

**REMOVING BARRIERS TO LEGAL
MIGRATION TO STRENGTHEN OUR
COMMUNITIES AND ECONOMY**

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CONTENTS

OPENING STATEMENTS

	Page
Padilla, Hon. Alex	1
Cornyn, Hon. John	3
Durbin, Hon. Richard J., U.S. Senator from Illinois	6

WITNESSES

Legomsky, Stephen H.	9
Prepared statement	36
Melmed, Lynden D.	13
Prepared statement	49
Rajakumar, Athulya	11
Prepared statement	55
Responses to written questions	62

APPENDIX

Items submitted for the record	35
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**REMOVING BARRIERS TO LEGAL
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TUESDAY, MARCH 15, 2022

UNITED STATES SENATE,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
AND BORDER SECURITY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice at 2:02 p.m., in Room 226, Dirksen Senate Office Building, Hon. Alex Padilla, Chair of the Subcommittee, presiding.

Present: Senators Padilla [presiding], Klobuchar, Blumenthal, Cornyn, Tillis, and Hirono.

Also present: Senator Durbin.

**OPENING STATEMENT OF HON. ALEX PADILLA,
A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Chair PADILLA. Good afternoon, everybody. I call to order this hearing of the Senate Judiciary Subcommittee on Immigration, Citizenship, and Border Safety. This hearing will come to order, and I do thank you all for joining us today. This is a hearing to explore some critical and timely issues, and I want to thank—start by thanking our Ranking Member, Senator Cornyn, and his staff for once again working so collaboratively with me and my team in putting this hearing together. That’s not always a given around here. I want to make sure, Senator Cornyn, you know how much I appreciate your partnership, both on this Subcommittee and in our other work together.

We’re here today to examine the challenges that many immigrants face in seeking lawful permanent resident status. For more than 200 years, people have come to the United States from around the world to seek refuge, pursue opportunity, and live the American dream. For generations, the dreams and hard work of immigrants have fueled our economy, sparked groundbreaking scientific discoveries, enhanced our national security, and strengthened our communities. That’s why Congress has routinely created pathways for people around the world to live and work in this country, and to bring their families along with them.

The immigration system that Congress designed to achieve those critical goals has failed to keep up with our needs in the 21st century. In this hearing, we’ll hear testimony on barriers to the legal migration that routinely separate families across international bor-

ders for years. Visa caps that keep employers from expanding their businesses and hold back the U.S. economy, and arbitrary cutoffs for legal status that force children of visa holders to leave the only country they've ever known when they age out of their parents' visas.

The gap between our country's needs and realities of our broken immigration system should come as no surprise. After all, Congress hasn't passed a significant update to our immigration policy in more than three decades. Think about that. We're still relying on an immigration framework that was last overhauled before the launch of the World Wide Web.

This has had devastating consequences for hardworking families and the economy. Currently, there's a backlog of 1.4 million people who are eligible for employment-based visas. Employment-based visas allow participating immigrants to bring extraordinary skills to our workforce, start new businesses, create new jobs in rural areas, and to help address worker shortages in industries like healthcare.

Only 140,000 of these individuals can obtain visas every year. Because the spouses and children who accompany them count against a total, far fewer than 70,000 visas actually go to eligible workers. Hundreds of thousands of others are left in limbo, restricted by a temporary visa or turned away from their dreams, and they're kept from realizing their potential.

Our immigration laws also cause years of delay for millions of family members who are otherwise eligible to join their relatives in the United States. The annual cap on family based visas is far lower than global demand, with about 7.7 million people stuck in our backlog. That means millions of parents and children, sisters and brothers, and married couples face years or even decades of separation. Wait times are further exacerbated by strict limits on how many visas can go to an individual country, and the term "wait time" for many is actually a cruel misnomer. For applicants from some countries, the "wait time" is literally longer than any human's life expectancy.

It's past time to update our immigration laws to reflect the current needs of our Nation. I thank my colleagues who are leading commonsense bills to address these unnecessary barriers to legal migration. For instance, Senator Durbin, Chair of the Judiciary Committee, has the RELIEF Act, which would increase the availability of visas to reunite families. Senator Menendez's U.S. Citizenship Act would eliminate per-country caps, increase the number of green cards through the diversity visa program, and recapture millions of previously unused visas to reduce green card backlogs. Representative Lofgren's LIKE Act would create a pathway for immigrant entrepreneurs to strengthen our economy. I've worked across the aisle with Senator Paul to introduce the America's Children Act, which would create green card opportunities for children who grew up in the United States but are now aging out of their parents' temporary visas.

The stakes of this work could not be higher. Professor Stephen Legomsky's joining us today to testify about how our outdated immigration laws are harming our communities and our economy. Mr. Melmed will focus on barriers to skills-based migration, and

Athulya Rajakumar, a documented DREAMer and aspiring journalist, is here to share the story of her family's struggle through years of immigration limbo, which contributed to her brother's tragic death.

Athulya, my heart goes out to you and your family, and I appreciate you being here and sharing your story. I'm outraged by this broken system that you, your brother, and thousands of documented DREAMers have had to face. We've organized this hearing today because we cannot allow the inaction of Congress to continue to cause this suffering.

The United States was founded as a nation of immigrants, and it's time to honor that spirit once again. I know I'm here to put in the work. I'm ready to have constructive, productive conversations with our Republican colleagues. These issues need to be more than just bipartisan in spirit. We must act. We must fix this outdated system, and I know we can do it if we work together. Now, I want to recognize Ranking Member Cornyn for his opening remarks before we get to our witnesses in the balance of today's hearing. Senator Cornyn.

**STATEMENT OF HON. JOHN CORNYN,
A U.S. SENATOR FROM THE STATE OF TEXAS**

Senator CORNYN. Thank you, Mr. Chairman. Thank you for holding this hearing on barriers to legal immigration. We've long known the vital contribution immigrant workers make to our economic growth and to our national fabric. Last year in this Subcommittee, we heard testimony that foreign-born workers often bring special skill sets to the United States, and that U.S. economic growth over the last three decades would have been significantly lower in their absence.

That's certainly the case in my home State of Texas, where we've benefited from the contributions of foreign-born workers in virtually every industry. Just as one example, it's been estimated that 30 percent of practicing physicians in the Dallas-Fort Worth area are foreign born. Thirty percent. Unfortunately, our current immigration system fails to harness the full economic potential of immigrant workers. The Congressional Research Service recently estimated that, without significant change, the employment-based green card backlog could exceed two million by the year 2030.

Indian nationals have been hit especially hard, because our system's per-country caps do not allow them to receive more than 7 percent of the available employment-based visas in any given year. To make matters worse, due to processing inefficiencies attributable in part to USCIS's paper-based system and to the closures of many of our consulates, we failed to issue as many as 92,000 employment-based visas in the height of the pandemic.

Senator Tillis has recently proposed the Preserving Employment Visas Act, which would recapture these unused visas and allow us to use them to reduce the employment-based green card backlog. I'm proud to be a cosponsor of that legislation, along with another Member of this Subcommittee, Senator Coons.

I'd also like to highlight my work with the Chairman of the full Committee, Senator Durbin, on the Healthcare Workforce Resilience Act, which would recapture as many as 40,000 unused em-

ployment-based green cards, which would be used—issued to doctors and nurses. Many foreign physicians and nurses work on H-1B visas while waiting for a green card, and our legislation would help reduce that backlog.

Finally, I'm a proud cosponsor of legislation last Congress that would've eliminated the per-country caps for employment-based immigrants, ensuring that countries like India do not face disproportionately long backlogs. I highlight these bills to demonstrate the strong appetite for immigration reform on this side of the aisle.

Unfortunately, the opportunity to act on these and other productive pieces of legislation has been completely derailed because of the current humanitarian crisis at our southern border. Since President Biden took office, we've seen historically high levels of illegal border crossings along our southwest border. Last month alone, Customs and Border Protection recorded 164,000-plus encounters along the southwest border, the highest total in more than 20 years, and that's just for last month. We know that as the weather warms up in the springtime, those numbers will continue to grow and grow.

In spite of this, the administration doesn't seem to really care or take the problem of this crisis at the border seriously. Rather than deter would-be migrants with weak asylum claims from taking the dangerous journey to the southwest border, the administration has rolled out the welcome mat and created new incentives to illegally immigrate to the United States. For example, the Department of Homeland Security has adopted a policy of paroling migrants into the United States without first issuing them a notice to appear before an immigration judge, the document that formally commences immigration court proceedings.

Unsurprisingly, a large percentage of these migrants don't show up and don't turn themselves in to the nearest ICE office when they reach their final destination in the United States. The Biden administration has also re-implemented and updated its Central American Minors program, and now allows migrants with asylum claims that were filed on or before May 15th, 2021, to petition to have their children brought to the United States.

Two months ago, Senate Democrats asked Secretary of Homeland Security Mayorkas and Secretary of State Blinken to re-designate El Salvador, Honduras, and Guatemala, for temporary protected status. This would give migrants with nonexistent asylum claims another avenue for lawful status in the United States, and one that is unlikely to be truly temporary.

Senator Sinema, Democrat from Arizona, another border State, and I have introduced narrow, targeted bipartisan legislation that would help us resolve the crisis on the southwest border. It would treat migrants fairly and deter those with weak asylum claims from attempting to cross in the first place. I'm pleased that Senator Tillis and Senator Hassan have joined us as bipartisan cosponsors.

Democratic leadership could demonstrate that they were serious by taking up our Bipartisan Border Solutions Act as a first step to get the crisis on our southwest border under some semblance of control. There was a brief glimmer of hope last year when Senator Durbin, the Chairman of the Full Judiciary Committee, convened a working group to explore bipartisan immigration reform options.

But rather than engage in a constructive process that actually produced solutions, Senator Durbin prematurely declared those talks a failure, claiming that Republicans made unreasonable demands. He advocated for a quixotic, partisan, go-it-alone approach that would create a pathway to citizenship for 6-to-8 million illegal immigrants.

This, of course, came without any accompanying measures to increase border security or interior enforcement to ensure that the undocumented population doesn't accrue yet again. Thankfully, the Senate Parliamentarian ruled against this effort to go it alone and use the reconciliation process. Unfortunately, in taking this partisan tack, our Democratic colleagues have poisoned the well when it comes to bipartisan immigration reform. It will be difficult to rebuild the trust with one another in order to come up with bipartisan solutions.

Having said that, I am willing to work with anyone, Republican or Democrat, to secure our borders and make it easier for legal immigrants to contribute to the American economy. Our best chance of updating our immigration laws lies in putting in the hard work necessary to craft consensus bipartisan legislation that make more targeted choices. As long as our colleagues across the aisle insist on a purely partisan measure with massive scope, the Senate will do what we have done for almost the entire time I've been here in the Senate, which is never fail to fail.

I'm looking forward to the testimony today about the changes that would be suggested here to harness the full economic potential of our immigration system. I know that while we don't agree on every proposal today, Mr. Chairman, I hope we can continue to find common ground where we can. Mr. Chairman, may I say a word about Mr. Melmed, my—the third witness.

Lynden Melmed is the third witness here today and a partner in the Berry Appleman & Leiden law firm here in DC. Before joining that firm, Lynden served as chief counsel of the U.S. Customs and Immigration Service, the agency's highest ranking legal position. As chief counsel of USCIS, Lynden managed a legal team of about 130 lawyers, and was a key advisor to senior leadership within USCIS, DHS, and the White House and other Federal agencies on all aspects of immigration law.

Before he—before his role in USCIS, Lynden served as my immigration counsel when I was Chairman of this Subcommittee, and I value his counsel and advice on all matters pertaining to the subject matter of today's hearing. It's good to have you back again with us here, Lynden, in the Judiciary Committee. I'm sure the entire Subcommittee will benefit from your excellent counsel as I have in the past. Thank you very much.

Chair PADILLA. Thank you, Senator Cornyn. Before introducing the other two witnesses, I want to recognize Chairman Durbin for some remarks. Even before that, Senator Durbin, a couple comments on Senator Cornyn's remarks. I just want to make sure that we're not conflating two different dynamics here.

Someone coming to the United States seeking refuge or asylum is very different than the case, that we're going to be hearing a perfect example of it today, of a young person who is here, who has been here lawfully as a child of an immigrant whose—has a lawful,

employment-based visa and stuck waiting, stuck in a backlog so long that they age out of those protections with no means of changing status. I just want to make sure we don't conflate very different scenarios.

As it pertains to the asylum system, it's important to recognize the asylum system is indeed a legal migration pathway. People who come to our border fleeing persecution and seeking protection have a legal right to ask for asylum. It may not be guaranteed, but they have a right to ask for it. Those who are able to establish a valid claim are allowed to stay here permanently and seek a green card after a year.

There is a notion that immigrants are misusing the asylum system by filing false claims. The fact is false claims made by asylum applicants are extremely uncommon. In fact, 99 percent of all asylum seekers do appear for their hearing. Finally, expanding and increasing legal immigration avenues for family reunification, employment opportunities, and humanitarian relief would help disincentivize unauthorized immigration. I think it just continues to underscore the complexities of our immigration system and our need for modernization. With that, Senator Durbin.

**STATEMENT OF HON. RICHARD J. DURBIN,
A U.S. SENATOR FROM THE STATE OF ILLINOIS,**

Chair DURBIN. Thank you, Mr. Chairman. Thank you to the witnesses for being here today. Is there anyone in America who is not following what's going on in Ukraine? Turn on the television, every single day, for another heartbreaking scene. You wonder about those poor people. Those families at the train station or the mother holding the baby that's kissing her husband goodbye and wonders if she'll ever see him again. She takes that train, most times, to Poland. An interesting thing has happened. Poland now has received about 1 1/2 million refugees from Ukraine.

We estimate that 3 million Ukrainians have left their country, 3 million refugees. Polish Ambassador spoke to us last week in a meeting, and he said, "I hope you've noticed something. We don't have any refugee camps in Poland. The people who get off that train are greeted by Polish families who bring them into their homes. They welcome these refugees." They're not the only country in Europe that does that. There are only 5 million people living in Ireland. They've agreed to accept 100,000 Ukrainian refugees.

You look at the United States of America, and you wonder, how would we have reacted to this situation? Three million displaced people in Ukraine out of a 40 million population. What is a comparable number in the United States? It's the State of Texas. Twenty-nine million people, if they were, in a matter of 3 weeks, displaced from their home and sent out around the Nation, around the region, trying to find a place to call home, would America respond? Would we open our doors to those refugees?

I just suspect it's possible that many of the European countries that are accepting Ukrainians are accepting people who, by and large, look like them. By and large, have their same types of religion and culture and background. It's a fact of life that, when it comes to choosing refugees who are acceptable, we are much more

caring when they look like our own. When they don't, we're not as welcoming.

I hope that the United States will show, not just by appropriated funds, but by appropriated values, that we share the feeling of the people of Poland and others. Not just for these refugees, but for other refugees.

There are some among us who just say, flat out, "Make no mistake. I don't want a single one coming into this country. I don't want another immigrant, not one. If you're going to come up with ideas on how to bring more immigrants into this country, count me out." We have colleagues just like that. I know, I've spoken to them. I've listened to them. I've watched them over the years. Colleagues who never vote for an immigration bill, would not even consider it. I just don't understand that. We are a nation of immigrants. My mother was an immigrant. I'm proud of that fact. Her naturalization certificate sits behind my desk because it defines who I am and where I come from. We haven't updated this legal immigration system in America in, now, 32 years. Thirty-two years.

In 2013, we tried to change it. I worked with a group of eight, led by John McCain and Schumer and Menendez and Bennett and Graham—I'm missing some here along the way. Senator Flake. We passed a bipartisan comprehensive immigration bill. Some Republicans wouldn't even vote for that, even though it contained more money for border security than we have ever appropriated. The bill passed the Senate 68-to-32. It provided a path to citizenship for millions of immigrants with deep roots in this country. I thought it was the answer. Republicans wouldn't consider it in the House, wouldn't even take it up. It would've established new protections for American workers, would've cleared the green card backlog, which is one of the reasons we're here today, and it would substantially increase future legal immigration. As I said, it wasn't taken up in the House. Then came the Trump administration.

We saw unprecedented attacks on legal immigrants, the Muslim ban, the lowest refugee admissions targets for the United States of America in decades. You know what inspired us to create refugee admission targets in the United States? Our reflection on what we did during World War II, turning away the *SS St. Louis*, with hundreds of passengers, Jewish people, trying to escape the Holocaust in Europe. We turned them away. Many of them went back to Europe to die in the Holocaust.

After that experience, we said as a Nation, "That isn't what America's going to be in the future. Both parties are going to stand up and speak up for refugees in admissions into this country." We did it, consistently, until the last President.

Last year, I convened a bipartisan immigration negotiation that dragged on for months. Senator Cornyn was speaking to it when I entered the room, so I didn't hear all he said, John, so I won't dwell on it. I was disappointed, because there were just people who were sitting at that table who wanted not one more immigrant. Maybe it's partisan on my part, maybe it is, but I believe we're a nation of immigrants and we would be stronger if we had them.

One of those significant challenges that the Chairman of this Subcommittee just addressed, that's the lack of green cards. The numbers are stunning. Four million future Americans, 4 million,

are stuck in the family green card backlog overseas. Many of them are family members who want to be reunited with their families. I thought we were for family values. We changed that family migration into something called chain migration, and many of it—many people among the Senate Membership look on it in a negative way.

With 4 million family members waiting to be reunited with their families overseas, how many family green cards do we issue each year? Two hundred twenty-six thousand. Do the math. More than 875,000 immigrants are stuck in the employment green card backlog in the United States. Eight hundred seventy-five thousand. We issue 140,000 employment green cards per year.

One of the most heartbreaking consequences of the green card backlog is its impact on innocent children, and I know we're going to hear about that today. They've grown up in America. They believe this is their home. They want to be part of its future. They're college students. They're bright and ready to go. Current law strips them of their legal status when they reach the age of 21. As a result, they are, quote, "aging out" at 21.

Athulya Rajakumar, and forgive me if I didn't pronounce your name correctly, one of our witnesses, is just such a person. Remarkable persistence despite tremendous obstacles. We'd be a better nation if you were a citizen here, and I hope we can make that happen. That's why I'm proud to sponsor Chairman Padilla's bipartisan bill, America's Children Act, which would provide a path to citizenship to you.

I also commend my House colleagues for including a path to citizenship for so-called documented DREAMers. I introduced the DREAM Act 21 years ago in this room. Before that, if you asked people, "Who are the DREAMers?" they'd say, "They're a British rock group, weren't they?" No. They're a lot of young people who, for over 2 decades, have been looking for a chance.

I've also introduced the RELIEF Act, which is based on the bipartisan 2013 comprehensive immigration bill. It will lift the arbitrary country caps that limit the number of green cards that go to immigrants for any single country in a given year. We need to help everyone stuck in a green card backlog, which is why this act would clear the backlog in 5 years. Not 20, 5 years. Keep American families together.

Also working closely with the House Judiciary Committee on the legal immigration reforms in Build Back Better. I hope the Senate will pass some measure like that this year. Though we have our disagreements, I want to thank Senator Cornyn for partnering with me to introduce the bipartisan Healthcare Workforce Resiliency Act. John, I don't know if you checked the cosponsorship lately. We're doing pretty good. I think we've got a chance to pass that. Addresses the plight of immigrant doctors and nurses stuck in the green card backlog.

Strengthening our immigration system will make us a better country. Opening our doors to refugees will remind us of the goodness of the American people. Let's get the job done. Thank you, Chairman Padilla.

Chair PADILLA. Thank you, Senator Durbin. I want to lay out the mechanics for the rest of today's hearing. After I introduce and

swear in the witnesses, they'll each have 5 minutes to make their opening remarks. We'll then begin our first round of questions, and each Senator will have 5 minutes. I ask Senators to please try to remain within your allotted time. Now, our witnesses.

Let's start with Professor Legomsky. Professor Stephen Legomsky is the John S. Lehmann University Professor Emeritus at the Washington University School of Law in St. Louis. Professor Legomsky took a leave of absence from 2011 to 2013 to serve as chief counsel of U.S. Citizenship and Immigration Services, the immigration services agency in the U.S. Department of Homeland Security. After retiring in July 2015, he returned to Washington to serve as senior counselor to Secretary of Homeland Security Jeh Johnson. He has served as a member of President Biden's transition team, and as a consultant to the transition teams of Presidents Clinton and Obama, the first President Bush's Commissioner of Immigration, the U.N. High Commissioner for Refugees in Geneva, and several foreign governments on immigration and refugee policies. He has testified before Congress many times while in the private sector, and his book, *Immigration and Refugee Law and Policy*, has been the required text at 193 law schools.

Today we also welcome Athulya Rajakumar. Ms. Rajakumar is a 23-year-old recent graduate of the University of Texas at Austin, from the Moody College of Communication. Originally from India, she came to the United States when she was 4 years old, as a dependent of her mother's visa. Ms. Rajakumar grew up in Seattle, Washington and now resides in Dallas, Texas. She has completed her entire education from 1st grade to her bachelor's degree in the United States.

Senator Cornyn has already introduced Mr. Melmed, so with that, I would ask each of the witnesses to please rise and be sworn in.

[Witnesses are sworn in.]

Thank you. You may be seated. Let the record reflect each of the witnesses responded in the affirmative. With that, Professor Legomsky. Let's go ahead and proceed with your opening statement.

**STATEMENT OF STEPHEN H. LEGOMSKY,
PROFESSOR EMERITUS, WASHINGTON UNIVERSITY
SCHOOL OF LAW, ST. LOUIS, MISSOURI**

Professor LEGOMSKY. Thank you for the privilege of testifying before you today. It's now been more than 30 years, as several of you have now said, since Congress has last meaningfully updated the numerical limits on legal immigration. As you know, massive backlogs have now accumulated. Those backlogs have needlessly diminished so many of the benefits that immigrants bring us. My view, for all the reasons contained in my written statement, is that the U.S. could and should significantly increase the number of immigrants whom we admit each year.

Whether or not one shares that view, I think there are four things that Congress can do now that would not increase total immigration, but would put a serious dent in the backlog and shorten the long waiting periods faced by qualified immigrants. These four measures don't change any of the individual criteria for admission

as a lawful permanent resident, an LPR. They would, however, simply allow those immigrants who eventually will be admitted anyway to be admitted sooner rather than later. They would affect the timing of the given person's admission, but not the overall long-term numbers.

As you know, the statute contains formulas for computing the annual worldwide caps on family sponsored and employment-based immigrants. My first set of proposals calls for three changes to those formulas. Increasing the base numbers of 480,000 and 140,000 respectively, recapturing all the visas that Congress has authorized but that have gone unused because of bureaucratic delays since the start of the current system in 1992, and, in the family sponsored program, repealing the present deduction for the previous year's admission of immediate relatives.

Second, one of the family sponsored subcategories consists of the so-called 2As. These are the spouses and the unmarried, under age 21 children of LPRs. At the moment, except for the across-the-board administrative processing delays, there's actually no waiting period for 2As. It hasn't always been that way, and there's no guarantee it won't become that way again.

At times, 2As have had to wait as much as 5 1/2 years to join their nuclear families in the U.S.; even longer if they are from Mexico. This is an especially serious problem, because the petitions are usually filed soon after the sponsoring LPR is married or have children overseas. To be clear, for the most part, the people we're talking about here are newlyweds being separated for the first several years of their marriage, and parents being separated from their newborn babies for the first several years of the child's life. My second proposal, therefore, is to reclassify the 2As as immediate relatives, thus freeing them from the numerical limits that have given rise to these long delays. The humanitarian concerns are obvious, and my written statement contains several additional practical reasons to address these separations.

Third, the current law also limits the number of qualified immigrants who may be admitted from any one country in a single year, as has been noted. The current per-country caps have produced extreme results, including very long waiting periods for Mexican and Filipino immigrants in the family category, and for Chinese and Indian immigrants in the employment category. My third proposal doesn't require repealing these per-country caps, although I personally would be in favor of doing so. It does call for raising them.

My fourth proposal concerns lawfully admitted temporary workers, mainly the H-1Bs, whose petitions for employment-based LPR status have been approved, but who have been wait-listed for actual adjustment of status. This proposal would allow them to file their adjustment applications a certain amount of time in advance, to give UCSIS a head start on the processing.

The fifth and final proposal, unlike the first four, would extend eligibility to some individuals who are currently blocked. It would repeal the various provisions that bar people from the U.S. for 3 years, for 10 years, or in some cases, for life because of past—not current, but past—unlawful presence. My own view is that the harshness of these bars is inherently disproportionate to the offenses that they mean to punish.

The most severe consequences of these provisions fall on those immigrants who have been unlawfully present at one time or another, but who now satisfy all of Congress's substantive eligibility requirements for immigrating to the United States. By that I mean, they fall within one of the categories established by Congress: family, employment, etc. They don't fall with any inadmissibility grounds created by Congress, and they have waited their turn in line to the point where their priority dates are now current. For them, these bars create a procedural Catch-22.

As my written statement explains, and I'll be happy to elaborate further if there's interest, they meet all these substantive requirements, but there's simply no place they can go to actually file their applications. For various reasons, they can't apply overseas. For various other reasons, they can't apply here in the United States as well. Again, I will be happy to elaborate. Thank you all once more.

[The prepared statement of Professor Legomsky appears as a submission for the record.]

Chair PADILLA. Thank you, Professor Legomsky. I turn to Ms. Rajakumar for your testimony.

**STATEMENT OF ATHULYA RAJAKUMAR,
GRADUATE OF THE UNIVERSITY OF TEXAS
AT AUSTIN, DALLAS, TEXAS**

Ms. RAJAKUMAR. Chairman Padilla, Ranking Member Cornyn, and Members of the Subcommittee, thank you for the opportunity to share my story. My name is Athulya Rajakumar. I'm a recent graduate of the University of Texas at Austin. I'm also a member of Improve the Dream, a youth-led organization that supports and advocates for over 200,000 young immigrants who grow up in the United States with a documented status but face self-deportation after aging out of the immigration system.

I am a documented DREAMer. I was born in India, and when I was four and my brother was six, my mother left an abusive marriage in search of a better life for us. After graduating from San Jose State University, she secured a full-time job and was able to acquire a work visa. Eventually, in 2012, she was able to apply for her green card with me and my brother as her dependents. After nearly a decade in the green card backlog, I aged out in January 2020, when I turned 21.

My single mother worked hard to support me and my brother on her own. Things were hard, but still, I remember making happy memories while building our new life, like eating red, white, and blue popsicles on 4th of July, driving through neighborhoods to look at Christmas lights, and watching my first baseball game at the Nationals' stadium just a few miles from here. These experiences, uniquely American, are not only unforgettable, but a part of who I am today.

I learned very young that every aspect of my life would be controlled by my status. I could not participate in my high school's AP French exchange program, even though I was president of the French club, because I could not leave the country and guarantee a return. When I applied to colleges, I was considered an international student even though I completed 1st through 12th grade

in America. I had to answer questions like, “What can you contribute to our institution as a resident from your country?” I grew up in Seattle. Starbucks was founded there. I didn’t know how much more American I could get.

I also could not qualify for any Federal or university financial aid. Regardless, I worked hard, earned good grades to get direct admission into my dream program at Moody College of Communication’s Journalism School, to pursue my long-term goal of becoming a journalist so I could use my voice to bring awareness to important issues.

My brother and I were forced to raise ourselves because my mother was always working, not only to provide for us, but also to retain our visa status. Due to this uncertainty and anxiety, we both faced severe mental health issues, my older brother to a worse extent. He should’ve been pulled out of school, given proper medication and counseling, and at times I felt he should’ve been institutionalized. However, as H-4 dependents, we legally needed to be enrolled as full-time students to remain in this country. Though my mother wanted to quit her job and stay home with him, risking her job meant risking our entire life here.

After college, he took the LSAT, in which he scored in the 98th percentile and got into some of the best law schools in the country. We thought, if we cannot fight the immigration system, maybe we can work to help change it. His goal was to become an immigration lawyer and speak out for this group of children that America cannot see or refuses to recognize. However, the day before his orientation at the University of Washington, he took his own life.

Our entire family was torn apart, and our worlds were turned upside down. I flew home and went from writing a school paper to his obituary in less than 24 hours. The most cruel part of this tragic situation was that we were not even given the proper time to mourn. Within 1 week, I was back in college, and by the end of the month, my mother had to be back at work.

Once again, our visa status controlled our lives, even when one of us was dead. I can only describe his life as simply existing. Not living, but surviving. I’m 23 years old, I should be excited about my goals, but I’m scared because I know they’ll be taken away from me by something I cannot control. I got a full-time offer from a major news corporation in Houston, a top ten market, but the same company who saw my potential withdrew their offer the second they heard about my visa status. Worst of all, being considered an alien, an outsider, in the only place you know to call home, is a different kind of pain.

Without a change, in 8 months, I will be forced to leave not only my home of 20 years, but also my mom, who is my only family left. Over 5,000 documented DREAMers face this every year. Aaron, a nursing graduate, was forced to self deport last summer in the midst of a pandemic. Rutha, a data analyst student, was forced to self deport 2 months ago. Summer will be forced to self deport in 4 months, even though her family has legally resided here since she was a baby.

Members of Improve the Dream hope that one day everyone who grows up in America can become an American citizen and fully contribute to our country. Members of this Subcommittee can make

this a reality by passing America's Children Act, a bipartisan bill that would permanently end aging out and ensure that children like me, who are raised and educated with a documented status, receive a clear opportunity to apply for permanent residency. This bill would create a reality that most Americans likely assume already exists. The Subcommittee should also address root causes that lead to aging out, including the green card backlog and the flaws in our system that allow for lawful, long-term residence without any clear path to citizenship.

Though the immigration system has constantly tested my faith, I am thankful my mom brought me here. We are Americans, and all we hope is to be recognized as that, to finally give meaning to the lives that we have lived here so far. I hope you can improve the dream for all of us. Thank you.

[The prepared statement of Ms. Rajakumar appears as a submission for the record.]

Chair PADILLA. Thank you, Ms. Rajakumar. It takes courage to share your story. It's beyond moving. I know your mother is with us today, and I want to thank her for her courage as well. Mr. Melmed.

**STATEMENT OF LYNDEN D. MELMED,
PARTNER AT BERRY APPLEMAN &
LEIDEN, WASHINGTON, DC**

Mr. MELMED. Thank you, Chairman Padilla. Ranking Member Cornyn, good to see you. Appreciate the opportunity to testify today.

As the Chairman mentioned, my testimony is going to focus on barriers to skilled immigration. If you ask any company in any industry today where Congress should place its efforts on addressing that problem, you will encounter something rare in immigration debate: consensus. Almost all companies agree that the lengthy green card backlog and related per-country limits make it difficult to attract and retain high-skilled immigrants.

When I joined the Government in 2002, not a single employment-based immigrant, irrespective of nationality, had to wait for a green card number. Two decades later, it is estimated there could be as many as 1.4 million employment-based immigrants in the backlog, and nationals of India and China face decades long wait times. Compounding the outdated numerical limits, hundreds of thousands of green card numbers have been wasted because the agency was unable to use them within the fiscal year. Last year, approximately 80,000 numbers—although I heard earlier, maybe more than 100,000 numbers—went unused. Halfway through the current fiscal year, the data suggests the agencies will fall short again, perhaps by an even bigger amount.

I'd like to pause on this point. Agency processing capacity now has a larger impact on immigration levels and flows than any legislation passed by Congress in the past few decades. The agencies have legal authority to remediate prior shortfalls. There's legislation that I know many Members here have introduced and sponsored, and I encourage Congress to address that issue.

Lengthy green card wait times have near-term and long-term consequences for U.S. competitiveness. Knowing that they will

have to wait decades for a green card in the U.S., highly skilled foreign nationals are increasingly taking their talents to other countries, including Canada. Toronto now leads the 30 top tech markets for job growth in the U.S. and Canada, and Vancouver ranks third. A key component of Canada's job growth is its willingness to grant permanent residence to high-skilled immigrants without delay.

Fifty-six percent of new immigrants to Canada will enter through economic channels. In contrast, only 6 percent of legal immigrants to the U.S. enter through economic channels. There is, however, one essential way that the U.S. employment-based system is superior. Our employer sponsorship model is very efficient at aligning immigrant skills with a labor market, which reduces the likelihood that the country will admit highly skilled workers that end up underemployed.

As you heard earlier, the green card backlogs place employees and their families in very difficult and heart rendering situations. Many high-skilled immigrants from India, including those who graduate from U.S. universities and work in critical STEM fields, will face the choice of leaving the U.S. or remaining on a temporary work visa for their entire life. Those outcomes are inconsistent with our country's values, but they also undermine our economic interest. The U.S. is losing key employees and limiting the career progress of those that remain in the system at a time when there is already a shortfall and record unemployment, particularly in computer-related occupations.

Furthermore, the children of green card applicants can age out, as you heard earlier. There's little that I can add to Ms. Rajakumar's powerful testimony, other than to validate that the legal options for documented DREAMers are few and far between.

Finally, I wish to call attention to how the green card backlog relates to processing delays at the agencies. High-skilled workers in a backlog must repeatedly extend their status and work and travel documentation, often for years on end. The family of a high-skilled immigrant will file multiple applications while waiting in that backlog. Today the Government often takes over a year to process a simple employment authorization document.

Not only does that processing time force business disruption on thousands of companies and workers, but those extra applications get added to a case processing backlog that is really difficult to get your head around. In 2013, the agency had 3 million pending applications. Today, that backlog exceeds 9.5 million and is expected to grow. I raise this because I'm often asked how the agencies can address processing delays, and it is clear to me that the Government can't keep doing the same thing as they did in the past and hire its way out of the problem. Congress and the agencies should focus on how immigrants move through the system and eliminate unnecessary steps and bureaucracy.

In closing, I want to thank the Committee for calling attention to this important issue. I outlined several policy options for Congress and the agencies to consider, and I look forward to answering your questions.

[The prepared statement of Mr. Melmed appears as a submission for the record.]

Chair PADILLA. Thank you, Mr. Melmed. Thank you to all three of you for your testimony. Now questions from the Committee.

A major failure of the U.S. immigration system is the failure to consider the fate of the children of temporary visa holders. While their parents have applied for green cards, applications remain stuck in years-long backlogs. There are currently over 250,000 children of long-term temporary visa holders who are at risk of aging out from the protection of their parents' status. These are individuals who, like Ms. Rajakumar, have grown up in the United States, have contributed greatly to their communities, and who are unmistakably American.

For these documented DREAMers, as they're called, there are almost no pathways to remain in the country after aging out of their parents' visas. When they turn 21, they face the impossible decision of leaving their families to return to a country that is often completely foreign to them or living undocumented in the shadows.

I introduced the bipartisan America's Children Act, which would create green card opportunities for these children, and fix this often overlooked inequity in our immigration system. Ms. Rajakumar, again, thank you for sharing your story with us. If I may, can you explain how the enactment of the bill—I know you're familiar with it—how it would impact your life, and what having a pathway to citizenship would mean to you.

Ms. RAJAKUMAR. First and foremost, what comes to my brain is that my mom and I would not be immediately separated. Second, it would allow me to pursue my desired career path, gain experience, and while these are tangible things I can point out, the biggest thing it would do is allow me to build my life here permanently and contribute to the place that I've called home for 20 years without fear that it would be taken away from me.

Chair PADILLA. Thank you. Second question is for Mr. Melmed. Do you think it makes sense for immigration system to allow children to be brought here on their parents' visa, raised and educated here, oftentimes for decades, but not have a clear opportunity to become an American citizen because their parents' green card petition is stuck in the backlog?

Mr. MELMED. Chairman, it doesn't make sense, and if I could add a couple of additional points—

Chair PADILLA. Make sure your microphone is on.

Mr. MELMED. Chairman, it doesn't make sense, and if I could add additional points to that question is that the backlog that they are experiencing was not contemplated by Congress previously. Backlogs are not new to the immigration system. You can say, in fact, that 70 years ago, there were backlogs in the immigration system. Congress has, on multiple times, enacted relief for children who are aging out. This particular group that Ms. Rajakumar is part of was not considered because those backlogs didn't exist at the time that Congress previously considered this issue.

The second, very sympathetic factor about the situation that they encountered themselves in is part of my testimony, is that these backlogs didn't exist as recently as 2013. At the time that the parents enter the country on the temporary work visas, it wasn't like they could have known. None of us really necessarily foresaw the explosion in those backlogs over the ensuing decade.

As I did mention, Congress has wrestled with this issue before. There's been various policy solutions, including in some situations, freezing their age, and other times using a formula to back out agency processing times to afford relief. There are a few options for Congress to consider to provide relief, and they can look at prior legislation perhaps as a road map.

Chair PADILLA. I share your observation, not just on this particular dynamic, but more broadly. What's clear from today's testimony is that our immigration laws are outdated and no longer serve the purpose for which they were created. Reforming our family, employment, and diversity visa systems would be in the best interest of our economy and our communities. Professor Legomsky, in your testimony, you highlighted several ideas to help reform the system and reduce the harmful backlog.

I'd like to ask specifically about the idea of reclassifying spouses and unmarried children of legal permanent residents who are applying for family based green cards. Right now, those individuals are subject to the arbitrary numerical limits, but your suggestion would be to classify them as immediate relatives, a category of relatives that is not subject to the numerical caps. Professor, can you explain why a fix to this category of family based petitioners would have significant impact on reducing the backlog?

Professor LEGOMSKY. Thank you, Mr. Chairman. I think my strongest reason for feeling this would be a good fix just focuses on who these people are in reality. As I mentioned during my original remarks, these are people who petitioned for their spouses—for their new spouses or their newborn babies sometime after becoming an LPR.

I should explain that if you are admitted as an LPR, the current law does allow you to bring with you your accompanying spouse and under age 21, unmarried children. The problem is that if you immigrate as an LPR and then you get married to someone who is not a citizen, or then you get married to someone and have a baby overseas, those children and spouse fall into the 2A category rather than the accompanying category. Although there currently is no wait as I mentioned, there were very long waits before.

The reason I focus on who these people are is that, because the petitions are filed typically soon after the event, we are talking about separating newlywed couples and separating parents from their newborn babies for the first several years of their lives. My guess is that people of all political stripes would recognize this to be a serious problem, a particularly heartbreaking one. There are a couple other practical reasons as well.

One is that, since the family members cannot come here until their visa numbers come up, if the LPR wants to maintain any semblance of a family life, what that person is going to have to do is periodically and frequently travel overseas to visit his or her family members, often at great disruption to the person's job, often at great expense. Third, and I know this will be a little more controversial, it seems to me that when the waits do become this long, you're practically inviting illegal immigration.

I want to be clear that I'm not advocating illegal immigration. I'm simply calling attention to the reality that human nature will have to be remade before newlywed spouses willingly separate for

years at a time at the beginning of their marriage. Human nature will have to be remade before parents willingly separate from their newborn babies for the first several years the child's life. My guess is that most of us in this room would not do so. These are compelling—particularly compelling circumstances for the family sponsored 2As.

Chair PADILLA. Thank you. Senator Cornyn.

Senator CORNYN. Ms. Rajakumar, it's nice to meet you. I hate for it to be under these circumstances. I certainly am sympathetic to your conundrum and those others like you that have aged out of the H-1B system. I'd like to work with Senator Padilla on the legislation he's introduced to come up with a solution.

