

August 14, 2023

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BY ELECTRONIC MAIL to

Secretary Mayorkas % Angela Kelley, angela.kelley@hq.dhs.gov

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

The Honorable Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, DC 20529

**RE: Letter in Support of the Massachusetts Delegation's Request for Streamlined
Work Authorization for Parolees**

Dear Secretary Mayorkas and Director Jaddou:

We are nonprofit legal services advocates in Massachusetts, and we write on behalf of low-income parolees whom DHS has determined merit a favorable exercise of discretion upon entry due to humanitarian reasons or significant public benefit.¹ These parolees and re-parolees urgently need employment authorization documents (EADs), but slow processing times, coupled with an unnecessarily short parole duration and a lack of timely re-parole prevent them from obtaining meaningful work authorization that is effective for the duration of parole status.²

¹ As you know, the Secretary of Homeland Security has authority to parole non-citizens "into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). U.S. Citizenship and Immigration Services, "Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States," last updated May 2, 2023, <https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-individuals-outside-united-states>.

² As legacy INS recognized when parole was added to the list of categories for which EADs were available, the ability to work lawfully may inhere in the grant of parole itself. *See* 46 Fed. Reg. 55920, 55921 (Nov. 13, 1981)[adding 212(d)(5) parolees, who'd been omitted from a codification of employment authorization policies months earlier, to the EAD regulations, because "Although section 212(d)(5)(A) of the Act authorizes the exercise of discretion regarding the conditions of parole for such alien, and *which implies work authorization*, this new class of aliens is added... to avoid any uncertainty."][Emphasis supplied.]

We extend our unequivocal support for the three reforms proposed in the recent letter submitted to your office from the Massachusetts Congressional delegation.³ These proposed solutions would provide streamlined, uninterrupted EADs for parolees from the time of their EAD application throughout renewal. This would allow more rapid access to work authorization desperately needed by the parolees we serve and uninterrupted work authorization thereafter, which benefits both parolees and their employers while also reducing burdens on USCIS in processing and issuing EADs. We suggest the following complementary improvements to parolee EAD reform:

1. DHS could streamline the process of applying for EADs at the border by designating USCIS employees to assist with EAD applications there so that parolees could immediately apply for EADs⁴ and more quickly be issued the provisional EADs proposed by the delegation as well as the ordinary EADs. This has been done previously on a smaller scale. USCIS employees processed the I-765 applications of Afghans at Fort Lee as part of Operation Allies Welcome, and EADs were issued within weeks or even days of arrival.⁵
2. DHS could streamline the re-parole process for individuals who entered on parole in the last two years and remain eligible for parole. Some parolees in Massachusetts did not have their re-parole adjudicated in a timely manner despite the continuation of circumstances that warrant parole and re-parole.⁶ This has resulted in some families losing housing, food, and meaningful work. Given that DHS has wide authority to grant parole, the agency could standardize a clearer re-parole process by memo as was done for the Afghan Parolees.⁷ Alternatively, DHS could direct adjudicators to presumptively re-parole previously paroled individuals barring exceptional or unusual circumstances.
3. DHS could decide, if necessary, to consider a “temporary rule change” to automate a temporary employment authorization for parolees with pending I-765s in response to

³ Massachusetts Delegation Letter Urging the Biden Administration to Streamline Work Authorizations for New Arrivals Paroled into the United States (July 31, 2023), available here: <https://www.warren.senate.gov/imo/media/doc/2023.07.31%20Letter%20to%20DHS%20and%20USCIS%20on%20expediting%20work%20authorizations%20for%20humanitarian%20parolees1.pdf>

⁴ Congress provided the DHS Secretary with broad authority over immigration matters, and the DHS Secretary may designate any employee to discharge functions otherwise delegated by regulation. See 8 U.S.C. § 1103(a)(1) and 8 U.S.C. § 1324a(h).

⁵ See Wisconsin Department of Children and Families Fort Lee SIV FAQs (August 6, 2021) (“USCIS will adjudicate Form I-765 onsite”), available at: <https://dcf.wisconsin.gov/files/w2/ops-memos/pdf/21-26attachment4.pdf>. See also White House Press Release, Operation Allies Welcome Announces Departure and Resettlement of Last Afghan Nationals from Fort Lee, Virginia (November 17, 2021) available at: <https://www.dhs.gov/news/2021/11/17/operation-allies-welcome-announces-departure-and-resettlement-last-afghan-nationals>; White House Press Release, DHS Announces Fee Exemptions and Streamlined Processing for Afghan Nationals as they Resettle (November 8, 2021), available at: <https://www.dhs.gov/news/2021/11/08/dhs-announces-fee-exemptions-streamlined-processing-afghan-nationals-they-resettle>

⁶ This could be due to a number of reasons including the recurrent cavils over which DHS agency is responsible for re-parole, as led to litigation in MA several years ago that DHS settled. See *T.M. v. McAleenan*, No. 1:19-cv-11280-ADB (D. Mass. May 1, 2020)

⁷ See Afghan re-parole/EAD renewal by memo, available at: <https://www.uscis.gov/humanitarian/information-for-afghan-nationals/re-parole-process-for-certain-afghans>.

delays in adjudicating EADs, as it has in the past to address the injury to many noncitizens whose EAD applications were trapped in the USCIS backlog.⁸

4. Finally, DHS could move the I-912 Request for Fee Waiver online. DHS is promoting the online EAD process as more efficient and convenient than the previous paper system.⁹ However, parolees seeking fee waivers are unable to access this faster process. Moving the I-912 online would allow low-income parolees access to more rapid EAD adjudications.

