Codias Law

TESTIMONY OF

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"Restoring INA § 204(c): How the Trump Administration Can Protect Marriage Fraud Victims and Swiftly Remove Unindicted Felons Through BIA Appeals and an Immigration Fraud Court"

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Codias Law is the nation's premier immigration law firm for U.S. citizens who are victims of immigration fraud.

BEFORE THE U.S. HOUSE COMMITTEE ON THE JUDICIARY

Subcommittee on Immigration Integrity, Security, and Enforcement

"Restoring Integrity and Security to the Visa Process"

Wednesday, June 25, 2025, at 2:00 p.m.

Table of Contents

I. Introduction

Who We Are

My name is Cody M. Brown. I am the managing attorney at Codias Law, the nation's premier immigration law firm exclusively for U.S. citizens who are victims of immigration fraud. I have had a front-row seat—in more ways than one—to the national immigration fraud crisis.

Who We Represent

Our clients—half women, half men—come from all walks of life and span every demographic and political persuasion. We represent everyday Americans, high-net-worth individuals, media personalities, members of the intelligence community, and contractors with access to sensitive government facilities who are targeted by foreign perpetrators for a multitude of reasons.

We develop deep relationships with our clients as we walk with them through some of the darkest chapters of their lives. They are deceived, abandoned, and betrayed not only by the foreign nationals who defraud them, but by an unfeeling and unresponsive bureaucracy that routinely prioritizes the wants and wishes of foreign nationals over the rights and interests of U.S. citizens.

What We Do

At Codias Law, we help victims of immigration fraud navigate their legal options at both the state and federal levels. At the state level, we consult with local counsel and provide litigation support in cases that intersect with federal immigration law. These include annulments based on immigration marriage fraud, defense against improper enforcement of Form I-864 affidavits, civil protective order proceedings used to manufacture evidence of abuse for immigration benefits, and criminal defense matters involving U visa fraud. We advise on immigration implications, conduct fraud investigations, prepare legal assessments, collect evidence through discovery or forensic examination, and support trial preparation.

At the federal level, our work depends on the stage of the immigration process. In some cases, we assist clients in withdrawing visa petitions or I-864 affidavits. In others, we

conduct full-scale fraud investigations, prepare comprehensive legal assessments, and—if fraud is substantiated—help clients pursue appropriate federal actions.

How We Do It

We take pride in delivering ethical, premium-quality work product. We carefully screen all prospective clients to ensure our firm is not used as a conduit for unethical or improper purposes. We accept only a small fraction of inquiries, focusing on matters where we can deliver significant value and devote the time and resources each case deserves.

Once retained, we apply a disciplined and methodical approach to every investigation. We begin with structured intake and factual review, followed by the collection and careful organization of evidence across multiple domains. We use best-in-class investigative databases to develop witness profiles and prepare detailed witness lists. We construct highly detailed event timelines and, once the facts have been fully gathered, produce exhaustive fraud assessments—often exceeding one hundred pages in length. Every conclusion we reach is the product of first-class, evidence-driven analysis.

In Honor of Our Clients

I dedicate this testimony to our clients—to ensure their voices are heard, that the problems are clearly understood, and that both Congress and the current administration receive immediate and actionable guidance on how existing law can be used to provide relief to marriage fraud victims and restore integrity to the most exploited visa program in the immigration system.

II. Scope of Testimony

For years, the border captured the nation's attention, while masking a far more insidious scandal: the collapse of the lawful immigration system—where the law goes unenforced and antifraud safeguards are deliberately dismantled. Why spend billions on border security if foreign nationals can simply lie their way through the front door?

This testimony focuses on that interior collapse. While the national conversation remains fixated on illegal border crossings, it is the breakdown of interior enforcement—and the erosion of statutory protections—that poses the greatest long-term threat to victims and to the rule of law.

A. General Areas of Concern

Codias Law represents the most overlooked constituency in the immigration system: U.S. citizens who are victimized by foreign nationals. In our practice, we routinely encounter fraud across nearly every major immigration benefit category. But three programs stand out for their frequency, severity, and direct harm to Americans: marriage-based fraud, U visa fraud, and I-864 exploitation.

Unlike other programs (e.g., asylum, student visas, etc.) where the harm is largely institutional and indirect, these programs weaponize the immigration system directly against individual Americans. Contrary to a common myth, these are not victimless crimes. Our clients suffer profound legal, financial, emotional, and physical harm, including prolonged trauma, bankruptcy, and serious illness. These cases are not theoretical. These victims are real, and the damage is lasting. Equally important, we encounter potential national security threats that, to this day, remain unaddressed.

Below is a brief overview of the most common forms of fraud we confront.

1. Marriage-Based Immigration Fraud

Marriage fraud is the most deeply entrenched scheme in our practice. It typically falls into three categories:

- **One-Sided Marriage Fraud**: A foreign national deceives a U.S. citizen into marriage to gain immigration benefits, then abandons the relationship once status is secured. This is precisely the type of abuse Congress sought to prevent through the bipartisan Immigration Marriage Fraud Amendments of 1986 (IMFA).

- **VAWA Self-Petition Fraud**: A foreign spouse fabricates allegations of domestic violence to obtain lawful permanent residence without the U.S. citizen's knowledge or involvement. No arrest or conviction is required. Petitions are adjudicated entirely ex parte. Often, the supporting evidence includes a routine police report, a restraining order from a lenient jurisdiction, and a therapy letter obtained online.

- **I-751 Waiver Fraud**: After receiving conditional permanent residence, the foreign national bypasses the joint petition requirement by filing a waiver based on fabricated abuse or hardship. Despite IMFA's safeguard requiring joint signatures, USCIS routinely grants waivers based on superficial or unverified documentation.

These schemes exploit foundational weaknesses in the marriage-based immigration system. In many cases, the fraud is coordinated not only by the foreign national but also by family members, sophisticated networks, private attorneys, and publicly funded legal aid organizations. Over time, adjudicators have normalized this conduct, and the system has stopped asking hard questions.

2. Exploitation of the I-864 Affidavit of Support

The Form I-864 Affidavit of Support is a binding contract required in every spousal-based green card case. *See* 8 U.S.C. § 1183a. It was designed to protect taxpayers by ensuring that immigrants would not become public charges. But what was meant as a fiscal safeguard has become a weapon against U.S. citizens.

Our clients sign the I-864 in good faith, believing they are supporting a genuine marriage. When the foreign national's fraud succeeds, they often sue the U.S. citizen for breach of contract, demanding ongoing financial support, a form of immigration alimony. There is no statutory fraud defense, no duty to seek employment, and few realistic ways of discharging the obligation.

