

Congress of the United States

Washington, DC 20515

July 31, 2023

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

Dear Secretary Mayorkas and Director Jaddou:

Over the past year, the Biden administration has increased the number of vulnerable noncitizens eligible to enter the United States under various humanitarian parole programs. Massachusetts is welcoming many of these new arrivals with open arms. But stakeholders across the state — from local governments to housing nonprofits to legal aid groups — are being stretched to capacity as they work tirelessly to meet the needs of immigrant families that are left housing insecure because they cannot work legally and support themselves during their periods of parole. We urge the Administration to fix this problem by streamlining and expediting the processing of new arrivals' work authorization requests.

On January 5, 2023, the Biden administration announced a series of new measures on migration as it prepared to lift the Title 42 public health order.¹ We support the decision to end Title 42, having long called for the end of the Trump administration's improper use of the program to bar immigrants from entering the country.² Among the new steps announced was the expansion of a parole program that each month allows 30,000 nationals from Cuba, Haiti, Nicaragua, and Venezuela (CHNV), with eligible sponsors, to apply for parole into the United States. Both Democratic and Republican administrations have long used parole as a protection pathway into the United States for individuals with urgent humanitarian needs.³

Migration from Cuba, Haiti, Nicaragua, and Venezuela has significantly increased due to political and civil unrest, climate crises, economic crises, and the continuing effects of the COVID-19 pandemic.⁴ Three of these four countries are also Temporary Protected Status

¹ The White House, "FACT SHEET: Biden-Harris Administration Announces New Border Enforcement Actions," January 5, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/05/fact-sheet-biden-harris-administration-announces-new-border-enforcement-actions/>

² Letter from Senators Elizabeth Warren, Cory Booker, Representative Cori Bush, and colleagues to President Biden, February 16, 2022, https://www.warren.senate.gov/imo/media/doc/booker_bush_lead_colleagues_in_urging_president_biden_to_reverse_inhumane_immigration_policies_negatively_impacting_black_migrants.pdf.

³ Refugee International, "Supplementary Protection Pathways to the United States: Lessons from the Past for Today's Humanitarian Parole Policies," November 10, 2022, <https://www.refugeesinternational.org/reports/2022/11/7/supplementary-protection-pathways-to-the-united-states-lessons-from-the-past-for-todays-humanitarian-parole-policies>

⁴ National Immigration Forum, "The Reasons Behind the Increased Migration from Venezuela, Cuba, and Nicaragua," Arturo Castellanos-Canales, February 9, 2023, <https://immigrationforum.org/article/the-reasons-behind-the-increased->

designees, further highlighting the U.S. government’s recognition of the dangerous conditions in those countries.⁵ In recent years, Haiti has faced natural disasters, gang violence, and political unrest that has led many individuals to seek safety in the United States⁶ — and particularly in Massachusetts, a top state of residence for Haitians.⁷ Under the administration of President Nicolás Maduro, Venezuela has suffered a deep economic depression and endured violent crackdowns on nonviolent civil actions.⁸ Meanwhile, Nicaragua has faced growing political unrest, the suppression of political dissent, severe hurricanes, and a weak economy.⁹ Finally, conditions in Cuba have worsened due to government repression, hurricanes, and a severe economic downturn partly driven by the COVID-19 pandemic.¹⁰ In addition to the CHNV program and other formal parole programs, the Biden administration also grants parole into the United States from ports of entry on a case-by-case basis.

Over the past year, many cities across the country, including those in Massachusetts, have seen increased numbers of new arrivals due to the expansion of parole programs and the easing of pandemic-era travel and entry restrictions. Massachusetts is committed to welcoming new immigrant arrivals. It is currently the only state in the country that guarantees a “right to shelter” to families in need of assistance.¹¹ But municipalities and nonprofits across Massachusetts are facing significant strain as they tirelessly work to meet the needs of families seeking shelter. For example, the Massachusetts Department of Housing and Community Development was providing shelter in hotels for 19 families in June 2022, but by May 2023 that number had skyrocketed to 882 families.¹²

Too often, newly arriving families are left housing insecure because they lack Employment Authorization Documents (EADs), are unable to work lawfully, and are therefore unable to support themselves. CHNV parolees and port-of-entry parolees are not granted employment authorization incident to parole. Instead, after being paroled, these individuals must file an I-765

migration-from-venezuela-cuba-and-nicaragua/; The Brookings Institution, “Haiti in 2023: Political abyss and vicious gangs,” Vanda Felbab-Brown, February 3, 2023, <https://www.brookings.edu/blog/order-from-chaos/2023/02/03/haiti-in-2023-political-abyss-and-vicious-gangs/>

⁵ U.S. Citizenship and Immigration Services, “Temporary Protected Status,” last updated June 21, 2023, <https://www.uscis.gov/humanitarian/temporary-protected-status>

⁶ Brookings Institution, *supra* note 4.

