

# United States Senate

WASHINGTON, DC 20510

November 2, 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:

We commend the important steps that you recently announced to expand access to work authorization for eligible noncitizens and to expedite the delivery of work permits, known as employment authorization documents (EADs). We now urge you to implement these policy changes swiftly and to adopt additional changes to ensure that all new arrivals who are eligible to work can do so promptly.

Too often, new arrivals who are eligible to receive authorization to work in the United States encounter obstacles and delays in doing so. Asylum seekers are delayed by the statutory 180-day asylum EAD clock, which requires them to wait a minimum of 6 months after submitting an asylum application before they can be issued an EAD.<sup>1</sup> Many asylum seekers and other noncitizens are further delayed by the processing backlog of the United States Citizenship and Immigration Service (USCIS); some wait upwards of 12-18 months for their EAD applications (Form I-765) to be processed due to USCIS's backlog of nearly 1.6 million unprocessed EAD applications.<sup>2</sup> Meanwhile, new arrivals often face delays in even entering the pipeline to seek an EAD due to barriers to submitting their applications, including cost and language barriers, among others. Indeed, only 16% of work-eligible CBP One app parolees had even applied for work authorization as of late August 2023.<sup>3</sup>

In the meantime, new arrivals cannot access legal employment to financially support themselves and their families.<sup>4</sup> Unable to pay for housing, many new arrivals have no choice but to rely on

<sup>1</sup> 8 U.S.C. § 1158(d)(2)

<sup>2</sup> U.S. Citizenship and Immigration Services, "Check Case Processing Times," <https://egov.uscis.gov/processing-times/>. (noting, for example, 16 month case processing time for asylum-based renewal EADs and 17.5 months for a Haiti extension-based EAD); U.S. Citizenship and Immigration Services, "Immigration and Citizenship Data: FY22 Appropriations Reporting Requirement - Application Processing Data for August 2023," [https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?topic\\_id%5B%5D=33737&ddt\\_mon=9&ddt\\_yr=2023&query=&items\\_per\\_page=10](https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?topic_id%5B%5D=33737&ddt_mon=9&ddt_yr=2023&query=&items_per_page=10) (data current as of the end of August 2023).

<sup>3</sup> The White House, "Readout of White House Meeting with Governor Hochul," press release, August 30, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/30/readout-of-white-house-meeting-with-governor-hochul/>.

<sup>4</sup> In Massachusetts, for example, the governor has pointed to work authorizations as a primary driver of a shelter crisis that has left almost 7,000 families dependent on the state-run shelter system, up from 3,100 just one year ago. Mass.gov, "Governor Healey Declares State of Emergency, Calls for Support for Newly Arriving Migrant Families," press release, August 8, 2023, <https://www.mass.gov/news/governor-healey-declares-state-of-emergency->

overburdened state and local shelter systems, and some turn to sleeping in public spaces such as hospital emergency rooms, or even on the streets, when shelters are full.<sup>5</sup> In recent months, many states have seen an unprecedented strain on resources for new arrivals. At the same time, many of our states have strong job markets and no shortage of employers eager to hire new arrivals who are ready to work.<sup>6</sup> For many new arrivals, the problem is simply their inability to have their paperwork processed in a timely fashion. And in the absence of work authorizations, too many individuals must turn to the informal labor market, where they are at heightened risk of exploitation and abuses ranging from wage theft to unsafe working conditions that harm all workers, as Secretary Mayorkas has rightly observed.<sup>7</sup> In short, expediting EADs for eligible individuals is essential to allowing new arrivals to enter the formal labor market, gain financial independence, and better support themselves and their families.

We represent states that are fully committed to welcoming new arrivals. And we are working to pass long-overdue reforms to our immigration system, including bipartisan legislation to shorten the statutory 180-day waiting period before asylum seekers can obtain an EAD.<sup>8</sup> But to ensure that all eligible individuals receive employment authorization in a timely manner, we ask that the administration make critical policy fixes to eliminate unnecessary barriers preventing new arrivals from working legally even when they should be eligible to do so.

The Department of Homeland Security (DHS or “the Department”) and USCIS have taken important steps to address this bureaucratic crisis. The Department has significantly shortened

[calls-for-support-for-newly-arriving-migrant-families](#); Mass.gov, “Governor Healey Announces State’s Emergency Family Shelter System Will Reach Capacity by End of Month,” press release, October 16, 2023, <https://www.mass.gov/news/governor-healey-announces-states-emergency-family-shelter-system-will-reach-capacity-by-end-of-month#:~:text=As%20of%20October%2016%2C%20there,in%20emergency%20shelter%20are%20children.>; WBUR, “State-funded shelters in Mass. reach new record: nearly 5,000 families,” Gabrielle Emanuel, July 25, 2023, <https://www.wbur.org/news/2023/07/25/family-homelessness-record-high>.

<sup>5</sup> New York Times, “Migrants Sleep on the Sidewalk, the Face of a Failing Shelter System,” Andy Newman, August 1, 2023, <https://www.nytimes.com/2023/08/01/nyregion/nyc-migrants-homelessness.html>; CNN, “More migrants are showing up nightly at a Boston hospital. Dozens, most from Haiti, slept in the lobby this week,” Celina Tebor, April 29, 2023, <https://www.cnn.com/2023/04/29/us/haitian-migrants-boston-hospital-lobby/index.html>.