The financial burden is significant—upwards of hundreds of thousands of dollars—even after divorce. And despite common belief, the I-864 obligation does not automatically end after ten years; it can last indefinitely. The risks are exacerbated by an ambiguous statute that failed to address key issues in I-864 enforcement actions, including:

- How household size is calculated post-separation;
- What income counts toward the obligation;
- Whether any equitable defenses apply;
- Whether offsets are available; and
- Whether the obligation can be settled or modified.

This has left courts to fill the gaps inconsistently, often with cursory analysis and without proper briefing, particularly in the Ninth Circuit.

3. Abuse of the U Visa Program

The U visa program—originally promoted as a tool to help law enforcement solve crimes—is now pitched as a humanitarian benefit. In reality, it solves virtually no crime and has become the most abuse-prone immigration program in the system. USCIS does not track how many crimes are actually solved because the number is negligible.

The program allows any illegal alien to secretly accuse a U.S. citizen of a crime and apply for a visa after securing a law enforcement certification. No arrest. No charges. No conviction. Just an allegation—often with no notice to the accused. The process is entirely ex parte, and there is no mechanism for rebuttal.

Certifications are routinely rubberstamped, especially in sanctuary jurisdictions like California, where state laws like SB 674 pressure law enforcement agencies to certify U visas unless they affirmatively justify denial. Some prosecutors have deliberately withheld U visa certifications during criminal proceedings to avoid triggering Brady disclosure obligations, further eroding due process.

Although Congress imposed a cap of 10,000 visas per year, USCIS created a "waitlist" that confers immigration benefits without any formal adjudication. Once waitlisted, aliens receive deferred action, work permits, Social Security numbers, and often driver's licenses—regardless of merit. Nearly all grounds of inadmissibility can be waived, including prior immigration fraud and serious criminal conduct.

Over 400,000 U visa applications are currently pending. USCIS should terminate the waitlist immediately. Congress should repeal the program in full. It no longer serves a legitimate public purpose. It rewards fraud, subverts due process, and leaves American citizens defenseless.

B. Focus of Testimony

Although our practice spans a wide range of immigration fraud scenarios, we have deliberately chosen to focus on a single antifraud safeguard for purposes of written testimony: INA § 204(c). We believe the Subcommittee will gain far more from a close examination of how one clear statutory bar—enacted by Congress and still on the books—has been systematically dismantled by the administrative state.

We focus on § 204(c) for three reasons:

- **Victim Impact**: Marriage fraud directly targets U.S. citizens. These are not bureaucratic irregularities—they are acts of deception and exploitation with devastating, lifelong consequences for victims.
- **Systemic Volume**: Marriage to a U.S. citizen is the single largest pathway to permanent residence—arguably the highest-priority category for congressional oversight and reform.
- **Institutional Expertise**: Our firm has done the most sustained work in this area—representing victims, documenting failure, and advancing reforms grounded in the statute's original purpose.

But make no mistake—§ 204(c) is not an isolated failure. It is a case study. The same erosion of legislative authority is occurring across other marriage-based safeguards and across the entire benefit structure. We highlight this provision not because it is the only one that matters, but because it reveals—more clearly than most—how federal statutes

can be hollowed out by an administrative state that has become increasingly autonomous, unaccountable, and detached from democratic control.

III. The Problem: National Marriage Fraud Crisis

A. Legislative History of INA § 204(c)

Congress has long recognized that marriage-based immigration is uniquely vulnerable to fraud. Over nearly a century of legislative action, Congress has repeatedly amended the immigration laws to strengthen safeguards, close loopholes, and ensure that lawful permanent residence is reserved for bona fide marital relationships. The history that follows traces how these protections evolved—and how systemic failures across the Executive Branch have allowed marriage fraud to flourish despite clear congressional mandates.

1. Congress Has Combatted Marriage Fraud for a Century

The Immigration Act of 1924 marked an early milestone. While the Act exempted the foreign wives of U.S. citizens from national origin quotas—thereby promoting family reunification—it simultaneously imposed felony penalties for immigration fraud. Specifically, it criminalized knowingly providing false information in immigration applications. *See* Immigration Act of 1924, Pub. L. No. 68-139, §§ 6, 16, 43 Stat. 153, 155 (1924).

Congress reinforced this posture in 1937 by mandating deportation of any alien who secured a nonquota or preference visa through a fraudulent marriage—especially if the marriage was retroactively annulled or the alien failed to perform the marital agreement. *See* Immigration Act of 1924, Amendments, Pub. L. No. 75-79, 50 Stat. 164 (1937).

Following World War II, Congress enacted a series of humanitarian statutes to facilitate family-based immigration. *See* The War Brides Act of 1945, Pub. L. No. 79-271, 59 Stat. 659 (1945); Fiancé Act of 1946, Pub. L. No. 79-471, 60 Stat. 339 (1946); The Displaced Persons Act of 1948, Pub. L. No. 80-774, 62 Stat. 1009 (1948). These measures introduced no new fraud safeguards, relying instead on the existing civil and criminal penalties.

The Immigration and Nationality Act of 1952 marked a comprehensive overhaul of the immigration system—and a turning point in federal marriage fraud enforcement. It substantially expanded marriage-based benefits while embedding durable antifraud tools. *See* Pub. L. No. 414, 66 Stat. 163 (1952). Several provisions introduced lasting incentives for marriage fraud:

- **Exemption from Quotas**: Alien spouses of U.S. citizens were exempted from numerical visa caps governing most other immigrants. *Id.* at § 101(a)(27).
- **Adjustment of Status**: The quota exemption worked in tandem with a newly established procedure—adjustment of status—which allowed certain bona fide nonimmigrants lawfully present in the United States to apply for lawful permanent residence without first departing the United States. *Id.* at § 245(a).
- **Expedited Citizenship**: While most lawful permanent residents had to wait five years before applying for naturalization, alien spouses of U.S. citizens could naturalize after only three years. *Id.* at § 316(a), 319(a).
- **Accelerated Chain Migration**: Once naturalized, a fraudulently admitted spouse could sponsor not only a new spouse, but also parents, children, and siblings—ushering in entire family units and amplifying the original fraud's long-term impact on the immigration system. *Id.* at § 205(b).