I'm very sympathetic to not only your situation, but for the other immigrants who've come here as children, known sometimes as the DREAMers, sometimes as DACA recipients for the Deferred Action on Childhood Arrival memorandum that President Obama issued 10 years ago, which continues to be caught up in litigation, which is a reason why that sort of executive action is a bad way to do immigration reform. I voted for a bill that contained other elements, maybe, sure, but which provided a pathway to citizenship for 1.8 million DREAMers or DACA recipients. Unfortunately, it failed in the Senate, which has been the story since I've been in the Senate.

We, Congress, has never been successful in getting an immigration reform bill to the President's desk for his signature since I've been here. I think that should be an embarrassment to us all. Mr. Melmed, let me ask you two questions.

First, is the problem of H-1B dependents aging out a symptom of greater underlying problem with our immigration system, in your view?

Mr. MELMED. Ranking Member Cornyn, absolutely. You know, these are, for the most part, immigrants who have already established to the Government that they are eligible for a green card. They have—their employers have already gone through a multi-year process to establish that there's no qualified and available U.S. workers, their employers have repeatedly sponsored them for work visas, showing an ongoing need, and their communities and their employers have invested a huge amount in them. The sole reason that they are aging out is because they are caught in that green card backlog, and it falls most heavily on Indian nationals who are limited by the per-country 7 percent limit.

Senator CORNYN. Is the America's Children Act consistent with the approach Congress has used to address these problems in the past, in your view?

Mr. MELMED. When Congress—you know, even recently as last week with EB-5, Congress historically has taken—well, there's been—excuse me, let me back up. There's been consensus to protect children when this has been brought to the attention of Congress, so I'll start with that. The solutions that Congress has pursued in the past have generally focused on either—I use the term “freezing” the child's age at a certain date in the green card process, so even though the child will sometimes be in their 20's or 30's, they're still for immigration law purposes considered a child. Other times, the relief utilizes a formula to ensure that they just back out

the amount of time a case was pending with the Government, which can sometimes, of course, measure years.

What they didn't do is necessarily create a different path to a green card. What I mean by that is that the children continued to ride along as derivatives to their parents' green card application, as opposed to going out onto their own application for a green card. Those are just different policy decisions. Both should be considered, but you're correct, in the past it was done as where they stayed as derivatives to their parents.

Senator CORNYN. Assuming that we can come up with a bipartisan response to this particular problem that Ms. Rajakumar's situation exemplifies, it would require, of course, the Judiciary Committee as a whole to mark up a bill, and then Senator Schumer to bring it to the floor, as the Senate is currently constituted.

I know Senator Tillis and I previously had requested, when it came to the larger group of DACA recipients who'd been caught up in litigation for the last 10 years, we've requested that the Chairman put a bill in front of the Judiciary Committee so we can vote on it, amend it as appropriate, and if it gets a majority vote, then make it available for floor action. Unfortunately, that has—that has not happened.

Mr. MELMED, let me ask you about visa overstays. What role do visa overstays play in terms of illegal immigration in the United States?

Mr. MELMED. I apologize, maybe at one point I could cite the numbers off the top of my head, but it's a significant percentage. Historically, it's been over 40 percent are visa overstays. I hazard a guess that that number is higher over the past few years as a percentage of the undocumented immigration. You know, there's been efforts throughout the years to improve entry-exit tracking and to have a better sense of who has overstayed their lawful status. I think that the tools that are available to the agencies today are different than they were back in 1996, which is really the last time Congress tried to tackle the question of overstays, and it's probably ripe now for review to look at that question.

Senator CORNYN. Thank you.

Chair PADILLA. A note before recognizing Senator Durbin, the American Children's—America's Children Act bipartisan basis introduced includes a provision to freeze their age at 21, would also give work authorization. The main benefit of the American Children's Act would be it creates an opportunity for the children who are raised and educated here to apply for a green card, and we should do what we can to help them. Just wanted to add that piece of information as we're talking about the proposed act. Senator Durbin.

Chair DURBIN. Thank you very much, Mr. Chairman. Ms. Rajakumar, I assume that is your mother sitting behind you?

Ms. RAJAKUMAR. Yes. It is.

Chair DURBIN. She's a remarkable person.

Ms. RAJAKUMAR. Definitely.

Chair DURBIN. That she would want to protect you and your family and go to these lengths says a great deal about you. Thank you so much. When will she receive a green card? Does she have a date?

Ms. RAJAKUMAR. Actually, shortly after I aged out of the application, my mother did receive her green card. Which is why, if I was forced to leave in 8 months, we would first and foremost be separated. While she may have the opportunity to come visit me from time to time, our lives would be in completely separate places.

Chair DURBIN. Of course. Mr. Melmed, our omnibus bill had more money for processing, which you raised. I think is a valid point. Wouldn't you agree that, unless we get to the heart of the issue in terms of the number of green cards, that we are going to continue to run into issues even if we are efficiently processing applications?

Mr. MELMED. Absolutely, Senator Durbin. At this point in the process, for an Indian national, the agency processing times are checked with our firm before appearing. The overall green card process is still measured in years, in terms of agency processing. The issue that their family ran into is tied solely to the lack of green card numbers.

Chair DURBIN. It's not just a matter of appropriating the money. We've got to do something.

Mr. MELMED. Yes, sir. It's up to Congress.

Chair DURBIN. That's an honest appraisal, thank you very much.

Mr. Legomsky, thank you for acknowledging the obvious. We are dealing with real lives here. We can write laws trying to condition conduct, and we know in our own personal experience, newlyweds want to be in the same household. Families want to be close to one another. There's nothing wrong with those instincts. In fact, we reward them in many places in the law. But in immigration law, we challenge them way too often. Thanks for your service.

Mr. Chairman, I'm glad that Senator Cornyn has returned. I have a bill called the RELIEF Act which goes after the green card issue and aging out children. You have a bill which I've cosponsored, America's Children Act. I want to accept the challenge that Senator Cornyn has made. I want Senator Tillis to be in on this conversation, because he and I have talked about this too.

Let's put a bill before this Committee. Let's see what elements we can agree on and put it before this Committee. Let's test—Full Committee. Let's test whether or not we can expand it in certain directions. I have Members from your side of the aisle, Senator Tillis, coming up to me—not a great number, but some—saying, “Am I going to get a chance to vote on DREAMers in this year?” I haven't been able to say anything to them one way or the other. I want to say something to them. I want to give them that chance, but I think we have to test, in the Judiciary Committee, whether we can put together a bipartisan effort that can make it to the floor so we can implore McConnell and Schumer to give us our chance.

There are just too many people like Ms. Rajakumar, whose lives are hanging in the balance. I don't want to be guilty of not trying. Mr. Chairman, I would want to join with you, because you've been an amazing leader on immigration in the short time that you've been with us. Let's do that. Let's decide what is acceptable and then test whether other things can be added to it and bring something to the floor. Let's not go another 32 years without a bill.

Chair PADILLA. Thank you, Senator Durbin. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman, Chair Durbin, I appreciate you saying that too. I think that's the best way for us to get the work done. A few years ago we had two bills on the floor that came very, very close. We had a historic number of Republicans voting for a path to citizenship for the DACA population. We almost got where we needed to be on addressing some of the border security issues. We can, I think, dust that off and come up with something productive. You know, I, for one, would like for this to be the Congress where we address the DACA population that we also address some of these guest worker programs and green card issues, which, to me, I lived firsthand.

I got exposed to the H-1B process in my job as a partner at Pricewaterhouse. I've tried to tell anyone who thinks that we just need to find more computer scientists, more data analysts, more people with advanced degrees from the U.S. population, that they need to wake up and recognize that if we want our economy to continue to grow, if we want to continue to build on this great economy, that we've got to look to legal immigration as a critical part of fulfilling our workforce needs and really growing our innovation economy. Mr. Melmed, you were chief counsel at CIS, right?

Mr. MELMED. Yes, sir.

Senator TILLIS. It seems to me that they are working on technology that existed largely before Myspace existed. If—I mean, just based on your business perspective of that operation, the lack of electronic systems, it just seems like there's not going to be enough oil in the gears of CIS to even just process the current backlog. For people like me, who would like to see more going through, that they're going to have to really modernize, and we are going to have to make the investments to allow them to do that. Do you agree?

Mr. MELMED. Absolutely, Senator. I know my colleague, Professor Legomsky, also supported the Agency as they were wrestling with this after me. Being on the outside now, it's pretty phenomenal the way technology is transforming business. There are some positive signs out of the immigration agency this year. They've now been running the H-1B registration system as an online tool for a couple years, and that's gone well and successfully. They're starting to do more online payments, but that gives you an idea of how far they are behind the private sector in terms of case management.

Senator TILLIS. Wow, online payments.

Mr. MELMED. It's still a paper-based process and very slow.

Senator TILLIS. You know, I also agree, Professor, that when you build—and I, you know, I've got lifelong friends that, back in the 1990s, brought on as H-1B visa workers, and I saw firsthand that connection to family members as they—these were some younger, freshly out of graduate school or with a PhD, building a life and building a family, getting caught up in all the things we're talking about here. That's why we do have to look at it. Because it's actually a drain and a distraction on the professionals. It actually undermines productivity and their quality of life, and I think that we do have to look at it through that lens.

Mr. Melmed, are you familiar with the Preserving Employment Visas Act that we proposed?

Mr. MELMED. I'm familiar with it, yes, Senator.

Senator TILLIS. Does it make sense conceptually that if we have all these unused visas, we have 7 million, 8 million plus job openings, that that's at least going to take a portion out of that pressure that we have today?

Mr. MELMED. It does, Senator.

Senator TILLIS. I also think that I've heard in several hearings now that we're tracking a lot more entrepreneurs. A lot more new businesses have opened up. I think the COVID pandemic has made people either pursue dreams that they had on the shelf or just pursue other ways to make an income. They may never be going back to those jobs. Aren't we really undermining our ability to grow the economy and get back to a post-COVID kind of performance if we don't look at these issues?

Mr. MELMED. We are, and I would note that immigrants are—I saw the statistic—25 percent more likely to start new businesses. Hundreds of thousands of high-skilled, professional workers can't leave their employer today. Otherwise, they jeopardize their green card application. Both shortening that time period and allowing them to get their green card and then go out and start on their own, or creating other opportunities, are all going to boost the economy.

Senator TILLIS. That, you know, I think, just back on DACA—why I was so glad to hear what Senator Durbin has proposed. We did a lot of research on people who would be qualified through the DACA program. If you were to take a cohort of, depending upon the estimates, of 1.8 million to 2.2 million that would be eligible for the program, about 700,000 who had enrolled in it. There are extraordinary people. They tend to have higher levels—they're either engaged in education, gainfully employed, serving in the military.

I mean—for anyone who would have a philosophical problem with a path to citizenship for that population should probably do their homework because I actually think it's a group of people that we should figure out a way to solve that problem. I do also believe, Mr. Chairman, the only way we're going to solve it is to have a broader discussion about some of these other things that I believe that—we can ultimately put a package together and make significant progress, and I hope that progress is made in this Congress. Thank you, Mr. Chair.

Chair PADILLA. Thank you, Senator Tillis. I just want to compliment you on your effort, as well, on the Preserving Employment Visas Act, which would represent a great step forward in reducing the employment-based backlog. After today, I'd love to work with you to see if we can incorporate some of the relief to the family based backlog that we're talking about as well. Next is Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chair. Thanks for your great leadership here, and all the Senators. We have an all-star cast of people that have worked on this issue, including the Chair, Senator Tillis and Senator Durbin, Hirono, and Blumenthal.

I have cared a lot about this for a long time. I've cared a lot about it because my State is the home of so many refugees and immigrants. We have the biggest population of Somalis, the biggest population of Liberians, second biggest of Hmong, and we also have

workforce issues right now. It is both where my heart is, but also where my head is when it comes to our economy throughout our State.

Our unemployment rate is very, very low in Minnesota, way below the national average. We have traditionally, because of bringing in immigrants, have been able to maintain one of the strongest economies in the country, which includes one of the highest per capitas of Fortune 500 companies.

I'll start with you, Mr. Melmed. In your opening statement you discussed how the U.S. is falling behind. I think about this all the time. When we have job openings, we can't fill them with various skill levels of employees. I literally go into companies, and I think about it, because we talk about apprenticeships in workforce and then I always say, what's the most immediate thing we can do to shake this up? It's immigration reform. It's visas. It's all different things to create pathways to citizenship. What do you think—what policies do you think have the most detrimental effect right now on the ability of American companies to attract and retain top talent?

Mr. MELMED. Senator, I would start with, one, maximizing the immigrants who are already here. What we hear from our clients and companies is that they have employees who are caught in the green card backlog, and that limits their progress. It limits the roles that they can take on. As I mentioned just a few minutes ago, it limits their abilities to go out and create new enterprises. The green card backlog and per-country issues, those are already here. I'd start with that.

The other issue you hear about, I suspect, is from companies who look to hire out of U.S. universities. Such a high percentage of graduates, particularly in STEM fields, are in computer-related occupations. If a company today asked me, right now, they have a top candidate out of a U.S. university that they want to hire and sponsor for a work visa, the earliest that individual could start would be not this October, but the following October.

Senator KLOBUCHAR. Exactly. I've found it's even, for some of our smaller companies, it's harder to get in line to get these employees because they may not have quite the structure to pursue the whole thing. Very good, thank you.

I'm going to turn to a bill I'm working on right now for our Afghan refugees. We're taking in a number of them in Minnesota, and this bill would provide a pathway to permanent legal status for Afghan refugees who were evacuated. I guess I'd ask you, Professor Legomsky, what should we be doing for these refugees and for others in order to—who are facing long waits and processing times, and why is it important to change that?

Professor LEGOMSKY. Thank you for that question. I think your solution is exactly the right one. We should be providing a path to lawful permanent resident status. I think that the situation of all refugees is compelling, but in the case of the Afghan refugees, there are more reasons still. The big one, and the obvious one, is that these are folks who, at great risk to their own lives, have assisted American civilians and American military personnel in Afghanistan. With all the trauma they have already been through, we don't need to superimpose the additional trauma of not knowing

whether, at any moment, they will suddenly be picked up and returned home.

For their children, the situation is probably even more dire, because they have less understanding of what is going on. For their older children, the awareness is even greater. A path to permanent resident status, I think, is the best thing we can do at this point.

Senator KLOBUCHAR. Mr. Melmed, one other thing I wanted to note—and thank you for that answer. Foreign doctors who are from other countries, but they are doing their medical—getting their medical degrees in the U.S. and do their residencies. Crazy situation where they have to go back to their home country. We'd love them to stay. This is the Conrad 30 bill. I now have 20 other co-sponsors, bipartisan. It's a bill that I have with Collins, Rosen, and Ernst to try and continue that program and make it even stronger. It's called the Conrad 30 because it is named after Kent Conrad, because North Dakota had so many problems in retaining, as Senator Cornyn, another all-star cast member of people who want to get immigration reform done, knows, and so that would be very important.

Do you also think that we need to make the case—I always—this is always one of my big things, trying to make the case. I think businesses know it, but sometimes I think our citizens need to understand that connection with businesses. Senator Cornyn, Coons, and Murkowski and I did a bill to require the Department of Labor to study the barriers that immigrants with advanced training face in finding employment when you look at our needs right now. Do you want to just comment briefly on that? Then I've got to let my other colleagues take a shot here.

Mr. MELMED. I'd be remiss if I didn't comment on foreign physicians, as I'm a child of an immigrant foreign physician who settled in Dallas, Texas. I think, historically, the United States has been effective in identifying ways where there's win-win opportunities. Bringing foreign physicians to serve medically underserved areas is—has been done in the past, and it's an important tool at our disposal, and Congress should definitely continue to utilize that program.

Senator KLOBUCHAR. I'll ask you a question on the record, Ms. Rajakumar. Thank you. We'll get you one in writing so others can go. Thank you.

[The information appears as a submission for the record.]

Chair PADILLA. Thank you, Senator Klobuchar. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chair. I join in thanking you and the Ranking Member for your work, and especially on this issue of enabling more of our communities and our businesses to make use of foreign talent. It is one of the really great strengths of our Nation that we are a nation of immigrants. From all over the world, including Ukraine and Afghanistan, possibly the two greatest recent sources.

I've been working very, very energetically to enable more of our Afghan at-risk allies to leave that country. There has been only a trickle after the initial surge of those who were able to depart the country in the initial days of the withdrawal. I am frustrated by the slow pace at this point and continued lack of enabling of those

individuals to leave the country. They are a source of potential talent to us because they are the translators, interpreters, guides, workers.

I'm wondering, Professor Legomsky, whether there's any precedent in recent history for enabling that kind of population to go from temporary protected or parole status, as they are now, with the sword of Damocles over their heads very shortly, actually, having to leave the country, to deal with that kind of major part of the population in those numbers.

Professor LEGOMSKY. I can't think of a specific example in which Congress has adjusted a large group of people from TPS status directly to either refugee or lawful permanent resident status. There's certainly, however, been many executive actions in which former Presidents have allowed particular groups of those who face compelling humanitarian needs to be paroled into the United States.

One thing I will say about TPS is that, sometimes the objection you hear to making their status permanent, is that TPS was meant to be only a temporary program. I take that objection seriously, but my own view is that, whatever the original purpose of the admission of a particular group, circumstances change. Sometimes for humanitarian or even for interest—reasons of national self-interest, it makes sense to adjust that population. I'd be hard pressed to think of a group more deserving of that kind of treatment than the Afghan refugees who have been so helpful to us.

Senator BLUMENTHAL. As you say, they've put their lives on the line for us, our troops and our diplomats, in Afghanistan. They did it because they love this country, because they value freedom and democracy, and they were willing to put themselves and their families at risk to serve us. We have a moral obligation here that transcends any self-interest, I think.

You mention executive actions by Presidents—former Presidents. Can you give me a couple?

Professor LEGOMSKY. I was afraid you were going to ask me that because my memory is starting to slip.

Senator BLUMENTHAL. You can get back to me.

Professor LEGOMSKY. Okay, I will. Thank you.

Senator BLUMENTHAL. Okay. In my home State of Connecticut, my office has seen the kind of backlog that's been described by many of your colleagues—you're familiar with it—in immigration processing times for pending applications. My own case workers have seen I-765 employment authorization applications waiting for months, literally months on end, and that's the reason that I advocated for an additional \$200 million in funding for USCIS as part of an effort to address the backlogs. You may have answered this in part already, but could you give me a specific to-do list with that money for USCIS?

Professor LEGOMSKY. Yes. I'm a little bit limited in what I can say because it has been 8 years since I've served as chief counsel, and I have to assume that at least some procedures have changed. I will say that, in all honesty, during my time there, it's not as if I noticed lots of obvious inefficiencies in the way applications were being processed. My own view is that it's a positive thing that Congress, I believe for the first time for this fiscal year, has supple-

mented USCIS revenues with appropriations of its own. Normally, it's reliant—USCIS is reliant solely on the fees provided by the applicants themselves.

In addition to that, nobody can be against constantly being on the lookout for ways to enhance efficiency. To put this question in perspective, I think that both increasing efficiency and supplementing funds—both of which I count as positive steps—alone would produce just a small drop in the bucket. The big problem, and Senator Durbin has alluded to this, is that Congress has to act by dramatically raising the caps for people. That's where the big gains are likely to be made. Until that happens, I think efficiency gains will get us only marginal improvement.

Senator BLUMENTHAL. Would you agree, Mr. Melmed?

Mr. MELMED. I do agree with Professor Legomsky. I think until there are some efficiencies through digitization that Senator Tillis mentioned, and those would be measured in percentages, not major levers to reduce, I think the issues that we've talked about in terms of green card backlog, I just—if I could highlight the employment authorization document delay that your constituent services teams are wrestling with day in and day out. That's a backlog that's just going to continue to increase. As I mentioned, you can't hire your way out of that. You've got to somehow reduce the number of pending applications.

This administration has, to their credit, lengthened the validity of those documents, and that's helped a little bit but obviously not enough. Some of those bigger levers need to be pulled to bring that processing time down.

Senator BLUMENTHAL. It doesn't speed it. It just lets more people wait in line for longer periods.

Professor LEGOMSKY. Correct.

Senator BLUMENTHAL. Thank you. Thank you—thank you all for being here today.

Chair PADILLA. Thank you, Senator Blumenthal. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. I'm glad that Senator Durbin acknowledged the presence of Ms. Rajakumar's mother. I want to extend to you a very special aloha. I represent the State of Hawaii, and I too had a very courageous mother who brought three children to this country to create a better life for us. I am the only immigrant serving in the U.S. Senate right now. A special aloha to you.

Now, there is consensus among Democrats and Republicans that we have a broken immigration system. When you look at the over 11 million undocumented people who are here, we have over 800,000 DREAMers who are actually signed up, with many, many more who could qualify. You have the undocumented DREAMers, maybe 250,000 of them. You have all the people stuck waiting for their visas and practically in the—well, hundreds of thousands.

There is agreement that our system is broken. If you start with the proposition that we're going to need to do some sort of solution, come up with some sort of solution to the border situation and that is how you were going to start immigration reform, then we're not going to get very far. That's one of the major reasons that we have not gotten very far since 2013, when we actually managed to pass a bipartisan immigration bill that I thought was very comprehen-

sive. It wasn't all that it could have been, of course, but immigration is screwed up in so many different areas that you hardly know where to begin.

As I'm sitting here listening to the testimony, Dr. Legomsky and Mr. Melmed, you both have been working on immigration issues for a long time. Ms. Rajakumar has lived it. If we were to put the two of you in a room and told you guys to come up with areas of agreement for what we can do with our broken immigration system, do you think you could do that? Do you think you could come up with something that we could work on?

Mr. MELMED. I feel like that might be the toughest question that you've sent our way.

Senator HIRONO. Because if you can't, how can you expect us to do it?

Mr. MELMED. Honestly, I think the Professor and I would disagree on a number of things. I think we would both be well intentioned, and I think we would both be committed to roll up our shirt sleeves and get something done. I mean, it's an area where I think we would agree these are hard issues to wrestle with, and everyone on either side is going to have to make compromises.

Professor LEGOMSKY. I very much agree. I have found Mr. Melmed to be an extremely reasonable person, especially given his comment that I would be an easy person to deal with. It's true that there are many, many areas in which I think we would easily find agreement, some in which we might find agreement with a little bit of fine tuning, other areas in which I'm sure we would disagree. The real question is whether we could come up with a plan that we both agree on and that would pass both houses of Congress. I think that would be a tougher issue, because I know there's a wider diversity of opinion within the Senate and as well within the House.

Senator HIRONO. If you were to leave Congress out of it and we asked you to come up with something that's reasonable that addresses the huge backlog that we have and, you know, all of the myriad problems that you have testified to, I would think that you would be able to come up with some reasonable areas that would enable us to go forward.

Every time the word immigration comes up, you know, there are Members—mainly, I would say, of the Republican party because I feel like I can say that since my friend there, Senator Cornyn, has castigated the Democrats. Really, there are a lot of Republicans who run for the hills. At the same time, I know that our Ranking Member really wants to get something done in this area, and I—after hearing this and talking with my colleague to my left, the Chairman of the Committee, I feel as though maybe we can get something done.

In the area of who should have some sort of preference to come into our country, Mr. Melmed, you said that we should enable people with certain skill sets, probably in the math and science areas. We certainly need workers in those areas. I would just like to mention to you and this body, when we worked on the comprehensive immigration reform, there was a preference, I would say, for people with those kinds of backgrounds and experiences to have preference to come into our country with visas.

We have a huge need for domestic workers, for healthcare workers, etc. These are not people with science and technology backgrounds, and yet with the kind of preference that was in the original comprehensive immigration bill, a lot of women would have been left out of our immigration system. They would have been left out of getting visas on their own. They would've had to marry, usually, the guy who had the STEM backgrounds and experiences. I'd just like to note that, because we have huge needs for all kinds of workers in this country. I would not want us to get—to just focus on the people with the so-called advanced degrees and those kind of experiences.

Mr. Chairman, thank you very much for holding this hearing. My hope is that we can come up with something. In fact, I welcome the two of you to suggest something to us based on the testimony that you provided today. Thank you.

Chair PADILLA. Thank you, Senator Hirono. We had, a few minutes ago, Senator Booker online to participate, are you still there, Senator Booker. If you are, you're next for asking questions, and if not, then we will proceed with the second round of questions for Members who are with us. I want to come back to Ms. Rajakumar who, again, embodies the issue, one of the many challenges of our immigration system before us.

I asked you previously what it would mean if the America's Children Act were to pass, but I want to go retrospective a little bit. How would your life have been different over the last few years if you have—had been able to get a green card already? As you answer that, you can share with us also, would you describe what would happen in your life and your family if you had to leave the United States?

Ms. RAJAKUMAR. Thank you for your question. I think that permanent residency would have benefited me in many ways at several points in my life, but specifically over the past few years, especially once I turned 18. It would have given me the independence that I so badly desired. For example, I really wanted to be able to work when I was in college.

The out-of-state tuition—as I mentioned in my testimony, children like me don't qualify for any university or Federal financial aid, so the \$70,000 of out-of-state tuition that my mom took upon herself was an exorbitant burden on my family. She jeopardized our only home, and my inability to support myself due to my inability to work was just an extra stress on the family, not even being able to take care of my personal expenses.

Then, in addition, in 2019, if I had my permanent residency, I would have loved to have been able to take off a semester or even a year off school after my brother's passing, and really mourn and process and heal and be there for my mother, and had the confidence that I could have picked up my education once again when I felt ready, without any impact on my future.

If I had to leave, first and foremost, after being separated from my mother, it means returning to a country that I've only ever been to twice before, a place where I have no place to live, no means of transportation let alone a license, a career, or support system, because apart from my mother, even my most immediate

extended family reside in the U.S., so it would quite literally mean starting over completely from scratch.

My only other option of staying here would be to apply for an H-1B application, which would only further my work visa sponsorship and maybe me give me a couple more years, but at the end of which I will once again face self-deportation. The problem, again, with these applications type is they're fully luck based. They're pure lottery. It does not take into the account that I have—the years that I have spent growing up here, and even if I were to be lucky enough to get an H-1B application and then be sponsored for my green card through my employer, as my mom did over a decade ago, I would once again fall toward the back of the line that she was in and the line that I aged out of. Neither option is very viable, in my opinion.

Chair PADILLA. Very real circumstances. I want to focus back on the employment-based immigration system for another moment. The number discussed as to numerical limit for employment-based green cards is 140,000. We've referenced that figure earlier in the hearing. That number does not actually represent the number of people who petitioned for an employment-based green card. Spouses and children of immigrants who accompany an employment-based immigrant actually count against the 140,000 cap. I mentioned that in my opening statement. Therefore, less than half of the 140,000 employment green cards actually go to immigrants selected for employment reasons.

A question for both Mr. Legomsky and Mr. Melmed, can you discuss how exempting spouses and children from the cap would improve our immigration system?

Professor LEGOMSKY. It would have the same kind of beneficial effect, with slightly different numbers, as some of the other bases for increasing the total cap, such as increasing the base number, recapturing unused visas, eliminating the deduction for immediate relatives, and so on.

I see a proposal to exempt the dependents from the cap as being in that same vein, and I think they would all have the same benefits. They would greatly shorten the waiting times for people who, after all, are going to be admitted at some point anyway. It's just that this would allow them to be admitted sooner rather than later, thereby helping the employers who need their essential labor right now, rather than forcing them to wait in the future.

Chair PADILLA. Mr. Melmed.

Mr. MELMED. I agree with Professor Legomsky. I don't have anything else to add other than—you can see the snowball effect, that when you have a 10-year backlog for a green card, people will marry, they will have children. Those folks are then being added to the line, so a little bit of an explanation of why that backlog is increasing even while doing nothing, just by nature of families growing.

Chair PADILLA. I think it speaks to both the backlog and the effort to address the backlog at the same time, the purpose for which this was intended to impact employment and the economy. When a majority of the numbers are not the sponsored entity but spouse and children of, that's limiting the employment and economic contribution side, so it makes sense to me. Senator Cornyn.

Senator CORNYN. Mr. Melmed, I mentioned Senator Tillis's bill, Preserving Employment Visas Act, which would recapture 92,000 employment-based green cards that went unused. I suppose the answer to this question is obvious, but if we recaptured 92,000 employment-based visas, that would reduce the backlog accordingly, correct?

Mr. MELMED. It certainly would, Senator.

Senator CORNYN. Talk about the impact that that would have, what beneficial impact would it have on children who are in Ms. Rajakumar's situation, if we're able to recapture those green cards. Would it help those who might otherwise age out of the system?

Mr. MELMED. Yes, Senator. You would shorten out the wait time for a green card, and it wouldn't, of course, protect everyone from aging out. It would certainly reduce the likelihood and chances of children turning 21 before the parents get a green card.

Senator CORNYN. Okay. To Senator Durbin's point, lest people think that we all disagree on—about everything, I mention the bill that he and I partnered on, Healthcare Workforce Resilience Act. This would capture 40,000 employment-based immigrant visas for doctors and nurses. If there's one thing I hear from my hospitals in Texas, it's the shortage of nurses because of the burnout factor associated with COVID-19 and the like. Now, hospitals are having to pay incredible multiples of what they ordinarily would pay to nurses to contract with companies that basically will provide the nurses at a given price.

Mr. Melmed, you stated that more than 2.6 million migrants are currently employed as healthcare workers, and as I mentioned, about 30 percent of the physicians in Dallas and Fort Worth are foreign born. What impact would this have, if we're able to recapture those 40,000 employment-based visas for doctors and nurses? What impact would that have on the public's access to healthcare?

Mr. MELMED. Thank you for highlighting that fact. It is an industry that's, as they say, overrepresented with immigrants, and they're critical to that industry. Addressing the green card backlog would do two things for them. Some of them are already here and, as we've talked about at length, are caught in that backlog and therefore unable to change roles, progress in their roles, start new enterprises. There's also others in the healthcare industry who come straight to the United States on a green card. By making additional extra visa numbers available, you would actually increase the number of workers, immediately. That would have a near-term impact.

Senator CORNYN. Thank you. Thank you, Mr. Chairman.

Chair PADILLA. Thank you. Just as a follow-on to that, Mr. Melmed, I want to recognize from your written testimony submitted that a recent report by the Niskanen Center indicates that, if the Federal Government recaptured 231,000 unused employment-based green cards, the policy would add \$216 billion to GDP over 10 years. If it recaptures 940,000 unused employment-based and family preference green cards, the policy would add \$815 billion to GDP over 10 years. Further makes the point. Senator Durbin.

Chair DURBIN. Let me just add a couple things very quickly, and I thank the panel for their patience. The Tillis bill, Senator Cornyn

cleared the hotline on the Democratic side, but there were two on your side who objected. They're both Members of this Committee. At least one of them has said he doesn't want one more immigrant in this country. That's the problem. We're going to—if we're going to do anything, we'll have to do it the old-fashioned way. We're going to need 60 votes. We're going to have to find something to come out of this Committee in a bipartisan fashion that has a chance of 60 votes on the floor. That may limit our scope, but I hope it doesn't. I'm willing to undertake that. I think what we've heard today ought to be a compelling reason to start that conversation and see if we can—

Senator CORNYN. I would just say to my friend the Chairman, obviously we pass things around here by unanimous consent, but when we can't get 100 Senators to agree, then we vote them out of Committee and we get them on the floor and get 60 votes for cloture and we pass them. It may be necessary, because this—immigration can be an emotional issue. Frankly, some of the positions taken on either side of the aisle, I don't find make a lot of sense to me.

I do think there's a core, certainly, of 60-plus Senators who are willing to take up commonsense measures like this and to pass them, if we can get a commitment to mark them up in Committee and then on the floor. I just want to say publicly how much I appreciate your willingness to take up and mark up an immigration bill, particularly relating to a situation like Ms. Rajakumar finds herself in, such as proposed by the Chairman of the Subcommittee. I think this is something we ought to be able to find the solution to, and maybe some of these other areas as well.

Chair DURBIN. Mr. Chairman, I want to acknowledge to you and to salute the panel. You may have seen history in the making, who knows. I always say the education of a Senator is a daunting task, and a public declaration by a Senator that they're actually going to try to legislate is almost historic around here. Who knows, this may end well. I want to thank all three of you, particularly Ms. Rajakumar. Your story is so compelling. It really calls on all of us to get up and do something, so I hope we can. Thank you for being here today, all of you.

Chair PADILLA. Thank you, Senator Durbin. Before moving to a close this hearing, I'm going to take the Chair's privilege and ask just one more question that I think is important to raise today. It's going to be for Professor Legomsky. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act. With that measure, Congress attempted to create disincentives to come and remain unlawfully in the United States. An individual who remains unlawfully present in the United States for more than 180 days but less than a year is barred from admission for 3 years. Those that are unlawfully present for more than a year are barred for 10 years. The most extreme case, if one re-enters after having been removed, after being unlawfully present for more than a year, they're permanently barred. Exceptions to these bars remain very limited.

Professor, in your testimony, you advocated the repeal of the 3-year, 10-year, and permanent bars. You said they create a procedural Catch-22, whereby someone who otherwise qualifies for legal

permanent resident status has no place to apply for it. Can you elaborate on that for a minute?

Professor LEGOMSKY. Yes, and I apologize in advance that this explanation will be a little bit on the nerdy side, but I don't think I can avoid it. When a person has been unlawfully—if a person is currently unlawfully present, then that, of course, alone is already a ground for removal. As you have indicated, these 3, 10 bars apply to people who have been unlawfully present at some point in the past. My own view is that they are inherently disproportionate to the nature of the offense, even in general, given the desperation that drives people to enter or to remain in the U.S. without status. The particular procedural catch-22 that you referenced is as follows.

Suppose you are a person who meets all of the substantive eligibility requirements that Congress has set for becoming an LPR. That is, you fall within one of the family categories, you do not fall within any of the inadmissibility grounds, and you've waited your turn in line, and now your priority date has become current. You're at the front of the line ready to be admitted. There is a point in your life at which you have been unlawfully present.

You can't simply go to the U.S. consulate and get a visa, which is the traditional route for becoming an LPR, because the moment you step outside the country, you will now have departed, and the unlawful presence plus the departure together make you inadmissible for, in almost all cases, 10 years. The visa will be denied on that ground alone. That would be okay, if you could instead simply do the paperwork here in the United States through the process known as adjustment of status. With rare exceptions, you can't do that—I shouldn't say rare. With an exception of only a minority, you can't do that either.

For one thing, you are statutorily ineligible for adjustment if you have not been admitted or paroled. If you entered the country without inspection, that alone would rule you out. Even if you entered the country legally on a nonimmigrant visa but then overstayed and became unlawfully present in that way, okay, you can overcome the admitted or paroled bar, but then you run into another obstacle. Because to be eligible for adjustment, you also have to show that you have been continuously, lawfully present—pardon me—you have maintained continuous, lawful status in the United States since your entry, which you would not have done had you overstayed.

To be fair, I should acknowledge an important exception. That is that immediate relatives are exempt from the requirement of lawful continuous status. Unless you are an immediate relative who became undocumented only by reason of having overstayed, as opposed to entering without inspection, then you're not within any of the exceptions, and despite having met all of the substantive eligibility requirements for admission, you can't apply for it outside the country and you can't apply for it inside the country. That's why I describe it as a procedural catch-22.

Chair PADILLA. Thank you very much. Enlightening for those who are unfamiliar with that dynamic, and not very for the many, many who have personally or know someone who is caught in that catch-22.

Before we conclude, I want to move to enter a number of statements into the record, including statements from Asian Americans Advancing Justice, Americans For Prosperity, and the LIBRE Initiative, American Families United, the Center for Migration Studies of New York, CHIRLA, FWD.us, Improve the Dream, NACS, the National Immigration Law Center, and the National Venture Capital Association. Without objection, those statements will be included, and the record for the hearing will close 1 week from today.

As this hearing concludes, I do want to thank my fellow Subcommittee Members and especially our witnesses for joining us. I'm glad to see that we might've taken some steps forward and made progress today. That's why we held this hearing, to try to find pathways for progress and to improve this outdated and overly complex immigration system. I look forward to working with my colleagues on both sides of the aisle to move the America's Children Act and other important legislation forward in Judiciary Committee.

To just sort of capture the spirit of the last couple of hours, we've heard overwhelming evidence that our immigration system is broken, outdated. Visa limits are hurting our economy and endangering workers. Enormous backlogs are separating families, sometimes for years, sometimes for decades. Arbitrary cutoffs are forcing children who grew up in this country to leave their families and their only home.

We have a responsibility to fix all of this. Just think about all the lives and stories reflected in the chart here behind me. If you're a U.S. citizen with a sister in Mexico, you're supposed to wait 224 years before she receives her visa. That's the impact of the current backlogs. If your married child is in the Philippines, he and his partner face a wait time of 155 years. If you're an employer trying to hire a Chinese worker with 2 years of training, your employee should expect to wait 44 years before receiving a green card. Indian workers with a bachelor's degree are expected to wait a staggering 90 years.

These aren't wait times. They are *de facto* bans. It's past time to make our immigration laws reflect reality, as well as the current needs of our Nation. When we do so, that reform will benefit everyone by reuniting immigrant families who can help communities thrive. By inviting immigrants to join our workforce, we can grow our economy for all. By welcoming immigrants from countries with lower levels of immigration through our diversity visa program, we contribute to the rich, cultural fabric of the United States. By recapturing unused visas, we can reduce employment and family based immigration backlogs and add billions of dollars to our GDP, reunite families and strengthen our economy at the same time. By making sure any bill coming out of the America COMPETES/USICA Conference includes immigration provisions, we can help build our domestic STEM workforce and encourage startup companies to establish roots here.

These reforms are especially important at a moment when our workforce is aging and demand for visas is higher than ever. America has a proud history of welcoming immigrants, and now is the moment to recommit ourselves to that task. As Mr. Melmed said

in his testimony, by doing nothing, the United States is going backward.

Although it's not a topic of this hearing, I want to conclude by taking a step back and acknowledging a few recent events. Right now, the people of Ukraine are enduring a brutal and unprovoked assault by Russian forces. More than 2 1/2 million people have already been forced to flee their homes, and that number seems to be growing by the day, creating the largest European refugee crisis since World War II. America must be a leader by example and protect Ukrainians who have been driven away from their homes, just as we should be doing for the Afghan evacuees who made it to our soil, as well as Afghan refugees abroad.

At the same time, I urge the Biden administration and my colleagues to remember the refugees who are waiting at our border, kept out by the cruel and unnecessary Title 42 policy. The administration made the correct decision to end Title 42 for unaccompanied children, recognizing that there is no public health need to deny the rights of lawful asylum seekers. It's past time to end this draconian policy for all the individuals and families who come here to escape terrible persecution.

Colleagues, again, I ask that we recommit ourselves to reflecting our values as a nation of immigrants. Thank you all for your participation again here today, and with that, today's hearing is adjourned.