<sup>6</sup> Letter from Senator Richard Durbin to President Joseph Biden, May 5, 2023, <https://www.judiciary.senate.gov/imo/media/doc/Letter%20to%20President%20Biden%20on%20State%20Sponsored%20parole.pdf>; NYC, “Transcript: Mayor Adams Calls for Expedited Work Authorization for Asylum Seekers,” May 22, 2023, <https://www.nyc.gov/office-of-the-mayor/news/352-23/transcript-mayor-adams-calls-expedited-work-authorization-asylum-seekers>; Chicago Tribune, “As asylum seekers struggle while waiting for work permits, Chicago businesses can’t fill jobs,” Laura Rodriguez Presa, Talia Soglin, Nell Salzman, July 16, 2023, <https://www.chicagotribune.com/business/ct-biz-migrants-work-permits-labor-shortage-20230716-uzx66vux6fb53pjo3d7scjilfa-story.html>.

<sup>7</sup> U.S. Department of Homeland Security, “Memorandum: Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual,” October 12, 2021, [https://www.dhs.gov/sites/default/files/publications/memo\\_from\\_secretary\\_mayorkas\\_on\\_worksite\\_enforcement.pdf](https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf); *see also* NYC, “Transcript: Mayor Adams Calls for Expedited Work Authorization for Asylum Seekers,” May 22, 2023, <https://www.nyc.gov/office-of-the-mayor/news/352-23/transcript-mayor-adams-calls-expedited-work-authorization-asylum-seekers>.

<sup>8</sup> Asylum Seeker Work Authorization Act of 2023, S.255, <https://www.congress.gov/bill/118th-congress/senate-bill/255?q=%7B%22search%22%3A%22%5C%22Asylum+Seeker+Work+Authorization+Act+of+2023%5C%22%22%7D&s=1&r=2>; ASPIRE Act, S.2175, <https://www.congress.gov/bill/118th-congress/senate-bill/2175?q=%7B%22search%22%3A%22%5C%22ASPIRE+Act%5C%22%22%7D&s=2&r=2>.

wait times over the past year and recently committed to further shortening certain wait times. For example, for asylum seekers' initial work permit applications, the median EAD processing time dropped from nine months in FY2022 to two months in FY2023,<sup>9</sup> and USCIS is working to reduce EAD wait times for certain parolees from 90 days to 30 days.<sup>10</sup> USCIS has also: implemented a temporary increase in the length of time during which individuals seeking renewal of expiring EADs can continue to work, from 180 days to 540 days;<sup>11</sup> adopted policy guidance allowing certain Afghan and Ukrainian parolees to work incident to their status;<sup>12</sup> and begun sending push notifications to remind asylum seekers and parolees to apply for EADs as soon as they are eligible.<sup>13</sup> And USCIS recently announced that it will begin issuing certain EADs with validity periods of up to 5 years rather than 2 years, including for asylum seekers,<sup>14</sup> and re-designated Afghanistan and Venezuela for TPS, allowing more nationals of those countries to access TPS-based EADs.<sup>15</sup>

Still, there are other critical fixes that DHS can implement without waiting for congressional action. We encourage DHS to consider the following proposals to resolve the current EAD crisis. Each proposal would either (1) facilitate speedier submission of EAD applications (including by

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<sup>9</sup> U.S. Citizenship and Immigration Services, "Table 1: I-765 - Application for Employment Authorization Eligibility Category: C08, Pending Asylum Initial Permission to Accept Employment Completions by Processing Time Buckets," September 5, 2023, <https://www.asylumadvocacy.org/wp-content/uploads/2023/09/August-2023-Rosario-Report.pdf> (showing that 91% of asylum seekers' EAD applications were being processed within 30 days as of August 2023); Citizenship and Immigration Services Ombudsman, "Annual Report 2023," p. 108, June 30, 2023, [https://www.dhs.gov/sites/default/files/2023-07/2023%20Annual%20Report%20to%20Congress\\_0.pdf](https://www.dhs.gov/sites/default/files/2023-07/2023%20Annual%20Report%20to%20Congress_0.pdf); U.S. Citizenship and Immigration Services, "Check Case Processing Times," <https://egov.uscis.gov/processing-times/>.

<sup>10</sup> U.S. Department of Homeland Security, "Fact Sheet: The Biden-Harris Administration Takes New Actions to Increase Border Enforcement and Accelerate Processing for Work Authorizations, While Continuing to Call on Congress to Act," September 20, 2023, <https://www.dhs.gov/news/2023/09/20/fact-sheet-biden-harris-administration-takes-new-actions-increase-border>.

<sup>11</sup> U.S. Department of Homeland Security, Federal Register Notice, "Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants," May 4, 2022, <https://public-inspection.federalregister.gov/2022-09539.pdf>.

<sup>12</sup> U.S. Citizenship and Immigration Services, "Certain Afghan Parolees Are Employment Authorized Incident to Parole," last updated June 8, 2023, <https://www.uscis.gov/newsroom/alerts/certain-afghan-parolees-are-employment-authorized-incident-to-parole>; U.S. Citizenship and Immigration Services, "Certain Afghan and Ukrainian Parolees Are Employment Authorized Incident to Parole," last updated February 24, 2023, <https://www.uscis.gov/i-9-central/form-i-9-related-news/certain-afghan-and-ukrainian-parolees-are-employment-authorized-incident-to-parole>.