Recognizing these vulnerabilities, Congress enacted three foundational antifraud provisions:

- **Presumption of Marriage Fraud**: Authorized deportation of aliens who gained entry through a marriage that ended within two years or who failed to fulfill the marital agreement—unless the alien could affirmatively prove the marriage was bona fide. The provision created a statutory presumption of fraud, put the burden of proof on the alien, and recognized one-sided fraud even where the marriage remained intact. *Id.* at § 241(c). This provision remains substantially intact at INA § 237(a)(1)(G), underscoring Congress's longstanding commitment to make it easier to deport aliens for marriage fraud than other grounds of removal.

- **Fraud-Based Inadmissibility**: Barred admission of "[a]ny alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact." *Id.* at § 212(a)(19). The Board interpreted this ground as imposing a permanent bar, subject only to narrow waivers. *See Matter of G— G—*, 7 I&N Dec. 161, 165 (BIA 1956).

- **Immigration Crimes and Penalties**: Imposed fines and imprisonment for knowingly falsifying documents, making false statements, or aiding others in immigration violations. The provision applied to both aliens and U.S. citizens, reflecting Congress's intent to deter fraud through criminal enforcement. *Id.* at § 402.

In short, the INA of 1952 simultaneously broadened access to marriage-based immigration and enacted some of the most enduring antifraud enforcement tools—civil, administrative, and criminal. Together, these provisions reflected a congressional attempt to balance the desire for family unification for U.S. citizens with the need to protect the integrity of the system.

2. Marriage Fraud Was Excluded From Fraud Waivers

In 1957, Congress enacted a targeted waiver provision designed to provide relief for certain immigrants who had committed document fraud in the aftermath of World War II. Many of these cases involved European refugees who had misrepresented their nationality or other identifying details to avoid repatriation to Communist regimes. To prevent humanitarian hardship, Congress created a mechanism to forgive specific misrepresentations by otherwise eligible immigrants with close family ties in the United States. *See* Immigration and Nationality Act Amendments of 1957, Pub. L. No. 85-316, § 7, 71 Stat. 639, 640–41 (1957); *INS v. Errico*, 385 U.S. 214, 218–20 (1966).

These waivers took two forms:

- **Mandatory Waiver**: Certain immediate relatives of U.S. citizens or lawful permanent residents who had entered the United States through fraud or false claims of nationality were protected from deportation—so long as they were "otherwise admissible at the time of entry."

- **Discretionary Waiver**: In future cases, the Attorney General was granted discretion to admit aliens who had committed similar types of fraud, provided they met all other admissibility requirements.

Although the statute did not expressly reference marriage fraud, the limitation to aliens who were "otherwise admissible" necessarily excluded those who had procured visas through sham marriages. A fraudulent marriage invalidated the qualifying relationship itself and thus defeated admissibility. The Board later confirmed this reading in *Matter of S—*, 7 I&N Dec. 715 (BIA 1958), and *Matter of D'O—*, 8 I&N Dec. 215 (BIA 1958). In both cases, the Board held that even if a fraud waiver applied, the alien must still establish lawful entitlement to the visa category used at entry—something a sham marriage could not provide.

These cases confirmed that while Congress showed mercy for certain classes of documentary fraud, it did not extend relief to aliens who fabricated the very family relationships that serve as the foundation for spousal immigration benefits. The "otherwise admissible" requirement functioned as a gatekeeper, ensuring that fraudulent marriages remained outside the waiver's protection.

3. Original Marriage Fraud Bar Was Codified in 1961

By the early 1960s, marriage fraud had become a major problem. A 1961 House report described "the increasing number of such sham marriages," citing organized schemes—often involving alien seamen—who paid high fees to U.S. citizens in exchange for fraudulent unions. H.R. Rep. No. 1086, 87th Cong., 1st Sess., 36–37 (1961). Senator James O. Eastland (D-MS) likewise called for stronger enforcement, warning of "fraudulent marriages for the purpose of evading the law." 107 Cong. Rec. 19653–54 (1961).

In direct response, Congress enacted a new statutory bar targeting aliens who had previously secured immigration benefits through a fraudulent marriage. The amendment to § 205(c) of the INA provided:

> Notwithstanding the provisions of this subsection, no petition shall be approved if the alien previously has been accorded, by reason of marriage determined by

> the Attorney General to have been entered into for the purpose of evading the immigration laws—
>
> > (1) nonquota status under section 101(a)(27)(A) as the spouse of a citizen of the United States, or
> >
> > (2) a preference quota status under section 203(a)(3) as the spouse of an alien lawfully admitted for permanent residence.

See Immigration and Nationality Act of 1961, Pub. L. No. 87-301, 75 Stat. 650, 654 (Sept. 26, 1961).

This amendment functioned as a "one-bite rule." While it did not retroactively revoke benefits already conferred through a sham marriage, it permanently barred the alien from receiving any future spousal immigration benefit. The provision served both as a deterrent and a firewall—ensuring that those who had once exploited the marriage-based system could not do so again.

The Board confirmed this reading in *Matter of R—,* 9 I&N Dec. 544 (BIA 1962), describing the new bar as "a new legal instrumentality to counteract the increasing number of fraudulent acquisitions of nonquota status through sham marriages." The Board emphasized that the restriction was mandatory, forward-looking, and irrevocable—reflecting Congress's intent to permanently disqualify those who had used marriage fraud to gain entry.

Congress did more than clarify agency discretion: it codified a categorical prohibition. Whereas earlier waivers permitted adjudicators to weigh fraud against family unity, the 1961 bar treated marriage fraud as a fundamental breach of trust. The qualifying relationship was presumed irreparably tainted. No new petition could undo the legal consequences of the fraud. For the first time, the INA expressly declared that one instance of marriage fraud would forever bar access to immigration benefits—no waiver, no discretion, and no second chance.

4. Marriage Fraud Bar Was Preserved in 1965

Four years later, Congress enacted the Immigration and Nationality Act of 1965, abolishing the national origins quota system and reorganizing family- and employment-based preference categories. Amid these sweeping reforms, Congress made the affirmative decision to preserve and relocate the marriage fraud bar in a new § 204(c):

> *…[N]o petition shall be approved if the alien has previously been accorded a nonquota or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws.*

See Pub. L. No. 89-236, § 4, 79 Stat. 911, 915 (1965).

The language remained virtually unchanged. Even as Congress dramatically expanded access to family-based immigration, it reaffirmed that marriage fraud was categorically disqualifying. Section 204(c) continued to impose a mandatory denial—with no waiver, no discretion, and no exception.