None of the proposals listed in the delegation letter or here would require legislation or statutory modifications, and all can be implemented through either a memorandum or other sub regulatory policy changes. We would be happy to discuss our research on DHS's authority to implement systemic changes that would help parolees and their families become more financially independent while decreasing the EAD adjudication costs for USCIS.

Sincerely,

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cc:

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Aideh Moussavian, USCIS Chief of the Office of Policy and Strategy, 5900 Capital Gateway
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⁸ On May 4, 2022, DHS issued a temporary rule change to extend the EADs of eligible renewal applicants for 540 days if the applicants filed to renew in the same category of EAD and the case was still pending. 87 FR 26614, available at: <https://www.federalregister.gov/documents/2022/05/04/2022-09539/temporary-increase-of-the-automatic-extension-period-of-employment-authorization-and-documentation>. This temporary rule change did not go through any prior notice and comment period before implementation, and it expires on October 15, 2025.

⁹ See USCIS Newsroom, Parolees Can Now File Form I-765 Online (July 28, 2022), available at: <https://www.uscis.gov/newsroom/alerts/parolees-can-now-file-form-i-765-online>

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

March 4, 2024

Ms. Melanie Chaput
Massachusetts Law Reform Institute
40 Court St, Suite 800
Boston, MA 02108-2202

Dear Ms. Chaput:

Thank you for your August 14, 2023 letter to the U.S. Department of Homeland Security (DHS). I am responding on behalf of the Department.

We appreciate your feedback and interest in the issuance of Employment Authorization Documents (EADs) for non-citizens who have been paroled into the United States. We recognize the challenges you highlighted and welcome the opportunity to discuss these issues further.

Since August 2023, DHS has engaged extensively with the Commonwealth of Massachusetts and the City of Boston on these issues. In October 2023, a delegation of DHS personnel traveled to Boston to meet with city and state officials to assess the government's migrant operations and state of response, including their service capabilities. Since that visit, officials from U.S. Citizenship and Immigration Services (USCIS) and the Federal Emergency Management Agency (FEMA) have met weekly with the Commonwealth's federal affairs team, which is leading the state's response to migrant arrivals. DHS also engages with the City of Boston regularly, and our Acting Deputy Secretary met with Mayor Wu on January 30, 2024. Our teams have provided state and local officials with coordination and identified additional ways DHS can support processing efforts for new arrivals. For example, in November 2023, DHS operated a work authorization site to assist new migrant arrivals in quickly submitting required paperwork and collecting necessary biometric data. The clinic served a total of 1,951 people by collecting biometrics and intaking Form I-765, Application for Employment Authorization.

Beyond these on-the-ground efforts, USCIS continues to explore methods to make the employment authorization application and adjudication process as efficient as possible. Since October 2023, USCIS has been working to maintain median processing times of 30 days for Form I-765 filed by parolees who scheduled an appointment through CBP One or who were paroled into the United States under the processes for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV processes). USCIS has made steady progress towards this commitment –

as of February 2024, median processing times for CHNV and CBP One-associated employment authorization applications decreased to approximately 30 days from an average of 90 days earlier this year.

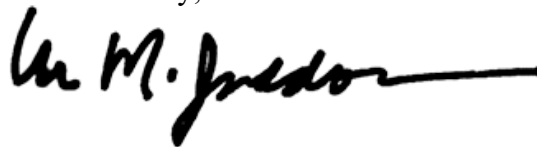
To ensure noncitizens who recently arrived in the United States know they are eligible to apply for employment authorization, USCIS launched a first-of-its-kind campaign to share information on employment authorization eligibility and the application process. Since Fall 2023, USCIS has sent approximately 1.96 million emails and text messages to certain noncitizens to inform them of their eligibility to apply for employment authorization. DHS has also prioritized local outreach on employment authorization, hosting several stakeholder engagements in addition to the employment authorization clinic noted above, in partnership with the Commonwealth and not-for-profit partners assisting parolees. USCIS will continue to work with these partners to support application for employment authorization assistance efforts as well as help to address additional barriers in serving new arrivals.

In the letter, you recommended several policy changes that USCIS could implement without needing Congressional action. You suggested that these proposals would streamline the issuance of EADs and facilitate quicker and uninterrupted access to employment authorization for parolees in your community. USCIS will take your suggestions under advisement. You also recommended that USCIS make the Form I-912, Request for Fee Waiver, available to file online to reduce wait times and to reduce the burden of physically mailing forms to USCIS. Presently, applicants seeking a fee waiver for their Form I-765 fees must continue to submit Form I-765 and Form I-912 by mail. USCIS recognizes that this may present a hurdle for some of our stakeholders and remains committed to expanding the number of forms available for online submission, including a fee waiver request. USCIS welcomes your suggestion and will continue to pursue improvements to the filing process.

We believe that recently implemented policy guidance and processing enhancements will contribute to the broader effort to reduce processing times. USCIS continues to identify ways to streamline our employment authorization application processes and will employ all available tools and resources to reduce the processing time of these applications, which includes pursuing regulatory action or rulemaking where appropriate to promote flexibility for both the agency and noncitizens seeking employment authorization.

Thank you again for your letter and interest in this important issue. Please share this response with the individuals who cosigned your letter. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a long horizontal flourish.

Ur M. Jaddou
Director