<sup>13</sup> CBS News, "U.S. reminds migrants to apply for work permits following pressure from city officials," Camilo Montoya-Galvez, August 31, 2023, <https://www.cbsnews.com/news/u-s-reminds-migrants-to-apply-for-work-permits-following-pressure-from-new-york-other-cities/>.

<sup>14</sup> U.S. Department of Homeland Security, "Fact Sheet: The Biden-Harris Administration Takes New Actions to Increase Border Enforcement and Accelerate Processing for Work Authorizations, While Continuing to Call on Congress to Act," September 20, 2023, <https://www.dhs.gov/news/2023/09/20/fact-sheet-biden-harris-administration-takes-new-actions-increase-border>.

<sup>15</sup> U.S. Department of Homeland Security, Federal Register Notice, "Extension and Redesignation of Venezuela for Temporary Protected Status," October 3, 2023, <https://www.federalregister.gov/documents/2023/10/03/2023-21865/extension-and-redesignation-of-venezuela-for-temporary-protected-status>; U.S. Department of Homeland Security, Federal Register Notice, "Extension and Redesignation of Afghanistan for Temporary Protected Status," September 25, 2023, <https://www.federalregister.gov/documents/2023/09/25/2023-20791/extension-and-redesignation-of-afghanistan-for-temporary-protected-status>.

reducing the number of new arrivals subject to the asylum EAD clock), (2) reduce the number of new arrivals who must file EAD applications at all, (3) authorize certain new arrivals to work while their applications are being processed, or (4) expedite USCIS’s processing of EAD applications.

## **I. Urgent priorities**

First, the following proposals are high-impact fixes that DHS could implement now, generally without the need for notice-and-comment rulemaking:

- 1. Issue provisional employment authorizations to eligible new arrivals who submit EAD applications.** When a new arrival who is eligible to work submits an EAD application, DHS should ensure that the individual is not penalized by bureaucratic backlogs by immediately issuing a document authorizing them to temporarily work while their EAD application is being processed. One way to implement this is the following: when new arrivals submit an EAD application, USCIS sends them a receipt, called an I-797. USCIS could issue a policy statement explaining that new arrivals can show prospective employers their I-797 (along with an identity document) as evidence that they have submitted an EAD application and are temporarily authorized to work while the application is being processed. DHS has the authority to make this change; it can determine what documents are acceptable for purposes of demonstrating employment authorization and can establish that I-797s indicating receipt of I-765 applications are one such document.<sup>16</sup> DHS has used this authority in the past to allow documents other than formal employment authorization cards to count as evidence of employment authorization — such as permitting an I-797 received upon approval of an EAD application to be shown as proof of employment authorization during the COVID-19 pandemic.<sup>17</sup> Another way to implement this would be to allow EAD applicants to bring their I-797s to USCIS offices to receive a stamp that would qualify as an interim provisional employment authorization endorsement. DHS should promptly make this change for all new arrivals who are legally eligible to work, yet who must navigate the backlogged EAD application system — including certain parolees, as well as asylum seekers whose asylum applications have been pending for 180 days or more.

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<sup>16</sup> 8 U.S.C. §1324a(b)(1)(C); 8 C.F.R. § 274a.2(b)(1)(v)(C)(7); *see, e.g.*, U.S. Citizenship and Immigration Services, “U.S. Citizenship and Immigration Services, “Certain Afghan and Ukrainian Parolees Are Employment Authorized Incident to Parole,” November 21, 2022, <https://www.uscis.gov/newsroom/alerts/certain-afghan-and-ukrainian-parolees-are-employment-authorized-incident-to-parole> (policy guidance allowing Afghan and Ukrainian parolees to show an I-94 arrival record as evidence of authorization to work, for a temporary period of 90 days).

<sup>17</sup> U.S. Citizenship and Immigration Services, “Form I-9 Verification During EAD Production Delays Due to COVID-19,” August 19, 2020, <https://www.uscis.gov/archive/form-i-9-verification-during-ead-production-delays-due-to-covid-19> (permitting I-797s indicating approval of an I-765 to count as an “employment authorization document” under 8 C.F.R. 274a.2(b)(1)(v)(C)(7) due to the COVID-19 emergency and long delays, without a rule change); U.S. 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> (permitting I-94s plus notices from USCIS to demonstrate authorization to work);

2. **Continue the 540-day automatic extension period for EAD renewals.** Typically, individuals have a 180-day grace period during which an expired EAD remains valid after its expiration date, while the individual’s EAD renewal application is pending.<sup>18</sup> Due to lengthy processing backlogs, in 2022 USCIS issued a temporary final rule (TFR) to extend this grace period from 180 days to 540 days.<sup>19</sup> That extension expired on October 26, 2023.<sup>20</sup> At the time of the TFR, roughly 66,000 EAD renewal applications were pending for more than 180 days.<sup>21</sup> That number has skyrocketed to over 263,000 as of April 2023 — making the need for this rule even more urgent now.<sup>22</sup> Unless USCIS is able to dramatically reduce its renewal backlog over the coming months, we will begin to see individuals facing gaps in their employment authorizations when grace periods begin to lapse in the spring of 2024.<sup>23</sup> Thus, DHS should issue an interim final rule to codify the 540-day extension period for new arrivals submitting EAD renewal applications after October 26, 2023. The Citizenship and Immigration Services (CIS) Ombudsman similarly recommends maintaining the current automatic extension period.<sup>24</sup> The new extension period should ensure that USCIS has enough time to process all EAD renewal applications before applicants’ work authorization expires.
  