5. Marriage Fraud Withstood Expansion of Fraud Waivers

Throughout the 1960s and 1970s, the Supreme Court reshaped key aspects of immigration enforcement. The Warren Court raised the standard of proof for deportation and broadly interpreted statutory waivers for fraud—making it significantly more difficult to remove aliens who had fraudulently entered the United States. Yet marriage fraud remained a categorical exception to these trends.

In *Woodby v. INS*, 385 U.S. 276 (1966), the Warren Court rejected the statutory standard of proof—"reasonable, substantial, and probative evidence"—that Congress has previously enacted in the deportation statute and imposed a new, judicially-created one: the government must prove deportability by "clear, unequivocal, and convincing evidence." The Court reasoned that the severity of deportation warranted heightened procedural protections.

Justice Clark dissented forcefully:

> The Court, by placing a higher standard of proof on the Government, in deportation cases, has usurped the legislative function of the Congress and has in one fell swoop repealed the long-established "reasonable, substantial, and probative" burden of proof placed on the Government by specific Act of the Congress, and substituted its own "clear, unequivocal, and convincing" standard. This is but another case in a long line in which the Court has tightened the noose around the Government's neck in immigration cases.

Woodby significantly increased the government's burden in all deportation cases—making it harder to remove even those found to have committed fraud.

Just days later, the Supreme Court issued another landmark decision in *INS v. Errico,* 385 U.S. 214 (1966), interpreting a fraud waiver provision then codified at INA § 241(f). That statute barred deportation for aliens who entered through fraud, provided they were "otherwise admissible" and had a qualifying family relationship to a U.S. citizen or lawful permanent resident.

The Court held that § 241(f) waived both the misrepresentation and its legal consequences. It rejected the government's argument that misrepresentation of quota status constituted a separate ground of inadmissibility. Instead, the Court construed the waiver broadly, emphasizing the statute's humanitarian purpose: to prevent the breakup of families that included U.S. citizens or lawful permanent residents.

However, the companion case, *Scott v. INS*, made clear that marriage fraud was not covered by the waiver. The alien in *Scott* had entered the United States through a sham marriage contracted to obtain nonquota status. The Second Circuit ruled that a fraudulent marriage does not establish a qualifying spousal relationship under § 241(f), and the Supreme Court—while reversing the judgment based on the existence of a U.S. citizen child—expressly declined to disturb that holding.[1]

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[1] The Supreme Court later narrowed Errico in *Reid v. INS*, 420 U.S. 619 (1975), holding that § 241(f) waives only misrepresentation-based inadmissibility under § 212(a)(19).

Thus, while *Errico* expanded relief for some categories of fraud, it did not excuse marriage fraud. The waiver applied only when a bona fide family relationship existed. A sham marriage failed to meet that requirement.

Although *Woodby* and *Errico* imposed significant limits on the government's enforcement power, both preserved a clear understanding of congressional intent: even in an era of sweeping judicial leniency for immigration fraud, marriage fraud remained intolerable. That clarity would anchor future legislative efforts to fortify the marriage fraud bar and reaffirm its mandatory, categorical nature under INA § 204(c).

6. Congress Began a Fraud Crackdown in the Early 1980s

By the early 1980s, mounting concern over judicial expansion and administrative inconsistency prompted Congress to act. The confusion generated by *Errico* and its progeny—particularly regarding the scope of fraud waivers—revealed growing instability in the enforcement framework. Courts and litigants had begun invoking § 241(f) as a sweeping amnesty provision, far beyond its intended scope.

In response, Congress enacted the Immigration and Nationality Act Amendments of 1981, Pub. L. No. 97-116, 95 Stat. 1611 (1981), a bipartisan reform sponsored by Rep. Romano Mazzoli (D-KY) and passed by voice vote in both chambers. The law eliminated the automatic nature of § 241(f)'s waiver and replaced it with a discretionary mechanism—granting the Attorney General authority, but not a mandate, to waive deportability in fraud-based cases.

The House Judiciary Committee emphasized that Congress never intended § 241(f) to serve as a general amnesty for fraud. The waiver was originally designed to forgive limited misrepresentations by otherwise admissible immigrants with close U.S. family ties. But, as the Committee explained, litigants had distorted that purpose—treating it as a "charter of amnesty, waiving all restrictions for those who have entered the United States through fraud." Court decisions in *Errico* and *Reid* had exacerbated the problem, leaving the law in "a state of confusion" that made uniform enforcement "virtually impossible." *See* H.R. Rep. No. 97-264, at 30 (1981).

In short, the 1981 amendments marked the beginning of a new legislative era—one in which Congress decisively reasserted control over fraud enforcement, curtailed the

misuse of humanitarian waivers, and drew firm lines around the use of family ties to circumvent the law. By restoring executive discretion and narrowing the scope of relief, Congress made clear that immigration fraud—even when linked to close family relationships—does not warrant blanket forgiveness. These reforms laid the groundwork for the far more comprehensive crackdown to come.

7. Senate Hearing Exposed Widespread Marriage Fraud

By the mid-1980s, immigration marriage fraud specifically had escalated into a national immigration enforcement priority. Fraud was rampant, enforcement was inconsistent, and U.S. citizens were increasingly victimized.

To confront this growing crisis, the U.S. Senate Subcommittee on Immigration and Refugee Policy convened a hearing on July 26, 1985. *See Fraudulent Marriage and Fiancé Arrangements to Obtain Permanent Resident Immigration Status: Hearing Before the Subcomm. on Immigration & Refugee Policy of the S. Comm. on the Judiciary*, 99th Cong. (1985). Chaired by Senator Alan Simpson (R-WY), the hearing sought to "inquire into the nature and extent" of marriage fraud. *Id.* at 1. Senator Paul Simon (D-IL) echoed the bipartisan urgency: "[W]e obviously have a problem here, and I think the law has to be tightened up." *Id.* at 2.

The testimony that followed—from the executive agencies, legal experts, and fraud victims—delivered a unanimous diagnosis: marriage fraud was real, serious, and widespread. Legislative safeguards like § 204(c) existed but were easily circumvented. Agencies struggled to prevent and respond to fraud, and defrauded U.S. citizens had no meaningful protection or remedy.

a. INS Identified Marriage Fraud as a Huge Problem

INS Commissioner Alan C. Nelson testified that marriage fraud had become the most exploited pathway to legal immigration. *Id.* at 3-20. The special privileges for foreign spouses—visa number exemptions, labor certification waivers, and expedited paths to naturalization—had created "tremendous draw factors and few deterrents", making this category "irresistible" for fraud. He identified two main types of fraud:

- **Two-sided fraud**, where both parties collude; and

- **One-sided fraud**, where the U.S. citizen is deceived into marriage.

