

Congress of the United States
Washington, DC 20515

September 9, 2021

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, D.C. 20528

The Honorable Ur Jaddou
Director
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Mayorkas and Director Jaddou:

We write to express our concerns regarding the affirmative asylum application backlog at U.S. Citizenship and Immigration Services (USCIS). As of April 2021, the number of pending asylum applications reached a record high—nearly 400,000—representing a total of more than 600,000 asylum applicants who are awaiting a decision on their fate.¹ Of these cases, 94 percent have not yet received an interview, while the remaining 6 percent have been interviewed but are awaiting a final decision.²

As you are aware, since January 2018, USCIS has been processing asylum applications under a “last in, first out” (LIFO) approach. Except for a 3-year period when USCIS briefly switched to a “first in, first out” policy, LIFO has been the approach that USCIS has used to process affirmative asylum applications for more than 25 years.

Despite this, the asylum backlog has continued to grow, and older meritorious cases have languished for years. As a result, individuals who have experienced significant trauma are left in limbo, often separated from their families while their applications are pending.³ This can exacerbate the trauma experienced by applicants and impose significant hardships on families, particularly those who remain exposed to dangerous conditions in their home country. Sadly, some applicants report that their children have experienced ongoing violence or have even disappeared while they wait for a decision on their applications—tragic outcomes that could

¹ Human Rights First. 2021. “Protection Postponed: Asylum Office Backlogs Cause Suffering, Separate Families, and Undermine Integration.” https://www.humanrightsfirst.org/sites/default/files/Protection_Postponed.pdf; Jason Dzubow, Affirmative Asylum Fact Sheet (2021), pp. 1-3.; *Number of Service-wide Forms Fiscal Year to Date by Quarter and Form Status* (2020), distributed by U.S. Citizenship and Immigration Services. https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2020Q4.pdf.

² Jason Dzubow, Affirmative Asylum Fact Sheet (2021), pp. 1-3.; *Number of Service-wide Forms Fiscal Year to Date by Quarter and Form Status* (2020), distributed by U.S. Citizenship and Immigration Services. https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2020Q4.pdf

³ Designing a Trauma Informed Asylum System in the United States, Center for Victims of Torture (2021), https://www.cvt.org/sites/default/files/attachments/u101/downloads/2.4.designing_a_trauma_informed_asylum_report.feb42021.pdf.

have been avoided had their applications been processed promptly.⁴ This indefinite state of separation can have devastating emotional impacts on applicants, leaving them in a constant state of fear and uncertainty.

We recognize that the increase in the asylum backlog can be attributed in part to an increased number of asylum seekers who are lawfully exercising their right to request protection in the United States as they flee persecution. We support your efforts to restore humanity and efficiency at the border and to process all asylum claims as expeditiously as possible, consistent with principles of due process. We also commend USCIS for its efforts to significantly increase the corps of asylum officers to adjudicate cases and address the backlog. We are, however, deeply concerned about those who have languished in the backlog for extended periods of time—some close to seven years. As you continue to work to restore faith in our legal immigration system, we ask that you consider adopting a balanced approach to asylum adjudications—one that both prioritizes new cases and provides relief to those who have been waiting for a decision on their cases the longest. Toward this end, we ask that you consider:

1. Designating a portion of asylum officers to work “back to front” to address the backlog and ensure the longest-pending cases are addressed. This would give those who were moved to the back of the line by the 2018 change to LIFO the opportunity to receive a more timely decision on their cases.
2. Creating a five-year “cutoff period” after which time a pending asylum application would be prioritized in the application queue. This would provide greater uniformity in wait times while reassuring applicants that they will not wait decades for an interview.

A balanced adjudication policy will allow USCIS to efficiently address new asylum applications, while giving hope to those who have waited years for the peace of mind that comes with lawful status. Though we must swiftly and fairly adjudicate the claims of new asylum seekers, we must not leave others behind in the process.