[Whereupon, at 3:55 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

Miscellaneous submissions:

American Families United	64
Americans for Prosperity & The LIBRE Initiative	86
Asian Americans Advancing Justice (AAJC), statement	87
Canaba, Ramon, Jr., statement	84
Coalition for Humane Immigrant Rights (CHIRLA)	112
Delich, Mark, FWD.us statement, March 15, 2022	116
National Association of Convenience Stores (NACS)	132
National Association of Manufacturers	135
National Immigration Forum	138
National Immigration Law Center	143
Nation's Venture Capital Investors (NVCA)	148
Poll from Survey USA	85
Removing Barriers to Legal Migration to Strengthen our Communities and Economy	104
UnidosUS	151

Improve The Dream, Collection of Stories from Members

<https://www.govinfo.gov/content/pkg/CHRG-117shrg56622/pdf/CHRG-117shrg56622-add1.pdf>

Written Testimony of

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Before the

United States Senate
Subcommittee on Immigration, Citizenship, and Border Safety
Committee on the Judiciary

Removing Barriers to Legal Migration to Strengthen our Communities and Economy
March 15, 2022

Mr. Chairman, Ranking Member Cornyn, and Honorable members of the committee, thank you for the opportunity to testify before you. My name is Stephen H. Legomsky, and I am the John S. Lehmann University Professor Emeritus at the Washington University School of Law. I taught U.S. immigration law for more than 30 years and am the author (co-author starting with the fifth edition) of the law school textbook "Immigration and Refugee Law and Policy." This book is now in its seventh edition and has been the required text for immigration courses at 193 U.S. law schools since its inception. From 2011 to 2013, I had the honor of serving as the Chief Counsel of U.S. Citizenship and Immigration Services, in the Department of Homeland Security. I have also had the privilege of advising both Democratic and Republican administrations and several foreign governments on immigration policy. I have held visiting academic appointments at universities in twelve countries.

By way of background, I find it useful to think of our current laws as comprising three sets of requirements for the lawful admission of immigrants to the United States:

First, many members of the public mistakenly believe that our current laws permit anyone to immigrate legally to the United States as long as they don't have a criminal background or other negative baggage and are willing to wait their turn in line. But as members of this subcommittee are well aware, our laws take the opposite approach. Being free of such disqualifying characteristics is not enough. To be admitted as a lawful permanent resident (LPR), a person must also affirmatively qualify under one of several specific categories created by Congress. The main categories are those seeking unification with specified family members who are U.S.

citizens or LPRs, those whose occupational skills are needed by U.S. employers, those who hail from countries that in the past five years have sent relatively few immigrants to the United States, and refugees. A person who doesn't fall within any of those four categories (or a handful of much smaller miscellaneous categories) cannot lawfully immigrate to the United States.

Second, the Immigration and Nationality Act contains more than 20 pages laying out the grounds on which otherwise qualified intending immigrants are ineligible. These inadmissibility grounds generally relate to criminality, national security, communicable diseases, likelihood of becoming a public charge, protection of the U.S. labor force, and the integrity of the immigration system itself.

Third, with some important exceptions, there are annual numerical limits on the admission of qualified immigrants. Those limits are of two kinds. There are annual numerical ceilings for each category (and many subcategories) of immigrants – family immigration, employment immigration, etc. Within each of those categories, there are additional annual limits on how many immigrants may be admitted from a single country.

In the past three decades Congress has enacted several laws concerned principally with immigration enforcement. Not since the Immigration Act of 1990,¹ however, has Congress taken any major action to update our nation's policies on legal immigration. In the intervening decades, much has changed, and there is now ample reason to revisit the system that governs the lawful admission of immigrants to the United States.

Examining the decennial U.S. Census reports, FWD.us found that “between 2010 and 2020, the U.S. saw its slowest population growth of any decade since the 1930s.”² Similarly, the George W. Bush Institute found that immigration as a percentage of the U.S. working age population decreased during the period studied, 1992 to 2014.³

Those trends are concerning, because the overwhelming majority of the many extensive empirical studies, cited below, have found immigration and its effects on the U.S. population to be important components of our nation's economic growth. In this testimony, I won't try to rehash the statistical details of those studies, but a brief outline of the benefits that they have highlighted might be useful.

Concluding that immigration has been, and continues to be, a net economic benefit, the studies have emphasized several of its effects. Immigrants supply labor to geographic areas and sectors of the labor market that cannot attract sufficient numbers of American workers. Immigrants tend to gravitate to fields in which specialized skills essential to the particular jobs are in short supply.

1 Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990).

2 FWD.us, Immigration Facts: The Positive Economic Impact of Immigration (July 21, 2020), <https://www.fwd.us/news/immigration-facts-the-positive-economic-impact-of-immigration/>.

3 George W. Bush Institute, Pia Orrenius, Benefits of Immigration Outweigh the Costs, *The Catalyst* (Spring 2016, issue 2), <https://www.bushcenter.org/catalyst/north-american-century/benefits-of-immigration-outweigh-costs.html>.

Immigrants are highly entrepreneurial, starting new businesses at much greater rates than U.S. citizens. Being younger on average than U.S. citizens, they increase the ratio of active workers to retirees, thus, among other benefits, fortifying the financial stability of the Social Security system. And by increasing the overall supply of labor, they help to brake some of the inflationary effects on consumer prices.⁴

To be fair, not everyone shares those views. Organizations whose missions are to advocate reductions in immigration see current levels of immigration as imposing net economic costs.⁵ Among economists, that is very much a minority perspective.

Nor are the benefits of immigration limited to the economy. The family unification program – the largest component of legal immigration – reflects the fundamental value that Americans have placed on family unity and our recognition of the multiple long-term harms of prolonged separation. Reunification of the family also fosters immigrants’ full-fledged integration into American life. The ethnic diversity that immigration supplies enriches our cultural lives. Opportunities for legal immigration diminish the incentive for illegal immigration. And free market economists emphasize the link between generous immigration policies and the optimal matching of supply and demand.

Today, however, so many of these benefits are needlessly diminished by the mounting backlogs of qualified immigrants who must wait years to be admitted. These backlogs create hardships for the applicants themselves, the U.S. citizen and LPR family members who await them, and the employers who have demonstrated the need for their labor. But they do more harm than that. They delay these immigrants’ contributions to the overall economy and to the country as a whole. Moreover, for those individuals and families who are already lawfully present in the United States on temporary visas, speeding their adjustment to full-fledged permanent resident status would help clear the backlog, in the process freeing them to maximize their contributions and accelerating their full integration into American life.

4 Among the recent studies finding immigration to be a net economic benefit are FWD.us, Immigration Facts: The Positive Economic Impact Of Immigration (July 21, 2020), <https://www.fwd.us/news/immigration-facts-the-positive-economic-impact-of-immigration/>; Center on Budget and Policy Priorities, Arloc Sherman, Danilo Trisi, Chad Stone, Shelby Gonzales, & Sharon Parrott, Immigrants Contribute Greatly to U.S. Economy, Despite Administration’s “Public Charge” Rule Rationale (Aug. 15, 2019), <https://www.cbpp.org/sites/default/files/atoms/files/8-15-19pov.pdf>; Mercatus Center, George Mason University, Daniel Griswold, The Benefits of Immigration: Addressing Key Myths (May 23, 2018), <https://www.mercatus.org/publications/trade-and-immigration/benefits-immigration-addressing-key-myths>; National Academy of Sciences, The Economic and Fiscal Consequences of Immigration (2017), <https://www.nap.edu/read/23550/chapter/1>; and George W. Bush Institute, Pia Orrenius, Benefits of Immigration Outweigh the Costs, The Catalyst (Spring 2016), <https://www.bushcenter.org/catalyst/north-american-century/benefits-of-immigration-outweigh-costs.html>.

5 Numbers USA, for example, advocates “reducing immigration by half in the short run.” <https://www.numbersusa.com/>. Its website declares that “The immigration tidal wave of the last three decades has made it impossible for Baby Boomers to ever enjoy the 1970s dream of a stabilized country.” See Numbers USA, Unsustainable Population Increase, <https://www.numbersusa.com/problems/unsustainable-population-increase>.

Thus, my main objective in this testimony is to describe and recommend several ways in which Congress could clear the backlog, prevent the creation of future backlogs, and significantly shorten the waiting periods for those who meet our existing requirements for admission as LPRs. Many of these reforms appear in bills that have already been introduced in the present Congress.

My view, for all the reasons outlined above, is that the U.S. could, and should, significantly increase the number of immigrants whom we admit each year. Importantly, however, the proposals in the first four sections of this testimony do not require doing so. They do not change the substantive eligibility criteria for immigrating and thus do not increase total immigration in the long term. They merely shorten the waiting times for individuals who already qualify for LPR status and thus will eventually be admitted in any event. With these measures, Congress would be speeding their reunification with close U.S. family members and/or their ability to serve the U.S. businesses that need their labor. The key, in other words, is that shortening the waiting periods would change the *timing* of the immigrants' arrivals but not the total long-term *numbers*.

To be clear, immigration would increase in the short term following the changes, but those increases would be almost⁶ entirely offset by the corresponding decreases in subsequent years. If Congress is otherwise amenable to these proposals but concerned about the magnitude of the short-term impact, it could phase in the changes over a specified number of years.

With or without a phase-in period, the statutory changes recommended here would necessitate at least a short-term increase in the resources required for processing. The lion's share of those additional resources would be the fees paid by the increased number of applicants. As the subcommittee is aware, until, I believe, the current fiscal year, USCIS has had to rely solely on higher and higher application fees to fund the processing of applications. The supplemental funding that Congress provided for the current fiscal year is a very helpful step.

Section I of this testimony examines ways to raise the worldwide caps on the admission of LPRs. Section II recommends reclassifying the family-sponsored "2As" (spouses and unmarried children of LPRs) as cap-exempt immediate relatives. Section III advocates raising the per-country limits. Section IV prescribes early filing of adjustment of status applications for certain employment-based immigrants. Section V calls for repealing the so-called "3/10" bars and lifelong bars that create inadmissibility based on past unlawful presence.

I RAISING THE WORLDWIDE CEILINGS

Under current law, the formula for computing the annual worldwide ceiling for family-sponsored immigrants is (with some minor modifications) as follows: 480,000, plus any employment-based

⁶ The only reason I add the qualifier "almost" is that, when waiting times are long, a certain number of qualified applicants die, age out, or give up before their priority dates become current.

visas that went unused during the preceding fiscal year, minus the number of immediate relatives admitted in the preceding fiscal year, but subject to a minimum final figure of 226,000. The formula for computing the worldwide employment-based ceiling is 140,000 plus any family-sponsored visas that went unused during the preceding fiscal year. Within each of those two programs, different subcategories of immigrants are subject to additional numerical limits. Immediate relatives and certain miscellaneous categories are exempt from all such numerical limits.

As with most of the reforms described in the next three sections, raising these ceilings without changing the substantive eligibility requirements for LPR status would not increase total long-term immigration. It would merely change the timing, shortening the waits for the affected categories. There are at least three ways to do this:

The simplest way to raise the ceiling would be to increase the base numbers in the statutory formulas, from 480,000 and 140,000 for family-sponsored and employment-based immigrants, respectively.

Second, over the past two decades, hundreds of thousands⁷ of immigrant visas authorized by Congress have gone to waste, largely because of bureaucratic delays and more recently because of Covid travel restrictions. At the same time, the backlog of approved petitions (the first step in the admission process for most categories of LPR) has grown to an estimated 9 million, of which approximately 83% are family-sponsored and 17% employment-based.⁸ Congress could reduce the huge backlogs in applications for both immigrant visas and adjustment of status by recapturing those visas. The idea would be to increase the statutory ceilings for both family-sponsored and employment-based visas by the number of visas that went unused in each program from 1992 (when the current statutory formulas first became effective) to the present.

Third, Congress could amend the formula for computing the worldwide family-sponsored ceiling

⁷ All agree that the number of unused visas available for recapture is in the hundreds of thousands, but a more precise figure has eluded consensus. The disagreements reflect both substantive policy choices in the reach of the various legislative proposals and differences in the methodologies that have been used to compute the bottom line numbers. An excellent summary is provided by David J. Bier, Cato Institute, *Different Green Card Recapture Proposals Offer Wildly Divergent Outcomes* (Oct. 28, 2021), <https://www.cato.org/blog/different-green-card-recapture-proposals-offer-wildly-divergent-outcomes>. For each of the programs (and in this testimony the emphasis is on the family-sponsored and employment-based programs), for each fiscal year from 1992 through 2021, Bier compared the worldwide limit produced by the statutory formula with the corresponding number of immigrants actually admitted. Adding up those annual differences for the entire period, he estimated the total numbers of unused visas as 556,112 for family-sponsored immigrants and 578,342 for employment-based immigrants. The Congressional Research Service provided lower estimates of the unused visas -- 247,000 family-sponsored and 194,100 employment-based. It described its methodology as that "used by the Department of State (DOS)," but it did not further elaborate. See <https://crsreports.congress.gov/product/pdf/IN/IN11811>.

⁸ David J. Bier, Cato Institute, *Family and Employment Green Card Backlog Exceeds 9 Million* (Sept. 29, 2021), <https://www.cato.org/blog/family-employment-green-card-backlog-exceeds-9-million>.

by eliminating the deduction for the preceding year's immediate relative admissions.⁹ That deduction was never part of the immigration laws until the Immigration Act of 1990. It needlessly constrains the timely admission of qualified family-sponsored immigrants and pits them against immediate relatives, when both groups have compelling needs for family reunification.

This change would also eliminate two other adverse consequences of the current formula. First, the practical result of deducting the number of immediate relatives from the visa allotment for family-sponsored immigrants has been that, year after year, the admissions of family-sponsored immigrants have bottomed out at the absolute statutory minimum of 226,000. Second, in turn, this has meant that Congress's decision to supplement the number of employment-based immigrants' admissions by allowing them to draw upon the preceding year's unused family-sponsored visas has become meaningless, as the latter figure is always zero.

II RECLASSIFYING FAMILY-SPONSORED "2As" AS IMMEDIATE RELATIVES

As the subcommittee is aware, several different provisions of the INA govern the admission of lawful permanent residents for purposes of family reunification. The spouses and the under-age-21, unmarried children of United States citizens, as well as the parents of over-age-21 United States citizens, are classified as "immediate relatives." If otherwise admissible, they are admitted to the United States without any numerical limits.¹⁰ Certain other individuals seeking immigration based on family reunification are classified as "family-sponsored" immigrants; unlike immediate relatives, they are numerically restricted. In addition, if a person is admitted for permanent residence under any of the family, employment, or diversity immigrant programs, the law grants the same status to his or her spouse and unmarried, under-age-21 children who accompany or follow him or her. Importantly, however, the law grants "accompanying or following to join" status only in the case of pre-existing relationships – i.e., cases in which the spouses married, or the children were born, before the principal immigrant's admission. After-acquired spouses and children of LPRs do not qualify as accompanying or following to join.¹¹

⁹ In fiscal year 2021, the number of immediate relative admissions was 383,973. See USCIS Office of Immigration Statistics, *Legal Immigration and Adjustment of Status Report Fiscal Year 2021, Quarter 4, Table 1B*, <https://www.dhs.gov/immigration-statistics/special-reports/legal-immigration>. In fiscal year 2020, the number of immediate relative admissions was 321,148. See USCIS, *Yearbook of Immigration Statistics 2020*, table 7d, <https://www.dhs.gov/immigration-statistics/yearbook/2020>. However, because the Covid travel restrictions greatly reduced admissions in both those years, the 2019 figures are likely more representative. In that year, 505,765 immediate relatives were admitted. See USCIS, *Yearbook of Immigration Statistics 2019*, table 7, <https://www.dhs.gov/immigration-statistics/yearbook/2019/table7>.

¹⁰ 8 USC § 1151(b)(2)(A)(i). Under the INA, a "child" must be unmarried and under 21 and must meet various other conditions. 8 USC § 1101(b).

¹¹ See 8 USC § 1153(d).

All the family preference categories except one encompass relationships to U.S. citizens. The one exception is the second preference, which covers the spouses and unmarried sons and daughters of LPRs. And within that second preference the subcategory known as “2As” merits special attention. These are the spouses and the unmarried, *under-age-21* children of LPRs (as opposed to LPRs’ *adult* sons and daughters).¹²

Over the past twenty years, the waiting times for the 2As have steadily declined, to the point where, at this writing, the State Department Visa Bulletin shows the priority dates for 2As to be current, for all source countries.¹³ Thus, for the time being, they may be admitted as soon as the administrative processing at all the various stages has been completed. But this has not always been the case, and under current law there is no guarantee it will remain the case. Because of the per-country limit discussed above, and the relatively higher demand from Mexico, the waits for Mexican 2As have typically been somewhat longer than their counterparts from other countries. The following table displays the waiting periods for 2As in selected recent years:

FAMILY-SPONSORED 2A WAITING TIMES
(rounded off to nearest half-year)¹⁴

Visa Bulletin	Worldwide	Mexico
March 2002	5.5	7.5
March 2007	5.0	6.5
March 2012	2.5	2.5
March 2017	2.0	2.0
March 2022	C	C

¹² I have not yet been able to determine how many 2As were admitted in fiscal year 2021, as the USCIS Yearbook of Immigration Statistics for that year does not disaggregate the number of 2nd preference admissions that are within the 2A subcategory. The fiscal year 2020 Yearbook shows total 2nd preference admissions of 51,701 (line 47 of table 7d), of which 10,658 (8,358 new arrivals plus 2,300 adjustments of status, lines 81 and 82 of table 7d) were 2B admissions. The difference of 41,043 represents the number of 2As admitted in FY 2020. See <https://www.dhs.gov/immigration-statistics/yearbook/2020>. However, because FY 2020 admissions were greatly reduced by the Covid travel restrictions, the FY 2019 numbers are more likely representative. In that year, total 2nd preference admissions were 93,398 (table 7 of the 2019 USCIS Yearbook of Immigration Statistics), of which 14,533 were 2Bs (11,631 new arrivals plus 2,902 adjustments of status). The difference of 78,865 represents the number of 2A admissions in FY 2019. See <https://www.dhs.gov/immigration-statistics/yearbook/2019/table7>.

¹³ U.S. Dept. of State, March 2022 Visa Bulletin, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-march-2022.html>.

¹⁴ Sources: March 2002 Visa Bulletin, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2002/visa-bulletin-for-march-2002.html>; March 2007 Visa Bulletin, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2007/visa-bulletin-for-march-2007.html>; March 2012 Visa Bulletin, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2012/visa-bulletin-for-march-2012.html>; March 2017 Visa Bulletin, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2017/visa-bulletin-for-march-2017.html>; March 2022 Visa Bulletin, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-march-2022.html>.

As this chart shows, the waiting times for 2As can change rapidly, in response to annual fluctuations in both the supply of visas and the demand for them. While the trend in the last two decades has been one of decreasing waits, there is no way to be confident that this trend will not reverse. Rather than leave it to chance, Congress should consider legislation to reclassify 2As as immediate relatives, thereby assuring the speedy reunification of their nuclear families. There are several reasons to do so.

First, since the 2As are the *after-acquired* spouses and children of LPRs (the preexisting spouses and children having already received the same priority dates as the principal immigrants), the typical 2A petition is filed shortly after the relationship is formed. This means that, for the most part, we are talking about newlywed spouses and newborn babies. The most obvious reason to speed the immigration process is therefore the humanitarian one – the inherent hardship that occurs when newlyweds are separated for the first several years of their marriages (the typical duration of the waiting time until recently), and when parents and newborn babies are separated for the first several years of the child's life. In a nation that rightly trumpets family values, this problem requires fixing.

Humanitarian concerns aside, these long separations generate an assortment of other problems. They require LPRs to travel back and forth, as often as they can, to their countries of origin, frequently located in distant reaches of the world, in order to maintain some semblance of family life. Perhaps more importantly, these separations virtually invite illegal immigration. Human nature will have to be remade before new spouses willingly separate for the first several years of their marriages, or new parents willingly separate from their newborn babies for the first several years of their children's lives. For too many people, illegal immigration will prove to be an irresistible temptation. Finally, even the dates displayed in the monthly State Department Visa Bulletins tell us only how long ago those people who are receiving visas today had to have applied. They do not tell us how long someone who applies today will have to wait. The statutory supply of visas changes from year to year according to the formula; in addition, the number of applicants fluctuates from year to year. As a result, the applicants have no way to predict confidently how long it will take for the family to be together. Family and other planning becomes impossible.

There is an easy solution: reclassify the current 2As as immediate relatives. Such a change would not only serve the humanitarian goal of uniting newlywed couples and parents of newborn babies, but also eliminate expensive and unnecessary periodic overseas travel by LPRs as they await the arrivals of their loved ones. It would provide young married couples and families with the predictability they need to plan the timing of future children. And it would eliminate one of the major incentives for illegal immigration.

III RAISING THE PER-COUNTRY CAPS

The two previous sections concern the worldwide numerical caps on the overall family-sponsored and employer-based programs and on the specific preference categories within each of those programs. Applicants in both programs are also subject to per-country limits. With some exceptions, in any given fiscal year, current law provides that no more than 7% of the combined numbers of family-sponsored and employer-based immigrants may be admitted from a single country.¹⁵ When a country reaches its statutory limit for a given fiscal year, complex statutory formulas distribute the available visas among the various preference categories for that country.¹⁶

The per-country limits reflect a collision of two opposing philosophies. On the one hand, suppose you and I are similarly situated -- for example, we are both the unmarried adult daughters of U.S. citizens. And suppose you have been waiting in the queue for several years and I apply today. It might seem unfair for the law to let me immediately skip ahead of you. Yet that is what will happen if you are from Mexico and I am from Norway. The explanation that *other* similarly situated Mexican applicants happen to outnumber *other* similarly situated Norwegian applicants -- whom neither of us even know -- is unlikely to satisfy you. After all, countries don't immigrate; people do. On the other hand, such nationality-based discrimination, while unacceptable in other contexts, serves the purpose of diversifying the country's immigrant population. In a sense, it all boils down to how we want to conceptualize immigrants -- as individuals who should be treated equally when their circumstances are similar, or as delegates of their home countries.

Different people will hold different views on those issues. But, assuming for the sake of discussion that the diversity of our immigrant population is a worthwhile objective, I would suggest nonetheless that our current laws go too far in that direction and not far enough in the direction of equity among individuals in the same preference category.

I say this because in practice, year after year, the current per-country caps lead to extreme results. The March 2022 Visa Bulletin¹⁷ provides numerous examples: Within the family-sponsored program, individuals from Mexico and the Philippines are hit particularly hard. In the first preference (the unmarried adult sons and daughters of U.S. citizens), the general waiting time is 7 years, but that wait increases to 10 years for Filipinos and 22.5 years for Mexicans. For 2Bs (unmarried adult sons and daughters of LPRs), the general waiting time of 6.5 years becomes 10.5 years for Filipinos and 21.5 years for Mexicans. Third preference immigrants (married sons and daughters of U.S. citizens) generally wait 13.5 years, but Filipinos wait 20 years and Mexicans 24.5 years. And for the fourth preference (siblings of adult U.S. citizens), the general wait of 15 years (slightly longer for Indians) rises to 19.5 years for Filipinos and 23 years for Mexicans.

In the employment-based program it is natives of China and India who bear the brunt of the per-country caps. For first preference immigrants (those with "extraordinary ability" in specified

¹⁵ 8 USC § 1152(a)(2). For the dependent area of a foreign country, the corresponding figure is 2%. *Ibid.*

¹⁶ 8 USC § 1152(e).

¹⁷ <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-march-2022.html>.

fields, “outstanding” professors and researchers, and certain multinational executives and managers), all visas are current. But second preference immigrants (professionals with advanced degrees, including physicians working in shortage areas, and those with “exceptional ability” in specified fields) from China must wait 3 years and those from India 9 years; for everyone else the priority dates are current. And for third preference immigrants (skilled workers, professionals, and a limited number of “other workers”), natives of China face waits of 4 years, natives of India 10 years; again, the priority dates are current for all others.

Congress could, of course, simply repeal the per-country caps entirely. Immigrant visas would then be distributed to qualified applicants, within each preference category, on a first-come, first-served basis. Under such a system, those who are similarly situated with respect to the individual criteria for LPR status would be treated equally, without regard to nationality.

But Congress can remedy the most extreme results of the present system without going that far. It need only raise the per-country cap well above the current 7% level. How high to raise it is a judgment call, involving a tradeoff between individual equity and immigrant diversity. To aid that determination, Congress could ask the State Department Visa Office to study the impact that different per-country caps would have (a) on the distribution of immigrant visas by nationality and (b) on the resulting waiting times.

Like the recommendations in sections I and II, this recommendation does not require changing any of the individual eligibility requirements for admission as an LPR and thus would not increase the total number of immigrants admitted over the long term. It would alter only the relative waiting times.

IV ALLOWING EARLY FILING OF APPLICATIONS

Many of the current H-1B professional nonimmigrant (temporary) workers in the United States have approved petitions for employment-based LPR visas but have been waitlisted for admission as LPRs because of either the worldwide caps or the per-country caps or both. Within that group, the vast majority will be eligible for adjustment of status once their priority dates become current. But under 8 USC § 1255(a)(3), they cannot even file their adjustment applications until that time. That is because, for, adjustment of status, one statutory requirement is that “an immigrant visa ... be immediately available to [the applicant] *at the time his application is filed* [my emphasis].” Because of the often lengthy processing times, that means adjustment cannot be granted until well after the applicant meets all the requirements for it. Congress could amend the adjustment of status provision to allow lawfully employed nonimmigrants to apply for adjustment, if otherwise eligible for it, when their priority dates are no more than a specified number of months later than the relevant priority dates displayed in the State Department Visa Bulletin.

Others have noted an important benefit of such an amendment. Although H-1B nonimmigrants

already hold limited permission to work, longstanding regulations allow the granting of a broader employment authorization to those with properly filed pending applications for adjustment of status.¹⁸ Thus, with early filing, “applicants can receive employment authorization documents that allow them to work in any similar job, allowing them to leave their sponsoring employers for higher-paying jobs or to take promotions.”¹⁹

The benefits of allowing early filing would extend to two other groups in particular. A certain number of children would avoid aging out (by turning 21²⁰) while they are waiting for their priority dates to become current. And in cases in which early filing advances the time when H-1B temporary workers can adjust their status, it would simultaneously advance the time when their spouses, classified as H-4, would adjust status and thus receive authorization to work – an authorization that with limited exceptions H-4 status does not provide.

V

REPEALING THE 3/10 AND PERMANENT BARS FOR PRIOR UNLAWFUL PRESENCE

Unlawful presence in the United States can result either from unauthorized entry or from overstaying a nonimmigrant visa or other temporary authorization. Either way, not surprisingly, *current* unlawful presence is a basis for removal.²¹

But what about *past* unlawful presence? Until 1996, this was not a ground for either exclusion or deportation. In that year, as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress added several new grounds for inadmissibility based on prior unlawful presence.²²

Two of those grounds appear in 8 USC § 1182(a)(9)(B). With some exceptions and narrow discretionary waivers,²³ past unlawful presence for more than 180 days but less than a year, followed by departure from the United States before the commencement of removal proceedings,²⁴ makes a person inadmissible for three years. Past unlawful presence for one year or more, followed by a departure, makes the person inadmissible for ten years.

¹⁸ 8 CFR 274a.12(c)(9).

¹⁹ David J. Bier (Nov. 30, 2021), <https://www.cato.org/blog/build-back-better-act-immigration-provisions-summary-analysis>.

²⁰ 8 USC § 1101(b)(1).

²¹ One who entered without inspection will generally be inadmissible under 8 USC § 1182(a)(6)(A)(i).

One who overstayed his or her visa will generally be deportable under 8 USC § 1227(a)(1)(B and C(i)).

²² Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), Div. C, § 301(b)(1).

²³ The exceptions are for minors, asylum applicants, domestic violence and trafficking victims, and certain others. There is also a discretionary waiver in cases where refusing someone admission would cause “extreme hardship” to their U.S. citizen or LPR spouses or parents.

²⁴ Most likely, the reason for specifying that the departure must occur before the commencement of removal proceedings is that, if it occurs while removal proceedings are pending, the person would ordinarily already be inadmissible for five years under 8 USC § 1182(a)(6)(B)(failure to attend or remain in attendance at removal hearing).

Given the desperation that drives so many millions of people to enter or remain in the United States without authorization, and given both the limited avenues for and the restrictions on legal immigration alternatives, these lengthy bars – imposed on individuals who in most cases have lived in the United States long enough to have formed close bonds -- seem disproportionate to the nature of the offense. It is telling that the criminal laws themselves classify entry without inspection only as a misdemeanor and do not make overstaying a visa a crime at all.

But the most severe consequences of these provisions fall on those undocumented immigrants who satisfy all of Congress's substantive eligibility requirements for LPR status. For them, the 3/10 bars create a procedural catch 22. They cannot travel to a U.S. consulate overseas to obtain visas, because, the moment they leave the United States, their "departures" will make them inadmissible for 3 or (in most cases) 10 years. The visas will be denied on that ground alone.²⁵ That would not be a problem if they could do the paperwork in the United States via adjustment of status. But that avenue is foreclosed as well if they entered without inspection, because adjustment is available only to those who were "admitted or paroled."²⁶ Those who overstayed nonimmigrant visas can overcome that hurdle, but they too will generally be ineligible for adjustment for a different reason, failure to have continuously maintained a lawful status.²⁷ (The continuous lawful status requirement for adjustment does not apply to immediate relatives, but it does apply to family-sponsored and employment-based immigrants.)

As noted earlier, repealing the 3/10 bars, unlike the proposals in all the previous sections of this testimony, would increase total immigration to some extent. That must be acknowledged. But it bears repeating that these barriers block individuals who meet all the substantive requirements for LPR status; that is, they fall squarely within one of the categories that Congress has chosen to admit (family, employment, etc.), they are not otherwise within any of the inadmissibility grounds, and their priority dates are current. Moreover, it is not only they who lose out. It is also all the other intended beneficiaries of the programs under which they seek admission – their U.S. citizen or LPR family members and the U.S. businesses that need their labor. Congress should repeal the 3/10 bars, thus allowing individuals who otherwise qualify for admission as LPRs to proceed to U.S. consulates to obtain visas without rendering themselves inadmissible.

Finally, the same IIRIRA provision that created the 3/10 bars created one other bar based on unlawful presence. Under 8 USC § 1182(a)(9)(C), a person who has been unlawfully present for more than a year (or who has been removed), and later reenters without being admitted, becomes inadmissible for life. There are only two escapes from this result, and both are discretionary: Once the person has been away for at least ten years, the Secretary of Homeland Security has the discretion to allow the person to reapply for admission. Discretion may also be exercised when

²⁵ This statement is subject to the exceptions and the narrow discretionary waiver described in note 22 above.

²⁶ 8 USC § 1255(a).

²⁷ 8 USC § 1255(c)(2). The continuous lawful status requirement does not apply if the person's failure was "through no fault of his own or for technical reasons," *ibid.*, but the meanings of those exceptions are unclear.

either the departure from the United States or the unlawful reentry was connected to the applicant's "battering or subjection to extreme cruelty."²⁸

The lifelong bar seems excessive. The only people to whom it will be relevant are those who otherwise have some legal ground for admission, such as family in the United States. And as to them, the unlawful reentry alone is already sufficient ground for removal. Adding a lifelong bar on future admission means (subject only to the narrow discretionary waivers described above) that they will never again be permitted to enter the United States even to visit their U.S. family members, much less reunite with them on a permanent basis. Like the 3/10 bars, the permanent bar is both unnecessary and disproportionate to the nature of the offense. It too should be repealed.

CONCLUSION

It has been 32 years since Congress last meaningfully updated our system of legal immigration. Since then, massive backlogs have accumulated. Millions of immigrants who qualify for admission – and the American family members and businesses who sponsor them -- continue to wait for years. Statutory caps too low to accommodate present-day flows, combined with bureaucratic delays occasioned by inadequate resources and recently exacerbated by the Covid travel restrictions, account for these backlogs. It is with the goal of shortening the waiting periods for those whom Congress has made the decision to welcome to our shores that the recommendations in sections I through IV of this testimony are respectfully offered. The recommendations in section V reflect additional concerns rooted in the principle that punishment should be proportionate to the nature of the offense.

Thank you once more for the privilege of testifying before this subcommittee.

²⁸ 8 USC § 1182(a)(9)(C)(ii,iii).

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U.S. Senate Committee on the Judiciary
Subcommittee on Immigration, Citizenship and Border Safety

on

Removing Barriers to Legal Migration to Strengthen our Communities and Economy

Washington, D.C.

March 15, 2022

Introduction

Chairman Padilla and Ranking Member Cornyn, thank you for the opportunity to appear before this Committee to discuss barriers to legal migration. My name is Lynden Melmed and I previously served as Chief Counsel of U.S. Citizenship and Immigration Services (USCIS). Today, I am a partner at Berry Appleman & Leiden LLP and serve on the Advisory Board of the Migration Policy Institute.

My testimony today will focus on barriers to skills-based migration, and my comments are informed by my time in government and my subsequent representation of hundreds of companies that touch every corner of the U.S. economy.

Background

It isn't easy to immigrate to the United States through employment channels. Unless subject to narrow exceptions, every applicant's employer must obtain a certification from the Department of Labor that there are no qualified, willing and able U.S. workers. Then, the applicant or employer must prove to U.S. Citizenship and Immigration Services (USCIS) that the applicant qualifies for one of a few preference categories. And finally, the applicant must apply for an immigrant visa at a U.S. consulate overseas or apply to adjust his or her status from within the United States. The process involves thousands of pages of documents (with no opportunity for electronic filing), and it takes years for the government to process the paperwork.

Separate and apart from government processing requirements, an immigrant must also wait in line until a green card number is available. Congress allocates 140,000 green cards a year to employment-based immigrants, and that number includes spouses and children. No more than 7 percent of those visas (less than 10,000) may go to a single nationality. This limitation is otherwise known as the "per country" limit. The Department of State administers the visa wait list, known as the "Visa Bulletin," and an applicant may not apply for an immigrant visa or apply to adjust his or her status until a green card number is available.

If you ask any company in any industry what the single biggest problem is with the U.S. high-skilled immigration system, you will encounter something rare in the immigration debate: consensus. All agree that the lengthy green card backlog is the central problem. Yes, processing delays at the agency are

disruptive and costly and need to be addressed, but those are often *symptoms*. The cause is an outdated green card system that undervalues skilled immigration, which in turn leads to untenable backlogs.

A System at a Tipping Point

The issue of wait times for employment-based migration is reaching a tipping point. When I joined the government in 2002, not a single employment-based immigrant – irrespective of nationality – had to wait for a green card number. Two decades later, it is estimated there could be as many as 1.4 million employment-based immigrants in the backlog and nationals of India and China face decades long wait times.¹ The employment-based green card backlog is now ten times the total number of green cards made available in any year for those visa categories.² If trends continue, a green card may be unattainable for the vast majority of skilled immigrants unless applicants are willing to commit to years of government processing *and* a multi-year wait for a green card number.

Compounding the outdated numerical limits, hundreds of thousands of green card numbers have been wasted because the agency was unable to process all allocated visa numbers.³ Last year, the agencies failed to use approximately 80,000 of the available employment-based green card numbers. Halfway through the current fiscal year, the data suggests the agencies will fall short again, perhaps by an even bigger amount.

Congress created a complex system to allow unused green card numbers to spill over and across to other visa categories to ensure that all available green cards would be used. The only reason Congress contemplated that green card numbers would go unused was a lack of demand in either the family- or employment-based categories. Of course, there is now overwhelming demand for the limited number of green cards, and the annual caps have not been updated since 1990 despite the dramatic changes that have occurred since then.⁴ Administrative shortfalls now have a larger impact on immigration levels and flows than any legislation passed by Congress in the past few decades. This problem persists even though the immigration agencies have legal authority to remediate prior failures by recapturing and issuing the green card numbers they failed to use.

Consequences for the U.S. Economy and Key Industries

Lengthy Wait Times Make the U.S. Less Competitive

Knowing that they will have to wait for decades for a green card in the U.S., highly skilled foreign nationals will take their talents to other countries such as Canada that have more welcoming immigration systems, where they can envision building lives and careers.⁵ Canada welcomes the same number of immigrants under its family categories as the U.S. but *12 times* more legal immigrants under its economic category as the U.S.⁶ In 2022, 56 percent of new immigrants to Canada will enter through economic pathways.

¹ David J. Bier, *Family and Employment Green Card Backlog Exceeds 9 Million*, Cato Institute (Sept. 29, 2021), <https://www.cato.org/blog/family-employment-green-card-backlog-exceeds-9-million>.

² David J. Bier, *1.4 Million Skilled Immigrants in Employment-Based Green Card Backlog in 2021*, Cato Institute (March 8, 2022), <https://www.cato.org/blog/14-million-skilled-immigrants-employment-based-green-card-backlogs-2021>.

³ *Green Card Recapture and Reform Would Reduce Immigration Backlogs*, FWD.us (Apr. 13, 2021), <https://www.fwd.us/news/green-card-recapture/>.

⁴ Julia Gelatt, *Explainer: How the U.S. Legal Immigration System Works*, Migration Policy Institute (April 2019), <https://www.migrationpolicy.org/content/explainer-how-us-legal-immigration-system-works>.

⁵ *U.S. Immigration Policy: Lessons from Canada and Australia*, Business Roundtable (December 2019), <https://s3.amazonaws.com/brt.org/BRT-LessonsfromCanadaandAustraliaReportDec2019.pdf>.

⁶ Richard Sanders, *A Layered Look at Canadian and U.S. Immigration*, Wilson Center (July 21, 2020), <https://www.wilsoncenter.org/article/layered-look-canadian-and-us-immigration>.

International students have already begun choosing Canada over the United States, which is a clear indicator that this country is becoming a less attractive destination. The National Foundation for American Policy (NFAP) found that between 2016 and 2019, international student enrollment dropped by 7 percent at U.S. universities, and increased by 52 percent at Canadian colleges and universities.⁷

There are ways that the U.S. employment-based migration system is still superior to Canada's system. The U.S. employer sponsorship model is very efficient at aligning immigrant skills with the labor market, which reduces the likelihood that the country will admit many highly skilled workers that end up underemployed.

What does it mean if talent goes elsewhere? Immigrants to the U.S. are more likely to study in high-demand science, technology, engineering, and mathematics (STEM) fields than native-born Americans,⁸ and losing that talent stream will harm economic growth in industries key to our economic and strategic security.⁹

Increasing Skilled Immigration Will Improve the U.S. Economy

U.S. immigration policy should reflect the widely accepted fact that our economy has benefited from immigrants' knowledge, skills and hard work – particularly in the high-demand science, technology, engineering and mathematics (STEM) fields and other high-demand fields. Expanding legal immigration would increase the pace of economic growth, lower the budget deficit by nearly \$3 trillion over 10 years, and boost per capita income by \$1,700 over 10 years.¹⁰ Countless studies examining immigration from a variety of angles and using different methodologies have settled on this conclusion.¹¹

Several members of this subcommittee have sponsored legislation that would recapture unused immigrant visas. A recent report by the Niskanen Center indicates that if the federal government recaptures 231,000 unused employment-based green cards, the policy would add \$216 billion to GDP over ten years.¹² If it recaptures 940,000 unused employment-based and family-preference green cards, the policy would add \$815 billion to GDP over ten years.