Although overall immigration declined in the late 1970s, marriage-based immigration surged. In FY 1984 alone, INS investigated 62 major fraud rings—some involving hundreds of sham marriages facilitated by immigration attorneys, ministers, or criminal brokers.

Nelson identified four major systemic gaps: (1) no statutory definition of marriage; (2) no conditional residency; (3) a high standard of proof in removal proceedings; and (4) a narrow § 204(c) that applied only *after* benefits were granted. "There is no penalty for attempting to commit fraud," he explained. "The law only acts after the benefit is conferred." He called marriage fraud a "thriving cottage industry"—profitable, exploitable, and dangerous.

One portion of Nelson's testimony attracted scrutiny in later years. After prepared remarks, Senator Simpson directly asked Nelson in a question-and-answer session to quantify the amount of fraud. Nelson acknowledged and emphasized that the INS did not have "hard" data. But in an attempt to answer the question, Nelson cited a preliminary survey from three cities in FY 1984 suggesting that "as much as 30 percent" of spousal immigration cases "may be fraudulent."

Critics later seized on Nelson's figure to discredit subsequent reforms. *See e.g., Azizi v. Thornburgh*, 908 F.2d 1130, 1141 (2d Cir. 1990); *Manwani v. U.S. Dep't of Justice, INS*, 736 F. Supp. 1367, 1372-73 (W.D.N.C. 1990); James A. Jones, *The Immigration Marriage Fraud Amendments: Sham Marriages or Sham Legislation?*, 24 Fla. St. U. L. Rev. 679 (1997), https://ir.law.fsu.edu/lr/vol24/iss3/6.

Yet Nelson's impromptu statement was elicited by a senator's question, was explicitly framed as provisional, and reflected the best available investigatory data. Far more important than an exact percentage was the unanimous consensus in both the legislative and executive branches, fueled by consistent and corroborated testimony of both quantitative and qualitative data, that marriage fraud was a major problem.

These same critics also conveniently leave out that the president of the American Immigration Lawyers Association, then speaking on behalf of 1,850 immigration

lawyers nationwide, also agreed that marriage fraud was a "problem" of a "serious nature" that had existed "for many, many years." *Id.* at 74-76.

b. State Department Confirmed the Global Epidemic

While the INS testimony underscored the domestic scope and systemic vulnerabilities of marriage fraud, the State Department confirmed that the problem extended far beyond U.S. borders. *Id.* at 23-35. Vernon D. Penner Jr., Deputy Assistant Secretary of State for Visa Services, testified that marriage fraud was "one of the most prevalent forms of fraud" in the visa process. "We consider this problem a highly significant one," he warned, "a problem that is growing." He described it as a global phenomenon occurring "at most all of our immigrant visa issuing posts," adding it had reached "folkloric proportions," at some consulates.

c. Fraud Victims Explained the Lack of Remedies

The most moving testimony came from U.S. citizens who were victims of one-sided marriage fraud. Amita Narielwala testified that her husband's behavior changed immediately after their arranged marriage in India. Once he obtained his visa, he abandoned her and later admitted the marriage had been a pretext to immigrate. Despite more than 50 attempts to seek help from INS, she received no assistance. "He said… there is nobody that can take [his green card] away." *Id.* at 42-44.

Patricia Beshara similarly described how an Egyptian national married her in Rome, entered the U.S., and began abusing her physically and financially. Even after she secured a deportation order, he mocked enforcement: "Nobody takes my green card… 100 women will bring me back." *Id.* at 44-48.

Both victims emphasized that their stories were common. There were no penalties for attempted fraud, no mechanism to revoke status once granted, and no structured protections for defrauded citizens. Their testimony revealed the human cost of agency inaction and weak safeguards. The very problems these women described would become the central targets of legislative overhaul the following year.

Together, the testimony from federal officials and victims crystallized the scope of the problem. Within months, Congress began drafting targeted legislation to begin addressing the structural failures exposed at the hearing.

8. Congress Wrote the IMFA of 1986

a. House and Senate Introduced Early Bills

Following the 1985 Senate hearing, Congress moved swiftly to translate testimony into legislation. On November 12, 1985, Representative Bill McCollum (R-FL) introduced H.R. 3737, *Immigration Marriage Fraud Amendments Act*—the first comprehensive legislative effort to address marriage fraud. It created additional criminal penalties, imposed a three-year conditional residency period for foreign spouses, and barred adjustment to full lawful permanent resident status during the conditional period. The bill also empowered the Attorney General to revoke residency if the marriage was found fraudulent or had dissolved, and imposed stricter requirements for fiancé visa applicants.

A Senate companion, S. 2270, was introduced by Senator Paul Simon (D-IL) on April 8, 1986, with bipartisan cosponsors including future Vice President Al Gore (D-TN). Nearly identical to H.R. 3737, the Senate version proposed a shorter, one-year conditional period.

b. GAO Completed an International Survey

To support legislative efforts, Senator Simon commissioned a study from the General Accounting Office (GAO), which issued its findings in July 1986. The report, "Immigration: Marriage Fraud—Controls in Most Countries Surveyed Stronger Than in U.S.," confirmed that U.S. law lacked basic safeguards found in peer nations—such as conditional residency, affirmative evidence of bona fide marriage, and penalties for attempted fraud. U.S. GEN. ACCOUNTING OFFICE, *Immigration: Marriage Fraud—Controls in Most Countries Surveyed Stronger Than in U.S.*, GAO/GGD-86-104BR (July 1986).

c. House Judiciary Expanded the IMFA

On September 12, 1986—ten months after H.R. 3737 was first introduced—the IMFA was marked up by the House Judiciary Subcommittee on Immigration, Refugees, and International Law and forwarded to the full Judiciary Committee. On September 25, the full committee approved the bill by voice vote and issued House Report No. 99-906, which significantly expanded and restructured McCollum's original bill.

The report emphasized that marriage fraud had become a pervasive abuse of the family-based immigration system. Although statutory tools already existed—including criminal penalties and administrative bars—Congress found that those tools were underutilized, inconsistently applied, and often ineffective. "[I]n practice," the report explained, "it is very difficult to revoke or rescind an alien's status, deport him, or even locate him or his spouse." H.R. Rep. No. 99-906, at 6 (1986).