Sincerely,



David N. Cicilline
Member of Congress



Sylvia R. Garcia
Member of Congress



Pramila Jayapal
Member of Congress



Joe Neguse
Member of Congress



Linda T. Sánchez
Member of Congress

⁴ Center for Victims of Torture Submission on Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services (2021), https://www.cvt.org/sites/default/files/attachments/u93/downloads/cvt_comment_barriers_uscis_benefits_services_5.19.2021.pdf

/s/Nanette Diaz Barragán
Member of Congress

/s/Karen Bass
Member of Congress

/s/Tony Cárdenas
Member of Congress

/s/André Carson
Member of Congress

/s/Judy Chu
Member of Congress

/s/Yvette D. Clarke
Member of Congress

/s/Gerald E. Connolly
Member of Congress

/s/J. Luis Correa
Member of Congress

/s/Mark DeSaulnier
Member of Congress

/s/Debbie Dingell
Member of Congress

/s/Veronica Escobar
Member of Congress

/s/Ruben Gallego
Member of Congress

/s/Raul Grijalva
Member of Congress

/s/Jahana Hayes
Member of Congress

/s/Sheila Jackson Lee
Member of Congress

/s/Henry C. “Hank” Johnson Jr.
Member of Congress

/s/Carolyn B. Maloney
Member of Congress

/s/Betty McCollum
Member of Congress

/s/James P. McGovern
Member of Congress

/s/Grace Meng
Member of Congress

/s/Jerrold Nadler
Member of Congress

/s/Alexandria Ocasio-Cortez
Member of Congress

/s/Chellie Pingree
Member of Congress

/s/Mark Pocan
Member of Congress

/s/Jamie Raskin
Member of Congress

/s/Mary Gay Scanlon
Member of Congress

/s/Jan Schakowsky
Member of Congress

/s/Albio Sires
Member of Congress

/s/Thomas R. Suozzi
Member of Congress

/s/Rashida Tlaib
Member of Congress

/s/Ritchie Torres
Member of Congress

/s/Lori Trahan
Member of Congress

/s/Juan Vargas
Member of Congress

/s/Nydia M. Velazquez
Member of Congress

/s/John Yarmuth
Member of Congress



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

December 15, 2021

The Honorable David Cicilline
U.S. House of Representatives
Washington, DC 20515

Dear Representative Cicilline:

Thank you for your September 9, 2021 letter to the U.S. Department of Homeland Security (DHS) and U.S. Citizenship & Immigration Services (USCIS). Secretary Mayorkas asked that I respond on his behalf.

I share your interest in the affirmative asylum backlog, and one of my priorities as USCIS Director is to use all available policy and operational improvements to reduce both the number of pending cases and overall processing times.

USCIS has taken numerous steps to address pending affirmative asylum caseloads by expanding operations and allocating adjudicative resources according to workload priorities. For example, USCIS increased the number of authorized asylum officer positions from 273 in 2013 to 771 in 2019, which was intended in part to reduce the affirmative asylum backlog. However, the full impact of this step has not been realized due to COVID-19 health precautions restricting in-person services. Even after reopening the asylum offices in June 2020, necessary health precautions reduced the number of in-person interviews that could be safely conducted, thus slowing the rate at which USCIS could adjudicate affirmative asylum cases.

As another step to address the affirmative asylum backlog, USCIS implemented the use of video technology for interviews to increase the number of asylum interviews conducted safely during the pandemic. These efforts successfully increased monthly affirmative asylum case completions by 39%, from 2,916 monthly completions in October 2020 to 4,063 monthly completions in March 2021, which has continued through the year with 4,266 monthly completions in September 2021. While asylum office case completions and interviews remain below pre-pandemic levels, further gains in interviews and case completions are expected in FY 2022.

In addition, as you noted in your letter, USCIS prioritizes scheduling new cases for interview under the “Last In, First Out” (LIFO) policy, which has proven to be effective in slowing the growth of affirmative asylum receipts and pending caseloads. Other asylum cases are scheduled for interview as resources permit. Asylum offices also continue to devote portions of their schedules to older applications. Additionally, USCIS may consider, on a case-by-case basis, an urgent request by an asylum seeker to be scheduled for an interview outside of the LIFO priorities. See <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/affirmative-asylum-interview-scheduling>. In fact, 26% of the interviews conducted in fiscal year (FY) 2021 were of cases pending for 36 months or more, and 38% of the cases completed were of cases pending for 36 months or more.