Skilled Immigration is Critical to Domestic Manufacturing

With a renewed emphasis on domestic manufacturing, Congress should consider the role skilled immigrants play in that process. Dating back to the industrial revolution at the turn of the 19th century,

⁷ *Analysis of U.S. and Canadian International Student Data*, National Foundation for American Policy (March 2022), <https://nfap.com/wp-content/uploads/2022/03/Analysis-of-International-Student-Data-NFAP-Policy-Brief-March-2022.pdf>

⁸ *The Economic Impact of Curbing Optional Practical Training*, Business Roundtable (December 2018), https://s3.amazonaws.com/brt.org/BRT-OPTProgramReport_1.pdf

⁹ Immigrants have been awarded 38 percent, or 40 of 104, of the Nobel Prizes won by Americans in chemistry, medicine and physics since 2000, according to an analysis by the National Foundation for American Policy (NFAP), *Immigrants and Nobel Prizes: 1901-2021*, National Foundation for American Policy (October 2021), <https://nfap.com/wp-content/uploads/2021/10/Immigrants-and-Nobel-Prizes-1901-to-2021-NFAP-Policy-Brief-October-2021.pdf>

¹⁰ *Benchmark Immigration Reform Would Boost Growth and Reduce Deficit*, American Action Forum (Apr. 9, 2013), <https://www.americanactionforum.org/press-release/benchmark-immigration-reform-would-boost-growth-and-reduce-deficit/>; Laura Collins, *Bolstering America's Economy Through Employment-Based Immigration*, George W. Bush Institute (February 2021), <https://gwibcenter.imgix.net/Resources/gwbi-immigration-employment-white-paper.pdf>

¹¹ See, e.g., Diana Furchgott-Roth, *Does Immigration Increase Economic Growth?*, Manhattan Institute (Dec. 2014); Gordon Hanson, *Immigration and Economic Growth*, Cato Journal (2012); Ekram Boubtane, Jean-Christophe Dumont and Christophe Rault, *Immigration and Economic Growth in the OECD Economies, 1986–2006*, Oxford Economic Papers (April 2016).

¹² Jeremy L. Neufeld, Lindsay Milliken, and Doug Rand, *Stop the Incinerator: The high cost of green cards going unused and the benefits of recapturing them*, Niskanen Center (June 2021), <https://www.niskanencenter.org/wp-content/uploads/2021/06/5Niskanenpaper-5.pdf>

immigrants have been a catalyst for increased manufacturing in the U.S.¹³ Today, innovation drives advanced manufacturing. Companies that build plants in or move manufacturing operations to the U.S. must be able to transfer skilled workers to the U.S. Companies I work with evaluate both short-term and long-term immigration strategies when considering where to build manufacturing centers.

A warning sign for Congress is a study that evaluates how the U.S. immigration system compares with competitor countries. The United States ranked 9th out of 10 competitor countries, ahead of only Japan, a country historically closed to outsiders. This analysis found that America's near-bottom ranking among major advanced economies is due to U.S. laws and regulations that impose unrealistic numerical limits and excessive bureaucratic rules on hiring workers that the country's economy needs.¹⁴

Lengthy Wait Times Aggravate Healthcare Staffing Shortages

The harms of the green card backlog touch every industry. Covid-19 and the healthcare crisis brought home to many Americans the critical role foreign workers play in that industry and the shortages that arise when access is restricted.¹⁵ Lengthy green card times and delayed processing at U.S. consulates result in gaps in healthcare delivery, particularly in health professional shortage areas around the country.

In 2018, more than 2.6 million immigrants, including 314,000 refugees, were employed as healthcare workers.¹⁶ 1.5 million of them were working as doctors, registered nurses, and pharmacists. Though immigrants represented 17 percent of the overall U.S. civilian workforce, they were 29 percent of physicians, 38 percent of home health aides, and 23 percent of retail pharmacists.

Consequences for Foreign Workers and Their Families

Absent action by Congress or the agencies, many high-skilled immigrants from India – including those who graduate from U.S. universities and work for the world's leading companies – will face the choice of leaving the U.S. or remaining on a temporary work visa for their entire life. This is because the nationality-based limits that were established seventy years ago do not reflect current talent migration trends. The National Foundation for American Policy has written that “[w]ithout a change in immigration law, it will be sometime in the year 2216—195 years from now—when the last person born in India waiting today in the employment-based immigrant backlog is expected to receive a green card.”¹⁷ This results in the U.S. losing key employees, including those in STEM fields where there already is a shortfall.

¹³ Charles Hirschman and Elizabeth Mogford, *Immigration and the American Industrial Revolution From 1880 to 1920*, Soc. Sci. Res. 38(4), 897-920 (Dec. 1, 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2760060/> (“Without immigrant labor, it seems unlikely that the American industrial revolution would have been achieved at the same pace, scale, and profitability that it did.”).

¹⁴ *State of Immigration: How the United States Stacks Up in the Global Talent Competition*, Business Roundtable (March 2015), <https://s3.amazonaws.com/brt.org/BRT-immigrationreport-2.pdf>

¹⁵ Silva Mathema, *Removing Barriers for Immigrant Medical Professionals Is Critical to Help Fight the Coronavirus*, Center for American Progress (April 2, 2020), <https://www.americanprogress.org/article/removing-barriers-immigrant-medical-professionals-critical-help-fight-coronavirus/>; *New Findings Confirm Predictions on Physician Shortage*, Association of American Medical Colleges (AAMC) (April 23, 2019), <https://www.aamc.org/news-insights/press-releases/new-findings-confirm-predictions-physician-shortage>; see also *AAMC Report Reinforces Mounting Physician Shortage*, AAMC (June 11, 2021), <https://www.aamc.org/news-insights/press-releases/aamc-report-reinforces-mounting-physician-shortage>.

¹⁶ Julia Gelatt, *Immigrant Workers: Vital to the U.S. COVID-19 Response, Disproportionately Vulnerable*, Migration Policy Institute (March 2020), available at <https://www.migrationpolicy.org/research/immigrant-workers-us-covid-19-response>.

¹⁷ Stuart Anderson, *Immigration Bill Shows Need to End Employment-Based Immigrant Backlog*, Forbes (March 1, 2021), <https://www.forbes.com/sites/stuartanderson/2021/03/01/immigration-bill-shows-need-to-end-employment-based-immigrant-backlog/?sh=17b6d2b7271a>.

Additionally, children of green card applicants can “age out” of their temporary visa status when they turn 21.¹⁸ This means they not only lose their status, but also become ineligible to apply for their green card along with their parents. A few may be able to change visa classifications, but legal options are limited. If they cannot change classifications, they must depart the country they know as home.

Consequences for the Immigration System

Green Card Wait Times Compound Agency Backlogs

Lengthy green card waitlists increase agency backlogs and processing times for immigration benefit applications. Under current agency policy, high-skilled workers in the green card backlog must repeatedly apply to extend their nonimmigrant status or related work and travel documentation, often for years on end. The family of a high-skilled immigrant will file multiple applications while waiting for a green card number, and today the government often takes over a year to process an Employment Authorization Document (EAD) application, effectively forcing a business disruption on thousands of U.S. companies.

Those extra filings get added to a case backlog that is already insurmountable. In 2013, the agency had 3 million pending applications. Ten years later, the number of pending applications exceed 9.5 million.¹⁹ The agency backlog will continue to grow in an exponential way unless and until Congress creates an off-ramp from temporary work visas or the agency reduces the frequency at which foreign workers must renew their status or associated documents. Issues that I know you are familiar with from constituent services, like delayed processing for EADs and Advance Parole travel documents, are often tied to unnecessary “churn” in the immigration system.

Backlogs Invite Judicial Interference in Agency Priorities

In the face of these delays and untenable wait times, applicants often feel they have no choice but to seek relief in court. Though favorable court rulings may provide relief to some foreign nationals in the short term, USCIS is at risk of losing its ability to prioritize resources, and Congress is at risk of ceding its plenary authority over immigration law to district court judges.

Lawsuits against the State Department have targeted delays in visa processing during the pandemic.²⁰ Parties have also sued USCIS over its processing of work authorization documents for asylum seekers; foreign students seeking employment under the Optional Practical Training (OPT) program; spouses of foreign workers on E-2, H-4, and L-2 visas; and people adjusting to green cards within the U.S.

Policy Options

How immigrants are prioritized, whether and to what extent nationality should be part of that prioritization, and how temporary visas should relate to immigrant visas, are all topics that are ripe for review. Other countries are moving quickly to make their immigration systems more attractive to global talent. By doing nothing, the U.S. is going backwards.

¹⁸ Hafsa Fathima, *They Came to the U.S. as Children, But At 21, Their Legal Status Runs Out*, National Public Radio (NPR) (Aug. 4, 2021), <https://www.npr.org/2021/08/01/1023393351/documented-dreamers-live-their-whole-lives-in-the-u-s-then-face-deportation-at-2; Meet Documented Dreamers>, Improve the Dream, <https://www.improvethe dream.org/stories/ Documented Dreamers: An Overview>, American Immigration Council (Aug. 20, 2021), <https://www.americanimmigrationcouncil.org/research/documented-dreamers-overview>.

¹⁹ Muzaffar Chishti and Julia Gelatt, *Mounting Backlogs Undermine U.S. Immigration System and Impede Biden Policy Changes*, Migration Policy Institute (Feb. 23, 2022), <https://www.migrationpolicy.org/article/us-immigration-backlogs-mounting-undermine-biden>.

²⁰ *Id.*

Focusing on U.S. competitiveness and job creation, Congress has no shortage of options, including but not limited to the following:

- Increase the number of employment-based immigrant visa numbers available to immigrants who have the skills needed to grow the economy;
- Exempt classes of skills-based immigrants from annual limits to provide targeted benefits to those with certain skillsets or those working in particular industries that have the greatest need;
- Recapture unused immigrant visas from prior years, which would be particularly helpful to those who are already caught in the green card backlog;
- Evaluate whether immigration law should funnel all intending immigrants into temporary work visa categories;
- Allow high-skilled immigrants caught in the backlog to move off of temporary work visas and file adjustment of status applications;
- Protect children of long-term work visa holders who have maintained status, without creating a system that advantages or incentivizes those in that situation; and
- Expand opportunities for spouses of high-skilled immigrants to work in the U.S. to mitigate the harm of lengthy wait lists.

Congress should also increase oversight of the immigration agencies to ensure that the executive branch does not frustrate legislative intent. I encourage Congress to provide oversight of the agencies so that they:

- Utilize all available immigrant visa numbers, manage the visa waitlist in a more transparent manner, provide Visa Bulletin predictions six months in advance, and increase the number of adjustment of status applications available for adjudication;
- Recapture and preserve immigrant visa numbers to ameliorate the harm of agency inaction;
- Automatically grant work authorization to foreign workers who are at risk of losing employment due solely to agency processing delays;
- Eliminate unnecessary filing requirements, like the obligation to notify the agency every time a professional worker changes work locations; and
- Maintain consistency in granting immigration benefits (across agencies as well), particularly when applicants are seeking to extend their status in the U.S.

Conclusion

In closing, I want to thank you for bringing attention to this important topic and I look forward to answering questions you have.



**Testimony of Athulya Rajakumar
Graduate of The University of Texas at Austin, Class of 2021
Member, Improve The Dream**

**Before the Senate Judiciary Committee
Subcommittee on Immigration, Citizenship and Border Safety**

**“Removing Barriers to Legal Migration to Strengthen our Communities and
Economy”
Tuesday, March 15, 2022**

Chairman Padilla, Ranking Member Cornyn, and members of the subcommittee, thank you for the opportunity to share my story.

My name is Athulya Rajakumar. I am a recent graduate of The University of Texas at Austin and currently reside in Dallas, Texas. I am also a member of Improve The Dream, a youth-led organization that supports and advocates for the over 200,000 young immigrants, who have grown up in the United States as child dependents of long-term visa holders, but face self-deportation after aging-out of the immigration system. I am a Documented Dreamer.

I was born in India, and when I was four and my brother was six, my mother left India and an abusive marriage behind, in search of a better life for us. After completing her master's at the Queensland University in Australia, she was chosen to come to America on a cultural exchange student visa with us as her J-2 dependents. After graduating, she secured a full-time job at Microsoft, which then sponsored her H-1B work visa, with her children as H-4 dependents. Eventually, in 2012, she was finally able to apply for her green card with me and my brother as her dependents. After nearly a decade in the green card backlog, I aged out of that application in January of 2020, when I turned 21.

My single mother worked hard to support me and my brother on her own. Things were hard, yes, but still I remember making happy memories¹ while building our new life here. I remember waiting in line at midnight for the fourth Harry Potter movie release; eating red, white, and blue Bomb Pop original popsicles on the Fourth of July; driving through neighborhoods to look at Christmas lights; and watching my first baseball game at the Nationals Stadium just a few miles from here. I still remember knocking my nachos and soda all over me as I stood up to cheer

¹American Immigration Council, "Documented Dreamers: An Overview", 2021, available at <https://www.americanimmigrationcouncil.org/research/documented-dreamers-overview>

when the Nationals hit a homerun. These experiences, uniquely American, are not only unforgettable but a part of who I am today.

As a child, I did not always understand the meaning behind the letters and numbers surrounding our immigration status, but it was clear to me that they were imperative to legally remaining in this country. I learned very young that every aspect of my entire life would be controlled and overshadowed by my visa status. I became used to opportunities being taken away by a factor out of my control. I could not participate in my high school's AP French exchange program even though I was president of the French Club, because I could not legally leave the country with a guaranteed ability to return. When I applied to colleges, I was considered an international student, even though I completed first through 12th grade in America. I had to take additional tests and write extra essay prompts that asked questions like "What can you contribute to our institution as a resident from your country?" – to which my only response was, "I grew up in Seattle, Washington; Starbucks was founded here. I don't know how much more American I can get." I did not qualify for any federal or university financial aid, though my mother was a single parent and we lived within financial circumstances that should have qualified us for aid.

Regardless, I worked hard, earned good grades, took every test, and wrote every essay, to get direct admission not only to my dream university, but my dream program at The University of Texas at Austin's Moody College of Communication's prestigious journalism program - to pursue my long-term goal of becoming a journalist, and to use my voice to advocate and bring awareness to issues I was passionate about.

As my brother and I grew up, we were essentially forced to raise ourselves because my mother was working overtime to make sure she kept a roof above our heads and food on the table, but most importantly retained our visa status. But this constant uncertainty and anxiety eventually caught up to us in our adolescence. We both faced severe mental health issues, my older brother to a much worse extent. His mental health began to rapidly decline once he hit high school. For ten years, we - as a family - struggled to navigate his severe depression and mood swings. My brother should have been pulled out of school. He should have been given proper medication and counseling. At times I felt he should have been institutionalized. However, as H-4 dependents, my brother and I legally needed to be enrolled as full-time students in order to comply with our visa status and remain in the country lawfully. Taking a leave of absence from school to address serious mental health concerns was not an option. And though all my mother wanted to do was quit her job and stay home to care for my brother, risking her job meant risking our entire lives here—everything we had worked so hard for. Thus, we soldiered on. My brother attended the most academically rigorous high school in the state, graduated from college, and we encouraged him to pick a career path that would serve him well for future visa sponsorship because, being older, he was closer to aging out of status while on my mother's green card application than I was. He took the LSAT, scored in 98th percentile and got into some of the best law schools in the country. We thought, if we cannot fight the immigration system that is constantly testing us, maybe we can study it, maybe we can be a part of it. His goal was to become an immigration lawyer and speak out for this group of children that America cannot see and, to this day, refuses to recognize. However, the day before his orientation at the University of Washington, my brother took his own life.

Our entire family was torn apart, our worlds turned upside down. I flew home and went from writing a school paper to writing my brother's obituary in less than 24 hours. The most cruel part of this whole tragic situation was that we were not even given the proper time to mourn, process or heal. Within one week, I was back in college, and by the end of the month, my mother had to be back at work. Once again, our visa status controlled our lives - even when one of us was dead.

I can only describe this life as simply existing – not living, but surviving. I am 23 years old. I should be excited to go out into the world and start my life, but I am scared. I am scared to make goals and find my passions, because I am sick of them being taken away from me by something I cannot control. Suddenly the degree I worked so hard for is not good enough for me to stay in this country; because it is not STEM, it is not considered as “high-skilled.” Recently I received a prestigious full-time employment offer from a major news corporation in Houston, a top ten media market — something virtually impossible to achieve as a new graduate in this field — but the same company that saw my dedication and potential withdrew their offer the second they heard about my visa status, and in their view, investing in someone who needs visa sponsorship would just be too much of a risk. I did not have a Social Security number until last month. I do not have a credit card, savings, or any paid work experience, because I was not legally allowed to make money. But worst of all is to be considered an alien, an outsider, in the only place you know to call home. That is a different kind of pain that only me and the 200,000 other children in my position share.

Without congressional action that creates a clear, reliable pathway for me to apply for permanent residency, in eight months, I will be forced to leave not only the country I have called home for

nearly 20 years, but also my mom, who is my only family left. Over 5,000 other Documented Dreamers face this possibility every year, despite having maintained a documented status.² And this is not just a hypothetical. Erin, a nursing graduate from Florida, was forced to self-deport last summer in the midst of the pandemic. Rutha was forced to self-deport two months ago, even though she aspired to go to graduate school to become a data analyst. Summer will be forced to self-deport in four months, even though her family has legally resided in the United States since she was a baby. Members of Improve The Dream hope that one day, everyone who grows up in America will have a clear opportunity to become an American citizen, pursue their passions, and fully contribute to our country. As members of this subcommittee, you can help make this a reality by passing the bipartisan *America's Children Act*, led by Chair Padilla and Senator Paul.³ This bill would permanently end the problem of aging out and ensure that children like me who are raised and educated with a documented status receive a clear opportunity to apply for permanent residency. This legislation would create the reality that most Americans assume already exists. Moreover, the subcommittee should also address the root causes that lead to aging out, including the green card backlog and the flaws in our broken immigration system that allow for families to be lawful long-term residents of the country with no clear pathway to citizenship.

Though the immigration system has constantly tested my faith, I am thankful my mom brought me here. We are patriotic because we grew up loving our country and believe in the American

²David Bier, "100,000 Children in the Employment-Based Green Card Backlog at Risk of Family Separation", 2020, available at <https://www.cato.org/blog/100000-children-employment-based-green-card-backlog-risk-family-separation>

³Alex Padilla, "Padilla, Paul Introduce Bipartisan Bill to Protect Thousands of 'Documented Dreamers'", 2021, available at <https://www.padilla.senate.gov/newsroom/press-releases/padilla-paul-introduce-bipartisan-bill-to-protect-thousands-of-documented-dreamers/>

Dream. We are hardworking, skilled young Americans, and we hope to be recognized as that — as Americans — and to finally give meaning to the lives we have lived here so far. I hope you can improve the dream for all of us.

For Athulya Rajakumar, Graduate of the University of Texas at Austin

At the hearing, you shared that you are pursuing a career in journalism. As the daughter of a journalist, I was discouraged to hear that your immigration status has too often stood as a barrier to your dream of reporting on issues that you care about.

- Can you share more details about the job offer that was rescinded because of your immigration status?
 - o Yes, I went through the recruiting process for the position of Associate Producer at a major news organization in Houston. I had two preliminary interviews with the News Director as well as the Assistant News Director. After that, I had a writing test, which assesses my ability to write for TV on various topics under a time constraint. After making it through both interviews and the writing test, in which I did very well and was told that I was an impressive candidate for my experience and age, I went through one final HR interview. Soon after the HR interview, I was put on a phone call with the Assistant News Director and the Head of HR, when they verbally offered me the position. I said I would be delighted to accept, and proceeded to explain my visa situation. Their immediate change in tone threw me off. Up until then, they had verbalized about how perfect I would be for the position, and how eager they were to see my talents grow at their station, but as soon as I told them of my immigration status, they were upset that I had not mentioned it before and no longer thought I was the right fit. I tried to explain that my credentials remained the same and I am qualified for the position, and that I would not even need them to sponsor me for my work visa. If I were to find a third party staffing company that would sponsor me, all I would ask them would be their support in the filing process for my H-1B visa. The company said they would discuss it with their immigration team and get back to me. They never got back to me, and the following week, I reached out to them and they said they had not heard back from their immigration department because they had bigger things to deal with, and it was pretty clear they were withdrawing their offer. They said that investing their time and efforts into someone who could not guarantee that they could work past the end of this year would not be a smart move on the company's part.
 - o This experience was extremely disheartening, and just another example of how my talents, experience, and my life in the United States, are constantly undermined by my immigration status. If I had revealed my visa situation at the very first interview, I may not have made it past the first round, and revealing it at the end, even after I had proven my skills and prowess, still didn't guarantee me the position. While I was grateful to be granted a work visa after almost two decades in this country, I soon came to know of its constraints - and the way its constant temporary nature has affected my ability to work in my field of education or build a career.
- What steps can Congress take to ensure that you, and the thousands of young people who are similarly situated, have the stability needed to pursue your chosen career?
 - o Something Congress can do for people like me is create a mechanism that protects children who are raised and educated in the United States on long-term dependent

visas to be able to stay without needing to hop from one temporary visa to another; the bill S. 2753 America's Children Act allows for this. Current laws do not protect or have any mechanisms in place that allows long-term residents like me to apply for a green card, even if we were raised here with a documented status. This in turn ends up affecting our job prospects after graduation as well. We are bound by the constraints of our status. For example, the H-1B cap, a purely lottery-based system, does not take into account the years I've spent living here. Children who are raised and educated as dependents of visa holders should be protected from aging out of the system.



American Families United

**Statement of
Kali Pliego
President
American Families United**

**for
Senate Judiciary Committee: Subcommittee on
Immigration, Citizenship, and Border Safety**

**Hearing “Removing barriers to legal migration to
strengthen our communities and economy.”**

March 15, 2022

Thank you Subcommittee Chair Alex Padilla (D-CA), Ranking Member John Cornyn (R-TX), and members of the Senate Judiciary Committee: Subcommittee on Immigration, Citizenship, and Border Safety for the opportunity to submit this written statement in support of the American Families United Act, which would address barriers to legal immigration for spouses and children of U.S. citizens.

As president of American Families United, which represents U.S. citizens who have married foreign nationals, I would like to thank Committee Chair, Senator Alex Padilla, for submitting this statement into the record. The following pages contain a small sample of U.S. citizens who, while they have access to the legal immigration system, for various reasons cannot get *through* it. There are barriers throughout the legal immigration system that force the separation of American families across international borders, or the separation of U.S. citizens from their home in order to keep their family together.

I grew up in Rochester, Minnesota, graduated from Augsburg University (Minneapolis, MN) and earned a Master's degree from Bethel Seminary (St Paul, MN). I founded a non profit positive youth development organization in Guatemala, and served as the Executive Director for 12 years. I now work for the City of Minneapolis as a Crime Prevention Specialist, serving as a liaison between community and police in the 3rd precinct.

I married my husband, a Mexican national, in 2007 in Minneapolis where we later bought our home and are raising our 5 year old son. On our 14th anniversary last year, Minneapolis Mayor Jacob Frey honored us with a Mayoral Proclamation, naming the day for us and calling on Congress to pass the American Families United Act. As a U.S. citizen who is highly educated and capable at navigating complex systems, it pains me that there is nothing I can do to adjust my husband's immigration status besides separating our family for ten or more years, or leaving my beloved community and country to live with him in Mexico.

My story is just one of many eventual or actual separations, because of a long list of administrative inadmissibilities under the law. 1.3 million U.S. citizens are part of a family that has already been separated due to an automatic denial of a spousal visa or the removal of a U.S. citizen's spouse from the country. Another 2.7 million U.S. citizens fear separation for this reason.

The American Families United Act would allow U.S. citizens to request a case-by-case waiver for their foreign national spouse or child for many inadmissibilities. The bill would not abolish those inadmissibilities. Judges and others authorized to hear immigration cases would not have the discretion to reunite families if the foreign national is a security threat or has a history of serious criminal activity.

In a poll of registered voters conducted in April 2021, SurveyUSA found strong support for the American Families United Act across all regions and demographics. Democrats support by a margin of 10:1; Republicans support by 4:1; Independents support by 5:1.

This statement includes an appendix for each state represented by a member of this subcommittee with estimates of the U.S. citizens impacted statewide, personal stories, and poll numbers. It concludes with an appendix of national estimates, stories, and polling results.

Additionally, we are including a statement of support from Ramon Canaba, Jr., a retired supervisory immigration enforcement agent, Immigration Customs Enforcement.

Thank you for the opportunity to share these American stories with you,
Kali Pliego
President
American Families United
www.americanfamiliesunited.org



Impacted U.S. Citizens: 21,000

Personal Story

Larry Bailey, of Hot Springs, AR highlights how the entire family is impacted in these situations. Larry's nephew Jason Rochester, a UPS driver, got married to his wife Cecilia and together they have a 7 year old son. Cecilia returned to Mexico in an effort to correct her immigration status. She was assessed a ten-year bar and has not been able to return to the United States. In 2018, six months after Cecilia departed, their son Ashton was diagnosed with kidney cancer. The entire extended family was forced to live this nightmare without the comfort of Cecilia's presence. Because of the demands of the pandemic on truckers, Jason has been forced to rely on his entire extended family to help care for Ashton. He is also supported by The International Brotherhood of Teamsters. Ashton has lived over half of his life without his mother present.

Polling

Individual results for this state were not available.



California

Impacted U.S. Citizens: 954,000

Personal Stories

Edward Americano, an American citizen and hardworking family man from Hayward, California, is living through family separation because of immigration bars. He went to 'the back of the line' to adjust his wife's immigration status, but she did not qualify. She has lived outside the country with their four young American children for years. The American Families United Act would help families, like Edward's, by providing a pathway to reunification for those married to American citizens.

Patricia Gutierrez, from Bloomington, California, grew up in San Diego, California. When she met her husband, there was an interior border patrol checkpoint in between where she lived and where he lived. When she married, she had to move to where her husband lived. She is unable to travel freely to visit her family with her husband. She and her children are U.S. citizens living in the shadows.

Mirtha Arriaga, a U.S. citizen from Maywood, California and her foreign national husband are parents to children with special needs. Her husband would receive a 10 year immigration ban if he tried to adjust his immigration status. Mirtha relies on support and services for her children that are only available to them in the U.S., and if her husband was not allowed to remain in the U.S. with her, she would be facing a decade of separation without her husband's support, which would result in extreme hardship for both her children and herself.

Polling

We commissioned a poll with SurvryUSA in April 2021 and asked registered voters in the state if they support or oppose the American Families United Act.

Not Sure	Strongly Oppose	Oppose	Neutral	Support	Strongly Support
14%	4%	8%	12%	25%	36%

 **Connecticut****Impacted U.S. Citizens: 28,000****Personal Story**

Samantha Colindres, from New Fairfield, Connecticut, and her husband have been married for over 14 years. Together they have a 10 year old son and 6 year old daughter. Samantha's petition to sponsor her husband was approved but before they could proceed with the visa, Joel Colindres was ordered deported. They've been fighting with paperwork errors since they were married. Joel missed a court date in 2004 in Texas because he never received the notice. ICE had his address wrong and both his first and last names were spelled wrong. After this news, The Colindres family had to sell their family home and all four family members have moved to Guatemala to wait out the five year bar. Living in a third world country during a global pandemic has been unusually cruel to three US Citizens who should be home safe in Connecticut.

Polling

Individual results for this state were not available.



Delaware

Impacted U.S. Citizens: 6,000

Personal Story

Allyson Batista, a Delaware taxpayer, holds a Masters of Education in Spanish Literature and Linguistics and is a former high school teacher. She has been married to her husband, a Brazilian national, for 18 years. Together, they have a 24-year-old daughter, a 17-year-old daughter, and a 15-year-old son. Her husband faces a lifetime bar and is only eligible to apply for a waiver after spending 10 years outside of the United States. Allyson reflects that she never thought their children would be approaching adulthood before her husband's immigration status would be rectified. Now middle-aged, she continues to live with the fear that her family's life could be disrupted and uprooted due to her husband's ongoing irregular status and that even looking forward to life events like grandchildren and retirement is somehow less joyful or certain given her family's unfortunate predicament created by unjust policies.

Polling

Individual results for this state were not available.



Hawaii

Impacted U.S. Citizens: 21,000

Personal Story

Brenda Cleveland-Reynolds from Kona and her husband Andres Magana Ortiz own a coffee farm. Her husband was smuggled to the US when he was 15. They worked for nearly three decades to obtain legal status for Andres but while his applications were pending, he was ordered removed. He returned to Mexico, where he has no family, after building a life and family here in the United States. It will be ten years before he is allowed to return to his wife and three children.

Polling

Individual results for this state were not available.



Iowa

Impacted U.S. Citizens: 19,000

Personal Stories

Timothy Tucker is an electrical engineer from Des Moines, IA. He is married to Charity, an LPN, for over ten years. The couple has two US citizen children. In 2014, Charity's green card application was denied and she was assessed a lifetime bar. Charity has lived in the USA since 2007, entered with a valid visa, got a degree, never had a problem with the law but mistakenly checked the wrong box on a form. In a global pandemic, with shortages in healthcare workers, the government is keeping a woman who has saved lives from working and living legally in the US with her US citizen family members.

Heather Rochez from Sioux City, IA lives in daily fear that her husband and her children's father will be taken from them. Living in the shadows as an American citizen impacts every decision Heather makes for her family. She is most regretful that due to this law, she and her husband are not able to contribute to their community in the many ways they wish they could.

Polling

Individual results for this state were not available.



Illinois

Impacted U.S. Citizens: 169,000

Personal Stories

Megan Stenberg, a US citizen and high school counselor from Schaumburg, Illinois, would like to start a family soon with her immigrant husband. However, she is concerned about bringing a child into this world with the potential of not having her husband around some day due to immigration barriers.

Kathy McGroarty-Torres, a teacher from Evanston, traveled to Mexico with Ines in 2002 to get married and process his paperwork. They wanted very badly to go through all the proper steps to adjust his status so that they could live and work freely, and start to build a family in the U.S. Unfortunately, when they showed up at the Consulate in Ciudad Juarez for an interview, they were informed that, instead of a visa, Ines would receive a 10-year bar, prohibiting him from entering the country or submitting another application for 10 years. They have gone on to have three children and live in the shadows.

Polling

Individual results for this state were not available.



Louisiana

Impacted U.S. Citizens: 21,000

Personal Stories

Manuel Siliezar, a petroleum engineer from Lafayette, Louisiana has been separated from his wife of 14 years for 2 months. She was issued the 10 year bar. They have four adult children.

Polling

We commissioned a poll with SurveryUSA in April 2021 and asked registered voters in the state if they support or oppose the American Families United Act.

Not Sure	Strongly Oppose	Oppose	Neutral	Support	Strongly Support
3%	2%	6%	18%	39%	32%



Minnesota

Impacted U.S. Citizens: 51,000

Personal Stories

Daniel Adam Dusbabek, from Brainerd, Minnesota, has had to live in Mexico for the last 13 years because of his wife's permanent bar and no available waiver. The 13 years in Mexico were preceded by 6 years of living apart and in different countries while working through the immigration process with no success.

Anna Alberto, a kindergarten teacher from Crystal, Minnesota, has been married to her husband for almost 8 years. Anna and her 7 year old son lived in Honduras for a year to be together as a family with her husband, but life there was filled with danger and insecurity. They made the hard decision to move back to the U.S., leaving her husband behind, only able to see him via the phone. Anna and her son are both American citizens and should not have to choose between living in the United States and being together as a family.

Lois McGuire, a retired nurse practitioner from Rochester, Minnesota, has been living away from her daughter and grandchildren for 3 years. Her daughter and son-in-law, a Mexican national, moved to Mexico to try to obtain legal U.S. citizenship for him. This entails at least a 10 year wait outside of the country. Now, Lois is missing out on precious time with her family.

Mary Mejia, from Rochester, Minnesota, and her husband have been married for 10 years and live in Mexico with their 2 children. They don't feel safe in Mexico, but have made the decision to stay in order to live together as a family. Mary and her 2 citizen children have been effectively exiled from living in the U.S., based on a legal immigration system that doesn't work for citizen petitioners of immigrant spouses.

Polling

We commissioned a poll with SurvryUSA in April 2021 and asked registered voters in the state if they support or oppose the American Families United Act.

Not Sure	Strongly Oppose	Oppose	Neutral	Support	Strongly Support
4%	14%	4%	34%	30%	15%



New Jersey

Impacted U.S. Citizens: 167,000

Personal Stories

Ashley De Azevedo, a bi-coastal business owner from Ocean County and her husband have been married for 10 years and have a 9 year old son. Each day, Ashley is aware of the looming possibility that her husband will be forced to leave the country and return to Brazil. In order to be eligible for a waiver, he must be outside of the country for 10 years. Their son faces growing up without his loving father. The De Azevedo family is active in their community and loved by many. No one can understand why the laws would take this great father away from his wife and son.

Lynette Hernandez-Spencer from Eatontown, New Jersey is suffering extreme personal and financial hardship after her husband was deported. Lynette is raising the couple's two sons (12 and 8 years old) without their father, who is in Mexico since 2019 with a lifetime bar. Their home is now in foreclosure and their businesses are suffering as well.

Polling

Individual results for this state were not available.



North Carolina

Impacted U.S. Citizens: 73,000

Personal Story

Jennifer Rivera, a teacher from Rolesville, North Carolina, and her husband have been together for 15 years and have two U.S. citizen children. They started their immigration process 11 years ago, but have been unable to move forward without tearing their family apart for a minimum of 10 years, due to a permanent bar that her husband faces. Jennifer and her children live in fear every day that their lives could be torn apart at any moment.

Polling

We commissioned a poll with SurveyUSA in April 2021 and asked registered voters in the state if they support or oppose the American Families United Act.

Not Sure	Strongly Oppose	Oppose	Neutral	Support	Strongly Support
20%	7%	6%	35%	22%	10%



South Carolina

Impacted U.S. Citizens: 21,000

Personal Stories

Amanda, from Columbia, South Carolina, is a US citizen and her husband faces a permanent bar. She has been waiting on immigration reform for the 16 years they have been married. She lives with anxiety and fear at the prospect of her husband being separated from her.

Liza DuPont, who works as a flight attendant, was raised in North Augusta, South Carolina where her parents, Mary and Christopher DuPont still reside. Liza married her husband in 2012 and immediately began the immigration process for him. Liza's efforts to obtain her husband's green card came to a dead end in 2014 when they were informed that her husband could be subject to a lifetime bar if he were to attend his visa interview at the Mexican Consulate. This is despite the fact that he has no criminal history. The couple now has 2 young children and until the law is changed, they live in limbo and are hindered from their full potential.

Polling

Individual results for this state were not available.



Tennessee

Impacted U.S. Citizens: 34,000

Personal Story

Ashley Lopez from Johnson City, TN and her husband have been together for 7 years and have 5 children together. One of their children is severely disabled and receives extensive medical care which she would not be able to receive if forced to leave the country. Ashley has not been able to petition for her husband due to the fact that he has multiple entries which would permanently bar him from legal status in the US.

Karen Kiewatt, a retired office manager from Kodak Tennessee, fears that her daughter's family could be taken from her at any time. Her daughter has been married to her husband, who was born in Mexico, for 15 years and together they are raising Karen's only grandchild. The possibility of not being able to be present in her grandson's life is devastating. Karen says, "I can't imagine my life without them in it. If they go, so does the joy from my life."

Polling

We commissioned a poll with SurveryUSA in April 2021 and asked registered voters in the state if they support or oppose the American Families United Act.

Not Sure	Strongly Oppose	Oppose	Neutral	Support	Strongly Support
2%	0%	9%	12%	40%	37%



Texas

Impacted U.S. Citizens: 661,000

Personal Stories

Jennifer Alvarez, from McKinney, Texas, met her husband while working as a restaurant manager. He was brought to the U.S. as a 15-year-old boy. She is facing the probability of having to raise their 4 kids without a father due to his immigration status. Her kids have an amazing, devoted father and they may miss out on his presence for the rest of their childhood.

Monica Logan, a resident of Houston, Texas, and her husband started a life together five years ago. She has chronic illnesses that require extensive care from specialized physicians. Monica is facing the harsh reality of being separated from her husband who provides the physical, emotional and financial support she needs or living in a country where her health will deteriorate due to lack of skilled medical personnel.

Beatrice Rodriguez, of Palacios, Texas, has been trying to fix her husband's immigration status for 7 years. Beatrice has been raising her two daughters alone for over a year now, as her husband is in Mexico completing his 10-year ban. She faces daily emotional and financial struggles due to his absence.

Polling

We commissioned a poll with SurveyUSA in April 2021 and asked registered voters in the state if they support or oppose the American Families United Act.

Not Sure	Strongly Oppose	Oppose	Neutral	Support	Strongly Support
11%	3%	5%	26%	36%	18%



United States of America

Impacted U.S. Citizens: 4 million

Personal Stories

Matthew Bryan is an executive at a Fortune 500 company. Originally from Cimarron, Kansas, he has been forced to live outside of the United States for 13 years because of his wife's inadmissibility. He has a great desire to return home to Kansas and raise his two children, who are U.S. citizens, on the family farmstead with his parents and siblings.

Regina Cano, from Cincinnati, Ohio is struggling to pay her medical school debt while living in Mexico, since her husband cannot return to the U.S. upon receiving an immigration bar 8 years ago. She has left her family behind in Mexico on three separate occasions this past year to work in the U.S. on the front lines of the COVID-19 pandemic.

Krystal Loverin, a disabled Iraq veteran from Oregon, had to quit her government job to move her children to Mexico in order to keep her family together while her husband José applied for the I-601 waiver after their I-601A was erroneously denied.

Ed Markowitz, a U.S. Navy veteran from Lakewood, Colorado, has had to live abroad for the past 10 years to keep his family semi-intact. His wife is barred from entry into the U.S. due to an entry violation. Their minor U.S. citizen son is being raised in a foreign setting while they remain separated from their other two sons, who are U.S. permanent residents.

Stacy Rodriguez, housewife and entrepreneur from Union City, Pennsylvania, and her husband, a Mexican national, have been married for 11 years. Their family is facing long term separation related to immigration bars. They have 5 children ranging from 5-18 years old. Without her husband, the family faces financial, educational, medical, physical and emotional hardships. The future of their family- 6 U.S. citizens- depends on the passage of the American Families United Act.

Beth Capriz, from Centennial, Colorado, spent over 5 years separated from her husband while she applied for a hardship waiver that would allow her husband to return to the U.S. Had there been an opportunity to plead the case before a judge, in which the judge had the ability to review her husband's background and use his discretion based on a character review, she could have avoided an agonizing separation.

Susan Houmita, a graphic designer from Brooklyn, New York, has been pursuing a green card for her husband for 7 years. In August 2018, Susan's husband was detained after accidentally driving into Canada near Buffalo, NY. He has remained in custody for 2 years and 8 months, while they continue to appeal his deportation to Algeria.

Dr. Sherrie Licon, an administrator at college in Arizona, has been married to her husband since 2009. She and her daughters live with the fear and anxiety that their husband and father could be ripped away from them at any time. Due to harsh immigration laws, the family has no options to move his immigration process forward and face living in immigration limbo as a mixed-status family for the rest of their natural lives.