3. **Eliminate the EAD application filing fee for certain parolees.** Many new arrivals must pay a \$410 filing fee in order to submit an EAD application, unless they qualify for a fee waiver.<sup>25</sup> Demonstrating eligibility for a fee waiver requires documentation such as a tax return or pay stub.<sup>26</sup> Many parolees — such as those in the Cuban, Haitian, Nicaraguan, and Venezuelan (CHNV) parole processes, and those paroled via the CBP One app, which schedules appointments for processing at certain ports of entry<sup>27</sup> — often have not previously worked in the United States and lack such documentation to demonstrate eligibility for a fee waiver. Anecdotal reports suggest that many parolees wait additional time to save money for the filing fee before submitting their EAD applications, further delaying their processes of securing EADs. This economic hardship may help explain

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<sup>18</sup> 8 C.F.R. § 274a.13(d).

<sup>19</sup> U.S. Citizenship and Immigration Services, “USCIS Increases Automatic Extension Period of Work Permits for Certain Applicants,” May 3, 2022, <https://www.uscis.gov/newsroom/news-releases/uscis-increases-automatic-extension-period-of-work-permits-for-certain-applicants>.

<sup>20</sup> U.S. Department of Homeland Security, Federal Register Notice, “Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants,” May 4, 2022, <https://www.federalregister.gov/documents/2022/05/04/2022-09539/temporary-increase-of-the-automatic-extension-period-of-employment-authorization-and-documentation>.

<sup>21</sup> *Id.*

<sup>22</sup> U.S. Citizenship and Immigration Services, “I-765, Application for Employment Authorization Counts of Pending Petitions by Days Pending For All Eligibility Categories and (c)(8) Pending Asylum Category,” April 1, 2023, [https://www.uscis.gov/sites/default/files/document/data/I765\\_P\\_AllCat\\_C08\\_FY2023Q2.pdf](https://www.uscis.gov/sites/default/files/document/data/I765_P_AllCat_C08_FY2023Q2.pdf).

<sup>23</sup> U.S. Citizenship and Immigration Services, “Check Case Processing Times,” <https://egov.uscis.gov/processing-times/>.

<sup>24</sup> Citizenship and Immigration Services Ombudsman, “Annual Report 2023,” pp. 20, 26, June 30, 2023, [https://www.dhs.gov/sites/default/files/2023-07/2023%20Annual%20Report%20to%20Congress\\_0.pdf](https://www.dhs.gov/sites/default/files/2023-07/2023%20Annual%20Report%20to%20Congress_0.pdf).

<sup>25</sup> U.S. Citizenship and Immigration Services, “I-765, Application for Employment Authorization,” September 1, 2023, <https://www.uscis.gov/i-765>.

<sup>26</sup> U.S. Citizenship and Immigration Services, “Form I-912: Instructions for Request for Fee Waiver,” September 3, 2021, <https://www.uscis.gov/sites/default/files/document/forms/i-912instr.pdf>.

<sup>27</sup> U.S. Customs and Border Protection, “CBP One™ Mobile Application,” last modified August 16, 2023, <https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

why only 16% of work-eligible CBP One app parolees had applied for work authorization as of late August 2023.<sup>28</sup> DHS does not require a filing fee for some categories of new arrivals, such as asylum seekers, and has approved a fee exemption for others, such as Afghan and Ukrainian parolees.<sup>29</sup> DHS should exempt the filing fee for certain other parolees, such as CHNV parolees and CBP One app parolees. To do so, USCIS should approve a “Director’s exception” to the fee under 8 C.F.R. § 106.3(b), or if necessary, pursue a rule change to categorically exempt parolees from the fee under 8 C.F.R. § 106.3(e).

Furthermore, at a minimum DHS should move the I-912 fee waiver form online so that I-765s can be submitted online even when an applicant seeks an individual fee waiver.<sup>30</sup> Currently, most EAD applications can be submitted online, except for when the applicant is also submitting a fee waiver form, Form I-912, with the EAD application.<sup>31</sup> USCIS processes I-765s more quickly when they are submitted online, so applicants in need of fee waivers are penalized by the slower processing times for paper filings.<sup>32</sup> USCIS can expedite the processing of I-765s by allowing the fee waiver form to be submitted online, so that all EAD applicants can submit their I-765s online.

- 4. Increase USCIS’s access to information already collected from new arrivals by U.S. Customs and Border Patrol (CBP), to eliminate redundancies.** Much of the same information is provided to CBP in parole applications and to USCIS in EAD applications. DHS could streamline the gathering of information from parolees who recently provided parole application information to CBP and are now submitting EAD applications to USCIS. For example, DHS could allow photographs and biometrics taken by CBP to be used by USCIS for the issuance of EADs — thereby eliminating the time-consuming process of USCIS retaking photographs and biometrics of the same individuals. Advocates have urged DHS to implement such biometric efficiencies for various immigration proceedings and applications.<sup>33</sup> DHS could also permit parolees to request

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<sup>28</sup> The White House, “Readout of White House Meeting with Governor Hochul,” press release, August 30, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/30/readout-of-white-house-meeting-with-governor-hochul/>.