To address these systemic gaps, the Committee's bill adopted a multilayered and logical antifraud framework designed to prevent and respond to marriage fraud throughout the entire lifecycle of the immigration process—from barring perpetrators of fraud from entering the country in the first place, to closely monitoring new marriages for a conditional period, making it easier to deport fraudsters if they got through the initial barrier, and establishing a new federal crime designed to punish and deter perpetrators of marriage fraud:

i. Prevention at the Petition Stage: Expanded § 204(c) and Inadmissibility Bar

The Committee's expansion of INA § 204(c) served as the first gatekeeper, requiring the government to deny visa petitions where the alien had ever attempted or conspired to enter into a fraudulent marriage. This preemptive screening tool ensured that aliens who had previously sought to exploit the marriage-based system—even unsuccessfully—could be disqualified before benefits were granted.

This amendment eliminated the prior "one-bite" rule, under which an alien could reapply for benefits after an initial fraudulent marriage was discovered. By expanding § 204(c) to include attempted and conspiratorial fraud—regardless of whether benefits were ever conferred—Congress created a categorical and enduring bar designed to

ensure that any alien who had ever sought to exploit the marriage-based system could not receive future immigration benefits.

To reinforce this bar, Congress also amended the grounds of inadmissibility at § 212(a) to make any alien ineligible who, by fraud or willful misrepresentation, had sought to procure "any benefit" under the Act. Notably, this bar applied retroactively and extended to all forms of immigration benefits—not just marriage-based visas. *See* H.R. Rep. No. 99-906, at 7 (1986).

ii. Monitoring Through Conditional Residency

Recognizing that some fraudulent marriages would evade initial petition-stage scrutiny, the bill imposed a two-year conditional permanent resident (CPR) status on all aliens who obtained green cards based on a recent marriage. During this conditional period, the alien's status remained provisional and subject to termination.

To convert CPR status into full lawful permanent residency, the couple was required to:

- Jointly file a petition under penalty of perjury during the 90-day window before the second anniversary of CPR status;
- Appear for a personal interview; and
- Attest that the marriage remained legally valid, was not entered into for immigration purposes or compensation, and had not been terminated.

The statute also required the couple to disclose residential and employment history for both spouses—providing DHS with a record that could be scrutinized for inconsistencies or red flags. This post-adjudication monitoring mechanism provided a second opportunity for fraud detection after the initial visa petition had been approved.

iii. Lower Standard of Proof in Removal Proceedings

If the marriage was determined to be fraudulent or otherwise disqualified under the statute, the government could initiate deportation proceedings to terminate conditional status. Critically, the IMFA specified that the burden of proof in such proceedings would rest with the government, but the House lowered the standard of proof required from the "clear and convincing" standard created by the Supreme Court in *Woodby v. INS*, to a "preponderance of the evidence" standard. This reflected Congress's

deliberate effort to lower—not heighten—the evidentiary burden for fraud-based removals.

iv. Criminalization of Marriage Fraud

To further deter marriage fraud, Congress codified marriage fraud as a standalone federal felony, punishable by up to five years in prison and/or a $250,000 fine. This placed marriage fraud on par with other forms of immigration fraud and provided prosecutors with a clear, enforceable statute to prosecute perpetrators.

v. Other Safeguards

The House bill also included structural safeguards to prevent fraud from recurring:

- **Petitioning Restriction**: Aliens who gained permanent residency through marriage were prohibited from filing a new spousal petition for five years unless the prior marriage was affirmatively shown to have been bona fide.
- **Fiancé Visa Reform**: The bill required a showing that the couple had met in person within two years of filing, subject to waiver only for legitimate cultural or hardship reasons.
- **Bar on Marriages During Proceedings**: If an alien entered into a marriage while in exclusion or deportation proceedings, the petition would be denied unless the marriage endured for two years and the alien resided abroad during that time.

While the House Judiciary Committee significantly expanded the scope of the IMFA, the version it reported also weakened several of the core provisions originally proposed by Rep. McCollum in H.R. 3737:

- **Shortened Conditional Residency**: The committee reduced the conditional permanent residency period from three years to two years, limiting the time available to observe the marriage for indicia of fraud before granting full lawful permanent status.
- **Eliminated Ongoing Bona Fide Relationship Requirement**: McCollum's original draft would have allowed the government to revoke conditional status if the couple failed to maintain a bona fide marital relationship. The House version replaced this with a narrower attestation that the marriage had not been terminated, was legally valid, and was not entered into for compensation or to

evade immigration law—removing the statutory basis to revoke status based on estrangement or separation alone.

- **Removed Common Language Requirement for Fiancés**: The original bill required that K visa applicants demonstrate they spoke a common language. The House version struck this provision, despite its intended function of deterring sham engagements between individuals with no genuine personal connection.

d. Senate Judiciary Passes an Even Tougher Bill

On September 26, 1986, the Senate Judiciary Committee reported S. 2270 favorably with an amendment in the nature of a substitute and issued Senate Report No. 99-491. Like the House, the Senate adopted its version of the IMFA by voice vote. The Committee reaffirmed the need to protect the integrity of the immigration system, noting that marriage had become "the most favored alien status" and was increasingly perceived as "the cure-all for immigration problems or violations." S. Rep. No. 99-491, at 17 (1986).

The Senate version preserved the overall structure and most substantive provisions of the House bill. It adopted the House's expansion of INA § 204(c), the new inadmissibility bar for aliens who sought benefits through fraud or misrepresentation, and the two-year conditional residency framework. The Senate also retained the safeguards requiring joint petitioning, in-person interviews, criminal penalties for marriage fraud, and restrictions on repeat petitioning and marriage-based benefits during exclusion or deportation proceedings.

While maintaining the core framework, the Senate bill diverged from the House version in several important respects:

- **No Guaranteed Hearing or Evidentiary Standard**: The Senate version did not include the House's language guaranteeing a deportation hearing following the termination of conditional status, nor did it incorporate the House's "preponderance of the evidence" standard. Instead, it provided that conditional status would terminate if the Attorney General was "not satisfied" with the evidence submitted and that the alien would become deportable as of the second anniversary of admission.

- **Restored Ongoing Relationship Requirement**: The Senate reinstated a substantive requirement that the couple maintain a viable, bona fide relationship during the conditional period, rejecting the legal standard articulated in *Matter of Boromand*, 17 I&N Dec. 450 (BIA 1980), which had deemed the ongoing nature of the marriage irrelevant. The Senate stated that "separations or the initiation of actions to dissolve or annul the marriage may properly be reason to conclude that a bona fide relationship does not exist if there are no efforts under way to reconcile." S. Rep. No. 99-491, at 21.