LIFO is a critical tool in controlling non-meritorious or fraudulent applications filed only to obtain employment authorization. During the last period of significant affirmative asylum caseloads in the 1990s, some individuals realized that, due to processing delays, they could file non-meritorious asylum applications and receive employment authorization before their cases were reviewed or adjudicated. To address this issue, the legacy Immigration and Naturalization Service implemented several reforms, including shifting to a LIFO approach to interview scheduling. By giving priority to the newest cases, applicants had their cases heard and adjudicated quickly, meaning filing asylum applications solely to obtain employment authorization would be fruitless and thus discourage others from following the same path. During the first 20 years of LIFO scheduling, the affirmative asylum backlog was reduced from a high of over 400,000 to just under 5,000 cases by 2009. By the beginning of FY 2013, just over 4,200 cases were pending adjudication longer than six months.

In December 2014, USCIS temporarily adopted a “First-In-First-Out” (FIFO) scheduling system. Also at that time, most USCIS asylum officers were assigned to address the surge of credible fear screenings, reasonable fear screenings, and unaccompanied child asylum cases. After announcing the end of LIFO scheduling in December 2014, the number of affirmative asylum applications filed per year increased from 56,898 in FY 2014 to 83,197 in FY 2015 (+46%); to 114,965 in FY 2016 (+38%); to 141,695 in FY 2017 (+23%). The affirmative asylum caseload grew correspondingly. In FY 2015, the year after switching from LIFO to FIFO, the number of pending asylum applications grew by 77%; in FY 2016, it grew by 79%; and in FY 2017, it grew by 49%.

To stem the growth of the agency’s asylum application backlog and identify earlier in the process any frivolous, fraudulent, or otherwise non-meritorious asylum claims, USCIS announced on January 31, 2018, that it would return to the LIFO scheduling system. After the return to LIFO, the number of affirmative asylum applications filed per year decreased from 141,695 in FY 2017 to 106,147 in FY 2018 (-25%); to 95,959 in FY 2019 (-10%); and to 94,077 in FY 2020 (-2%). Since re-instituting LIFO, the annual growth of pending applications has dropped dramatically to 10% in FY 2018, 7% in FY 2019, and 13% in FY 2020.

We appreciate your request that USCIS consider designating a portion of asylum officers to work “back to front” on the oldest affirmative asylum cases. I can confirm that during FY 2021, USCIS allocated resources to the completion of our oldest cases, and we will continue to do so in the future while maintaining LIFO scheduling priorities generally. We will also continue to explore what the right balance is between working the oldest cases and maintaining the LIFO scheduling priorities. In addition, USCIS will continue its practice of considering requests to expedite interview scheduling for emergency or urgent humanitarian reasons, such as for applicants whose eligible dependents (spouses or unmarried children under the age of 21) remain in their country of origin and are at risk.

You also requested that USCIS consider establishing a five-year cutoff period, after which time a case would be prioritized for interview. USCIS’ current scheduling practice aims to maximize scheduling of cases at each office to the extent feasible, taking into account local constraints while remaining compliant with applicable public health and safety measures. USCIS must also account for the demands of other workload priorities, notably border protection screenings such as credible and reasonable fear interviews, and their impact on the local capacity for asylum interviews at each office. USCIS has been considering what feasible uniform practices may be implemented for scheduling cases at all offices. As we consider the options, we will take your recommendation into account.

Finally, as another way to address this issue, additional resources are being sought to significantly reduce or eliminate the backlog. The President’s FY 2022 budget to Congress includes \$345 million to both reduce application and petition backlogs and support the increased refugee admissions ceiling. Within the backlog portion of the request, it includes support to address the asylum backlog. USCIS is deeply appreciative of Congressional support of \$250 million, which was included in the FY 2022 Continuing Resolution. This will assist USCIS in its backlog reduction efforts.

Thank you again for your letter and for providing USCIS with meaningful input on how to address the asylum caseloads. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director