Jill Carrillo, a public servant from Vancouver, Washington, and her husband have been married 15 years. She is facing the harsh reality that she may need to spend her senior years in poor health while in exile in another country in order to stay with her husband, who has been a constant companion to her through her own illness and her mother's illness.

Summer Holbrook, of Southaven, Mississippi, met her fiancé 6 years ago while on a mission trip to Peru. Ever since then, they have been working to get him to the United States. However, there is no opportunity for him to obtain a waiver for an administrative violation that has them lost in immigration.

Melissa Paciulan, a former Americorps National Service Program volunteer from Londonderry, New Hampshire, has been exiled from the USA since 2006 when her husband was wrongly accused of an oral false claim to citizenship. This accusation and permanent immigration bar has had severe, detrimental impacts on Melissa and her family and there was NO due process, discretion, or special consideration offered to them as American citizens.

Laura Araujo, from Manchester, Maryland, has been living in Mexico for 4 years. She had to make the difficult choice to move her family to another country in order to keep her family together after her husband was given a permanent immigration bar at his consular interview. Poor legal counsel about confusing and draconian immigration law led her to believe that her husband would be able to return with her to the U.S. and live their American Dream together. She often laments the opportunities her children are missing by not living in the U.S.

John Wright, from Oakland Park, Florida, married his husband in 2019 in Colombia, South America. His husband was denied an American Tourism Visa in 2019 after he married John. They plan to apply again for a visa in 2022 after being married for more than 2 years, but fear another denial.

Ana Ortiz, an essential worker from Morriston, Florida, and her husband have been married 6 years. She is facing the harsh reality that she may need to leave the U.S. with her three U.S. citizen daughters to join her husband in a country where sex trafficking is the norm. Ana fears her daughters becoming part of the statistics living in another country and faces her own PTSD from when she herself nearly became a victim of human trafficking at the age of 12 while living in Mexico. She and her husband should be building a safe future for their family in the US.

Chasidy Rosa Morales, of Summit Point, West Virginia married her husband 10 years ago. Her husband received a 5 year bar and has been separated from the family for 3 years. She and her husband have 2 biological children and 1 adopted child.

Amanda Fernandez Franco, a registered nurse from Jackson, Missouri, has been living in Mexico with her husband for 13 years. They are happily married and have three daughters, but they have no options for moving forward in their immigration process. She is separated from her family in the U.S. and she has not been able to return regularly to the U.S. to visit her family.

Lara Garcia, from Columbia, Maryland, and her husband have been together for 10 years and they have three children together. They have been working through the process of adjustment of status for 5 years and still face 2-3 more years of tireless waiting before her husband will be able to return to El Salvador for a consulate interview. Their eldest child suffers from severe anxiety due to the fear of being separated from her father. They want nothing more than to be free from the shadows, so they can give their children the life that they deserve.

Stacy Marcondes, an American citizen from Somerset, Massachusetts, married her Brazilian husband in 2008. However, due to his immigration status and the lack of an immigration policy favorable for American citizens, they have been living together in Brazil for the last 7 years. Leaving behind her family, friends, career, and culture has been an extremely difficult experience; one that could be permanent if unable to adjust his immigration status.

Written Statement of Ramon Canaba, Jr. Retired Supervisory Immigration Enforcement Agent, Immigration Customs Enforcement

U.S. House of Representatives Committee on the Judiciary Subcommittee on Immigration and Citizenship

Hearing "'Why Don't They Just Get in Line?' Barriers to Legal Immigration"

April 28, 2021

Thank you Subcommittee Chairwoman Zoe Lofgren (D-CA), Ranking Member Tom McClintock (R-CA), and members of the House Judiciary Committee Subcommittee on Immigration and Citizenship for this opportunity to submit this written statement in support of the American Families United Act, which would address barriers to legal immigration for spouses and children of U.S. citizens. I would especially like to thank my Congresswoman, Representative Veronica Escobar, for introducing this bill.

My name is Ramon Canaba, Jr. I'm a retired SIEA (Supervisory Immigration Enforcement Agent), Immigration Customs Enforcement. I started with Border Patrol and retired with ICE at the mandatory retirement age of 57 years. I served for 31 years in total and was detailed to many branches of the service. My duties included processing immigrant visas, processing refugees/asylum applicants, inspections, supporting prosecutions, processing detentions, and carrying out removals. I was also an immigration law instructor at the Academy in Glynco, Georgia.

With the Patrol, I witnessed that immigration laws are very tough and have teeth, but most situations allow for waivers. I often encountered two broad waivers at our ports of entry: the I-212 (d)(4)(a) waiver of entry documents, which applies to humanitarian, public interest, and business applicants that are entering the US for business-related or special purposes; and the I-212 (d)(5)(a), which applies to criminal proceedings.

Immigration law should allow the immigration service to apply this principle to every case that presents itself, including when petitioning/applying for a spouse or children of a US citizen. The limited waivers available in these cases are granted in cases of "extreme hardship," but in my experience, the process is so difficult for a US citizen that the financial and emotional toll cause the very hardship that the process is meant to evaluate. US citizens cannot even live together while their applicant spouse gathers the required documents supporting the issue at hand.

Other times, applications for the spouse or child of a US citizen are denied without recourse to a waiver. I have seen good people, including those working for federally supported programs, forced to relocate to the other side of the border, where they and their families become targets for drug cartels. I place myself in their shoes and think about the anguish and hardship they have to go through each and every day, just because our laws do not support their need to live with their families in the United States of America.

My opinion on the *American Families United Act* is very strong. I believe that each and every case should be closely reviewed by immigration officers. Quality inspectors should have the leeway to review the application at hand. Adjudicators should be able to weigh the facts in favor of approval/disapproval and make decisions as soon as possible. Congress needs to consider that these applicants have very little resources, have commitments with their employers, and very little time to see the process through.

Thank you for letting me share my thoughts and input on this important bill. I urge Congress and the President to pass it into law.

Yours in Service, Ray Canaba

Polling

We commissioned a poll with SurveyUSA in April 2021 and asked registered voters across the United States if they support or oppose the American Families United Act.

1214 Registered Voters	U.S.	Gender		Age		Party Affiliation		
Credibility Interval: ± 3.5 pct points		Male	Female	18-49	50+	Rep	Dem	Ind
Strongly Support	23%	25%	21%	23%	23%	18%	28%	23%
Support	33%	35%	30%	30%	36%	32%	35%	31%
Neutral	24%	24%	24%	26%	21%	28%	20%	23%
Oppose	6%	7%	5%	5%	7%	8%	3%	8%
Strongly Oppose	4%	5%	4%	3%	6%	6%	3%	3%
Not Sure	10%	5%	15%	13%	7%	8%	10%	12%

About / Filtering: SurveyUSA interviewed 1,575 US adults 04/20/21 through 04/22/21, using samples provided by Lucid Holdings LLC of New Orleans. Of the adults, 1,214 were identified as being registered voters and were asked the substantive questions which follow. The pool of adult survey respondents was weighted to U.S. Census targets for gender, age, race, education, region, and home ownership. This research was conducted online.

QUESTION: "Another proposed law, the American Families United Act, would allow the U.S. citizen to request a case-by-case waiver for the non-citizen spouse and children for many of the reasons they ordinarily may be denied permission to live here. Judges and others authorized to hear immigration cases would not have the discretion to reunite families if the non-citizen is a national security threat or has a history of serious criminal activity. Do you support or oppose the American Families United Act?"

MEMORANDUM

From: Americans for Prosperity & The LIBRE Initiative
 For: Interested Parties
 Subject: Removing Barriers to Legal Migration to Strengthen our Communities and Economy

Thanks to America's founding principles of liberty and the rule of law, we are blessed with one of the most prosperous and dynamic economies in the world. For decades, American ideals have drawn the world's most ambitious people to our shores, allowing them to tap into their talents and grow the American dream for U.S. citizens and immigrants alike.

Though America remains a top destination for people pursuing opportunity, arbitrary and costly restrictions undermine our prosperity and prevent countless U.S. citizens from sponsoring a family member or employee. Our immigration system needs to be reformed to reflect the needs of U.S. citizens and modernized to embody the very principles that made America the greatest country on earth.

As a start toward modernizing our immigration system the Senate should advance the following reforms:

- **Reinstate the Known Employer Program**
 - Processing at U.S. Citizenship and Immigration Services (USCIS) has been so slow that the agency is anticipated to waste roughly [150,000 green cards](#) this fiscal year. Additionally, USCIS's net backlog [has increased](#) by 85 percent between 2015-2019.
 - Despite crisis level backlogs, USCIS still demands employers to resubmit [over 200 extra pages](#) of documents such as their stock purchase agreements, copies of meeting minutes, details of employee performance review processes, and copies of marketing materials.
 - Though such requirements are necessary for establishing an employer's legitimacy and financial health, it's wasteful to require employers to resubmit those same documents for every single visa they petition. Instead, USCIS should reinstate the [Known Employer Program](#), which permits employers to pre-certify themselves by uploading their documents to a database. This reform would conserve agency time and resources as well as remove barriers for U.S. businesses.
 - The program began as a pilot in 2016 but was terminated in 2020 without explanation. Though the executive branch's [regulatory agenda](#) includes plans to codify the program, it has no deadline for implementation. To ensure that the program gets reinstated, Congress should require a deadline for USCIS to codify and expand the program.
- **Pass the Health Care Workforce Resilience Act (S. 1024)**
 - The [Health Care Workforce Resilience Act](#) enjoys broad bipartisan support and should be promptly voted on in the Senate. The bill would grant 40,000 previously unused green cards to foreign physicians and nurses who passed U.S. training and medical exams.
 - If enacted, the bill will help rectify current health care staffing shortages, which [have caused](#) hospitals in rural areas to [suspend services](#) and have overwhelmed health professionals to the point of [quitting](#) their professions entirely.
 - The bill will also provide relief to the thousands of physicians waiting [over a decade](#) for their green cards due to the [per country caps](#). As they wait in line, these physicians must practice in the U.S. on restrictive non-immigrant visas, which [complicate travel](#) and their ability to practice in [different locations](#) inside the country. Such restrictions [are causing](#) backlogged physicians to leave the U.S. entirely.
- **Pass the America's CHILDREN Act (S. 2753)**
 - The [America's CHILDREN Act](#) is a bipartisan bill that would grant a pathway to permanent residency for young adults who grew up in the U.S. legally but were blocked from obtaining green cards due to visa backlogs and other arbitrary regulatory barriers. Without such a solution, [roughly 200,000 dependents](#) of long-term visa holders may be forced to eventually "self deport," because their visas expire the day they turn 21.
 - Skilled workers, [including physicians](#), have left the U.S. to avoid being separated from their children. Passage of this bill would help the U.S. attract and retain top talent by recognizing that skilled immigration is also a family affair.
- **Pass the Preserving Employment Visas Act (S. 2828)**
 - Between fiscal years 2020-2021, USCIS [wasted](#) as much as 80,000 employment based green cards because it failed to process them in time.
 - The [Preserving Employment Visas Act](#) would "recapture" all the wasted green cards from the previous fiscal year. According to [estimates](#) from the Niskanen Center, 16,000 of the green cards recaptured under this bill would go towards new arrivals and the remainder would be issued to those waiting on guest worker visas—generating an expected gain of \$27 billion in GDP over the next decade.
 - The bill enjoys support from members of both parties and should be prioritized and passed by the Senate.



Written Statement of Asian Americans Advancing Justice | AAJC

**Senate Committee on the Judiciary
Subcommittee on Immigration, Citizenship, and Border Safety**

**Hearing Titled
Removing Barriers to Legal Migration to Strengthen our Communities and Economy**

March 15, 2022

Contact Information:

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Asian Americans Advancing Justice | AAJC appreciates this opportunity to submit a statement for today's hearing on "Removing Barriers to Legal Migration to Strengthen our Communities and Economy." Advancing Justice | AAJC works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. Founded in 1991, Advancing Justice | AAJC is one of the nation's leading experts on civil rights issues of importance to the Asian American community including immigration and immigrants' rights, census, hate incidents, language access, discrimination, technology, and telecommunications, and voting rights. We are part of the national affiliation, Asian Americans Advancing Justice, comprised of five leading organizations advocating for the civil and human rights of Asian Americans and other underserved communities to promote a fair and equitable society for all. The affiliation's members are: Advancing Justice | AAJC (Washington, DC), Advancing Justice - Asian Law Caucus (San Francisco), Advancing Justice - Los Angeles, Advancing Justice - Atlanta, and Advancing Justice - Chicago.

Asian Americans Advancing Justice co-convenes the Value Our Families Campaign. The Value Our Families Campaign exists to protect, preserve, and strengthen the family immigration system and promote an immigration system that is informed by love, empathy and justice. We are a network of local and national community-based and advocacy organizations who reject attacks and proposed harmful changes to our current family-based immigration system. We see to build public support for an immigration system that protects and promotes family unity and contributes to the American social and economic fabric. Formed in 2017 in response to attacks on the family-based immigration system, Value Our Families has long pushed for the passage of Rep. Judy Chu's Reuniting Families Act. As such, we celebrated the inclusion of that bill in President Biden's U.S. Citizenship Act.

Immigration is an important issue to Asian Americans. Two-thirds of Asian Americans are immigrants. Family-based immigration is the primary pathway for immigrants from Asia. In



2016, 82.1% of visas issued for Asian countries were family-based.¹ Asian Americans sponsor more than one-third of all family-based visas each year.² As of 2017, there were around 1.7 million undocumented Asian people living in the U.S. including over 120,000 DACA-eligible Asian immigrants.³ There are close to 15,000 Nepali nationals living in the U.S. on Temporary Protected Status.

Asian Americans are acutely aware of the injustice of being allowed to live in, work in, and contribute to the U.S. but always being treated as a perpetual foreigner. This concept has been enshrined in our laws at different times with the Chinese Exclusion Act and Japanese American incarceration during World War II. As such, Advancing Justice | AAJC advocates for access to citizenship for all people who live and work permanently in the U.S. or semi-permanently in the case of many nonimmigrant visa holders. Advancing Justice | AAJC urges Congress to pass a path to citizenship for the 11 million undocumented immigrants, including DACA recipients and TPS holders. Many of the 11 million undocumented immigrants are essential workers, small business owners or their family members who care for children, the elderly and the disabled so their family members can work.

There are three main many reasons for the high number of undocumented immigrants living in the U.S. today. They are: (1) the insufficient number of green cards issued annually; (2) the existence of too many barriers to immigrants seeking to access to existing green card pathways; and (3) insufficient green card pathways for lesser-skilled workers. This testimony will address the first two issues.

Origins of Our of Current Immigration System

Our nation has a complicated immigration history. While it is important to celebrate our history as a nation of immigrants, we must also acknowledge our country's darker origins of colonization of Native Americans and slavery of African Americans. In keeping with the culture of white supremacy, Congress passed the Chinese Exclusion Act of 1882 followed by exclusions of people from other Asian countries culminating in 1924 when a racist national origin quota system passed excluding all Asians and greatly preferencing Northern and Western Europeans. While there was increased immigration in the 1940's and 1950's, the national quota system was not completely ended until the passage of the Immigration and Nationality Act ("INA") of 1965, which created the framework for the family-based immigration system that we have today. The INA of 1965 was both a civil rights law and an immigration law and in creating the family-based sponsorship system it opened up pathways for Asians and other peoples from around the world to immigrate to the U.S.

¹ This number excludes humanitarian visas. State Department Visa Statistics FY2016 Annual Report, Table III. <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableIII.pdf>

² *Id.*

³ AAPIData.com <https://aapidata.com/undocumented/> (Last accessed April 26, 2020).



The INA has been amended many times over the years. Notable amendments include the Refugee Act of 1980, creating the Federal Refugee Resettlement Program, and the Immigration Reform and Control Act of 1986, which legalized people out of status and created penalties for employers who knowingly hire undocumented immigrants. The Immigration Act of 1990 expanded the number of family-based visas allotted per year and created the Diversity Visa Program, which allows for 55,000 permanent residency visas annually. The Diversity Visa Program has become an integral pathway to lawful permanent residency, as well as ensuring equitable migration from nations and regions with low migration rates to the United States.

In 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (“IIRAIRA”), an enforcement enhancement law that increased criminal penalties for immigrants and stripped due process rights from them. Such provisions include creating a filing deadline on asylum applications, creating “expedited removal” and creating a system of mandatory detention for certain classes of immigrants. Most pertinent to this hearing, IIRAIRA created the three and 10 year bars to inadmissibility, described further below.

The U.S. Family-based Immigration System

Before addressing what is broken about our immigration system, it is important to state that Asian Americans Advancing Justice | AAJC is firmly committed to protecting family sponsorship as the central element of our immigration system and allowing people to sponsor their family members, including their adult children, parents and siblings. While it is clear that we need to expand our employment-based immigration system, that should not come at the expense of our family-based system.

The over 45 million immigrants (including 23 million naturalized citizens) living in the U.S. are the backbone and multi-ethnic fiber of our communities giving our country a competitive advantage while providing economic opportunities, freedom, safety and stability to many who need it most.⁴ The majority of immigrants came through our family-based immigration system. Others came as refugees, on employment-based visas or through the diversity visa program and then go on to sponsor their family members. Detractors have negatively ascribed this system as “chain” migration. In reality, estimates have ranged between 1 to 3 other immigrants in their lifetime.⁵ And this system creates a built-in safety net for those new immigrants. Immigrants integrate better and are more prosperous if they have the roots of strong communities. Those who came before them help new family members find housing and jobs, learn English, successfully navigate a foreign system and eventually become U.S. citizens and participate in our democracy.

⁴ Frequently Requested Statistics on Immigrants and Immigration in the United States. Migration Policy Institute. February 11, 2021. <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2020>

⁵ *These Claims About ‘Chain Migration’ Are Not Accurate*, The New York Times (January 11, 2018) <https://www.nytimes.com/2018/01/11/us/politics/chain-migration-immigration-daca-factcheck.html>



Migration is fundamentally about people planting permanent roots in a new country and should take into account the human need to live with and care for one's family. Family members step in to provide support in times of personal and economic hardship. Caretakers, who are predominantly women, spouses, mothers, grandmothers and aunts, often do unpaid and undervalued work that enables their family members to work outside the home and contribute to our economy.

Immigrants who arrive on family visas have greater economic flexibility in contrast to work-based visas allowing them to start businesses, fill labor market needs and change jobs. A person's educational attainment is not the sole measure for the creativity, entrepreneurial spirit or grit to open a small business or create innovation. Together, families buy homes and start businesses that create jobs. Many immigrant business owners came through our family-based immigration system. Immigrants accounted for 30% of new entrepreneurs in 2014, despite comprising only 13% of the U.S. population.⁶

While the economy is important, we should be careful not to create an immigration system that treats people like commodities. It is vital that the U.S. continues to be a safe haven for those seeking refuge from violence, persecution and fleeing poverty. We are offended by the notion that there are good immigrants and bad immigrants and further that only English-speaking, highly paid immigrants have value. Of equal concern is that a "merit-based system" will prioritize the immigration of men over women due to gender discrimination in other countries where women do not have equal opportunities.

Problems with the Family-based Immigration System

Within family-based immigration there are two broad subcategories: (1) immediate relatives of U.S. citizens, and (2) family sponsorship according to preference categories. Visas are distributed based on the relationship the petitioner has to a family member residing in the United States.

An immediate relative is an unmarried minor child, spouse, or parent of a United States citizen (USC). Within the immigration system, a minor child is defined as being under the age of 21 and unmarried. In the case of a parent petitioning for a child, the child must be under the age of 21 and in the case of a child sponsoring a parent, the child must be 21 or older. Immediate relative visas are uncapped, but these visas are counted towards the maximum number of family-based immigrant visas issued per year. Immediate relatives are usually admitted within 6 months to one year from the date their applications are received. But unlike U.S. citizens, lawful permanent residents (LPRs) sponsoring spouses and children do not fall into the immediate relative category and fall into the capped family-based preference categories outlined below.

⁶ Immigrants as Economic Contributors: Immigrant Entrepreneurs. National Immigration Forum. July 11, 2018. <https://immigrationforum.org/article/immigrants-as-economic-contributors-immigrant-entrepreneurs/#:~:text=Immigrants%20start%20businesses%20at%20a%20higher%20rate%20than%20the%20U.S.%20born&text=In%20other%20words%2C%20for%20every%20U.S.%20were%20immigrants%20in%202014.>



All other family-based immigrants enter the United States through the “family preference system.” This structure divides immigrants into categories based on their relationship to a family member in the United States and processes their applications according to these preferences. Each category has its own cap. The categories are as follows:

- 1st Preference - Unmarried adult children of a U.S. Citizen (USC)
- 2nd A Preference - Spouse or minor children of a Legal Permanent Resident (LPR)
- 2nd B Preference - Unmarried adult children of an LPR
- 3rd Preference - Married adult children of a USC
- 4th Family Preference - Brothers and sisters of a USC

The worldwide cap on family-based immigrant visas is 480,000 and the numerical limit on family-based preference categories is 226,000 per year. Technically, the 226,000 number is a floor and any excess visas available after the immediate relative visas would be distributed across the preference categories and processed up to 480,000 at maximum. However, for many years the demand for immediate relative visas has met or exceeded 254,000 (480,000 – 226,000), therefore limiting the preference categories to 226,000 and creating pressure on the backlogs in those categories. Unlike the preference categories that are capped at 226,000, immediate relatives are uncapped and can total beyond 254,000 and bring the total visa count above 480,000.⁷

In addition to the categorical limits on family preference visas, there is a per country limit written into the INA. Any one country cannot receive more than seven percent of the total admissions in the capped categories which totals approximately 25,600 visas per year. This number includes immigrants in both the family and employment-based categories. There are some, but few, exceptions to these per country limits. Most nations do not come near the seven percent figure. However, Mexico, China, India, the Philippines and Vietnam regularly reach or exceed this country cap. These countries are given different priority dates for processing and, as a result, their backlogs are even longer.

The Department of State (DOS) allocates family preference visas by estimating how many immigrant visas will be available and publishes the results in a monthly visa bulletin. If the number of visas available in a category exceeds demand for them, the visa bulletin will indicate that the category is “current.” If the demand for visas exceeds what is available in a certain category, the visa bulletin will indicate a cutoff date and the issuance of visas in that month is restricted to applicants whose priority dates are earlier than the cutoff date. Petitioners whose priority dates are after the published date must wait until DOS advances the posted date to obtain a visa. (Note that priority dates operate within both the family-based and employment-based visa systems. However, these systems are wholly separate, parallel processes.)

⁷ The INA lays out the numbers of immigrant visas to be granted. However, it is important to note that green cards issued within the U.S. to people “adjusting their status” count towards the immigrant visa caps as well as those granted at U.S. consulates abroad.



There are around 4 million people abroad waiting in the family immigration backlogs.⁸ Nationals from Mexico, the Philippines, India, Vietnam and China have the longest wait times. The table below shows the categories created by the Immigration Nationality Act (INA), the number of visas allocated to each of these categories and the length of time an applicant is required to wait. It is important to note that these wait times look backward. We can say for certain that a person from Mexico or the Philippines who received their green cards through the Fourth Family-based Preference Category a year ago has waited over 22 years and 19 years prospectively. Looking forward, the wait times will be longer. If nothing is done to clear the family-based backlogs, some categories for some countries will have much longer prospective wait times. However, there are reasonable proposals outlined below to clear the family-based and employment-based backlogs. Once the backlogs are cleared, Congress should reevaluate the program more frequently than it has. Demand to immigrate to the U.S. from different regions of the world will not remain static, nor will the U.S.'s need for immigrants.

Such long family separations are bad for families. People wait abroad in limbo. They forgo marriage in order not to lose their place in line or invest in a home while waiting. They have children abroad who could have started their education in the U.S. rather than transitioning at an older age. These lags are also contrary to the U.S.'s interests. Where possible, we should encourage people to immigrate in their youth so they can invest in English and education or job skills to be successful.

Visa Category	Citizenship Status of US Family Member	Relationship of Intending Immigrant to US Family Member	Annual Numerical Limit	Length of Wait Visas MOST COUNTRIES (as of Feb. 2021)	Longest Wait for Visas in this Category (as of Feb. 2021)
Immediate Relative	U.S. Citizen	spouse, unmarried minor child, parent	unlimited	6 months - 1 year to process	6 months - 1 year to process
First Family Preference	U.S. Citizen	unmarried adult children	23,400	6 years, 5 months	23 years, 1 months (Mex)

⁸ Family-Based Immigration Backlogs 5 Things to Know. Fwd.US. February 10, 2022. <https://www.fwd.us/news/family-based-immigration-backlogs/>



Second A Family Preference	U.S. Lawful Permanent Resident	spouse, minor child (under 21)	87,900	Current	Current
Second B Family Preference	U.S. Lawful Permanent Resident	unmarried adult children	26,300	5 years, 7 months	21 years, 8 months (Mex.)
Third Family Preference	U.S. Citizen	married adult children	23,400	12 years, 7 months	24 years, 5 mo. (Mex.) 18 years 11 mo. (Phil.)
Fourth Family Preference	U.S. Citizen	brothers and sisters	65,000	14 years, 4 months	22 years, 7 mos. (Mex.) 19 years (Phil)

The employment-based immigration system has a similar statutory scheme with 140,000 green cards spread across five employment-based categories. They are more than 900,000 people waiting in the employment-based green card backlogs.⁹ They are primarily waiting in the Employment-based 2 and Employment-based 3 categories as the other categories are for more specialized occupations. One driver of these backlogs is that the U.S. has issued more nonimmigrant visas, H-1B visas and others, per year than it issues green cards in these categories. These non-immigrant visas are not temporary, rather they are feeders to permanent immigration and therefore, Congress must authorize at minimum, an adequate number of employment-based visas to ensure that workers and their families are not in perpetual limbo. The H-1B holders are, with some exceptions, stuck in their job without full bargaining power or democratic rights in our society. Their spouses, predominantly women, wait years for work authorization that they could lose at any time. And their children grow up in the U.S. only to be told to leave when they turn 21 years-old.

Two problems with the system have contributed to the backlogs. In many years, but particularly in the 1990's, the Federal government has failed to process green cards up to the statutory caps. This was not due to demand but bureaucratic failures. The government has interpreted the INA to not allow the unused visas to roll over into the following fiscal year. Second, the State Department counts towards the visa caps spouses and children who accompany or follow to join

⁹ Green card recapture and reform would reduce immigration backlogs. FWD.US (April 13, 2021) <https://www.fwd.us/news/green-card-recapture/#:~:text=The%20employment%2Dbased%20green%20card%20backlog%20currently%20numbers%20more%20than%20900%2C000.&text=Most%20employment%2Dbased%20green%20card,temporary%20H%2D1B%20work%20visa>



the primary visa applicant (known as derivative visas). The INA is also ambiguous on this point but practice has dictated counting them towards the caps.

Barriers to Family Sponsorship

Over half of the around 1.1 million new green cards issued annually go to people who are adjusting their status within the U.S.¹⁰ This includes people without status and in various temporary statuses. However, some residents of the U.S. have to leave the country to apply for immigrant visas abroad because adjustment of status is not available to them. Others may have a relative or employer who would sponsor them but inadmissibility bars prevent them from doing so. As mentioned above, the 1996 immigration laws made it harder for immigrants who have spent time in the U.S. out of status to obtain lawful permanent residence. The 3-year bar is triggered by immigrants who accrue unlawful presence in the U.S. for 180 days to 364 days. If the bar is triggered, applicants must remain outside of the U.S. for three years before being sponsored by a family member or employer. The 10-year bar is triggered when a person accrues 365 or more days of unlawful presence in the U.S. They must remain outside the U.S. for 10 years before being sponsored. There are waivers for some classes of sponsorship but they can be hard to obtain and are not available for everyone seeking a visa. The extreme hardship waiver only applies for applicants who can show an extreme hardship to a U.S. citizen or LPR spouse or parent. It notably does not include U.S. citizen or LPR children who face hardship from family separation due to deportations daily. Other U.S. relatives experience hardship from deportations as well, including grandparents and siblings. A 10-year family separation is an extremely harsh punishment for a system that has benefited from the labor and taxes and other intangible benefits of contributing community members. It is also not practicable for many heads of households caring for other family members.

The Migration Policy Institute estimates that 1.4 million undocumented immigrants have a U.S. citizen or LPR spouse and at least 1.7 million undocumented immigrant immigrants would likely have an employer sponsor but are barred by provisions added by the 1996 laws. MPI further estimates that there are 3.4 million undocumented immigrants who live with U.S. citizen or LPR children and have been in the country for at least five years.¹¹ U.S. citizen children may not sponsor their parents until they turn 21 years of age, but every day more children become eligible to sponsor their parents but face inadmissibility challenges to do so. If DREAMers are legalized and become citizens, this number would further expand (though there is some overlap with parents of DREAMers and parents of U.S. citizens). In addition to this population, an unknown

¹⁰ In FY2019, more than 55 percent (or 573,000) of the 1 million new LPRs were issued to people in the country. That year was slightly lower than the recent average of 1.1 million green cards issued annually. "Frequently Requested Statistics on Immigrants and Immigration in the United States" Migration Policy Institute (Last Accessed April 26, 2020) <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2020>

¹¹ "Back on the Table: U.S. Legalization and the Unauthorized Immigrant Groups that Could Factor in the Debate" Migration Policy Institute (Feb 2021) https://www.migrationpolicy.org/sites/default/files/publications/mipi-rethinking-legalization-2021_final.pdf



but significant number of undocumented people are waiting in the family-based backlogs for green cards to become available. Anecdotally, practitioners and community leaders have told us that these numbers are high in the communities with the longest backlogs. Once their processing times become current on the visa bulletin, they may still face the same barriers to inadmissibility. If they cannot overcome them with a waiver, then they will lose their place in line, the money spent on their application fees and remain out of status.

Proposals for Reform

The majority of Asian Americans have come to the U.S. through the family-based system. The expected inclusion of much, if not all, of Congresswoman Chu’s bill in President Biden’s bill presents a major victory for the Asian American advocates and activists who have worked for four years to defend the family-based system under the Trump administration and the Asian American voters who turned out in record numbers in the 2020 election.

Advancing Justice | AAJC supports Representative Judy Chu’s Reuniting Families Act of 2019 and Senator Bob Menendez and Rep. Linda Sánchez’s U.S. Citizenship Act. We have outlined below the visa reforms in the U.S. Citizenship Act, which are smart solutions to the problems of the backlogs and the increased green cards in both the family-based and employment-based systems.

Clear the Family-based & Employment-based Backlogs:

- **Recapture Immigrant Visas Lost to Bureaucratic Delay**—Recaptures unused employment-based and family-sponsored visas from fiscal years 1992-2015. For future years, unused visa numbers will automatically “roll over” to the next fiscal year. [Between 1992–2009](#), there were over 240,000 unused family-based visas and 506,000 unused employment-based visas.
- **Reclassify Spouses, Permanent Partners & Minor Children of Green Card Holders as “Immediate Relatives”**— a category not subject to annual numerical limits.
- **End the Counting of Derivatives Towards the Caps**— Prevents derivative visa recipients (spouses, permanent partners, and children who are eligible to “accompany” or “follow to join” the primary applicant) from being counted towards the categorical or per-country caps.
- **Raise the Per-Country Limits**—Addresses the decades-long backlogs of people from certain countries by raising the per-country immigration limits from 7% to 20% for family-based categories and eliminates the cap for employment-based visas.
- **Create a Ten Year Maximum Wait Time**—Provides that once a beneficiary has been waiting in line for 10 years, they are no longer subject to the per-country or categorical visa caps.



- **Create Exemption from Family Visa Limit for Certain Sons and Daughters of Veterans from the Philippines**— Honors the contribution of Filipino World War II veterans by reducing their children’s waiting times for family-based visas.

Provide Relief for Orphans, Widows & Equal Treatment to All Stepchildren:

- Protects widows, widowers, and orphans by allowing them to continue to wait in line for a visa after the death of a sponsoring relative.
- Affords the same protection to the children of fiancés of U.S. citizens, preventing them from aging out of the visa application process that other married immigrant visa holders have pursuant to the Child Status Protection Act.
- Provides equal treatment for stepchildren by allowing stepchildren under the age of 21 to be reclassified as “immediate relatives” upon their parent’s marriage or permanent partnership (current age limit is 18).

Provide Greater Enforcement Relief to Reunify & Keep Families Together:

- Repeals the three- and ten-year bars, as well as the permanent bar on admission for individuals unlawfully present in the United States from adjusting to legal status.
- Narrows the instances of inadmissibility or deportability for those who willfully misrepresent (versus falsely represent) himself or herself to be a citizen of the United States by accepting any alien under the age of 21 at the time of making the willful misrepresentation.
- Increases the government’s discretion and flexibility in waiving certain grounds of inadmissibility or deportability in the case of an immigrant who is the parent, spouse, permanent partner, son or daughter of a citizen or LPR, in instances that would not be contrary to the national welfare, safety, or security of the United States, or for humanitarian purposes, family unity, or public interest. Note that the waivers are more limited in the U.S. Citizenship Act. We prefer the waivers in the Reuniting Families Act of 2019.

Provide Relief for Spouses, Permanent Partners, and Children on H-4 Visas:

- Allows spouses, permanent partners, and children of H1-B visa holders to contribute to the economy with work authorization.
- Prevents the children of H1-B visa holders from aging out of the H-4 visa or adjustment of status application by freezing the age of the child on the date the employment-based petition is filed.



Eliminate Discrimination Facing LGBTQ Families Throughout Our Immigration Laws:

- Permits U.S. citizens and legal permanent residents in binational same-sex relationships to sponsor their permanent partner for immigration to the U.S. This bill would help individuals whose permanent partner is from a country that does not recognize same-sex marriage. It would also ensure that same-sex refugee partners are resettled together and that asylum grantees can have their nonmarried partners “follow to join” them in the U.S.
- Extends acquired automatic citizenship to children with at least one U.S. citizen parent [regardless of a biological relationship](#) to that parent. These provisions apply to children born through Assisted Reproductive Technology and children adopted within the first year of their life.

Ensure Retention of Priority Dates:

- The bill corrects a drafting error in the Child Status Protection Act to protect children from aging out of the visa application as a result of processing delays on the part of the U.S. Citizenship and Immigration Services or the Department of State.
- It provides that a beneficiary of any family or employment-based petition shall retain his or her earliest priority date regardless of the category of subsequent petitions.

Embrace the Diversity Visa Program

- The bill increases the number of green cards provided through the diversity visa program by increasing the cap from 55,000 to 80,000 visas and no longer counting spouses and children, accompanying or following to join, under the cap.

Creates a New V Nonimmigrant Visa

- The bill would create a new V nonimmigrant visa for family members who have an approved family-sponsorship petition to come and live with their family members in the U.S. pending the receipt of their green card.

Other Employment-based Visa Reforms

- Increases the number of immigrant visas for lesser-skilled jobs from 10,000 to 40,000.



- It exempts people with a doctoral degree in a field involving science, technology, engineering, or mathematics from a U.S. university accredited from the numerical caps on visas allowing them to immigrate more easily.
- Increases Immigrant Workers' Protections by holding employers responsible for labor law violations regardless of the worker's immigration status.

In addition, Advancing Justice | AAJC supports provisions from the House-passed Build Back Better Act of 2021 that would clear the family & employment backlogs and provide redress to Diversity Visa winners affected by the previous administration's Muslim and African Bans:

- **Recapture Immigrant Visas Lost to Bureaucratic Delay**—Recaptures unused family and employment-based visas from fiscal years 1992-2021. This results in around 400,000 unused visas recaptured into circulation including the 122,000 lost family-based visas due to the pandemic in FY2020. For future years, unused visa numbers will automatically “roll over” to the next fiscal year and the language fixes a technical error in the INA that propagates backlogs.¹²
- **Provide Green Cards to around Diversity Visa Program Lottery Winners** Affected by Travel Bans—The Trump Administration made many administrative changes in an effort to lower immigration levels, particularly seeking to exclude Black people, people from Muslim-majority countries and other people of color. The notorious Muslim and African bans disproportionately impacted Black and Muslim migrants and their family members in the United States. A group of diversity visas applicants, numbering in the thousands, were selected during the FY2017 through FY2021 diversity visa lotteries and lost their opportunity to immigrate to the United States due to the Muslim or African bans or later COVID-related bans. The bill language would enable these victims to receive their green cards promised by law.

Conclusion

While our immigration system centered around family (while also promoting diversity) has worked well for the U.S., it is outdated and long overdue to be updated. Years of bureaucratic processing delays and Congress's inability to act and keep up with population growth and labor market needs has resulted in extreme backlogs in the green card programs and a large undocumented population prohibited from being sponsored by harsh bars and decades-long waits. Some families wait for decades to be reunited with their loved ones.

¹² Green card recapture and reform would reduce immigration backlogs. FWD.US (April 13, 2021) <https://www.fwd.us/news/green-card-recapture/#:~:text=The%20employment%2Dbased%20green%20card%20backlog%20currently%20numbers%20more%20than%20900%2C000.&text=Most%20employment%2Dbased%20green%20card,temporary%20H%2D1B%20work%20visa>



The U.S. has not updated the family-based immigration system nor increased the annual number allocation of immigrant visas in over 30 years (since 1990) despite the fact that the U.S. population has increased and is aging. There is both an economic need for new workers in our labor market and a moral imperative to allow families to be reunited and for the millions of people living no status or in temporary status to become permanent. As a civil rights organization, we take issue with excluding fellow community members who are subject to our laws from fully participating in our democracy.

Attachment: Stories of the Human Impact of our Broken Immigration System

The stories below are from 2021 interviews by the Value Our Families communications consultants with Tzumu Strategies.

Manuel* & Mary*: Separated by the 10 year bar

Manuel & Mary are pseudonyms. The names were changed to protect the persons' identities.

Manuel was born in Honduras and came to the United States 15 years ago. By all accounts, he had achieved the American dream. He became a mechanic and opened his own business that allowed him to support himself and his family, and purchased a home. In 2013 he married Mary, a U.S. citizen, who immediately sought to sponsor him for a green card.

For years, Mary and Manuel tried to fix his status. They met with a lawyer, filed for sponsorship and the necessary waivers, paid taxes, and Manuel attended regularly scheduled check-ins with ICE agents. In June of 2018, Didier and Melisa received a letter from ICE stating that he needed to come in for a routine check-in. When they arrived at the office, ICE arrested Manuel without an explanation. Four months later he was deported to Honduras. Manuel's family was in shock and disbelief.

Manuel is subject to a 1996 law that imposes a 10-year bar so he can't reunite with his son for 10 years or until the immigration laws in this country change. Manuel has been fortunate enough to be able to move to Portugal where he can work as a mechanic. However, due to their son's special needs, the child must stay in the U.S. Mary has been traveling to spend time with her husband but she has to go back and forth thousands of miles to be with their son and his father who are separated.

Mary said, "We need to change these laws in order to reunite and keep families like mine together. I am deeply saddened at how the government is separating families and targeting them."