- **Narrower Hardship Waiver Criteria**: Although the House version authorized hardship waivers from the joint filing requirement, the Senate emphasized that such waivers were not to be granted routinely and should be reserved for "unusual circumstances," such as domestic abuse, serious illness, or especially harsh conditions in the alien's home country.

- **Automatic Termination of Inadmissibility Waivers**: The Senate clarified that any waiver of inadmissibility granted solely on the basis of a marriage—such as for past fraud or certain criminal offenses—would automatically terminate if the marriage ended or conditional status was revoked. This provision ensured that temporary relief based on a marriage could not be used to gain permanent status after the relationship dissolved.

These changes reflected the Senate Judiciary Committee's intent to preserve the architecture of the House bill while adding clarity, narrowing discretionary relief, and reinforcing the principle that marriage-based immigration must rest on the continued existence of a bona fide marital relationship.

9. Congress Unanimously Agreed to Pass the IMFA

a. House Floor Debate of H.R. 3737

On September 29, 1986, the House of Representatives considered H.R. 3737, as reported by the House Judiciary, under suspension of the rules.

Floor debate reflected unanimous agreement that marriage fraud posed a serious threat to the integrity of the immigration system—and that existing enforcement tools were inadequate. Subcommittee Chairman Romano Mazzoli (D-KY) described marriage

fraud as a "serious problem" stemming from the privileged immigration status afforded to spouses of U.S. citizens. Ranking Member Dan Lungren (R-CA) emphasized the practical necessity of the bill, citing INS reports that marriage fraud was "one major way in which people have gotten around the law."

Rep. Bill McCollum (R-FL), the bill's sponsor, explained that the legislation targeted both categories of fraud: arranged marriages for payment and deceitful relationships in which U.S. citizens were tricked into sponsorship. He emphasized that the two-year conditional residency period was designed to give the government a second opportunity to detect fraud before granting permanent status.

Rep. Barney Frank (D-MA), who played a key role in negotiating the final bill, praised the enforcement mechanisms as both tough and fair. He described the IMFA as a model for how to strengthen immigration safeguards without penalizing legitimate couples. "This bill," he said, "is the right kind of law enforcement."

No opposition was raised to the bill or its expanded antifraud provisions, including the broadened bar under INA § 204(c). The House passed H.R. 3737 by voice vote, with no amendments and no dissent. The motion to reconsider was laid on the table, and the bill was transmitted to the Senate for final action.

b. Senate Floor Debate of H.R. 3737

On October 18, 1986—the final day of the 99th Congress—the Senate took up H.R. 3737, bypassing its own companion measure, S. 2270, to expedite final passage and avoid the need for further bicameral reconciliation. Sen. Alan Simpson (R-WY), Chairman of the Senate Subcommittee on Immigration and Refugee Policy, introduced the measure and underscored its necessity:

> The legislation we consider today attempts to deter a growing problem with immigrant status derived from marriage to a U.S. citizen: marriage fraud. Present U.S. law grants immediate permanent resident alien status to any alien who marries a U.S. citizen. For the many people who wish to enter our country by any means possible, the convenience and generosity of this immigration status has become a frequent target for fraud.

132 Cong. Rec. 33553 (1986) (statement of Sen. Simpson).

Without further discussion or amendment, the Senate passed H.R. 3737 by voice vote. It simultaneously postponed consideration of its own companion bill, S. 2270.

c. Presidential Signing

The Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3543 (1986), became law on November 10, 1986, when it was signed by President Ronald Reagan. The final bill reflected the version reported by the House Judiciary Committee. No signing statement accompanied the enactment. This basic antifraud framework remains in place today.

The IMFA was the culmination of decades of congressional efforts to strike a careful balance: facilitating family reunification for U.S. citizens while protecting the integrity of the immigration system through effective fraud prevention and enforcement. Ultimately, Congress concluded that a policy of zero tolerance for marriage fraud was the only tenable path forward. The IMFA tightened enforcement at every stage of the process—from the initial visa petition, to conditional residency review, to deportation proceedings, with a potential stop in federal prison along the way.

This is the context in which INA § 204(c) was enacted. The legislative record leaves no room for doubt: Congress intended to make it easier—not harder—for immigration officials to prevent and respond to marriage fraud, and to provide meaningful remedies for the victims of one-sided exploitation who testified before the bipartisan Senate committee.

10. The Rise of I-864 Financial Exploitation

While the IMFA made important strides in preventing fraudulent marriages, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 551, 110 Stat. 3009-675 (1996), created a powerful new incentive for a new form of immigration fraud. IIRIRA introduced the statutory predicate for Form I-864, a binding contract between U.S. citizen sponsors and the federal government obligating those sponsors to financially support their immigrant spouses—potentially indefinitely.

Prior to IIRIRA, a sponsor's financial exposure was limited to traditional family law disputes—alimony, property division, and related claims—all subject to judicial discretion, equitable defenses, and well-established constraints under state law. The I-864 fundamentally altered this landscape. Sponsors now face indefinite federal liability—enforceable in either federal or state court—that survives divorce and is not extinguished by the dissolution of the underlying relationship. *See* INA § 213A.

Compounding the problem, the I-864 statute is silent on critical aspects of enforcement. It does not define household size, clarify how to calculate income, identify which defenses (if any) apply—such as fraud or mitigation—or explain whether and how the obligation can be resolved absent terminating events that may never occur. Courts have been forced to construct a patchwork of interpretations, often without full briefing or uniform guidance. For many defrauded sponsors, the result is a nearly inescapable form of federal liability—an "immigration alimony" that has been interpreted by some as absolute, indefinite, and immune to the equitable protections available under state law.

This transformation—where the immigration system itself becomes a vehicle for financial exploitation—created an entirely new dimension of federal immigration marriage fraud. Fraudulent beneficiaries not only obtain lawful permanent residence through deceit, but then weaponize the I-864 to inflict lasting and ruinous financial harm on the very citizens Congress sought to protect.

Worse still, a secondary industry of contingency-fee plaintiff's attorneys has emerged to capitalize on this dynamic—aggressively soliciting I-864 enforcement claims against defrauded U.S. citizens and collecting substantial fees from judgments and settlements. *See* Greg McLawsen, *Can I Afford a Lawyer to Enforce the Form I-864?*, Sound Immigration (Apr. 24, 2015), https://www.soundimmigration.com/can-i-afford-a-lawyer-to-enforce-the-form-i-864/ (advertising "zero upfront cost" and stating that "our firm receives 40% of the damages (support money) that we recover for a client"). Victims of marriage fraud are thereby turned into targets of litigation, where their only mistake was trusting the wrong person.