<sup>29</sup> 8 C.F.R. § 106.3(e); U.S. Citizenship and Immigration Services, “I-765, Application for Employment Authorization,” last updated October 13, 2023, <https://www.uscis.gov/i-765>; U.S. Citizenship and Immigration Services, “Form I-765: Instructions for Application for Employment Authorization,” p. 23, October 31, 2022, <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf>; U.S. Citizenship and Immigration Services, “U.S. Citizenship and Immigration Services, “Certain Afghan and Ukrainian Parolees Are Employment Authorized Incident to Parole,” November 21, 2022, <https://www.uscis.gov/newsroom/alerts/certain-afghan-and-ukrainian-parolees-are-employment-authorized-incident-to-parole>.

<sup>30</sup> Letter from Senator Kirsten Gillibrand, et al., to USCIS Director Ur Jaddou, September 27, 2023, <https://www.gillibrand.senate.gov/wp-content/uploads/2023/09/Congressional-Letter-to-USCIS-I765-Fees-1.pdf?ga=2.247176514.719799908.1695925817-938423812.1695925817>.

<sup>31</sup> U.S. Citizenship and Immigration Services, “I-912, Request for Fee Waiver,” December 21, 2022, <https://www.uscis.gov/i-912>; U.S. Citizenship and Immigration Services, “Asylum Applicants Can Now File Form I-765 Online,” January 23, 2023, <https://www.uscis.gov/newsroom/alerts/asylum-applicants-can-now-file-form-i-765-online>.

<sup>32</sup> See U.S. Citizenship and Immigration Services, “Parolees Can Now File Form I-765 Online,” July 28, 2022, <https://www.uscis.gov/newsroom/alerts/parolees-can-now-file-form-i-765-online>.

<sup>33</sup> See, e.g., American Immigration Lawyers Association, “AILA and Partners Send Letter to USCIS, EOIR, and OPLA on Biometrics Appointments,” November 17, 2022,

EADs at the same time as they request parole, without completing a separate I-765. USCIS could then access CBP databases in order to gather the necessary information to issue an EAD after the individual is paroled. For example, DHS could allow parole applicants using the CBP One app to check a box indicating that they wish to seek an EAD and, after entering the United States, submit an attestation indicating that they've been paroled, to trigger USCIS's processing of the EAD. The CIS Ombudsman has similarly recommended allowing humanitarian parole applicants to request an EAD during the eligibility attestation stage of the process and later having USCIS confirm parole status in CBP's system to issue the EAD without adjudicating a separate I-765.<sup>34</sup>

- 5. Make the I-765 and the corresponding instructions simpler, clearer, and available in other languages (including Spanish and Haitian Creole).** While the I-765 EAD application must be submitted in English, USCIS should make translations of the form and instructions available on its website so that new arrivals may reference the translated information while completing their I-765 forms in English. Anecdotal reports suggest that new arrivals sometimes delay submission of their EAD application until they can obtain outside assistance, including turning to paying individuals who claim to be notaries yet charge exorbitant prices for shoddy or nonexistent work. However, the I-765 form is one of USCIS's more straightforward forms, and some individuals only rely on outside assistance for translation purposes. Making translated versions of the form and instructions available on USCIS's website — with clear markings indicating that the non-English forms are exclusively for reference — would empower many new arrivals to submit I-765s independently and more quickly. DHS could pair this change with minor clarifications to the I-765 instructions to reduce the risk of applicants paying the wrong fee, mailing paper forms to an incorrect lockbox, or writing the wrong eligibility category on the form. For example, the instructions could explicitly state that CHNV and CBP One parolees should use the (c)(11) code for parolees, rather than the (a)(4) code for refugees. DHS should also consider simplifying the I-765 form itself, which grew from 1 page to 7 pages under the Trump Administration and became more time consuming to complete and adjudicate as a result.<sup>35</sup>
- 6. Ensure that applicants for Temporary Protected Status (TPS) receive timely adjudication of their *prima facie* eligibility and are issued the corresponding EADs while their TPS applications are pending.** TPS allows nationals of countries facing armed conflict, environmental disasters, or other extraordinary circumstances to temporarily remain in the United States, obtain employment authorization, and receive other benefits.<sup>36</sup> “[U]pon the filing” of an application for TPS, individuals who establish that they are *prima facie* eligible for TPS shall receive “temporary treatment benefits”

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<https://www.aila.org/advo-media/aila-correspondence/2022/letter-to-uscis-eoir-and-opla-on-biometrics>.

<sup>34</sup> Citizenship and Immigration Services Ombudsman, “Annual Report 2023,” pp. 19, 25-26, June 30, 2023, [https://www.dhs.gov/sites/default/files/2023-07/2023%20Annual%20Report%20to%20Congress\\_0.pdf](https://www.dhs.gov/sites/default/files/2023-07/2023%20Annual%20Report%20to%20Congress_0.pdf).

<sup>35</sup> Jaclyn Kelley-Widmer, “Unseen Policies: Trump’s Little-Known Immigration Rules As Executive Power Grab,” Georgetown Immigration Law Journal, 2021, <https://www.law.georgetown.edu/immigration-law-journal/wp-content/uploads/sites/19/2021/07/03-Kelley-Widmer-GT-GILJ210043.pdf>.