Mirna Perez

Member of CHIRLA & the Value Our Families campaign

I was 11 years old when I came to the U.S. from Mexico. I came to this country searching for educational opportunities for myself and my family but quickly realized that it would be a difficult journey. My mother was able to legalize under IRCA, but I was denied. I found myself in a web of bureaucracy with limited options.

Ten years after I arrived in the U.S., I began the residency process. As I was just over 21 years-old, my case was delayed in the long backlogs. I waited many years for my documentation, just like the thousands of other families stuck in the backlogs.

I dreamed of attending college and becoming an accountant. But I was not able to pursue my dreams because my undocumented status presented many challenges, including not qualifying for funding to pay for college. My first-hand experience with the immigration system motivated me to work hard to provide for my family so that my children could attend college someday.

In 2017, my daughter turned 21, which meant she could file for my permanent residency. Thirty years after I arrived in the U.S. and after being stuck in the backlog for 20 years, I finally felt like part of this country. I have experienced the injustice and outdated immigration system, a system that keeps families separated for decades, and I don't want that for others.

Although I did not qualify for DACA, I became a volunteer to help others obtain DACA, and it brought me joy to help others. I don't want other families to feel the same way that I did. If I can support by sharing my story and advocating, I am more than happy to do so. Now that I am a permanent resident, I want to use my resources to advocate for the rest of the immigrant community and support them in any way I can.

I have been an advocate for the immigrant communities and have been part of organizations that assist immigrants in filling out their paperwork and with financial support. I am now part of the Value Our Families campaign working to reform the family immigration system – with hopes that other families don't need to wait nearly 20 years to feel safe in the country where they grew up.

Shurupa

Bangladeshi family fears they will never see their family again due to the immigration visa backlog



Shurupa's parents migrated to the U.S. in search of opportunities for themselves and their family members. Sharupa's mother applied to sponsor her siblings over twelve years ago. In 2021, they are still waiting for a response. Sharupa's mother feels alone in this country and fears that she may never reunite with her loved ones because of the immigration backlogs.

Shurupa's mother is the only one of her siblings in the U.S and she has not seen her family in over a decade because travel to Bangladesh is too expensive. In the last ten years, Shurupa's mother lost a sister due to the violence and lack of safety laws in their home country. She worries because another sister cannot receive adequate healthcare and Shurupa's cousin is the victim of stalking and fears for her safety. These are some of the reasons why Shurupa's family migrated to this country. Shurupa stated, "Attaining these visas is urgent for my family, but the immigration laws continue to tell us to wait. This has caused my family to be separated for over a decade."

Shurupa's mother's dream is to reunite with a brother or sister in the U.S. someday, but every day that passes fades that hope. Her family has been preparing for decades to come to the U.S., following indications from immigration officials, but after 10 years, there is no clear sign of when that will happen. Shurupa has done everything that she can to get an update on her family's status, but she always gets an automated message telling them to wait.

A Congressional representative reached out to Shurupa and her family and now they are hopeful they can get any information about the status of their case. Shurupa's mother fears that their case might not still be active, but they have no way of knowing. Just like Shurupa's family, many others have suffered from family separation for decades.

[HTTPS://ABC7.COM/IMMIGRATION-UNITED-STATES-PHILIPPINES-VALUE-OUR-FAMILIES-CAMPAIGN/10476821/](https://abc7.com/immigration-united-states-philippines-value-our-families-campaign/10476821/)

SOCIETY

SoCal Filipino American family separated more than 30 years underscores US immigration backlog

April 23, 2021

By [Anabel Munoz](#)

LOS ANGELES (KABC) -- The U.S. family-based immigration system can be complex. Wait times to immigrate can vary depending on several factors, including, where you were born.



Some of the countries that experience the longest wait times are China, the Philippines, India and Mexico.

Georgia Garcia Dolar has been waiting more than 30 years to immigrate from the Philippines.

"It just occurred to me, in doing the math, my aunt was younger than I am right now when this process started - by a lot," said Michael Milan, Garcia Dolar's nephew. "That's an entire lifetime."

She was petitioned by both her mother and sister in the 80s. In November 2020, her application was denied, citing proclamations signed by former President Donald Trump. Now, her case will have to be reconsidered. Her mother passed away in 2014 and her sister, Michael's mother, is now in her 80s. She worked as an ICU nurse in Southern California for about 30 years, taking care of others.

"I was emotionally depressed because I... really want to go to the states to be able to serve my sister, and to be with her because she's already 80 years old," said Garcia Dolar over a video Zoom call. "I wanted her to be with me until the last years of her life."

Milan joined the Value our Families campaign, which advocates for policies that would address the backlog that leaves families waiting up to 20 years or in some cases - like Garcia Dolar's - more.

"I guess that the most painful and the most challenging parts of this process: there are people on the other side of these forms that are being submitted, and multiply our family's story by several thousand - this is not uncommon," said Milan.

The Value our Families campaign is lobbying support the U.S. Citizenship Act of 2021, a bill President Joe Biden sent to Congress. Among other things, it would increase the 7% cap on visas to 20%.

"Under our current law...a certain country can have no more than 7% of all visa applications. And so, if that country hits that limit, then those people that are waiting in that line, would pause in that line, and people from different countries would get processed ahead of them," explained John C. Yang, executive director and president of Asian Americans Advancing Justice, an organization helping lead the campaign.

Part of the reason Garcia Dolar has waited so long is also because there's priority based on the sponsor's relationship to the applicant.

"If you are the spouse or a minor child of a current U.S. citizen, number one: you are not subject to these caps, and number two: it is basically immediate. In other words, you do go through the



normal processing, the normal background checks of getting a visa application, but you are not subjected to the same limits that we're talking about," said Yang.

Lawful permanent residents, also known as green card holders, can petition spouses and children, but it takes longer. The very last preference is for siblings of U.S. citizens, the category Garcia Dolar is in.

"If they could help me, possibly, that I can go there before my sister will be gone because I want to be able to serve her, to take good care of her," she said.

"I think that our government can do a lot more and do right by these families, who have an interest in making America their new home," said Milan.

Statement for the Record**Donald Kerwin, Executive Director, Center for Migration Studies of New York****Hearing of the Subcommittee on Immigration, Citizenship, and Border Safety, Senate
Committee on the Judiciary****“Removing Barriers to Legal Migration to Strengthen our Communities and Economy”****Tuesday, March 15, 2022, at 2 p.m.****Dirksen Senate Office Building, Room 226**

The Center for Migration Studies of New York (CMS) appreciates the opportunity to submit this statement to the Subcommittee on Immigration, Citizenship, and Border Safety for its hearing titled, “Removing Barriers to Legal Migration to Strengthen our Communities and Economy.” CMS is a think-tank and educational institute devoted to the study of international migration, to the promotion of understanding between immigrants and receiving communities, and to public policies that safeguard the dignity and rights of migrants and newcomers. It is a member of the Scalabrini International Migration Network (SIMN), which consists of hundreds of migrant shelters, welcoming centers, think tanks, and other programs and ministries for migrants throughout the world.

The Benefits of Legal Migration

CMS applauds the topic of this hearing since barriers to legal migration hurt “refugees, employers and Americans who want to live with their spouses, parents or children” and negatively impact “the country’s future labor force and economic growth.”¹ As past legalization and legal status programs have demonstrated, when undocumented immigrants secure status, they invest more in themselves and their lives in the United States.² As immigrants advance to

¹ Stuart Anderson, “Trump Cuts Legal Immigrants by Half And He’s Not Done Yet,” *Forbes* (July 21, 2020), <https://www.forbes.com/sites/stuartanderson/2020/07/21/trump-cuts-legal-immigrants-by-half-and-hes-not-done-yet/?sh=7b3cb0a26168>

² Sherrie A. Kossoudji and Deborah A. Cobb-Clark, “Coming out of the Shadows: Learning about Legal Status and Wages from the Legalized Population,” *Journal of Labor Economics* (20) 2002: 598–628; Tom K. Wong and Carolina Valdivia, “In Their Own Words: A Nationwide Survey of Undocumented Millennials,” Center for Comparative Immigration Studies, Working Paper 191 (2014), <https://ccis.ucsd.edu/files/wp191.pdf>; Donald

permanent residence and citizenship, they earn more, pay more in taxes, and contribute more to the economy and their communities.

A 2019 CMS study found that naturalized citizens match or exceed the native-born by metrics such as college education, self-employment, personal income, and homeownership.”³ In a more recent report, we argued that citizenship should be the organizing principle and goal of the legal immigration system given its myriad benefits to immigrants, their families and communities.⁴ This study proposed a series of administrative and legislative measures to expand the pool of eligible-to-naturalize immigrants. It also lifted up three factors – financial resources, English language proficiency, and education – that strongly influence naturalization rates and should be central to a national naturalization strategy. Finally, it describes three populations – those with large numbers of eligible-to-naturalize members, those with low naturalization rates, and those with growing naturalization rates – among the 8.1 million US residents eligible to naturalize that the Biden administration should prioritize for naturalization.

The Transition from the Prior Administration to the Biden Administration

The need to remove barriers to legal immigration has been particularly acute in the first 14 months of the Biden administration. The previous administration pursued a multi-pronged strategy to reduce legal migration. First, it tried to divest several groups of status, including Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) recipients. Second, it sought to bar the admission of persons from Muslim-majority and African countries. Third, it supported legislation that would have decreased legal immigration by 50 percent, primarily family-based immigration. Fourth, it eviscerated US refugee, asylum and

Kerwin, José Pacas, and Robert Warren, “Ready to Stay: A Comprehensive Analysis of the US Foreign-Born Populations Eligible for Special Legal Status Programs and for Legalization under Pending Bills,” *Journal on Migration and Human Security* (10) 2022: 37-76,
<https://journals.sagepub.com/doi/full/10.1177/23315024211065016>

³ Donald Kerwin and Robert Warren, “Putting Americans First: A Statistical Case for Encouraging Rather than Impeding and Devaluing US Citizenship,” *Journal on Migration and Human Security* (7) 2019: 108-22,
<https://doi.org/10.1177/2331502419894286>

⁴ Donald Kerwin, Robert Warren, and Charles Wheeler, “Making Citizenship an Organizing Principle of the US Immigration System: An Analysis of How and Why to Broaden Access to Permanent Residence and Naturalization for New Americans,” *Journal on Migration and Human Security* (9) 2021: 224-250,
<https://journals.sagepub.com/doi/full/10.1177/23315024211035591>

humanitarian programs, which will hamper the nation's ability to respond to refugee-producing crises, including those now confronting it, for years to come.

Of particular relevance to this hearing, the previous administration championed an array of regulatory, administrative and practical strategies designed to delay and deny status, permanent residence and citizenship for disfavored populations. These measures created significant hardship for immigrant families and workers,⁵ who work at high rates in essential industries and occupations.⁶ The prior administration's public charge rule, for example, continues to sow fear and confusion in immigrant communities, leading immigrants to forego public health, safety, and other services and benefits, to their own detriment and that of their communities.⁷ By preventing eligible persons from securing and advancing in status, these strategies also worked at cross-purposes to the bipartisan goal of reducing the US undocumented population.

Recent press reports have indicated that the Biden administration's political strategists have suppressed consideration legal migration options in order to reduce criticism of the administration's border enforcement policies.⁸ These officials reportedly believe that talking publicly about legal migration will lead to additional irregular migration. In fact, the availability of safe, legal and orderly migration options would *diminish* irregular migration. In an effective immigration system, robust legal immigration policies, strategic legalization programs, and enforcement would complement and re-enforce each other.

The Need for Reform of the Legal Immigration System

⁵ T. Alexander Aleinikoff and Donald Kerwin, "Improving the US Immigration System in the First Year of the Biden Administration," Center for Migration Studies and the Zolberg Institute on Migration and Mobility (2020). https://zolberginstitute.org/wp-content/uploads/2020/11/Improving-the-US-Immigration-System-Proposals_FINAL.pdf

⁶ Donald Kerwin and Robert Warren, "US Foreign-Born Workers in the Global Pandemic: Essential and Marginalized," *Journal on Migration and Human Security* (8) 2020: 282-300, <https://doi.org/10.1177/2331502420952752>

⁷ Daniela Alulema and Jacquelyn Pavilon, "Immigrants' Use of New York City Programs, Services, and Benefits: Examining the Impact of Fear and Other Barriers to Access," Center for Migration Studies (2022), <https://cmsny.org/publications/nyc-programs-services-and-benefits-report-013122/>

⁸ Jonathan Blitzer, "The Disillusionment of a Young Biden Official," *The New Yorker* (January 28, 2022), <https://www.newyorker.com/news/the-political-scene/the-disillusionment-of-a-young-biden-official>

Several overarching trends illustrate the need to reduce legal migration barriers and to expand legal migration pathways. These include:

- The falling undocumented population since 2010⁹ and the loss of this essential source of labor.
- The multi-year decrease in lawful permanent resident (LPR) admissions even *before* the COVID-19 pandemic, resulting in a “17- year low in 2020.”¹⁰
- The low unemployment rate (3.8 percent in February 2022¹¹), coupled with the widespread inability of employers to find workers.
- US total fertility rates that have fallen consistently below the replacement level since 2007.¹²

Forty-five percent of new LPRs over the last decade have been “immediate relatives”; that is, spouses of US citizens, unmarried children under age 21 of US citizens, and parents of US citizens who are at least age 21 years old.¹³ Slightly more than one in five obtained LPR status in this period through employment-based visas. Nearly one in five immigrated through one of the family-based “preference” categories, which cover¹⁴:

- Unmarried sons and daughters of US citizens (1st preference).
- Spouses and minor children of LPRs (2A preference).
- Unmarried adult sons and daughters of LPRs (2B preference).
- Married sons and daughters of US citizens (3rd preference).
- Brothers and sisters of US citizens (4th preference).

⁹ Robert Warren, “In 2019, the US Undocumented Population Continued A Decade-Long Decline and the Foreign-Born Population Nearing Zero Growth,” *Journal on Migration and Human Security* (9) 2021: 31-43, <https://doi.org/10.1177/2331502421993746>

¹⁰ Irene Gibson, “Fiscal Year 2021 US Lawful Permanent Residents, Annual Flow Report,” US Department of Homeland Security, Office of Immigration Statistics (September 28, 2021), https://www.dhs.gov/sites/default/files/2022-01/21_0920_plcy_lawful_permanent_resident_fy2020.pdf

¹¹ US Department of Labor, Bureau of Labor Statistics, “The Employment Situation – February 2022” (March 4, 2022), <https://www.bls.gov/news.release/pdf/empsit.pdf>

¹² Brady E. Hamilton, Ph.D., Joyce A. Martin, M.P.H., and Michelle J.K. Osterman, J.H.S., “Births Provisional Data for 2020,” *Vital Statistics Rapid Release* (May 2021), <https://www.cdc.gov/nchs/data/vsrr/vsrr012-508.pdf>

¹³ Irene Gibson, “Fiscal Year 2021 US Lawful Permanent Residents, Annual Flow Report.”

¹⁴ Id.

Many argue that the US immigration system favors families at the expense of workers. The reality is more complicated. Families constitute the main source of support and the principal integrating and mediating institution for immigrants into the larger society. Moreover, family members work and workers have families. It might surprise critics of family-based immigration to learn that the US immigration system has produced a legal foreign-born population with occupational skills equal to those of the native-born population.¹⁵ Moreover, in 24 US states and Washington, DC, the legal foreign-born population has *higher* rates of skilled workers than does the native-born population.¹⁶

The same holds true for humanitarian admissions. In a recent study of the US refugee resettlement program, respondents repeatedly made the point that refugees arrive with far more needs than to work, but they also need and want to work.¹⁷ CMS's research shows that over time refugees exceed the overall US population in median personal income, homeownership, access to a computer and the internet, and health insurance.¹⁸ In short, US family unity and humanitarian programs serve as labor programs, with the additional benefit that they preserve families, save lives, and promote integration.

This is not an argument against additional employment-based visas. In fact, there should be far more permanent employment-related visas than the paltry 140,000 now available per year. Moreover, these visas should cover both highly skilled workers and less experienced and credentialed workers, which some mistakenly label unskilled. It is a travesty, for example, that the US immigration system offers only 10,000 permanent visas per year to what the law characterizes as "other" workers.

¹⁵ Kerwin and Warren, "Putting Americans First."

¹⁶ *Id.*

¹⁷ Donald Kerwin and Mike Nicholson, "Charting a Course to Rebuild and Strengthen the US Refugee Admissions Program (USRAP): Findings and Recommendations from the Center for Migration Studies Refugee Resettlement Survey: 2020," *Journal on Migration and Human Security* (9) 2021: 1-30, <https://doi.org/10.1177/2331502420985043>

¹⁸ Donald Kerwin, "The US Refugee Resettlement Program — A Return to First Principles: How Refugees Help to Define, Strengthen, and Revitalize the United States," *Journal on Migration and Human Security* (6) 2018: 205-225, <https://doi.org/10.1177/2331502418787787>

CMS also recognizes the need for a more flexible, timely and evidence-based legal immigration system. To that end, it has joined several prominent voices in support of “a formal, independent body” that can assist Congress and the President to:

- “[I]dentify the nation’s evolving labor, family, or humanitarian needs that might be met through immigration, including on a state and local level;
- [I]dentify shortages in skills and occupations necessary to promote that nation’s economic competitiveness;
- [A]ssess the labor market contributions and other trajectories of those who enter via different categories of admission, including family-based visas;
- [P]ropose adjustments in legal admission levels and categories to reflect the nation’s needs, interests, and fluctuations in its economy;
- [C]onduct research on the views of immigrants on US immigration policies in order to strengthen the legal immigration system, develop strategies to advance policy goals, and better understand and address noncompliance with the law (citation omitted); and
- [C]hampion access by researchers to relevant datasets in order to build a more extensive evidence base on which Congress and the executive can make policy judgments in this area.”¹⁹

Visa Backlogs

Visa backlogs represent one of the most egregious barriers to legal immigration. As of November 2021, nearly four million family-based visa applicants and 171,617 employment-based applicants languished in backlogs.²⁰ Visa backlogs – which are distinct from application processing delays – result from the interplay between numerical limits on family-based (226,000) and employment-based (140,000) preference category visas, additional caps by individual preference category, per country limits, existing backlogs, and ongoing demand for

¹⁹Donald Kerwin and Robert Warren, “National Interests and Common Ground in the US Immigration Debate: How to Legalize the US Immigration System and Permanently Reduce Its Undocumented Population,” *Journal on Migration and Human Security* (5) 2017: 297-330, 309-310, <https://doi.org/10.1177/233150241700500205>.

²⁰ US Department of State, “Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2021,” https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2021vF.pdf

visas.²¹ The upshot of this convoluted system is that visa backlogs are longest in oversubscribed categories for countries with the highest demand for visas. In a Dickensian scenario of bureaucratic futility, visa backlogs exceed the life expectancies of many intending immigrants, who, by definition, have “played by the rules.” In these cases, immigrants do not so much break the law, as the law breaks them. Moreover, after waiting for years for their visas to become available, most immigrants must leave the country for consular processing.²² In doing so, however:

“... they trigger the bars to reentry: three years for those with at least 180 days of unlawful presence, and 10 years for those with one year or more of unlawful presence. They can apply for a waiver to the bars based on ‘extreme hardship’ to a US citizen or LPR spouse or parent (albeit not child), but many opt to forgo consular processing out of fear that they will not be able to return.”²³

These problems have been raised continuously since passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,²⁴ but Congress has never meaningfully addressed them. It could reduce visa backlogs in several ways. Scholars have long proposed, for example, that the visas of those who emigrate each year should be “recaptured” and used to reduce backlogs.²⁵ The House-passed Build Back Better Act adopted a version of this idea.²⁶ A CMS study concluded that reissuing 250,000 visas per year would cut the visa backlog by more than 50 percent in nine years and would substantially reduce the US undocumented population.²⁷ Congress could also define “immediate relatives” to include the nuclear family members of

²¹ Charles Wheeler, “Backlogs in Family-Based Immigration: Shedding Light on the Numbers,” Catholic Legal Immigration Network, Inc. (March 1, 2019), <https://cliniclegal.org/resources/backlogs-family-based-immigration-shedding-light-numbers>

²² The Legal Immigration Family Equity (LIFE) Act Amendments of 2000 allowed beneficiaries of visa petitions filed on or before April 30, 2001 to adjust status in the United States under Section 245(i) of the Immigration and Nationality Act. Congress could remove a significant barrier to legal immigration, obviating the need for immigrants to leave the country, if it extended this cut-off date to April 30, 2021.

²³ Donald Kerwin, “From IIRIRA to Trump: Connecting the Dots to the Current US Immigration Policy Crisis,” *Journal on Migration and Human Security* (6) 2018:192–204.

<https://journals.sagepub.com/doi/10.1177/2331502418786718>

²⁴ Pub. L. No. 104-208, 110 Stat. 3009-546 (1996)

²⁵ Robert Warren and Ellen Kraly, “The Elusive Exodus: Emigration from the United States,” *Population Trends and Public Policy Series, Occasional Paper No.8*. Washington, DC: Population Reference Bureau (1985).

²⁶ Build Back Better Act, H. R. 5376, 117th Cong. (2021-2022).

²⁷ Kerwin and Warren, “National Interests and Common Ground in the US Immigration Debate,” 318-319.

LPRs, which would exempt them from numerical limits on visas. The Equal Access to Green Cards for Legal Employment (EAGLE) Act of 2021²⁸ offers another alternative. It would eliminate the per-country caps for employment-based visas and increase family-based visa limits by country from 7 percent to 15 percent. Congress should make it a high priority to remedy this problem, as part of a larger strategy to expand and facilitate legal migration. As it stands, the nation's antiquated, self-defeating immigration policies impede its ability to realize its family, labor and humanitarian interests.

²⁸ Equal Access to Green Cards for Legal Employment Act of 2021, H.R. 3648, 117th Cong. (2021-2022).



March 15, 2022

Chair Alex Padilla
Committee on the Judiciary
Subcommittee on Immigration, Citizenship, and Border Safety
Washington, DC 20515

Ranking Member John Cornyn
Committee on the Judiciary
Subcommittee on Immigration, Citizenship, and Border Safety
Washington, DC 20515

RE: Hearing "Removing Barriers to Legal Migration to Strengthen our Communities and Economy"

Dear Chair Padilla & Ranking Member Cornyn:

On behalf of the Coalition for Humane Immigrant Rights (CHIRLA), the largest statewide immigrant rights organization in California, with national impact, I submit this statement for the record for today's hearing entitled "Removing Barriers to Legal Migration to Strengthen our Communities and Economy". CHIRLA advocates for humane, comprehensive and inclusive immigration reform. We strive to ensure that federal policies protect immigrants, promote family unity and help achieve a just society fully inclusive of immigrants.

CHIRLA is a member of the Value Our Families campaign. Value Our Families is a network of local and national community based and advocacy organizations who are committed to protecting, preserving, and strengthening the U.S. family immigration system and promote an immigration system that is informed by love, empathy and justice. We seek to build public support for an immigration system that protects and promotes family unity and contributes to the American social and economic fabric.

How the Current Systems Prevents An Immigrant from "Getting in Line"

Family immigration is in the best interest of the United States economy and local communities, but it is outdated and long overdue to be updated. Years of bureaucratic processing delays and Congress's inability to act and keep up with population growth and labor market needs has resulted in extreme backlogs in the green card programs and a large undocumented population prohibited from being sponsored by harsh bars and decades-long waits.



Currently, there are over 3.7 million people in the family immigration backlogs waiting to reunite with their loved ones. Nationals from Mexico, the Philippines, India, Vietnam and China have the longest wait times.¹ The average wait time for a permanent resident to sponsor an unmarried son or daughter from Mexico is over 21 years; a U.S. citizen sponsoring a sibling from the Philippines would take an average of 20 years, and the growing employment-based backlogs are mostly comprised of Indian families on H-1B visas who live in limbo in temporary status with their children facing loss of status when they turn 21.² It is past time for Congress to fix these problems and improve our immigration system.

Further, specific exclusions prevent many immigrants with family relations from adjusting their status. Most notoriously, **the 3 and 10 year bars** prevent hundreds of thousands of immigrants from getting a green card due to the fact that they have been inside the United States without status for 180 days or longer.³ Specifically, immigrants who entered without inspection - whether or not they would have an available visa specific to their country of origin - would be required to leave the US for 3 or 10 years if they have been present for 180 days or more. In other words, an immigrant faces the Hobson's choice of applying for a green card and waiting outside the US for 3 or 10 years away from the very family member sponsoring them, or remaining undocumented in the shadows but inside the US and with their family. CHIRLA has countless members in this untenable position - for this reason, we can only offer them consultations and not actual legal assistance. We do at least 20-30 such consultations per year, where we have to relay this heartbreaking advice. In addition, there are other immigrants who would otherwise be qualified - they have a sponsor, they do not face the 3- or 10-year bar or face other inadmissibility issues - but they are unable to sponsor their family member due to their incomes.

Immigrants Already Strengthen Our Economy, But Not to Their Full Potential

Immigrants fuel our economic growth: they are workers, tax payers, consumers and entrepreneurs. In 2016, immigrants added \$2 trillion to the U.S. GDP and \$458.7 billion in state, local and federal taxes in 2018. Overall, they also have \$1.2 trillion in spending power.⁴

According to a report released by the Congressional Hispanic Caucus and the Joint Economic Committee:

- One-in-seven of the total U.S. population is foreign-born (46 million people).

¹Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2020.

²https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2020_vf.pdf

³<https://www.cato.org/publications/policy-analysis/immigration-wait-times-quotas-have-doubled-green-card-backlogs-are-long#current-wait-times-by-nationality>

⁴<https://www.americanimmigrationcouncil.org/research/three-and-ten-year-bars>

⁵[Immigration Facts: The Positive Economic Impact Of Immigration \(fwd.us\)](https://www.immigrationfacts.com/the-positive-economic-impact-of-immigration/)



- More than one-in-six workers in the United States are foreign-born (28 million workers).
- Almost half (48 percent) of the foreign-born labor force is Latino; one-quarter (25 percent) is Asian; 10 percent is Black and 16 percent is White.
- Foreign-born workers are overrepresented in key occupations in the field of health, accounting for 38 percent of home health aides, 29 percent of physicians and 23 percent of pharmacists.
- Immigrants make up 22 percent of all workers in the U.S. food supply chain, even though they comprise only 18 percent of the labor force

Immigrants, as shown by numerous data, play a critical function in our local communities and nationwide. They have, and continue to supply essential services to help keep our communities and country running.

An Outdated, Unjust Immigration System

Furthermore, CHIRLA believes that the current U.S. immigration is outdated, and it is time that Congress recognize the contributions of immigrants, their full humanity and dignity. Our immigration system must be fortified by:

- Overhauling the current family visa system to reduce waiting periods and resulting backlogs to facilitate a speedy reunification for all families.
- Eliminate the 3 year, 10 year as well as permanent bars to immigrate for the undocumented and the unjustly deported.
- Ending any discrimination by race, country of origin, gender, sexual orientation, religious affiliation, age, health or economic status, incorporating a broad, generous definition of what constitutes a family.
- Expanding the categories, under the new more generous definition of family, of those eligible to immigrate to include e.e grandparents and parents of minor children.
- Safeguarding the interest of minors by immediately reuniting them with their parents and allowing the repatriation of deported individuals, especially if they have US citizenship children.

Legalization through Reconciliation

Finally, the biggest barrier to legal migration remains the lack of a path to citizenship for millions of immigrants who have been contributing to the US economy for decades. To that effect, CHIRLA supports a legalization program that is inclusive and provides undocumented immigrants with the opportunity to achieve a pathway to citizenship. In the U.S. there are currently 10.5 million undocumented immigrants who form the backbone of many sectors of the economy. Many remain undocumented because they are stuck in the backlogs, others because they do not qualify for family unification, work permit or humanitarian relief currently available under our immigration system. Accordingly, CHIRLA



believes an immigration program must be attainable, affordable, expedient, unifying and equitable.

Specifically, CHIRLA supports a registry update in the reconciliation legislative package. Updating the "Registry Date" from 1972 to "prior to January 1, 2010" would provide a clear pathway to citizenship to approximately 6-7 million of immigrants who have set down roots in the U.S. and who have lived and worked in service to our communities. This would offer a form of universal relief to DACA beneficiaries, TPS-holders, essential workers and other long-time community members.

According to the Center for American Progress, providing a pathway to citizenship for all of the approximately 10.5 million undocumented immigrants in the United States would boost U.S. gross domestic product (GDP) by a cumulative total of \$1.7 trillion over 10 years and create 438,800 new jobs.⁵

- Five years after implementation, those eligible would earn annual wages that are \$4,300 higher.
- Ten years after implementation, those annual wages would be \$14,000 higher, and all other American workers would see their annual wages increase by \$700.⁶

Immigrants are crucial to the US economy and our local communities. CHIRLA urges Congress to act this year, and in this congress, using all available means and prioritize strengthening our immigration system. Thank you for the consideration of this statement. Should you have any questions, please contact Luz Castro at lcastro@chirla.org

Sincerely,

Luz Castro
National Policy Advocate
Coalition for Humane Immigrant Rights (CHIRLA)

⁵<https://www.americanprogress.org/article/citizenship-undocumented-immigrants-boost-u-s-economic-growth/>

⁶<https://www.americanprogress.org/article/citizenship-undocumented-immigrants-boost-u-s-economic-growth/>



Statement for the Record from

Mark Delich

Director, Federal Policy and Government Relations

FWD.us

**Submitted to the Senate Subcommittee on
Immigration, Citizenship, and Border Safety for the
hearing regarding “Removing Barriers to Legal
Migration to Strengthen our Communities and
Economy”**

March 15, 2022

Chairman Padilla, Ranking Member Cornyn, and Members of the Subcommittee:

We thank the Subcommittee on Immigration, Citizenship, and Border Safety for dedicating time to today's topic, "Removing Barriers to Legal Migration to Strengthen our Communities and Economy."

To inform the Subcommittee's discussion and future work on this issue, FWD.us respectfully submits this statement for the record, adapted primarily from previously published FWD.us analysis and research, outlining why Congress must act to expand and modernize the immigration system to keep the U.S. globally competitive and to secure our demographic and economic future.

The United States needs an immigration system that can predictably, efficiently, and fairly admit immigrants in such a way, and at such levels, that meet our economic needs, preserve family unity, and ensure that America remains a place of refuge for those fleeing danger and persecution. Unfortunately, a scarcity of immigration options, particularly an insufficient number of immigration visas and pathways, makes this impossible under the current system.

While books have been written on the many benefits immigrants and immigration bring to the United States, we focus particularly here on the indispensable role immigration plays in growing our population and our economy, and the resultant need to increase annual immigration levels. Without increased immigration, we caution that the United States could soon sacrifice its role as the world's economic and innovation leader.

To that end, we also respectfully share recommendations for Congress to work in a bipartisan way to increase and expand immigration pathways and preserve America's global competitiveness and leadership.

Immigration is a vital component of population and economic growth in the U.S.

The United States is experiencing downward demographic trends¹ that will have negative consequences for both the national economy and for the American people. The senior-to-working-age ratio is increasing as our population ages and there are more senior citizens relative to the number of people in the workforce. That means the working-age population will be increasingly responsible for supporting citizens who are too old to work, and social support programs like Social Security will deplete more rapidly as more people draw on them than contribute to them.

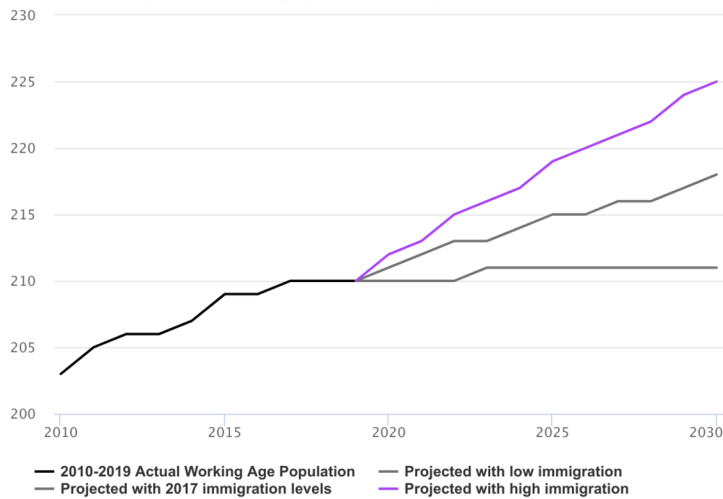
While Congress should consider policy changes to encourage growth in the U.S.-born population, immigration is also an important component of the solution, as immigration

¹ In December 2021, the Census Bureau published new population estimates, showing that "2021 is the first time since 1937 that the U.S. population grew by fewer than 1 million people, featuring the lowest numeric growth since at least 1900, when the Census Bureau began annual population estimates." The report notes that population growth has been slowing since the mid-2010s as a result of "decreasing fertility and net international migration, combined with increasing mortality due to an aging population." Luke Rogers, "COVID-19, Declining Birth Rates and International Migration Resulted in Historically Small Population Gains," Census Bureau, December 2021, <https://www.census.gov/library/stories/2021/12/us-population-grew-in-2021-slowest-rate-since-founding-of-the-nation.html>.

immediately adds working-age people with valuable skills to the workforce.² Increasing immigration would help shore up the economy against demographic declines in the short term, and contribute to future population and workforce growth, as immigrants settle in the U.S. and build families of their own.

Size of U.S. Working-Age Population Will Remain Stagnant if Low Immigration Levels Continue

Projected annual working-age population, by migration scenario, in millions



FWD.us research shows that increasing immigration would boost demographic and economic growth, helping the U.S. remain competitive for many years to come.³ Projections from our research show that doubling annual immigration levels would help grow U.S. gross domestic product to \$47 trillion in today’s dollars by 2050, delivering a 3% per capita increase in average income for all Americans.⁴

² A wealth of literature discusses the many benefits of immigration to the United States and U.S. citizens. A 2017 report from the National Academies of Sciences, Engineering, and Medicine provides a helpful overview and starting point: “The Economic and Fiscal Consequences of Immigration,” National Academies of Sciences, Engineering, and Medicine, 2017, <https://www.nap.edu/catalog/23550/the-economic-and-fiscal-consequences-of-immigration>.

³ FWD.us, “Increasing Future Immigration Grows the U.S.’ Competitive Advantage,” April 2021, <https://www.fwd.us/news/future-immigration>.

⁴ FWD.us, “How are Immigration and GDP Growth Connected?” June 2021, <https://www.fwd.us/news/immigration-and-gdp-growth>.

Immigrants also represent significant shares of workers in several critical industries, including farmworkers performing skilled labor under extremely difficult conditions; essential workers bravely serving on the front lines of the COVID-19 pandemic; and science, technology, engineering, and mathematics (STEM) experts⁵ driving research and development of emerging technologies critical to our national security. Increased immigration will be particularly important in reducing the labor shortages that have affected these industries in recent years.⁶

Failing to increase annual immigration levels—or worse, further restricting immigration—will lead to a smaller, poorer, weaker America.⁷ For example, we project that without increased immigration, the Social Security Trust Fund will be depleted by 2034.⁸ China will overtake the United States as the largest global economy by 2030, and other countries will not be far behind, not only eclipsing the U.S. in size but also in attracting top talent, in turn undermining our ability to remain the global innovation leader.

⁵ A report for the Center for Strategic and International Studies describes immigration as the United States' "key asymmetric talent advantage" in competition with countries like China, but goes on to warn that "the broad appeal of U.S. society is only an asset if the world's best and brightest can actually come and stay in the United States. And on this front, U.S. policy has long been moving in the wrong direction." Remco Zwetsloot, "Winning the Tech Talent Competition," Center for Strategic and International Studies, October 2021, <https://www.csis.org/analysis/winning-tech-talent-competition>.

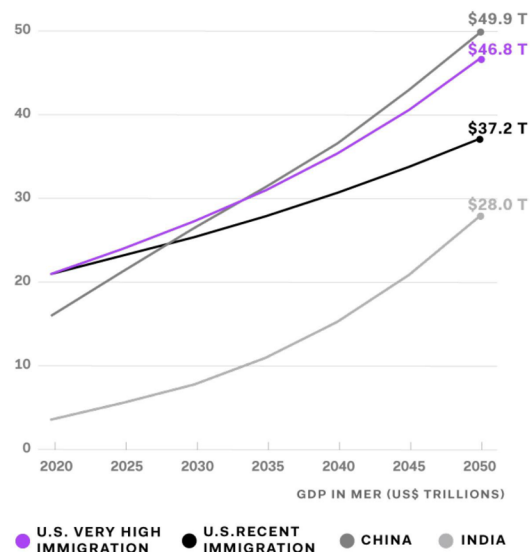
⁶ See "Immigrant Farmworkers and America's Food Production: 5 Things to Know," FWD.us, March 2021, <https://www.fwd.us/news/immigrant-farmworkers-and-americas-food-production-5-things-to-know>; "Immigrant Essential Workers are Crucial to America's COVID-19 Recovery," FWD.us, December 2020, <https://www.fwd.us/news/immigrant-essential-workers>; and TechNet, "Closing the Skills Gap: The Data Behind Talent Shortages, High-Skilled Immigration, and Economic Impact," December 2021, <https://technet.org/app.box.com/s/vxi5sarqeuahsvag25vc5obz93kq3ra>.

⁷ FWD.us, "Reducing immigration means a smaller, poorer, and weaker America," May 2021, <https://www.fwd.us/news/reducing-immigration>.

⁸ FWD.us, "Increasing Future Immigration Grows the U.S.' Competitive Advantage," April 2021, <https://www.fwd.us/news/future-immigration>.

U.S. FUTURE IMMIGRATION HIGHLY IMPACTS U.S.' FUTURE GLOBAL ECONOMIC STANDING

GDP, by country and selected U.S. immigration scenario



The study considers five immigration scenarios, based on immigration levels in 2017:

ZERO—No immigration

LOW—about 600,000 immigrants coming to the U.S. annually

RECENT—at least 1.2 million immigrants coming to the U.S. annually

HIGH—at least 1.8 million immigrants coming to the U.S. annually

VERY HIGH—at least 2.4 million immigrants coming to the U.S. annually

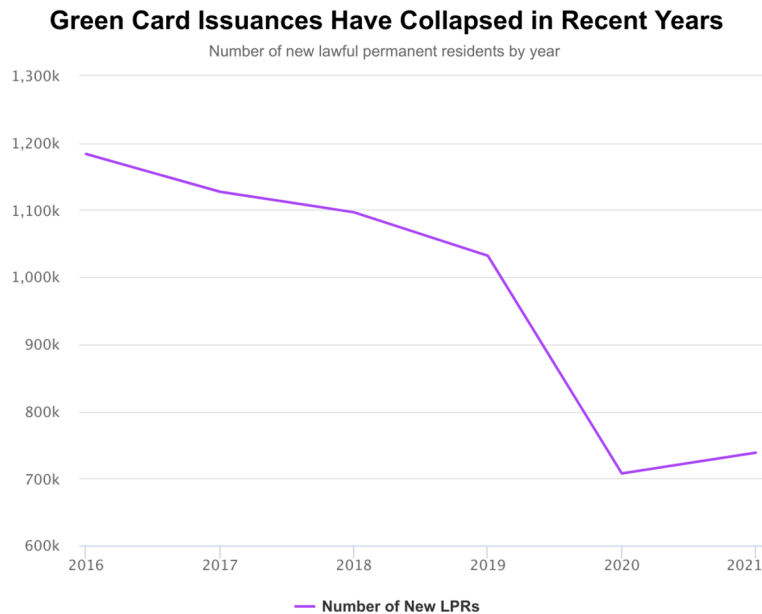
Alarming immigration declines in recent years limit growth, preview negative consequences to come

Immigration levels have faced an alarming decline in recent years. From 2016 to 2020, annual immigration levels fell every year, declining by 40% overall, reaching the lowest levels since immigration levels were set in the early 1990s.⁹ While total immigration was slightly higher in FY 2021 than the prior year, it was nowhere near pre-pandemic levels, much less nearer to pre-2016 levels.