⁷ Migration Policy Institute, “Haitian Immigrants in the United States,” Kira Olsen-Medina and Jeanne Batalova, August 12, 2020, <https://www.migrationpolicy.org/article/haitian-immigrants-united-states>.

⁸ AP News, “UN experts: Rights abuses continue in Maduro’s Venezuela,” Regina Garcia Cano and Jamey Keaten, September 20, 2022, <https://apnews.com/article/crime-venezuela-caribbean-united-nations-caracas-eb08edeba5ef02200a2cb2c6c2713b60>

⁹ The New York Times, “In Record Numbers, an Unexpected Migrant Group Is Fleeing to the U.S.,” Alfonso Flores Bermúdez and Frances Robles, December 27, 2022, <https://www.nytimes.com/2022/12/27/world/americas/nicaragua-us-migration.html>; National Immigration Forum, *supra* note 4. _

¹⁰ The New York Times, “‘Cuba Is Depopulating’: Largest Exodus Yet Threatens Country’s Future,” Ed Augustin and Frances Robles, December 12, 2022, <https://www.nytimes.com/2022/12/10/world/americas/cuba-us-migration.html>; National Immigration Forum, *supra* note 4. _

¹¹ WBUR, “Three hour wait, three days in a row: Mass. shelter hotline leaves some families desperate,” Gabrielle Emanuel, November 22, 2022, <https://www.wbur.org/news/2022/11/22/massachusetts-family-shelter-hotline-long-waits>.

¹² WGBH News, “‘A perfect storm’: Haitian refugees flow into an overburdened shelter system,” Liz Neisloss, May 10, 2023, <https://www.wgbh.org/news/local-news/2023/05/10/a-perfect-storm-haitian-refugees-flow-into-an-overburdened-shelter-system>.

application and wait for the application to be processed.¹³ U.S. Citizenship and Immigration Services (USCIS) has stated that “processing times will vary depending on the complexities of each case.”¹⁴ Many applicants wait six months or longer to receive their EADs. During that time, they cannot legally and safely work to support themselves.¹⁵

We therefore ask that you implement the following three policy changes to expedite the issuance of EADs to CHNV parolees and those being paroled in from the U.S. border:

- 1. Provisionally authorize a parolee to work upon submission of an EAD application.** USCIS has broad authority to determine which noncitizens may work in the United States.¹⁶ USCIS should issue a notice or policy announcement establishing that USCIS’s receipt of an I-765 application makes a parolee employment-authorized for I-9 purposes during the pendency of the I-765 application or for an agency-determined time period (such as 90 days). To implement this policy, USCIS could (1) attach a provisional work authorization endorsement to I-797 receipts for parolees who submit I-765 applications, or (2) inform the public that the I-797 itself authorizes a parolee to work until the I-765 is fully adjudicated (or for a set period).¹⁷
- 2. For arrivals paroled through U.S. ports of entry, standardize parole to two years.** Under the Immigration and Nationality Act (INA), the Department of Homeland Security (DHS) has the discretion to determine the length of parole.¹⁸ Extending and standardizing

¹³ 8 C.F.R. § 274a.12(c); U.S. Citizenship and Immigration Services, “I-765, Application for Employment Authorization,” May 30, 2023, <https://www.uscis.gov/i-765>.

¹⁴ U.S. Citizenship and Immigration Services, “Frequently Asked Questions About the Processes for Cubans, Haitians, Nicaraguans, and Venezuelans,” June 14, 2023, <https://www.uscis.gov/humanitarian/frequently-asked-questions-about-the-processes-for-cubans-haitians-nicaraguans-and-venezuelans>

¹⁵ ABC7 New York, “NYC mayor urges Biden administration to help asylum seekers get work authorization,” April 19, 2023, <https://abc7ny.com/asylum-seeker-nyc-migrant-jobs/13155007/>.