<sup>36</sup> U.S. Citizenship and Immigration Services, “Temporary Protected Status,” last updated October 10, 2023, <https://www.uscis.gov/humanitarian/temporary-protected-status>.

during the pendency of their application, including an EAD.<sup>37</sup> An applicant establishes *prima facie* eligibility for TPS if they submit a completed TPS application with information that, if un rebutted, would establish their eligibility.<sup>38</sup> Unfortunately, USCIS currently does not conduct a *prima facie* eligibility screening upon the filing of the application, but instead considers *prima facie* eligibility only after it has adjudicated the application on the merits and decided that the evidence is insufficient to grant TPS.<sup>39</sup> Given the 5-20 month backlog in adjudicating TPS applications,<sup>40</sup> applicants are unnecessarily waiting many months for EADs when they should be eligible to work within days or weeks of applying for an EAD. Many new Venezuelan TPS applicants are now entering this backlog.<sup>41</sup> USCIS must bring the agency's practices in line with applicable law and ensure that the agency promptly issues EADs to all TPS applicants who meet the *prima facie* standard.

## II. Other priorities

We also encourage DHS to consider the following proposals, some of which would require rulemaking or additional exploration:

1. **Automatically authorize certain parolees to work incident to parole via rulemaking.** Unlike many other classes of noncitizens, parolees are not authorized to work incident to their status and must apply for work authorization.<sup>42</sup> That requirement is regulatory, not statutory. DHS has the authority to permit certain parolees to work incident to their parole, and can do so by publishing a rule that moves 8 C.F.R. § 274a.12(c)(11) (regarding certain parolees' employment authorization) to 8 C.F.R. § 274a.12(a) and indicating that no work authorization application process is necessary for those parolees.<sup>43</sup> Doing so would allow such parolees to receive an EAD automatically upon the grant of parole, without requiring them to file an EAD application (Form I-765). DHS could go a step further by authorizing such parolees to work even without an EAD, either for a period of time, as is the case for refugees<sup>44</sup> and certain Afghan and Ukrainian parolees,<sup>45</sup> or for the duration of their status, as is the case for entrepreneur parolees.<sup>46</sup> This change likely would require additional modifications to 8 C.F.R. § 274a.2. Like it

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<sup>37</sup> 8 U.S.C. § 1254a(a)(4); 8 C.F.R. § 244.5(a)-(b), 244.10(e).

<sup>38</sup> 8 C.F.R. § 244.1.

<sup>39</sup> Letter from Senator Jeanne Shaheen to Secretary Alejandro Mayorkas, November 15, 2022, <https://www.shaheen.senate.gov/imo/media/doc/2022-11-15%20Shaheen%20Letter%20to%20DHS%20-%20TPS%20EAD%20Processing.pdf>.

<sup>40</sup> TPS applications are taking anywhere from 5-20 months to adjudicate. *See, e.g.*, U.S. Citizenship and Immigration Services, "Check Case Processing Times," <https://egov.uscis.gov/processing-times/> (18 months for new Haitian TPS applicants, 12 months for South Sudan initial TPS applicants, 20 months for Syrian initial TPS applicants, 9 months for Afghanistan initial TPS applicants, and five months for Burma initial TPS applicants).

<sup>41</sup> U.S. Department of Homeland Security, Federal Register Notice, "Extension and Redesignation of Venezuela for Temporary Protected Status," October 3, 2023, <https://www.federalregister.gov/documents/2023/10/03/2023-21865/extension-and-redesignation-of-venezuela-for-temporary-protected-status>.

<sup>42</sup> Compare 8 C.F.R. § 274a.12(a) with 8 C.F.R. § 274a.12(c).

<sup>43</sup> U.S. Citizenship and Immigration Services, "Policy Manual: Chapter 2 - Eligibility Requirements," <https://www.uscis.gov/policy-manual/volume-10-part-a-chapter-2#footnote-8>; 8 U.S.C. § 1103; 6 U.S.C. § 202.

<sup>44</sup> 8 C.F.R. § 274a.2(b)(1)(vi)(C).



did for the 540-day temporary final rule,<sup>47</sup> DHS should consider implementing this change for good cause through an interim final rule on an emergency basis, given the sudden spike in migration and unprecedented strain on state resources. Longer term, the Department should consider rulemaking to increase its flexibility to adopt sub-regulatory policies allowing for the issuance of EADs automatically to greater classes of individuals who otherwise must apply for employment authorization.

2. **Re-parole those whose periods of parole expired before they could receive an EAD.** While parolees entering via CBP One typically receive two-year periods of parole, those who were paroled outside of the CBP One system or before the system's implementation have sometimes received much shorter periods of parole that have expired or will soon expire<sup>48</sup> — often before they can apply for and receive an EAD based on their parole status. Instead, for many former parolees who are also applying for asylum, the only path to employment authorization is to apply for an EAD based on their asylum applicant status and wait the required 180 days. This delay is exacerbated by the difficulty of applying for asylum to even start running the 180-day clock, particularly for parolees who are unable to access the scarce options for affordable legal representation and must file *pro se*.<sup>49</sup> DHS should re-parole former parolees for two years, if they still qualify and merit re-parole as a matter of discretion. Authorizing re-parole would allow eligible individuals to apply for parole-based EADs under the (c)(11) code rather than having to wait for the 180-day asylum EAD clock to run.<sup>50</sup>
3. **Automatically renew EADs upon re-parole.** Whenever renewing the parole status of a parolee who has been authorized to work, USCIS should also renew their EAD to avoid a gap in work authorization. Currently, delays in EAD processing result in some re-parolees facing lengthy periods during which they cannot legally work because their existing EAD has expired and their renewal application has not been processed.<sup>51</sup> DHS

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<sup>45</sup> U.S. Citizenship and Immigration Services, “Certain Afghan and Ukrainian Parolees Are Employment Authorized Incident to Parole,” November 21, 2022, <https://www.uscis.gov/newsroom/alerts/certain-afghan-and-ukrainian-parolees-are-employment-authorized-incident-to-parole>.