This downward trend began before the onset of COVID-19, though the pandemic accelerated the decline. For 2020 and 2021, new immigration fell significantly, in part because then-President Trump issued a ban on it¹⁰ that remained in effect until February 2021.

⁹ DHS, "Yearbook of Immigration Statistics," <https://www.dhs.gov/immigration-statistics/yearbook>

¹⁰ President Donald Trump, "Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak," April 2020, <https://www.federalregister.gov/documents/2020/04/27/2020-09068/suspension-of-entry-of-immigrants-who-present-a-risk-to-the-united-states-labor-market-during-the>



In all, the U.S. is operating with roughly 2 million *fewer* working-age immigrants in 2022 than if the levels pre-Trump had continued.¹¹

Temporary immigration programs were also restricted during this time. Aspiring immigrants and employers applying through these programs faced higher denial rates, slowed processing times, and new regulations restricting eligibility.¹² In March 2020, President Trump also banned entry of virtually all immigrants who would have come here temporarily, a ban the Biden Administration left in place until it expired in early 2021.¹³

¹¹ Giovanni Peri and Reem Zaiour, "Labor Shortages and the Immigration Shortfall," EconoFact.com, January 2022, <https://econofact.org/labor-shortages-and-the-immigration-shortfall>.

¹² Jessica Bolter, Emma Israel, and Sarah Pierce, "Four Years of Profound Change: Immigration Policy during the Trump Presidency," Migration Policy Institute, February 2022, <https://www.migrationpolicy.org/research/four-years-change-immigration-trump>.

¹³ President Donald Trump, "Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak," June 2020, <https://www.federalregister.gov/documents/2020/06/25/2020-13888/suspension-of-entry-of-immigrants-and-nonimmigrants-who-present-a-risk-to-the-united-states-labor>.

The Trump Administration drove this decline¹⁴ by implementing restrictive policies and onerous requirements designed to make immigration prohibitively difficult; the Administration also attempted to eliminate numerous existing immigration policies and programs.¹⁵ The precipitous decline has harmed communities across the country.

While unemployment rates continue to fall to pre-pandemic levels,¹⁶ historic labor shortages¹⁷ are raising the cost of consumer goods, contributing to inflation,¹⁸ and hindering operations¹⁹ for U.S. businesses struggling to recover and reopen, with no clear benefits for U.S.-born workers.²⁰ In the long run, the workforce shortages we face today may be only a preview of much larger challenges, as the workforce continues to decline.

If immigration levels continue as they have in recent years, the U.S. will have only 1.5 million more working-age people in 2031 than in 2021; that number is about 7 million *less* than if immigration levels from 2017 and previous years had merely continued, and far short of the 15 million more workers who would be participating in the workforce had Congress increased immigration by at least 50% during that period, as we have recommended.²¹

Our prospects are clear, and grim. To avoid a continued decline, Congress must change course and act decisively to eliminate barriers and expand immigration pathways.

The greatest barrier to existing immigration pathways is scarcity

The United States is trying to sustain a 21st-century economy with a 20th-century immigration system: statutory immigration levels established 30 years ago are insufficient to meet the country's current economic and demographic needs.

There is clearly no supply challenge to increasing immigration. Every year, many Americans apply to sponsor family members or employees to immigrate, so many that significant backlogs have formed in virtually every family-based category and many employment-based categories.

¹⁴ FWD.us, "The Impact of Trump's Immigration Agenda," September 2020, <https://www.fwd.us/news/the-impact-of-trumps-immigration-agenda>.

¹⁵ For example, the Trump Administration attempted to rescind the Deferred Action for Childhood Arrivals policy, cancel Temporary Protected Status for numerous countries, eliminate the International Entrepreneur Rule for foreign-born startup founders, and rescind work authorization for H-4 spouses of high-skilled workers.

¹⁶ Bureau of Labor Statistics, "The Employment Situation: February 2022," March 2022, <https://www.bls.gov/news.release/pdf/empst.pdf>.

¹⁷ Lucia Mutikani, "U.S. labor market very tight, job openings near record high in January," Reuters, March 2022, <https://www.reuters.com/world/us/us-job-openings-slip-january-still-close-record-highs-2022-03-09>.

¹⁸ FWD.us, "Immigration relief in BBB can help curb inflation by stabilizing supply chains amidst historic labor shortages," February 2022, <https://www.fwd.us/news/immigration-inflation>.

¹⁹ Art Raymond, "U.S. small businesses continue to struggle amid omicron surge, ongoing labor shortages," Deseret News, January 2022, <https://www.deseret.com/utah/2022/1/24/22895509/goldman-sachs-report-says-small-businesses-struggling-omicron-surge-labor-shortages-supply-chain>.

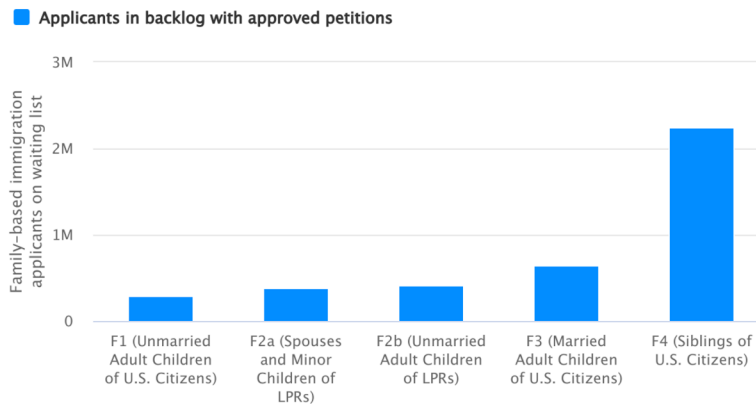
²⁰ Madeline Zadovny, "The Impact of the COVID-19 Drop in International Migration on the U.S. Labor Market," National Foundation for American Policy (NFAP), February 2022, <https://nfap.com/wp-content/uploads/2022/02/The-Impact-of-the-Covid-19-Drop-in-International-Migration-on-the-U.S.-Labor-Market.NFAP-Policy-Brief-February-2022.pdf>.

²¹ FWD.us, "Increasing Future Immigration Grows the U.S.' Competitive Advantage," April 2021, <https://www.fwd.us/news/future-immigration>.

To illustrate how limited current immigration pathways are, consider that nearly 4 million people are waiting abroad to reunite with U.S. citizen or lawful permanent resident family members in the U.S. They have already been approved for their green cards, but are still waiting to receive them. Now, consider that only 226,000 family-based green cards are generally available each year. Even worse, only 65,452 of the 226,000 available green cards were issued last year. That is why some family-sponsored immigrants have been waiting more than 20 years to receive a green card and reunite with their families in the U.S.²²

More than 4 Million Relatives of U.S. Citizens and Permanent Residents Are Stuck in Green Card Backlogs

Number of family-based immigrants waiting for visa availability of November 1, 2021



Nearly 1 million individuals approved for employment-based visas and their families are also stuck in backlogs; the vast majority of them have already been living and working in the U.S. for many years, just waiting for the green card for which they have already been approved.²³ Only about 140,000 employment-based green cards are typically authorized each year.

For many, immigration to the United States looks impossible.

To make matters worse, the government regularly issues *fewer* green cards than it is authorized to do so by Congress because of processing delays and bureaucratic errors.²⁴ And while Congress has established measures to ensure that these green cards could roll over to be used in future

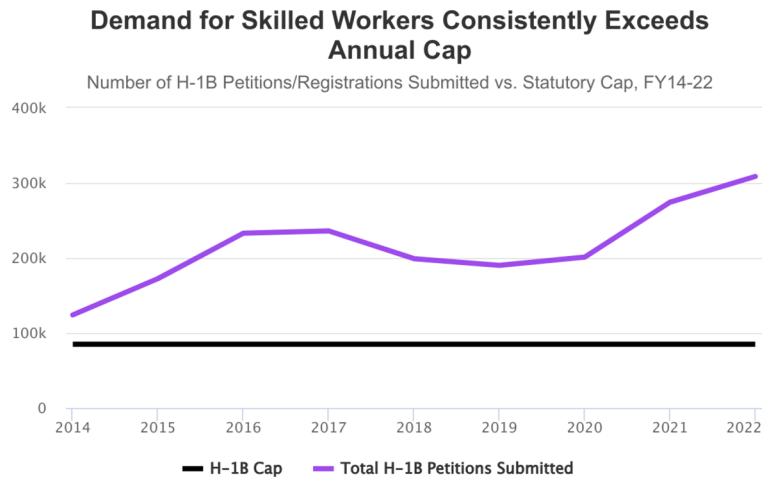
²² FWD.us, "Family-Based Immigration Backlogs: 5 Things to Know," February 2022, <https://www.fwd.us/news/family-based-immigration-backlogs>.

²³ FWD.us, "Per-Country Cap Reform: Priority Bill Spotlight," July 2021, <https://www.fwd.us/news/per-country-cap-reform-priority-bill-spotlight>.

²⁴ FWD.us, "Green Card Recapture and Reform Would Reduce Immigration Backlogs," April 2021, <https://www.fwd.us/news/green-card-recapture>.

years, the process is outdated and ineffective, leading to tens of thousands of green cards being lost forever, never issued.

Temporary immigration programs are also consistently oversubscribed year after year, showing a clear disparity between the demand to hire needed workers and the low levels authorized by law. For example, the H-1B high-skilled visa program, capped at 85,000 visas annually, has been consistently and significantly outstripped for nearly a decade, typically within a week of visas becoming available.²⁵ Similar trends for H-2B seasonal workers have forced the Administration and Congress to act repeatedly to temporarily increase caps, though even these increases still fall far short of demand.²⁶



These excessive backlogs and heavily oversubscribed programs show that the limited availability of pathways for individuals to come to or remain in the U.S.—despite significant interest from them and from the Americans who would sponsor them—is the greatest barrier to increasing immigration. This is true even before considering the many international graduates, STEM and medical professionals, and entrepreneurs who would like to contribute their skills to the U.S. but for whom no dedicated immigration programs exist.

The United States' failure to maintain appropriate levels of immigration stands in contrast to other countries that have embraced immigration as a key component of their economic and

²⁵ FWD.us, "America's Industries of the Future Need More Workers," March 2020,

<https://www.fwd.us/news/retaining-international-students>.

²⁶ Editorial Board, "The U.S. Legal Immigration Shortage," The Wall Street Journal, February 2022,

<https://www.wsj.com/articles/the-u-s-legal-immigration-shortage-h-2b-visas-department-of-homeland-security-11643737489>; and Congressional Research Service, "The H-2B Visa and the Statutory Cap," February 2020, <https://crsreports.congress.gov/product/pdf/R/R44306/8>.

demographic development. While the absolute number of immigrants welcomed by the U.S. each year is higher than in other countries, America's relative immigration levels as a share of its population are significantly lower than comparable countries. For instance, new immigration to the U.S. in 2019 accounted for only 0.3% of the total population; in Canada, new immigration represented 0.9% of its population; the numbers were 0.8% of the population for Australia and 0.5% for the United Kingdom.²⁷

Looking ahead, we cannot assume that large numbers of people will continue to come to the U.S. The lack of clear opportunities is a significant factor driving down international student enrollment in the U.S.²⁸ and increasing prospective students' interest in other countries, like Canada.²⁹ Skilled workers who have lived in the U.S. for years are losing hope and abandoning their places in the immigration backlogs, choosing to pursue immigration opportunities elsewhere.³⁰

Meanwhile, countries like Canada³¹ and China³² are working hard to recruit and educate skilled professionals, particularly in emerging fields that are critical for our economy and our national security. This means that the barriers limiting immigration today could also depress interest from future would-be immigrants as well, further hindering our potential growth.

Congress must act to increase and expand immigration pathways

The most impactful, important reforms to the U.S. immigration system would be to increase and expand immigration pathways. Among numerous approaches Congress can take to expand future immigration,³³ we have highlighted five proposals for Congress's immediate consideration here:

1. Dedicated pathways for international student graduates educated and trained in the U.S.

²⁷ Organisation for Economic Co-operation and Development, "Compare Your Country," <https://www.compareyourcountry.org/migration>.

²⁸ FWD.us, "International student enrollments have dropped and long term trends are worrying," May 2021, <https://www.fwd.us/news/international-student-enrollment-trends/>.

²⁹ NFAP, "Analysis of U.S. and Canadian International Student Data," March 2022, <https://nfap.com/wp-content/uploads/2022/03/Analysis-of-International-Student-Data.NFAP-Policy-Brief.March-2022.pdf>.

³⁰ P.B. Vijayakumar and C.J.L. Cunningham, "An Indentured Servant: The Impact of Green Card Waiting Time on the Life of Highly Skilled Indian Immigrants in the United States of America," Industrial and Organizational Psychology Translational Research and Working Papers, January 2019, <https://scholar.utc.edu/iopsy/2>.

³¹ Zachary Arnold, "Canada's Immigration System Increasingly Draws Talent from the United States," Center for Security and Emerging Technology (CSET), July 2020, <https://cset.georgetown.edu/publication/canadas-immigration-system-increasingly-draws-talent-from-the-united-states/>; The Economist, "A Wider Welcome: Canada Wants to Attract More Immigrants," April 2021, <https://www.economist.com/the-americas/2021/04/24/canada-wants-to-attract-more-immigrants>.

³² Task Force on National Security and U.S. Manufacturing Competitiveness, "A Manufacturing Renaissance: Bolstering U.S. Production for National Security and Economic Prosperity," November 2021, https://www.reaganfoundation.org/media/358068/task_force_report_2021_manufacturing_renaissance.pdf.

³³ FWD.us, "Expanding Future Immigration: 7 Proposals for Congress," April 2021, <https://www.fwd.us/news/future-immigration-proposals>.

The United States is the world leader in education, attracting more than 1 million international students from around the world to its colleges and universities each year.³⁴ This includes hundreds of thousands of students earning hands-on experience with U.S. employers through Optional Practical Training (OPT), mostly in STEM fields.³⁵

Unfortunately, there are no existing immigration pathways specifically for international graduates. Even those graduates who have already secured a job in the U.S. are typically required to try to secure a temporary H-1B visa and wait in backlogs to secure permanent residency, because green card backlogs and the lack of dual intent for student visas makes direct transition to permanent residency impossible. In recent years, the number of international students sponsored for H-1B visas has eclipsed the total number of visas available, meaning thousands of international students are being denied an opportunity even to apply to stay in the U.S. and contribute their skills here.³⁶

Congress should establish a dedicated green card pathway for international graduates.³⁷ FWD.us estimates that about 100,000 international student graduates each year would like to stay and work permanently in the U.S. if such a pathway were available.³⁸ This would grow our skilled workforce and the economy: these graduates would add up to \$233 billion to the U.S. economy this decade and reduce STEM-related talent shortages by about 25%.

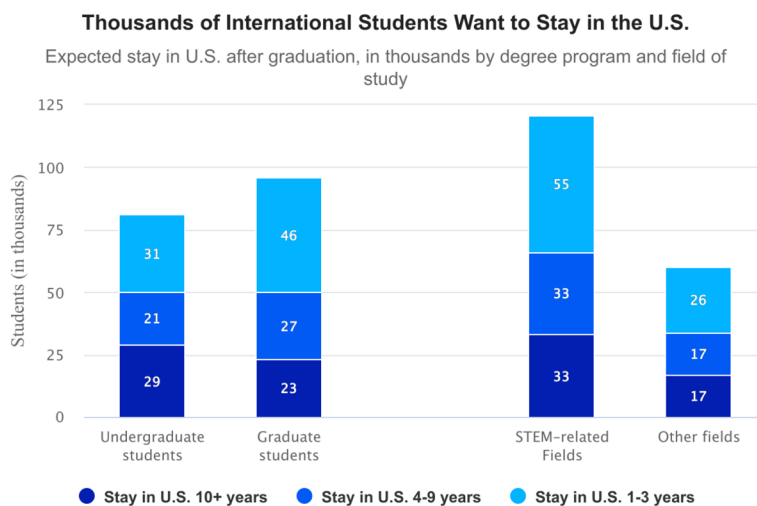
³⁴ FWD.us, "International Students and Graduates in the United States: 5 Things to Know," December 2021, <https://www.fwd.us/news/international-students/>.

³⁵ FWD.us, "What is OPT? 5 Things to Know About Optional Practical Training," May 2021, <https://www.fwd.us/news/what-is-opt>.

³⁶ FWD.us, "America's Industries of the Future Need More Workers," March 2020, <https://www.fwd.us/news/retaining-international-students>.

³⁷ The Stopping Trained in America Ph.D.s From Leaving the Economy (STAPLE) Act of 2017 (H.R. 2717) was a bipartisan bill that would have exempted foreign-born PhD graduates of U.S. colleges and universities from numerical limits on H-1B visas and employment-based green cards. Similar language is included in the U.S. Citizenship Act (H.R. 1177), endorsed by President Biden and introduced in this Congress by Representative Linda Sanchez (D-CA).

³⁸ FWD.us, "Retaining U.S. International Student Graduates Could Help the U.S. Win the Global Talent Race," February 2022, <https://www.fwd.us/news/us-international-students>.



FWD.us has published additional recommendations for Congress to retain international student graduates, including allowing international students to claim “dual intent,” exempting advanced degree holders from numerical limits on H-1B visas, and formally authorizing postgraduate work authorization.³⁹

2. Specialized pathways to meet urgent and critical needs, including STEM experts, medical professionals and job creators

Certain critical industries are facing their own long-term labor shortages; the national physician shortage, particularly in rural areas, is a striking example.⁴⁰ Additionally, members of Congress⁴¹ and private sector experts⁴² have emphasized the need to significantly bolster the STEM workforce in support of emerging technologies that are critical to national security.

Congress can help skilled individuals in these fields quickly access permanent residency by expanding access to existing pathways. The America COMPETES Act (H.R. 4521), passed by the House in February, exempts certain international graduates with STEM degrees from numerical limits on green cards, as well as extends eligibility for Special Immigrant status to

³⁹ FWD.us, “Retaining International Student Graduates: 5 Policy Proposals for Congress,” February 2022, <https://www.fwd.us/news/retaining-international-student-graduates>.

⁴⁰ Association of American Medical Colleges, “The Complexities of Physician Supply and Demand: Projections From 2019 to 2034,” June 2021, <https://www.aamc.org/media/54681/download?attachment>.

⁴¹ House Armed Services Committee Future of Defense Task Force, “Future of Defense Task Force Report 2020,” September 2020, <https://armedservices.house.gov/2020/9/future-of-defense-task-force-releases-final-report>.

⁴² National Security Commission on Artificial Intelligence, “Final Report,” March 2021, <https://www.nsc.gov/wp-content/uploads/2021/03/Full-Report-Digital-1.pdf>.

certain STEM experts working directly on projects related to national security. We encourage Congress to support the inclusion of these provisions in the final bill.

Additionally, Congress should consider bipartisan legislation like Senators Dick Durbin and John Cornyn's Healthcare Workforce Resilience Act (S. 1024), which would recapture wasted green cards for doctors and nurses, and the Conrad 30 Reauthorization Act (S. 1819), which would expedite the ability of foreign-born doctors finishing their training in the U.S. to enter the workforce. Congress could also consider working with the Department of Labor to update the Schedule A list of shortage occupations, which have expedited access to green cards, to include more professions facing clear shortages across the country, including medical professionals (like physicians) and STEM experts.⁴³

Finally, we urge Congress to consider legislation to establish an immigration pathway for foreign-born entrepreneurs and founders, similar to the LIKE Act (H.R. 4681) introduced in the House last year. Immigrants are highly entrepreneurial,⁴⁴ and many immigrant founders first come to the U.S. as students.⁴⁵ Establishing a defined pathway for entrepreneurs would boost job-creation and further help retain international graduates, while relieving pressure on other immigration programs.

3. Pathways to legal status and citizenship for undocumented immigrants

Undocumented immigrants are deeply ingrained in the fabric of our country and contribute tremendously to our communities. They deserve an opportunity to pursue legal status and citizenship in the country they call home.

FWD.us estimates that 68% of undocumented immigrants have lived in the U.S. for more than 10 years, and that 38% have children or spouses who are U.S. citizens. 21% of undocumented immigrants are "Dreamers" who came to the U.S. at a young age, and 52% are employed as essential workers.

In addition to the protection and certainty a pathway to citizenship would provide, it would also have multiplier effects for the economy that would benefit all Americans. If undocumented immigrants in the U.S. were able to secure citizenship, their economic contributions would increase by an additional \$149 billion *annually*, plus an additional \$39 billion in state and local taxes, beyond what they are already contributing.⁴⁶

While the ideal solution would be to provide a dedicated pathway to legal status for the undocumented population, Congress could use other legislative measures to expand access to

⁴³ The list of Schedule A shortage occupations is currently limited to physical therapists, professional nurses, and certain "aliens of exceptional ability." USCIS, "Chapter 7 - Schedule A Designation Petitions," <https://www.uscis.gov/policy-manual/volume-6-part-e-chapter-7>.

⁴⁴ Boundless, "Immigrants and Entrepreneurship," <https://www.boundless.com/research/immigrants-and-entrepreneurship>.

⁴⁵ Stuart Anderson, "Immigrants and Billion Dollar Startups," NFAP, March 2016, <https://nfap.com/wp-content/uploads/2016/03/Immigrants-and-Billion-Dollar-Startups.NFAP-Policy-Brief.March-2016.pdf>.

⁴⁶ FWD.us, "Pathways to Citizenship for Undocumented Immigrants," June 2021, <https://www.fwd.us/news/pathway-to-citizenship>.

legal status for undocumented immigrants, including advancing the registry date⁴⁷ or updating the eligibility date for Section 245(i) of the INA.⁴⁸

Many undocumented immigrants could qualify for a green card and eventually citizenship if not for barriers that prohibit them from adjusting status from within the United States. For example, FWD.us estimates that nearly 1.7 million U.S. citizens have a spouse who is undocumented⁴⁹ who could sponsor them for a green card; unfortunately, immigrants who entered the country without inspection need to leave and reenter to receive a green card, which is made prohibitively difficult because of the 3- and 10-year unlawful presence bars.⁵⁰ We urge Congress to consider legislation repealing the 3- and 10-year bars, and to allow immediate relatives of U.S. citizens to adjust status from within the U.S., even if they entered without inspection.

4. Preserve and expand pathways for family reunification

Members of Congress must reject the notion that increasing the number of green cards in one category requires cannibalizing those visas from other categories. “Merit-based” immigration proposals have previously proposed reducing annual green card availability in some categories, or outright eliminating others.⁵¹

On the contrary, FWD.us’s research shows that increased immigration with relatively similar levels of family-based immigration to the current makeup would actually yield greater economic benefits than focusing predominantly on “high-skilled” immigration, in part because immigrants who come to the U.S. to join their families are less likely to emigrate, adding to long-term economic success.⁵²

To that end, we encourage Congress to consider ways to increase family-based immigration, too, including exempting certain immediate family members (such as spouses and minor children of green card holders) from numerical limits, and increasing the annual worldwide and per-country limits on family-based green cards.⁵³ Congress could also authorize special immigration

⁴⁷ FWD.us, “Immigration Registry: A Potential Pathway to Citizenship for Many Immigrants,” April 2021, <https://www.fwd.us/news/immigration-registry>.

⁴⁸ FWD.us, “What is Section 245(i) and the LIFE Act? 5 Things to Know,” April 2021, <https://www.fwd.us/news/what-is-section-245i>.

⁴⁹ FWD.us, “Immigration reform can keep millions of mixed-status families together,” September 2021, <https://www.fwd.us/news/mixed-status-families>.

⁵⁰ FWD.us, “Three- and Ten-Year Bars: 5 Things You Should Know,” September 2019, <https://www.fwd.us/news/5-things-to-know-about-three-and-ten-year-bars>.

⁵¹ For example, the Reforming American Immigration for Strong Employment (RAISE) Act (S. 1103), introduced in the 116th Congress, would have slashed family-sponsored immigration and refugee resettlement, and would have eliminated the Diversity Visa program. Expert analysis found that the legislation would have had severe negative impacts on jobs and the economy, in addition to cutting off important immigration avenues that provide opportunity and strengthen American families. FWD.us, “How to Lose the Numbers Game,” April 2019, <https://www.fwd.us/news/raise-act-cuts-legal-immigration-part-1>.

⁵² FWD.us, “Increasing Future Immigration Grows the U.S.’ Competitive Advantage,” April 2021, <https://www.fwd.us/news/future-immigration>.

⁵³ In addition to reducing green card backlogs, Senator Durbin’s Resolving Extended Limbo for Immigrant Employees and Families (RELIEF) Act (S. 3721) would also strengthen family-based immigration by counting spouses and minor children of lawful permanent residents as immediate relatives, thereby exempting them from numerical limitations, and would revise per-country limits on green cards to reduce disproportionate wait times on the basis of country of origin.

pathways, including for family members of U.S. military members and veterans, to further promote the benefits of family unification.⁵⁴

5. Eliminate backlogs, restore fairness and efficiency to the U.S. immigration system

Ultimately, these efforts to increase immigration will only work if the government is able to implement them with fairness and efficiency.

Today, the government fails even to issue the extremely limited number of green cards available each year—for instance, nearly 200,000 green cards went unissued in 2021⁵⁵ and are now likely lost forever, unless Congress acts—and processing delays force people to wait months, or even years, for their applications to be adjudicated. USCIS' pending caseload has increased 85% since 2015 and processing times have increased, despite incoming receipts remaining constant or even dropping.⁵⁶

These inefficiencies, compounded by outdated legislative restrictions,⁵⁷ lead to backlogs of individuals waiting even to submit their immigration paperwork; millions of immigrants and their families are stuck in green card backlogs, including about 5 million principal applicants simply waiting for an available visa number.⁵⁸ As individuals wait in the backlogs, their ability to travel abroad or change jobs or employers is limited, and their children face the risk of aging out of their dependent status and having to leave their family in the U.S., or become undocumented.⁵⁹

Increasing immigration to the necessary levels will require eliminating the backlogs. One immediately impactful step would be to recapture green cards that were authorized but never issued because of bureaucratic delay and waste.⁶⁰ Congress could also consider legislation to exempt certain immediate family members from numerical limits, expediting their family's green card process. Congress could also just issue enough green cards so those in the backlogs can adjust their status, and the system can catch up.⁶¹

⁵⁴ FWD.us, "Green Cards for Military Spouses and Parents: Priority Bill Spotlight," July 2021, <https://www.fwd.us/news/green-cards-for-military-spouses-and-parents>.

⁵⁵ Walter Ewing, "The Biden Administration Let Over 200,000 Green Cards Go to Waste This Year," ImmigrationImpact.com, October 2021, <https://immigrationimpact.com/2021/10/05/unused-green-cards-biden-2021>.

⁵⁶ United States Government Accountability Office, "U.S. Citizenship and Immigration Services: Actions Needed to Address Pending Caseload," August 2021, <https://www.gao.gov/assets/gao-21-529.pdf>.

⁵⁷ These include per-country limits on the number of green cards that can be issued annually to individuals from a single country. These limitations create disproportionately longer wait times for hundreds of thousands of immigrants simply because of their country of origin. The Equal Access to Green cards for Legal Employment (EAGLE) Act (H.R. 3648) would eliminate these per country limits for employment-based immigrants and raise the limits for family-based immigrants. FWD.us, "Per-Country Cap Reform: Priority Bill Spotlight," July 2021, <https://www.fwd.us/news/per-country-cap-reform-priority-bill-spotlight>.

⁵⁸ David Bier, "Family and Employment Green Card Backlog Exceeds 9 Million," Cato Institute, September 2021, <https://www.cato.org/blog/family-employment-green-card-backlog-exceeds-9-million>.

⁵⁹ FWD.us, "Children of Immigrants in Green Card Backlogs Face Uncertain Futures in the U.S.," July 2021, <https://www.fwd.us/news/children-of-immigrants-in-green-card-backlogs-face-uncertain-futures-in-the-u-s>.

⁶⁰ FWD.us, "Green Card Recapture and Reform Would Reduce Immigration Backlogs," April 2021, <https://www.fwd.us/news/green-card-recapture>.

⁶¹ This is the approach taken in Senator Durbin's RELIEF Act.

In the meantime, Congress should take immediate steps to protect families at risk of separation due to the backlog. For example, the bipartisan America's Children Act (S. 2573), introduced by Chairman Alex Padilla, would ensure that children whose parents are caught in current backlogs do not lose their status when they turn 21.

Congress should also consider providing additional funding to USCIS, as Congress did with the passage of the Emergency Stopgap USCIS Stabilization Act (H.R. 8089) last year. While USCIS has historically received a majority of its funds from fees, the significant backlogs and a sizable portion of their caseload being fee-exempt has put the agency in a difficult financial position.⁶² Additional funding could subsidize fee-exempt work and allow the agency to add staff and resources focused solely on reducing backlogs.

Conclusion

Immigration will play an increasingly important role in bolstering America's economic, demographic, and national security in the years ahead. Failing to remove barriers to legal immigration pathways and significantly increase the level of immigration authorized each year will cost America its role as the world's economic leader and lower the standard of living for all Americans.

We urge the Subcommittee to demonstrate leadership in Congress by supporting commonsense measures, including the ones outlined here, to increase immigration and secure America's economic and demographic future.

⁶² American Immigration Lawyers Association, "Featured Issue: USCIS Budget Shortfall and Furloughs," January 2022, <https://www.aila.org/advocacy/media/issues/all/uscis-furloughs>.



March 15, 2022

The Honorable Alex Padilla
Chairman
Subcommittee on Immigration,
Citizenship & Border Safety
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable John Cornyn
Ranking Member
Subcommittee on Immigration,
Citizenship & Border Safety
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: March 15, 2022 hearing on "Removing Barriers to Legal Migration to Strengthen Our Communities and Economy"

Dear Chairman Padilla & Ranking Member Cornyn:

On behalf of the National Association of Convenience Stores (NACS) I want to thank you for holding today's hearing on "Removing Barriers to Legal Migration to strengthen our Communities and Economy. NACS represents the convenience retailing industry which is comprised of over 148,000 stores nationwide and which employs over 2.3 million people. Of those stores, roughly 60% are single store operators.

One thing that every business in the industry has in common is a need for additional workers. The labor shortages that have been experienced throughout much of the U.S. economy have not bypassed our industry. One area where our members would be interested in seeking additional employees is the U.S. immigration system. Unfortunately, many of the rules governing U.S. Visas make it very difficult for our industry to take advantage of that system. We recently conducted a targeted survey of some of our members on this topic and would like to share a summary of the findings and recommendations we've previously shared with the Department of Homeland Security from those surveys with the committee today.

Most of the specific feedback we received can be boiled down to the fact that the visa program requirements are too burdensome or expensive for our industry to make effective use of the H-2B and other programs. This difficulty for our industry and others finding workers is hurting productivity and the economy as a whole. It also contributes to supply chain problems and, correspondingly, to inflation. We need immigration policy to help address worker shortages and reduce these problems standing in the way of a robust and healthy economy.

- Seasonality Requirements too Burdensome

One of the most common responses that we received about the program was that the process needed to verify the "seasonal need" for workers under the H-2B program was overly burdensome. Our industry sees an additional need for staff during the summer - which is peak driving season for Americans. But the administrative requirements necessary to verify this need are expensive and difficult to overcome.

We should minimize or drop the seasonal need requirement for employers to participate in the H-2B program. This could be done explicitly or could be achieved by making the proof of such needs minimal.

- Need for More Visas

It is clear that the number of H-2B visas is insufficient for the needs of the labor market today. The additional 20,000 visas that the Administration recently provided was welcome but insufficient. The regular limit of 66,000 such visas per fiscal year are quickly taken up, especially in such a competitive labor market.

We should consider a significant increase in the number of such visas allowed per fiscal year. Large jumps in the number of visas available could be based on labor market triggers such as the unemployment rate and/or labor force participation rate. According to press reports, those numbers indicate that something on the magnitude of 3 million additional Americans have left the workforce during the pandemic. That indicates a much larger need than the number of available visas and our members' experience is consistent with those figures.

- Need for More Low-Skilled and Unskilled Workers

The current visa system favors skilled workers too heavily. The labor shortage exists primarily among low-skilled and unskilled workers. Many jobs, like working in a convenience store or restaurant, are ones that Americans are leaving – either to exit the workforce or seek different types of work. And, the costs of sponsoring unskilled workers for visas is often a much larger percentage of the costs of those workers than it is for high-skilled workers. Our members reported that it often costs \$10,000 to sponsor a worker for a visa and complete the process. The expense creates a larger barrier for using these programs for unskilled workers.

The application system for low- and unskilled workers should be streamlined to reduce those costs. In addition, we should identify industries with particular worker shortages – such as food sellers (convenience and restaurant) – and designate those industries as “Schedule A” which would exempt them from going through the Department of Labor market test prior to applying for visas. This treatment would be similar to what is already done for some industries (including nurses, physical therapists, and shepherders).

- Immigration Processes Take Too Long

Finally, the processing time for work visas is far too long. Even when applications are completed, there are long delays involved in getting approval. Our members reported average times of 1 ½ to 2 years to go through the Visa process with 8 to 13 months of that time spent simply waiting for an answer to the application. The e-verify system presents another example. It appears to process requests for American citizens rather quickly but takes too long for foreign workers, even those with permanent resident status. While some in our industry indicate that they can get verification on American citizens from the system within hours, it can take weeks to obtain the same verification for legal immigrants. We need concerted efforts to reduce the processing time for visa applications and lawful status verifications. Streamlining these processes and reducing the wait times would make hiring foreign workers more attractive to our industry.

I appreciate the committee focusing on this topic today and stand ready to work with you, your committee members and staff as you consider ways to amend our immigration system in ways that lower barriers for entry for those want to legally come to work in the United States.

Sincerely,

A handwritten signature in black ink, appearing to read 'Doug Kantor', with a long, sweeping horizontal stroke extending to the right.

Doug Kantor
General Counsel
NACS



Jay Timmons
President and CEO

March 22, 2022

The Honorable Alex Padilla
Chair
Subcommittee on Immigration, Citizenship
and Border Safety
Committee on the Judiciary
Washington, DC 20510

The Honorable John Cornyn
Ranking Member
Subcommittee on Immigration, Citizenship
and Border Security
Committee on the Judiciary
Washington, DC 20510

Dear Chairman Padilla and Ranking Member Cornyn:

On behalf of the National Association of Manufacturers and the millions of people who make things in America, we appreciate the subcommittee's focus on the critical need for Congress to reform our nation's immigration system during last week's hearing on "Removing Barriers to Legal Migration to Strengthen our Communities and Economy."

Manufacturers understand the powerful role immigration plays in our nation's history and the unique contributions immigrants make to our society, our communities and our workplaces. We know that a reformed, well-functioning immigration system will make our nation safer and our economy stronger and that it will advance the values that make this nation of immigrants exceptional. This hearing was an important step to advance much-needed, long-term solutions for replacing our current system with one that improves national security, boosts our economy and reflects America's values.

Addressing our immigration system is vital as manufacturers are currently facing a labor crisis. In January, the U.S. Department of Labor's Job Openings and Labor Turnover Survey reported 855,000 manufacturing job openings in January, up from a revised 746,000 in December. The number of job postings continues to be well above pre-pandemic levels, as companies ramp up activity and need more workers to meet the additional capacity. Over the past 10 months, job openings in the sector have averaged 873,000 including the record 943,000 in July. The NAM is working to address the labor crisis domestically through the Creators Wanted campaign, developed to attract, and train the next generation of talent but immigrants can play a vital role in addressing the current job crisis and supporting the U.S. economy.

Focused attention and durable solutions are required in immigration reform due to the humanitarian and national security dynamics at our southern. Indeed, these challenges do not lend themselves to one solution that can happen overnight. I traveled to the border three years ago to meet with humanitarian leaders and Border Patrol. The experience confirmed that there is not one easy answer, but that progress will require addressing the root causes of migration with a clear eye toward prioritizing security and human rights and resolving the shortcomings in our immigration system.

Manufacturers are in the business of building solutions and have brought this ethos to the question of immigration policy. The NAM's "[A Way Forward](#)" immigration plan is designed to address the problems created by our current federal immigration policy and fix the issues once and for all. We released this proposal in 2019 with the goal of unifying a fractured country. Three years later, in the wake of an economic and public health crisis, with an ongoing humanitarian challenge at the southern border and with asylum seekers from war-torn countries seeking refuge, the need for reform remains critical.

Decades of neglect and a lack of enforcement of existing laws and regulations have eroded public trust and the proper functioning of our current immigration system. It has left millions who know no home other than the United States worried about their future, living in uncertainty and fear. We know this uncertainty demands a comprehensive solution, and we have identified specific solutions for Congress and the administration in seven core areas:

- Strengthen border security through a combination of personnel, infrastructure, technology and enforcement.
- Prioritize America's workforce needs through reforms to the legal immigration system.
- Reform nonimmigrant visas and temporary worker programs to reflect employer needs, including a fund to support STEM programs so that we can boost our workforce and reduce the need for these types of visas in the future.
- Provide a permanent and compassionate solution for populations facing uncertainty, including the Dreamers, who were brought here as children and know no other home.
- Reform asylum and refugee programs for a more orderly and humane system, including asylum standards consistent with our values.
- Fix the problem of the unauthorized population with a firm reset, requiring an orderly process of review, including financial penalties for those who seek to become legal and deportation for those who choose to stay in the shadows.
- Strengthen the rule of law so that it is respected and followed by all, with a focus on preventing illegal activity, elevating public safety and requiring localities to cooperate to advance the enforcement of immigration priorities.

We knew when we crafted this proposal that not every element of the plan would appeal to all people. A comprehensive solution will require compromise. We believe our plan can serve as a roadmap for the way forward, including for efforts to advance incremental reform measures. For decades, the NAM has worked with policymakers from across the ideological spectrum to craft policies that encourage the growth of manufacturing in the United States. Immigration reform is one of those policies.

Moving beyond the current divide to develop and enact solutions will improve our economic competitiveness and strengthen faith in our institutions. It will also give so many individuals who deserve it a chance to participate fully in our society. We look forward to working with you to advance lasting solutions.

Sincerely,

A handwritten signature in black ink, appearing to read "Timmons". The signature is written in a cursive, flowing style with a prominent initial "T".