¹⁶ See 8 U.S.C. §1324a(h)(3); *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1062 (9th Circuit, 2014) (noting Congress’s grant to the executive branch of broad discretion over work authorization decisions); U.S. Citizenship and Immigration Services, “Authority to Modify Certain Procedures Related to Petitions for Employment-Based Immigrant Visa Petitions,” <https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:e5fd03e4-78ff-3d18-9ab3-e43b812e6d0c> (leaked memo from 2015 describing USCIS’s broad authority to change employment authorization procedures).

¹⁷ 8 C.F.R. §274a.2(b)(1)(v)(C)(7) notes that an “employment authorization document issued by the Department of Homeland Security” may establish an individual’s authorization for employment. DHS has the authority to regard a receipt or I-94 card as an “employment authorization document.” See, e.g., United States Citizenship and Immigration Services, “USCIS Updates Guidance on Employment Authorization for E and L Nonimmigrant Spouses,” March 18, 2022, <https://www.uscis.gov/newsroom/alerts/uscis-updates-guidance-on-employment-authorization-for-e-and-l-nonimmigrant-spouses> (I-94 can count as evidence of employment authorization); United States Citizenship and Immigration Services, “Form I-9 Verification During EAD Production Delays Due to COVID-19,” August 19, 2020, <https://www.uscis.gov/i-9-central/form-i-9-related-news/form-i-9-verification-during-ead-production-delays-due-to-covid-19> (I-797 receipt that indicates approval of I-765 can count as evidence of employment authorization). And DHS has in other contexts announced that receipts received during the pendency of an application can count as evidence of a particular status. See, e.g., United States Citizenship and Immigration Services, “USCIS Extends Evidence of Status for Conditional Permanent Residents to 24 Months with Pending Form I-751 or Form I-829,” Sept. 3, 2021, <https://www.uscis.gov/newsroom/alerts/uscis-extends-evidence-of-status-for-conditional-permanent-residents-to-24-months-with-pending-form>.

¹⁸ United States Citizenship and Immigration Services, “Policy Manual, Volume 3 - Humanitarian Protection and Parole, Part F – Parolees, Chapter 1 - Purpose and Background,” May 31, 2023, <https://www.uscis.gov/policy->

the length of parole to two years, absent special temporary circumstances for which an individual may be paroled, would allow individuals the time to find jobs, housing, and begin the process of seeking longer-term immigration status. The current patchwork system has led to some individuals seeing their periods of parole expire before they have been issued an EAD.

3. **Automatically extend an EAD when an individual is re-paroled, without requiring a new I-765 application.** When re-parole is granted to any parolee who is authorized to work, the EAD previously issued should be automatically extended. DHS has automatically extended EADs upon the renewal of parole for specific groups, including parolees from Afghanistan and Haitian TPS recipients whose TPS status is renewed.¹⁹ DHS has done so via public notices, without a rule change.²⁰ Similarly, DHS should issue a notice establishing that the Secretary will automatically extend EADs for any parolee who is re-paroled and who previously secured an EAD pursuant to 8 C.F.R. § 274a.12(c).

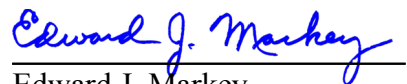
Massachusetts will continue to welcome and assist new arrivals as they resettle across the Commonwealth. The federal government can help relieve the strain on available resources in the Commonwealth by removing obstacles new arrivals face when trying to work legally. We urge the Administration to use its broad authority to streamline and expedite the processing of work authorization requests for new arrivals.

We thank you for your attention to these urgent matters, and we look forward to working with you to help support new arrivals in Massachusetts and across the United States.

Sincerely,



Elizabeth Warren
United States Senator



Edward J. Markey
United States Senator

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¹⁹ U.S. Citizenship and Immigration Services, “Re-Parole Process for Certain Afghans,” updated June 8, 2023, <https://www.uscis.gov/humanitarian/information-for-afghan-nationals/re-parole-process-for-certain-afghans>; U.S. Citizenship and Immigration Services, Federal Register Notice, “Extension and Redesignation of Haiti for Temporary Protected Status,” Jan. 26, 2023, <https://www.federalregister.gov/documents/2023/01/26/2023-01586/extension-and-redesignation-of-haiti-for-temporary-protected-status>.

²⁰ U.S. Citizenship and Immigration Services, Federal Register Notice, *supra* note 19.




Seth Moulton
Member of Congress



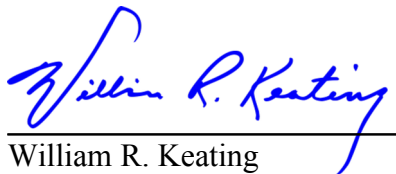
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