<sup>46</sup> See, e.g., 8 C.F.R. § 212.19(g).

<sup>47</sup> DHS recently issued a temporary rule without prior notice and an opportunity to comment and with an immediate effective date pursuant to the Administrative Procedure Act’s “good cause” exception. 5 U.S.C. § 553(b)(B) and (d) (3); see U.S. Department of Homeland Security, Federal Register Notice, “Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants,” May 4, 2022, <https://www.federalregister.gov/documents/2022/05/04/2022-09539/temporary-increase-of-the-automatic-extension-period-of-employment-authorization-and-documentation>.

<sup>48</sup> Migration Policy Institute, “In the Twilight Zone: Record Number of U.S. Immigrants Are in Limbo Statuses,” Muzaffar Chishti and Kathleen Bush-Joseph, August 2, 2023, <https://www.migrationpolicy.org/article/twilight-immigration-status>.

<sup>49</sup> Maine Public Radio, “Facing Threat of Deportation Many Asylum Seekers in Maine Struggle to Find Legal Representation,” Ari Snider, February 17, 2023, <https://www.mainepublic.org/courts-and-crime/2023-02-17/facing-threat-of-deportation-many-asylum-seekers-in-maine-struggle-to-find-legal-representation>.

<sup>50</sup> The EAD category for asylum seekers is 8 C.F.R. § 274a.12(c)(8) (“(c)(8)”), while the EAD category for most parolees is 8 C.F.R. § 274a.12(c)(11) (“(c)(11)”).

<sup>51</sup> For example, Massachusetts immigration advocates have reported that clients granted parole for less than two years applied for re-parole, but their requests were either not adjudicated at all or not in a timely manner. They also applied for work permits, then waited months for the adjudication of their EADs. By the time the EADs arrived, these parolees had not yet been re-paroled, and had only a few months left of employment eligibility. They were

has automatically extended EADs for certain groups in the past, including for Ukrainian parolees whose parole is extended.<sup>52</sup> Similarly, DHS should explore automatically renewing the EAD of any parolee who is re-paroled and who previously secured an EAD pursuant to 8 C.F.R. § 274a.12(c). Alternatively, short of automatic renewal of EADs, DHS should streamline the process for re-parolees to renew their EADs: as was done for Afghan re-parolees, DHS can allow applicants to check a box on their re-parole application indicating that they also seek an EAD, rather than requiring them to complete a separate I-765 application.<sup>53</sup>

- 4. Eliminate the regulatory 150-day asylum EAD clock and the pause on running the clock for applicant-caused delays.** Currently, asylum seekers must wait 150 days before they are able to submit an EAD application,<sup>54</sup> and USCIS cannot issue the EAD until 30 days later,<sup>55</sup> for a minimum total waiting period of 180 days. While the 180-day clock is statutory and outside of DHS’s control, the 150-day clock is regulatory, and DHS has the authority to eliminate or shorten that wait period. Doing so would afford asylum seekers the convenience of submitting EAD applications at the same time as asylum applications — when many have the assistance of attorneys. This change would also allow USCIS to begin processing EADs sooner, to ensure that EADs are fully processed and ready to be issued to asylum seekers on the 180th day after submission of an asylum application. Additionally, in practice, asylum applicants often must wait much longer than 150 days to submit EAD applications because, pursuant to a DHS regulation, the counting of days can be paused due to “[a]ny delay requested or caused by the applicant.”<sup>56</sup> Pausing the clock not only disadvantages asylum seekers; it also imposes a time-consuming administrative burden on USCIS, which must “track[] . . . the start and stop dates for each individual applicant’s case.”<sup>57</sup> DHS should eliminate the practice of pausing the asylum clock due to “applicant-caused delays,” such as requests to change an asylum interview location based on a change in address.<sup>58</sup> DHS could either eliminate the “delay” regulation, 8 C.F.R. 208.7(a)(2), altogether or issue policy guidance stating that any

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therefore unable to find work. Email from Massachusetts Law Reform Institute, September 25, 2023, on file with the Office of Senator Elizabeth Warren.

<sup>52</sup> U.S. Department of Homeland Security, “Uniting for Ukraine,” last updated September 22, 2023, <https://www.dhs.gov/ukraine> (noting that when parole is extended, USCIS will issue a I-797C to “demonstrate continued employment authorization through the extended parole period”). Cf. U.S. Citizenship and Immigration Services, Federal Register Notice, “Extension and Redesignation of Haiti for Temporary Protected Status,” January 26, 2023, <https://www.federalregister.gov/documents/2023/01/26/2023-01586/extension-and-redesignation-of-haiti-for-temporary-protected-status> (permitting automatic EAD extensions for Haitian TPS beneficiaries).