Jay Timmons

cc: The Honorable Dick Durbin, the Honorable Chuck Grassley



Statement for the Record

**U.S. Senate Committee on the Judiciary – Subcommittee on Immigration,
Citizenship, and Border Safety**

**Hearing on "Removing Barriers to Legal Migration to Strengthen our
Communities and Economy"**

March 15, 2022

The National Immigration Forum (the Forum) advocates for the value of immigrants and immigration to the nation. Founded in 1982, the Forum plays a leading role in the national debate about immigration, knitting together innovative alliances across diverse faith, law enforcement, veterans, and business constituencies in communities across the country. Leveraging our policy, advocacy, and communications expertise, the Forum works for comprehensive immigration reform, sound border security policies, balanced enforcement of immigration laws, and ensuring that new Americans have the opportunities, skills, and status to reach their full potential.

The Forum appreciates the opportunity to provide its views on the solutions to remove the barriers to legal migration to strengthen our communities and economy. Immigrants have long been crucial in helping to build a more prosperous and diverse country that can live up to the promise of the American Dream. However, the available legal avenues for immigrants to enter or remain in the U.S. have been severely curtailed in recent years. In turn, net international migration (NIM) to the U.S. between 2020 and 2021 added only 247,000 to the nation's population, the lowest level in decades.¹ This is partly due to Covid-19 but is also largely attributable to choices made by policymakers in Washington, D.C., who have opted to reduce immigration levels.

According to the Census Bureau, last year's NIM represents a significant drop from the 2015-16 peak, where more than a million immigrants were added to the U.S. population. This most recent data represent a significant drop from the 477,000 added between 2019

¹ U.S. Census Bureau, *Net International Migration at Lowest Levels in Decades*, December 21, 2021. Available at <https://www.census.gov/library/stories/2021/12/net-international-migration-at-lowest-levels-in-decades.html>



and 2020, partly reflecting the impact of Covid-19, but also the restrictionist immigration policies of the previous presidential administration.² The statistics highlight that Florida, Texas, New York, California, and Massachusetts — states which typically gain the most migrants from abroad and comprise about half of all international migration — saw decreases in NIM between 2015 and 2021, including a nearly 50% drop between 2020 and 2021. California experienced the most significant decline of these states, dropping from 148,000 in 2015 to 15,000 in 2021.³ This decline has reduced the number of potential workers, adding pressure to the widespread labor shortages that the United States is currently undergoing.⁴

Besides the historic low immigration levels, U.S. Citizenship and Immigration Services (USCIS) — the federal agency that processes green cards, visas, and employment authorization documents for immigrants — is struggling with a massive backlog and processing delays. USCIS has more than 8 million pending applications, with the number of pending employment authorization applications surging from 676,000 in March 2020 to 1.4 million as of October 2021.⁵ This colossal backlog is worsening America's labor shortage, with applicants facing lengthy waits to obtain visas and work authorization. Also, processing times for citizenship applications have surged during the pandemic, increasing from an average of nine months in 2019 to more than a year now. Furthermore, there are 281,259 pending Temporary Protected Status (TPS) applications, 412,796 pending applications for asylum, and 770,386 pending green card applications.⁶

² Arturo Castellanos Canales, *America's Labor Shortage: How Low Immigration Levels Accentuated the Problem and How Immigration Can Fix It*, National Immigration Forum, February 28, 2022. Available at <https://immigrationforum.org/article/americas-labor-shortage-how-low-immigration-levels-accentuated-the-problem-and-how-immigration-can-fix-it/>

³ U.S. Census Bureau, *Net International Migration at Lowest Levels in Decades*, December 21, 2021. Available at <https://www.census.gov/library/stories/2021/12/net-international-migration-at-lowest-levels-in-decades.html>

⁴ National Immigration Forum, *Why Businesses Should Support Immigration Reform*, National Immigration Forum, March 10, 2022. Available at <https://immigrationforum.org/article/why-businesses-should-support-immigration-reform/>.

⁵ Rafael Carranza, *Thousands of essential immigrant workers languishing amid federal processing backlog*, azcentral, January 25, 2022. Available at <https://amp.azcentral.com/amp/9165749002>

⁶ Jesse Canales, *Thousands of migrants out of work due to delays at U.S. Immigration Services*, Spectrum News. Available at <https://www.mynews13.com/fl/orlando/news/2022/01/26/uscis-delays-impacting-tens-of-thousands-of-workers?web=1&wdLOR=c7B55F519-3EEA-4AD5-A235-6AE1025BEBF5>



All the barriers to legal migration mentioned above are worrying from a demographic, national security, and economic perspective. From a demographic perspective, barriers to legal immigration accentuate the already worrying contraction of the U.S. population.⁷ Last year the United States' population grew at the lowest rate in its history — it grew only by 390,000 or 0.1%.⁸ Notably, immigration — even at reduced levels — made up a majority of the population growth with 247,000 people.⁹ In terms of national security, low immigration levels are leaving unfilled openings in crucial industries that are essential to maintain America's military strength and global stature.¹⁰

Finally, from an economic perspective, immigrants are critical economic agents. Immigrant workers make up 17.4 percent of the labor force in the United States.¹¹ They pay taxes, buy local products, run 28% of all "Main Street" businesses that supply necessities — such as gas stations, grocery stores, laundromats, and restaurants. Also, first- and second-generation immigrants have founded around 45% of the leading high-tech companies in the United States.¹² Immigrant households earn around \$1.5 trillion in total income, wielding significant spending power that powers local economies. They also pay more than \$300 billion in federal, state, and local taxes.¹³

Therefore, the Forum endorses legislation aimed at creating and enhancing the legal avenues to attract and retain foreign nationals in the United States. Among the many

⁷ Ali Noorani and Danilo Zak, *Room to Grow: Setting Immigration Levels in a Changing America*, National Immigration Forum, March 2021. Available at <http://immigrationforum.org/wp-content/uploads/2021/02/Room-to-Grow.pdf>

⁸ Miriam Jordan and Robert Gebeloff, *Amid Slowdown, Immigration Is Driving U.S. Population Growth*, The New York Times, February 5, 2022. Available at <https://www.nytimes.com/2022/02/05/us/immigration-census-population.html?searchResultPosition=1>

⁹ The Washington Post Editorial Board, *The U.S. needs more immigrants and more babies*, Washington Post, February 7, 2022. Available at <https://www.washingtonpost.com/opinions/2022/02/07/us-needs-more-immigrants-more-babies/>

¹⁰ Council on National Security and Immigration (CNSI), *High-Skilled Immigration: America's Key for Competitiveness and National Security*, September 23, 2021. Available at <https://cnsiusa.org/2021/09/resources-09232021-01/>

¹¹ U.S. Bureau of Labor Statistics, *Foreign-born workers made up 17.4 percent of labor force in 2019*, May 29, 2020, available at <https://www.bls.gov/opub/ted/2020/foreign-born-workers-made-up-17-point-4-percent-of-labor-force-in-2019.htm>

¹² National Immigration Forum, *High Tech: Immigrants are Indispensable to U.S. Workforce*, March 28, 2019. Available at <https://immigrationforum.org/article/high-tech-immigrants-are-indispensable-to-u-s-workforce/>

¹³ National Immigration Forum, *Why Businesses Should Support Immigration Reform*, March 10, 2022. Available at <https://immigrationforum.org/article/why-businesses-should-support-immigration-reform/>



immigration-related bills introduced in Congress, there are some bipartisan, common-sense bills that would help remove the barriers to legal immigration and consequently detonate America's full potential.

Among them, the American Dream and Promise Act of 2021 would provide a permanent solution to Dreamers and TPS holders.¹⁴ The America's Cultivation of Hope and Inclusion for Long-term Dependents Raised and Educated Natively (CHILDREN) Act of 2021 would provide a pathway to citizenship to Documented Dreamers.¹⁵ The Let Immigrants Kickstart Employment (LIKE) Act would provide new immigration alternatives to high-skilled foreign-born entrepreneurs in the U.S.¹⁶ The Healthcare Workforce Resilience Act¹⁷ and the Conrad State 30 & Physician Access Act¹⁸ would increase the number of immigrant doctors able to respond to the COVID-19 pandemic and work in medically underserved communities. The Equal Access to Green Cards for Legal Employment (EAGLE) Act would equalize green card backlogs by eliminating per-country caps for employment-based visas and raising per-country caps for family-based visas.¹⁹ The Farm Workforce Modernization Act would create a pathway to legalization for undocumented agricultural workers.²⁰

Reforming the U.S. immigration system is an economical, social, and national security imperative. Our nation would benefit from needed immigration reforms to provide

¹⁴ National Immigration Forum, *Bill Summary for American Dream and Promise Act of 2021*, March 12, 2021. Available at <https://immigrationforum.org/article/bill-summary-american-dream-and-promise-act-of-2021/>.

¹⁵ National Immigration Forum, *Bill Summary for America's CHILDREN Act of 2021*, November 18, 2021. Available at <https://immigrationforum.org/article/bill-summary-for-americas-children-act-of-2021/>. "Documented Dreamers" refers to the more than 200,000 children who came to the United States as dependents of their parents' visas who are in danger of "aging out" at 21 and being forced to self-deport. As a result of being Documented Dreamers, these young people are often overlooked, left out of policies and solutions meant for Dreamers because they are technically not undocumented.

¹⁶ Arturo Castellanos Canales, *Bill Analysis: Let Immigrants Kickstart Employment Act*, National Immigration Forum, September 7, 2021. Available at <https://immigrationforum.org/article/bill-analysis-let-immigrants-kickstart-employment-act/>.

¹⁷ Danilo Zak, *Bill Analysis: The Healthcare Workforce Resilience Act*, National Immigration Forum, May 6, 2020. Available at <https://immigrationforum.org/article/bill-analysis-the-healthcare-workforce-resilience-act/>.

¹⁸ S.948 - Conrad State 30 and Physician Access Reauthorization Act. Available at <https://www.congress.gov/bill/116th-congress/senate-bill/948/text>

¹⁹ National Immigration Forum, *Bill Summary: The EAGLE Act*, July 8, 2021. Available at <https://immigrationforum.org/article/bill-summary-the-eagle-act/>.

²⁰ Danilo Zak, *Bill Summary: Farm Workforce Modernization Act*, National Immigration Forum, November 19, 2019. Available at <https://immigrationforum.org/article/bill-summary-farm-workforce-modernization-act/>.



permanent solutions for Dreamers, the agricultural workforce, and other essential workers. These reforms can help address ongoing labor shortages, fill job openings in key sectors dependent on immigrant labor, strengthen the U.S. economy, and address long-term demographic shortfalls.



Statement of the National Immigration Law Center

Senate Judiciary Subcommittee on Immigration, Citizenship, and Border Safety

“Removing Barriers to Legal Migration to Strengthen our Communities and Economy”

Tuesday, March 15, 2022 at 2:00 PM

Dear Members of the Senate Judiciary Subcommittee on Immigration, Citizenship, and Border Safety,

The National Immigration Law Center (“NILC”) is pleased to submit this statement to the Senate Judiciary Subcommittee on Immigration, Citizenship, and Border Safety for the March 15, 2022 hearing, “Removing Barriers to Legal Migration to Strengthen our Communities and Economy.”

Founded in 1979, NILC is an organization exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. We believe that all people should have the opportunity to achieve their full human potential – regardless of their race, gender, immigration, and/or economic status. Over the past 40 years, NILC has won landmark legal decisions protecting fundamental human and civil rights and advocated for policies that reinforce our nation’s values of equality and justice for all. Furthermore, we engage in policy analysis and advocacy, strategic communications, and provide technical assistance to partner organizations across the country.

Immigrants are essential to the fabric of who we are as a nation. We applaud the subcommittee for conducting this much-needed hearing to explore the barriers to legal immigration and we’re calling on Congress to act quickly, using all available means, to pass inclusive legislation that builds a fair and humane immigration system, creating pathways to U.S. citizenship for Deferred Action for Childhood Arrivals (DACA) recipients and others who have grown up here, Temporary Protected Status (TPS) grantees, essential workers, and the millions of undocumented immigrants who live, work, and are an integral part of the U.S.

Why we need bold immigration reform now

Our country is facing the enormous challenge of trying to heal from the brutality of immigration enforcement under the prior administration and its catastrophic handling of the worst global pandemic we have faced in a century. The Trump administration used blunt instruments to inflict harm on immigrant communities and U.S. citizens alike – with intentionally cruel policies such as the discriminatory Muslim and African bans; decimation of our refugee resettlement program; a morally bankrupt family separation policy that continues to separate over 600 children from their parents;¹ destabilizing the future of millions of people who have relied on the protections under the DACA and TPS policies remain in limbo; and gutting legal immigration channels through numerous discriminatory bans; bars to accessing asylum and the refugee program; and the creation of a wealth test for accessing our immigration system. These tactics were

¹ Shear, Michael D., “Trump and Aides Drove Family Separation at Border, Documents Say,” New York Times, Jan. 14, 2021, <https://www.nytimes.com/2021/01/14/us/politics/trump-family-separation.html>.

nothing short of an attack on the soul of our nation and among the most dangerous attempts to redefine what it means to be an American, to divide us and to undermine and threaten our democracy.

While it is crucial to emphasize the distinctive cruelty of the Trump Administration, it is also important to acknowledge that the approach was possible because Congress has failed to seize opportunities to enact permanent solutions and protections for noncitizens and has let past immigration reform efforts and federal Department of Homeland Security (DHS) spending be defined by the massive expansion of harmful interior enforcement and border militarization. We are long past due in taking corrective action.

Millions of aspiring citizens have lived and worked in this country for decades but there are several barriers preventing access to existing status and/or citizenship. Polling nationwide shows that more than two-thirds of American voters support immigration reform, including a path to legal status, permanent residency, and eventually citizenship for the estimated 11 million undocumented persons living in the country.² We have an opportunity and a mandate to act now.

Congress must significantly reduce immigration enforcement funding

Immigrant communities have endured decades of escalating immigration enforcement and instead of spending billions of dollars on detention and deportation, we should be passing policies of inclusion that place the 11 million undocumented immigrants who are part of our families and communities on a pathway to citizenship. Federal immigration enforcement policies and practices, including increased reliance on state and local agencies for information about non-U.S. citizens, have swept an unprecedented number of asylum seekers and community members into the detention and deportation system.³ Since 2016, the U.S. Immigration Customs Enforcement's (ICE) budget has grown by about 40 percent while U.S. Custom and Border Protection's (CBP) budget has grown by 30 percent.⁴ Despite patterns of abuse, lack of accountability, and mismanagement of funds, the federal government continues providing an influx of funding to immigration enforcement agencies.⁵

Congress must repeal the three- and ten-year bars

One of the key barriers that often prevents individuals from being able to pursue a pathway to citizenship in the U.S. are the three- and ten-year bars. People who enter the U.S. without being "inspected" and "admitted" (entered without inspection "EWI") by a U.S. immigration officer—or in other words, who enter without government authorization—and who have been in the U.S. without authorization for a certain amount of time are generally not able to adjust to becoming lawful permanent residents while in the U.S., regardless of whether they have an approved family or employment-based petition, for example, filed on

² Narea, Nicole, "Poll: Most Americans support a path to citizenship for undocumented immigrants," Vox, Feb. 4, 2021, <https://www.vox.com/policy-and-politics/2021/2/4/22264074/poll-undocumented-immigrants-citizenship-stimulus-biden>; See also NILC Immigrant Justice Fund (IJF) survey where 71% said immigration reform should be an extremely or very important priority for the White House and Congress. NILC IJF, "State of the Union: New Poll Shows Majority of Likely Voters Support Bold Action on Immigration," Feb. 28, 2022, <https://www.immigrantjusticefund.org/press>.

³ "Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration," the American Civil Liberties Union (ACLU), Human Rights Watch (HRW), and the National Immigrant Justice Center (NIJC), December 2020, <https://www.aclu.org/report/justice-free-zones-us-immigration-detention-under-trump-administration>.

⁴ Defund Hate, "Understanding the Finances Behind ICE and CBP," <https://defundhate.org/how-to/#ICE-and-CBP-budget>.

⁵ Defund Hate, "Instead of Investing in What Immigrant Communities Truly Need, Congress Prepares to Greenlight Billions to Fund ICE and CBP, Abusive and Deadly Agencies," Mar. 9, 2022, <https://defundhate.org/2022/03/09/instead-of-investing-in-what-immigrant-communities-truly-need-congress-prepares-to-greenlight-billions-to-fund-ice-and-cbp-abusive-and-deadly-agencies-%e1%bf%bc/>.

their behalf. Instead, they must first leave the U.S. and apply for a waiver of their being unauthorized in the U.S., and pursue their lawful permanent resident (aka “green card”) application at a U.S. embassy or consulate abroad, a time- and cost-intensive process that entails risk of not being able to re-enter the U.S.

After a 1996 change in immigration law created what is known as the “unlawful presence bars,” pursuing a green card abroad for those who EWI and for those who accrued unlawful presence in the U.S. has become much more daunting. Under the unlawful presence bars, people who have been in the U.S. without permission for six months are barred from reentering the U.S. for three years once they leave and anyone who has been in the U.S. without permission for one year or more is barred from reentering the country for ten years, unless the person applies for and is granted a waiver.

In 2013, as immigration reform efforts stalled in Congress, and the Obama administration made headway in at least reducing some of the stress from having to consular process by permitting green card applicants to initiate the unlawful presence waiver process from the U.S. Those who have U.S. citizen family members may apply for a “provisional waiver” of the three- or ten-year unlawful presence bars before departing the U.S. if they can show that a U.S. citizen immediate family member would suffer “extreme hardship” should they be separated. Therefore, instead of having to wait for the waiver application to be adjudicated abroad, applicants can at least be with their family members until the application is approved, which can take years. Upon approval, they can then travel abroad for consular processing of their “green card” application, knowing that a waiver has already been granted for the “unlawful presence bar,” reducing both the time away from home and the risk that they would be denied reentry. The waiver was expanded at the end of the Obama Administration in 2016 through USCIS policy guidance, which allowed lawful permanent residents to also avail themselves of the provisions waiver process, and clarifying the “extreme hardship” standard.

However, there are still thousands of people with strong ties in the U.S. who have been unable to move forward with the green card process because they don’t want to risk years of separation from their loved ones should they leave the country and be denied reentry. Congress must take immediate steps to repeal this barrier which would allow thousands of otherwise undocumented immigrants living in the country today to pursue a pathway to citizenship.

Relief is long-overdue for undocumented youth whose home is here.

While NILC supports broad reforms to address our dysfunctional and increasingly cruel immigration system, we have worked together with immigrant youth for more than two decades to urge Congress to pass legislation to provide undocumented youth who came to the U.S. as children with a pathway to citizenship. The first version of the Dream Act was introduced in 2001 but Congress has been unable to pass the Dream Act into law. After years of Congressional inaction, President Barack Obama announced on June 15, 2012 the Deferred Action for Childhood Arrivals (DACA) program, which grants eligible immigrant youth temporary protection from deportation for a two-year renewable period and provides them work authorization. More than 830,000 young immigrants have been granted DACA and are able to pursue educational and professional opportunities, purchase homes, and remain with their families. However, DACA does not provide permanent lawful status and it must be renewed every two years. As a result, DACA recipients must continually pay the high renewal fees every two years to retain their work authorization and protection from being deported.

Until Congress acts to provide permanent protections for this population, immigrant youth will rely on DACA but this program has its own set of barriers and remains in a precarious situation due to litigation.

Barriers to DACA

One of the main barriers to applying for DACA is the cost (\$495 fees). These increased fees may block some recipients from being able to renew their DACA and cut off this crucial pathway to opportunity for immigrant youth and their families. Past research has shown that the applying for and getting DACA already presents barriers for immigrant youth and their families. Many young people who've applied for DACA come from low-income backgrounds.⁶ Research shows that DACA recipients struggle to pay the fees and not being able to afford the fees has delayed renewals. Lack of affordability has prevented some people from applying or renewing at all.⁷ In addition to having to pay the fees, many DACA recipients retain paid legal assistance to submit renewal applications. We know that participation in DACA is lower in communities that have high unemployment and low levels of economic opportunity.⁸ In other words, the people who have the most to gain from DACA may be prevented from accessing its benefits because of these exorbitant fees.

Litigation

The Trump administration abruptly terminated DACA on September 5, 2017 which has threatened immigrants with DACA protections. Several lawsuits were filed challenging the termination, and the U.S. Supreme Court concluded, on June 18, 2020, that the Trump administration had terminated DACA unlawfully. The Trump administration again tried to dismantle DACA on July 28, 2020, by shortening the duration of work authorization and protection from deportation from two years to one year for renewal applicants and eliminating DACA for first-time applicants. NILC and our partners challenged that change, and a federal district court set the change aside. On July 16, 2021, a U.S. district court in Texas issued a decision and injunction in *Texas v. United States*, holding that DACA is unlawful but allowing DACA to continue for current recipients and allowing renewals, while DHS takes steps to ensure the DACA program complies with the court's order. The federal government has appealed this decision. On September 28, 2021, USCIS issued a Notice of Proposed Rule Making codifying much of DACA. USCIS is expected to release a final rule soon. Nevertheless, DACA remains under threat, as there is ongoing litigation.

Multiple Pathways to Swift Reform

The consequences of political inaction on immigration reform have been severe and we have the moral authority to work together to update our cruel and outdated immigration system. With each passing day, the uncertainty for millions of immigrants causes unnecessary suffering and costs all of us. There is no silver bullet or any singular legislative path to bring us closer to our vision of an immigrant inclusive society, and so we urge Members to continue to pursue swift passage of multiple bills that advance our collective agenda.⁹

⁶ Caitlin Patler, Jorge A. Cabrera, and Dream Team Los Angeles. From Undocumented to DACAmented: Impacts of the Deferred Action for Childhood Arrivals (DACA) Program, (June 6, 2015), <https://escholarship.org/uc/item/3060d4z3>.

⁷ Tom K. Wong. In Their Own Words: A Nationwide Survey of Undocumented Millennials, Center for Comparative Immigration Studies, In Their Own Words: A Nationwide Survey of Undocumented Millennials, (Oct. 18, 2017), <https://escholarship.org/uc/item/1db6n1m2#author>.

⁸ Tom K. Wong and Angela S. Garcia. Does Where I Live Affect Whether I Apply? The Contextual Determinants of Applying for Deferred Action for Childhood Arrivals, *International Migration Review*, <https://journals.sagepub.com/doi/10.1111/imre.12166>.

⁹ For more information NILC's positions on legalization bills, please see Marielena Hincapié's statement submitted to the House Judiciary Committee's Subcommittee on Immigration and Citizenship for the hearing entitled, "The U.S. Immigration System: The Need for Bold Reforms," <https://docs.house.gov/meetings/JU/JU01/20210211/111174/HHRG-117-JU01-Wstate-HincapiM-20210211.pdf>.

NILC looks forward to continuing to work with members of this subcommittee to ensure that Congress acts quickly, using all available means, to pass inclusive legislation that builds a fair and humane immigration system, creating pathways to U.S. citizenship for the millions of undocumented immigrants who live, work, and are an integral part of the U.S..

We thank you for your time on this important matter.

Sincerely,
The National Immigration Law Center



March 15, 2022

The Honorable Alex Padilla
Chair
Subcommittee on Immigration, Citizenship,
and Border Safety
United States Senate
Washington, DC 20510

The Honorable John Cornyn
Ranking Member
Subcommittee on Immigration, Citizenship,
and Border Safety
United States Senate
Washington, DC 20510

Dear Chair Padilla and Ranking Member Cornyn:

On behalf of our nation's venture capital investors and the entrepreneurs they support, thank you for the opportunity to provide a statement for the record regarding the subcommittee's hearing on "Removing Barriers to Legal Migration to Strengthen our Communities and Economy." Our comments will focus on a major deficiency of U.S. immigration law – a lack of a dedicated visa category for foreign-born entrepreneurs who want to launch new, high-growth companies in the United States that will employ Americans and solve scientific and technological problems. Our country is currently held back by shortsighted immigration policy.

Foreign-born entrepreneurs have been an incredible driver of the U.S. economy for decades. Indeed, [more than 50 percent](#) of "unicorn" startups in the United States were founded or co-founded by immigrants. Immigrant-founded companies have played a crucial role in combatting the pandemic – the founders and CEOs of both Pfizer and Moderna are immigrants. Other iconic American companies founded or co-founded by immigrants include Dow, AT&T, DuPont, Levi Strauss, Anheuser-Busch, Goldman Sachs, Sun Microsystems, Google, Yahoo, eBay, YouTube, PayPal, Tesla, and LinkedIn.

A [study](#) by the Center for American Entrepreneurship found that 43 percent of Fortune 500 companies – and 57 percent of the top 35 companies – were founded by first- or second-generation immigrants. These companies are headquartered in 68 metro areas across 33 states and employ millions of Americans.

Despite these accomplishments, U.S. immigration law makes it unnecessarily difficult for foreign-born entrepreneurs to launch new companies in our country. There is currently no visa category designed for the entrepreneurial model. Therefore, immigrant entrepreneurs struggle to

fit square pegs in round holes and use visa categories that are challenging for startups.¹ All too often, immigrant entrepreneurs are forced to start their companies in other countries because of their immigration status. This is a massive loss to the U.S. economy and workers and comes at a time when Congress is focused on our country maintaining its competitive edge.

To address this blind spot, Congress should create a Startup Visa for foreign-born entrepreneurs. The Startup Visa has earned bipartisan support over the years. The 2013 comprehensive immigration reform that passed the Senate included a Startup Visa.² In recent years, the *Startup Act* from Senators Moran, Warner, Blunt, and Klobuchar has featured a Startup Visa.³ Most recently, Rep. Zoe Lofgren introduced the *Let Immigrants Kickstart Employment Act*, which was included in the House-passed *America COMPETES Act*. Rep. Lofgren's legislation is [supported](#) by a coalition of 19 entrepreneurial organizations and [more than](#) three hundred prominent American entrepreneurs.

Under these proposals, an entrepreneur can only qualify for the Startup Visa if they create American jobs and attract significant investment capital from U.S. investors. This is a formula for success and ensures that immigration policy serves to recruit talented individuals who offer the United States something it needs: new company formation and dynamism in the economy.

The United States is one of only a few industrialized nations that does not have a visa category for foreign-born entrepreneurs. In recent years, many other nations – including [China](#), [Canada](#), [Germany](#), [France](#), [New Zealand](#), [Australia](#), [Chile](#), and [the UK](#) – have overhauled their immigration laws to attract foreign-born entrepreneurs, including American entrepreneurs. These Startups Visas are being used to recruit top entrepreneurs to other countries to the detriment of the United States.

Creation of a Startup Visa is important for national security and has been [endorsed](#) by the National Security Commission on Artificial Intelligence. By welcoming entrepreneurs to our country, policymakers ensure companies are domiciled in the United States and therefore subject to U.S. law. In the absence of a Startup Visa, our immigration laws push company founders to other countries and outside U.S. law in many circumstances.

A [study](#) by the National Foundation for American Policy found that a Startup Visa could create more than 3 million new American jobs over a decade. A [study](#) of Startup Visa legislation by the Kauffman Foundation concluded that it would create as many as 1.6 million new American jobs over the same period.

¹ For example, the H-1B visa requires an employer-employee relationship and therefore is generally not helpful for the founders of companies. The O-1A visa for “extraordinary ability” is frustrating for young entrepreneurs who do not have a long track record. And the E-2 visa excludes many countries and requires capital from the entrepreneur's home country (as opposed to a U.S. investor).

² See Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744; 113th Congress)

³ See *Startup Act* (S. 328; 116th Congress)

We want the next generation of great companies launched in America and believe a Startup Visa is an important tool for our country. Thank you for your leadership on this critical issue that will help the United States remain the global technological and scientific leader.

Sincerely,

A handwritten signature in cursive script that reads "Bobby Franklin".

Bobby Franklin
President and CEO



Statement for the Record
Submitted to the U.S. Senate Committee on the Judiciary
Subcommittee on Immigration, Citizenship, and Border Safety

On Hearing Titled:
**“Removing Barriers to Legal Migration to Strengthen our Communities
and Economy”**

Submitted by:
UnidosUS
Raul Yzaguirre Building
1126 16th Street NW, Suite 600
Washington, DC 20036-4845

March 22, 2022

Introduction

UnidosUS, formerly the National Council of La Raza, is the largest national Latino¹ civil rights and advocacy organization in the United States. For more than 50 years, we have worked to advance opportunities for Latino families to enhance their significant contributions to the social, economic, and political tapestry of our great nation. In this capacity, UnidosUS and its Affiliate Network of nearly 300 community-based organization in 37 states, the District of Columbia, and Puerto Rico, work to provide education, health care, immigration, housing, workforce development, free tax preparation, and other services to millions of Latinos in the United States each year.

Throughout our history as an organization, UnidosUS has united communities and diverse groups seeking common ground through collaboration and a shared desire to make our country stronger and to achieve an immigration system that is fair, just, and accountable to the rule of law—an immigration system of which we can all be proud.

Modernizing and Updating Legal Immigration Channels Is A Must

We thank the subcommittee, Chairman Alex Padilla, and Ranking Member John Cornyn for hosting this important and timely hearing on the importance of modernizing our legal immigration system. UnidosUS enthusiastically supports proposals to modernize our legal immigration system that address the needs of industry and promote family unity. For us, this means not only ensuring visas systems work reliably for employers seeking foreign talent while protecting the labor rights of all workers, but also requires policies that help stabilize undocumented workforces such as those operating in the essential industries powering the nation's recovery from the COVID-19 pandemic.

Thus, UnidosUS seeks to draw particular attention to the plight of millions of long-time undocumented residents. Despite having lived in the United States for at least 15 years per Pew Research, the typical undocumented resident remains in a state of legal limbo.¹ While some believe there is a “line,” the reality for many undocumented individuals is that legalization is effectively out of reach despite their many contributions to families, communities, and the nation. Those who do possess a requisite family relationship that could lead them to legal status are often stymied by draconian and outdated laws like the so-called “3/10 year bars” and others like it that needlessly put families at risk of permanent family separation as they seek to regularize their status.² Proposals to recapture unused visas and others on an incremental ilk exist, but our laws and policies must incorporate solutions to blunt the harshness of these rules to ensure everyone with an approved family- or employment-based visa can benefit from the changes.

¹ The terms “Hispanic” and “Latino” are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race. This document may also refer to this population as “Latinx” to represent the diversity of gender identities and expressions that are present in the community.



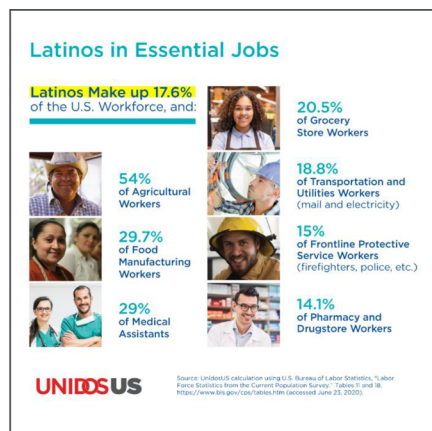
Solutions Are Available if We Look to the Past

We applaud the interest expressed during the hearing of exploring bipartisan solutions to these important matters. UnidosUS has a long standing tradition of support efforts to reform our efforts comprehensively but also appreciates that incremental reforms could be constructive first steps. That is why we believe that proposals that recapture unused visas, provide privileged adjustment of status processing for certain applicants, and/or exempt certain classes of employment-based visas from numerical caps, should be accompanied by provisions that give individuals with approved family- or employment-based petitions the option to cure unlawful presence bars of inadmissibility if needed.

Our laws already provide at least way for Congress to do this: modernize Section 245(i) of the Immigration and Naturalization Act. This law, a version of which was first authorized in 1990 and subsequently reauthorized several times until the early 2000s, allows those with approved family and employment-based petitions to pay a sizeable fine (in addition to application fees) to cure certain civil immigration infractions if needed. Critically, unlike measures that would provide independent paths to legalization, this law relies of existing family- and employment-based paths to lawful permanent residences which makes it the sensible companion to visa recapture provisions. Legislation like the Fairness for Immigrant Family of 2021 and The Family Reunification Act of 2021 contemplate this and other important updates to existing provisions of our immigration laws.

The Pandemic Reminds Us Why These Inclusions Are Needed

UnidosUS has documented the significant contributions Latinos and immigrants through the COVID-19 pandemic, including those of the millions of undocumented workers on the frontlines of the nation's response.³ The COVID-19 pandemic will not doubt leave us many lessons for how the country prepares for future emergency events. The nation's dependence on vulnerable communities over these past two years, makes clear to us that one of those lessons must be the urgency of modernizing our immigration system.



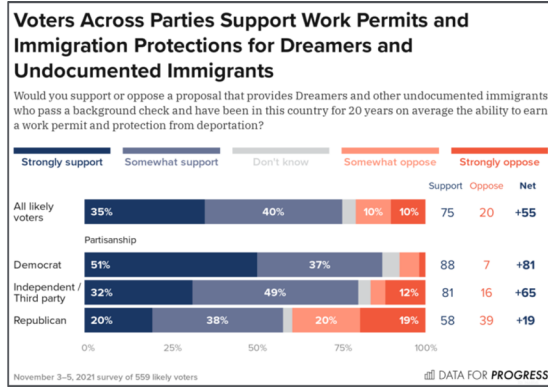
In the past two years, Latinos and immigrants have risen to the occasion, working on the frontlines and doing the essential work to help provide fellow Americans with fresh food, quality health care, and other necessities like child care. In a report published last year, the Center for American Progress (CAP) shared that an estimated five million undocumented immigrants—approximately three in four undocumented individuals in the labor force—are essential workers.⁴ Latinos, despite accounting for only 17.6% of the U.S. workforce, account for 70.5% of essential workers.⁵ According to a UnidosUS analysis of U.S. Bureau of Labor Statistics data from last year, Latinos represent 54% of agricultural workers, 29.7%

of food manufacturing workers, and 29% of medical assistant.⁶ These Latinos, key to maintaining the food supply chains and health of this country during the pandemic, are working—and putting themselves at risk—at a disproportionate rate relative to other demographics. Despite their essential contributions, many of these Latino who were undocumented were, given their legal status, left to fend for themselves. During this unprecedented time, our government failed to provide critical protections and relief to these communities.

The contributions these communities have made to our nation's economy invalidates the false assertion of critics that foreign-born workers steal jobs from, oftentimes blue collar, American-born workers. Literature on the topic has repeatedly emphasized that immigrants work in professions that most American-born workers do not actively seek out, given their physical- and time-intensive nature. Moreover, in addition to stimulating the economy with their spending power, many undocumented workers contribute through local and federal taxes as well. Undocumented workers and their households, according to CAP, contribute \$79.7 billion in federal tax contributions and \$41 billion in state and local contributions.⁷ These households tout \$314.9 billion in spending power, a capacity that would only increase if we implement immigration reform to provide them with appropriate protections and benefits.⁸

Bipartisan Support Is Largely Present

These efforts to achieve immigration reform and harness the economic potential of this community is not a one-sided effort. There has long been bipartisan support for immigration reform and the Subcommittee hearing acknowledged just that. During the hearing, Senator Durbin shared that several Republican Senators have approached him inquiring about whether a vote on DREAMers will take place this year. UnidosUS emphasizes the urgency of this moment: The opportunity for collaboration for the greater good of our nation is at hand and we must not let it pass us by.



The bipartisan support for immigration reform in Congress is similarly mirrored on the ground. A new poll from Data for Progress on the immigration provisions in last year’s Build Back Better plan demonstrates broad bipartisan support for protections for long-residing undocumented immigrants in the United States. The poll, which surveyed 598 voters, showed that 75% of them supported “a proposal that provides DREAMers and other

undocumented immigrants who pass a background check and have been in this country for 20 years on average the ability to earn a work permit and protection from deportation.” The support also was visible in bipartisan majorities: When the reform was proposed to them, 88% of Democrats approved, in addition to 81% of Independents and 58% of Republicans.⁹

Conclusion

As Professor Stephen Legomsky so adroitly reminded us at the hearing, challenges with visa backlogs impact human beings and these individuals possess very human desires to live and work alongside their loved ones. For some that desire means crossing vast oceans to rejoin a family member in the United States, while for others it means a harrowing journey across a shared land border. These very human desires combined with a long-broken visa system rife with insurmountable backlogs helps explain the reality for too many undocumented workers in American today.

The nation is long overdue for immigration reform. We applaud the Subcommittee for taking up this important issue, and we express our hope that it engenders and reignites healthy debate about how to accomplish this objective. Solutions are within reach, the need is urgent, and the American public is supportive.

Please feel free to contact Carlos Guevara (cguevara@unidosus.org) for any questions raised by this statement.

¹ Migration Policy Institute. “Unauthorized Immigrant Population Profiles.” *Migration Policy Institute*. <https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles> (accessed March 2022).

² Homan, Laura B. "Not All 'Entries' Are Equal – The Law of 'Entry' and 'Admission' for Purpose of the Immigration and Nationality Act." *National Law Review*. 29 October 2012. . <https://www.natlawreview.com/article/not-all-entries-are-equal-law-entry-and-admission-purposes-immigration-and-nationality> (accessed March 2022).

³ Cuevas, Rolando; Ruskin, Emily. "The Latino Community in the Time of COVID-19: Prospects for an Equitable Recovery One Year Later." *UnidosUS*. July 2021. <https://www.unidosus.org/publications/2178-the-latino-community-in-the-time-of-covid-19-prospects-for-an-equitable-recovery-one-year-later/> (accessed March 2022).

⁴ Svajlenka, Nicole Prchal. "Protecting Undocumented Workers on the Pandemic's Front Lines: Immigrants are Essential to America's Recovery." *Center for American Progress*. December 2020. https://cdn.americanprogress.org/content/uploads/2020/12/01095848/Making-The-Case-ForLegalization.pdf?_ga=2.104448704.1945692736.1620665685-1677381982.1619194653 (accessed March 2022).

⁵ United States Congress Joint Economic Committee. "The Economic State of the Hispanic Community in America: Keys to Building a Better Economy after COVID-19." 30 September 2020. https://www.jec.senate.gov/public/_cache/files/d25ebfa5-5843-4ce4-ac6d-a75c8af6425d/hhm2020-economicstateofthehispaniccommunityinamerica-final.pdf (accessed March 2022).

⁶ UnidosUS. "The Latino Community in the Time of Coronavirus: The Case for a Broad and Inclusive Government Response." *UnidosUS*. 9 July 2020. <http://publications.unidosus.org/handle/123456789/2066> (accessed March 2022).

⁷ Svajlenka, Nicole Prchal. "Protecting Undocumented Workers on the Pandemic's Front Lines: Immigrants are Essential to America's Recovery." *Center for American Progress*. December 2020. https://cdn.americanprogress.org/content/uploads/2020/12/01095848/Making-The-Case-ForLegalization.pdf?_ga=2.104448704.1945692736.1620665685-1677381982.1619194653 (accessed March 2022)

⁸ *Ibid.*

⁹ Penumaka, Evangel. "Congress Faces a Historic Opportunity to Deliver Transformative Immigration Relief." *Data for Progress*. 8 November 2021. <https://www.dataforprogress.org/blog/2021/11/8/congress-faces-a-historic-opportunity-to-deliver-transformative-immigration-relief> (accessed March 2022).