<sup>53</sup> U.S. Citizenship and Immigration Services, “Re-Parole Process for Certain Afghans,” last updated October 18, 2023, <https://www.uscis.gov/humanitarian/information-for-afghan-nationals/re-parole-process-for-certain-afghans>.

<sup>54</sup> 8 C.F.R. § 208.7(a)(1).

<sup>55</sup> 8 U.S.C. § 1158(d)(2).

<sup>56</sup> 8 C.F.R. § 208.7.

<sup>57</sup> U.S. Department of Homeland Security, Federal Register Notice, “Asylum Application, Interview, and Employment Authorization for Applicants,” November 14, 2019, <https://www.federalregister.gov/documents/2019/11/14/2019-24293/asylum-application-interview-and-employment-authorization-for-applicants>.

<sup>58</sup> U.S. Citizenship and Immigration Services, “The 180-Day Asylum EAD Clock Notice,” revised August 2023, <https://www.uscis.gov/sites/default/files/document/notices/Applicant-Caused-Delays-in-Adjudications-of-Asylum-Applications-and-Impact-on-Employment-Authorization.pdf>.

request for additional time to submit evidence, attend an interview, or comply with other legal requirements — if based on a lack of legal representation — does not constitute an applicant-caused “delay” for purposes of the tolling regulation.

5. **Re-designate Nicaragua and Haiti for TPS status.** Nicaragua was most recently designated for TPS on January 5, 1999, while Haiti was most recently designated on February 4, 2023.<sup>59</sup> Nicaraguans and Haitians who entered the United States after those respective dates are not eligible for TPS status. Alongside Venezuela — for which we applaud the recent TPS re-designation — Nicaragua and Haiti have been top humanitarian priorities for TPS. Members of Congress have called on the Biden Administration to re-designate Nicaragua for TPS so that Nicaraguans who arrived after 1999 may receive TPS status.<sup>60</sup> And while the Administration responded to calls to re-designate Haiti for TPS last year,<sup>61</sup> the many Haitians who have entered the country since February 2023 lack TPS protection. This move is critical not only in order to extend protection to Nicaraguans and Haitians who cannot safely return to their home countries; it would also allow recently arrived nationals of those countries to be authorized to work incident to their TPS status,<sup>62</sup> and receive EADs once they are found *prima facie* eligible for TPS based on an initial review of their applications.<sup>63</sup> Otherwise, many are left with no path to protection or employment authorization, except for possibly the asylum system, which requires them to wait a minimum of 180 days for EADs.
6. **Prioritize technological improvements to USCIS’s automated systems for processing EAD applications.** To the extent USCIS has identified needs for critical improvements to its IT systems used for processing EADs, DHS should prioritize directing resources toward those system improvements and coordinate with the U.S. Digital Service to improve the speed, reliability, and user-friendliness of USCIS’s online EAD systems.

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<sup>59</sup> U.S. Citizenship and Immigration Services, “Temporary Protected Status Designated Country: Nicaragua,” last updated October 5, 2023, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-nicaragua>; U.S. Citizenship and Immigration Services, “Temporary Protected Status Designated Country: Haiti,” last updated September 19, 2023, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-haiti>.

<sup>60</sup> Letter from Richard Durbin et al., to Secretaries Anthony Blinken and Alejandro Mayorkas, July 18, 2023, <https://www.durbin.senate.gov/imo/media/doc/Venezuela%20and%20Nicaragua%20TPS.pdf>.


<sup>61</sup> U.S. Department of Homeland Security, “Secretary Mayorkas Extends and Redesignates Temporary Protected Status for Haiti for 18 Months,” press release, December 5, 2022, <https://www.dhs.gov/news/2022/12/05/secretary-mayorkas-extends-and-redesignates-temporary-protected-status-haiti-18>.

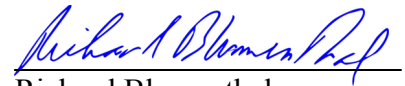
<sup>62</sup> 8 C.F.R. § 274a.12(a)(12).

<sup>63</sup> U.S. Citizenship and Immigration Services, “Temporary Protected Status,” last updated October 10, 2023, <https://www.uscis.gov/humanitarian/temporary-protected-status>.

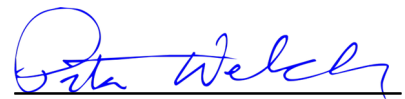
The byzantine EAD system has, for too long, caused real-world harm for newly arriving families. The changes above are just examples of the many steps DHS could take to help protect new arrivals from those harms, while also alleviating the burden on our states and their citizens. We appreciate your attention to this important matter.


Sincerely,

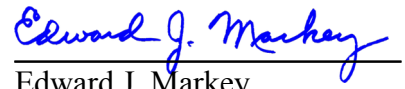
  
Elizabeth Warren  
United States Senator

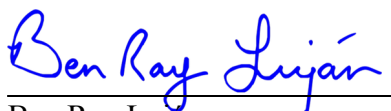
  
Richard Blumenthal  
United States Senator

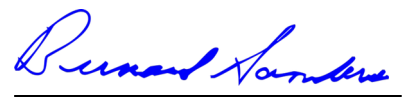
  
Mazie K. Hirono  
United States Senator

  
Peter Welch  
United States Senator

  
Tammy Duckworth  
United States Senator

  
Edward J. Markey  
United States Senator

  
Ben Ray Lujan  
United States Senator

  
Bernard Sanders  
United States Senator