What began as a humanitarian safeguard to protect the public treasury has become, in practice, an instrument of private financial abuse against U.S. citizens. The I-864 was designed as a shield for U.S. taxpayers—ensuring that immigrants would not become

reliant on public assistance. But when exploited by fraudulent beneficiaries, it becomes a sword against citizen sponsors—enabling indefinite liability even when immigration status was secured through deception. This context is not ancillary to the Board's review—it is essential for ensuring innocent victims of marriage fraud have a well-defined process for potentially unwinding these fraudulent I-864 benefits.

B. The Board's Ultra Vires Interpretations of INA § 204(c)

INA § 204(c) imposes a mandatory bar on visa petitions involving marriage fraud, but the Board of Immigration Appeals has adopted two interpretations that make it harder for federal agencies to enforce that bar. First, it imposed a heightened "substantial and probative evidence" standard not found in the statute. Second, it redefined marriage fraud to require intent to "establish a life together," rather than intent to evade the immigration laws. Both deviations lack textual support, frustrate congressional intent, and functionally protect foreign nationals at the expense of U.S. citizen victims.

1. Erroneous Heightened Standard of Proof

a. The Current Standard and Its Origins

The IMFA created a multilayered antifraud framework spanning the entire lifecycle of the marriage-based immigration process. Congress sought to prevent fraud before entry, detect it during conditional residency, enable easier removal, and punish perpetrators through a new felony provision.

At the adjudication stage, Congress adopted INA § 204(c), a zero-tolerance provision mandating the denial of visa petitions where the alien has ever entered into, attempted to enter into, or conspired to enter into a fraudulent marriage (hereinafter, "marriage fraud"). The text—unchanged since 1986—provides:

> [N]o petition shall be approved if— (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has

> attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

While § 204(c) imposed a categorical and mandatory bar, it did not specify a standard of proof for making this determination. It merely states that a petition "shall" be denied when the Attorney General, now USCIS, has "determined" that marriage fraud occurred.

i. DOJ Created a New Standard Without Authority

On August 10, 1988, INS issued final regulations implementing the IMFA. *See Marriage Fraud Amendments Regulations,* 53 Fed. Reg. 30018 (Aug. 10, 1988) (codified at 8 C.F.R. Part 216). The final rule for § 204(c) stated:

> Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director shall deny any immigrant visa petition for immigrant visa classification filed on behalf of such alien; regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of such attempt or conspiracy must be documented in the alien's file. The decision of the director to deny the petition may be appealed in accordance with Part 3 of this chapter.

The regulation made no mention of a heightened standard of proof, nor did it suggest any departure from the longstanding default evidentiary burden applied in civil administrative proceedings.

Then, in 1992, INS issued implementing regulations for the Immigration Act of 1990. *Petition To Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant*, 57 Fed. Reg. 41053 (Sep. 9, 1992). Notably, the 1992 act did not purport to amend § 204(c) in any way, shape, or form. Nonetheless, prompted by thirty-five unknown commenters, the INS amended the § 204(c) regulation to "clarify the type and extent of the evidence necessary to substantiate a denial under 8 CFR 204.2(a)(1)(ii) for prior marriage fraud." The INS did so by inventing, without congressional authorization, a "substantial and probative evidence" standard which is now set forth at 8 C.F.R. § 204.2(a)(1)(ii):

> The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy [to enter into a fraudulent marriage], regardless of whether that alien received a benefit through the attempt or conspiracy.

INS justified this change by citing the Board's own decision in *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). But reliance on *Tawfik* is legally baseless. In *Tawfik*, decided four years after the IMFA was enacted, the Board abruptly announced out of thin air that evidence of marriage fraud under § 204(c) must be "substantial and probative". To justify this proposition, the Board cited four legal authorities:

- ***Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988)**: This Board decision postdated the IMFA but did not even mention a "substantial and probative evidence" standard.

- ***Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978)**: This Board decision stated that a marriage fraud finding under § 204(c) "must be based on evidence that is substantial and probative". However, this case predated the IMFA by almost a decade. As a result, *Agdinaoay* is totally irrelevant for understanding the plain meaning of IMFA provisions which completely overhauled the entire marriage-based green card process to make it easier, not harder to prevent and respond to marriage fraud. In addition, it cited *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972), but as explained below, mischaracterized that decision.

- ***Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972)**: This Board decision did not even mention a "substantial and probative evidence" standard. Instead, the Board simply described the factual record in that particular case as containing "substantial evidence" of marriage fraud. Describing the quantity of evidence in a particular case cannot be reasonably construed as creating an entirely new standard of proof without congressional authorization.

- **8 C.F.R. § 204.1(a)(2)(iv) (1989)**: This regulation did not even mention a "substantial and probative evidence" standard.

Therefore, the INS's sole justification for creating a new standard of proof under § 204(c) were thirty-five unknown commenters and a Board case that mischaracterized the Board's own precedent and predated the IMFA.

ii. The Board's Interpretation in Singh is Legally Invalid

Then, in *Matter of P. Singh*, 27 I&N Dec. 598 (BIA 2019), the Board issued its first comprehensive and precedent decision purporting to define the meaning of "substantial and probative evidence" under 8 C.F.R. § 204.2(a)(1)(ii). It concluded that the phrase imposes a heightened standard of proof—greater than a preponderance, but less than clear and convincing. *Id.* at 607. This interpretation departed sharply from basic principles of statutory construction and cannot survive after *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), which overruled *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.,* 467 U.S. 837 (1984), and eliminated the deference that once insulated agency interpretations from judicial scrutiny.

Rather than beginning with the statutory text of INA § 204(c), the Board grounded its analysis solely in the regulatory language and justified the elevated standard based on the seriousness of the consequences. This was incorrect. To interpret a statutory standard of proof requires an analysis of the statute itself. *See Van Buren v. United States*, 593 U.S. 374, 381 (2021) (Barrett, J.) ("[W]e start where we always do: with the text of the statute."); *Babb v. Wilkie*, 589 U.S. 399, 404 (2020) (Thomas, J.) ("[W]e start with the text of the statute."); *Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004) (Kennedy, J.) ("The starting point in discerning congressional intent is the existing statutory text."); *United States Forest Serv. v. Cowpasture River Pres. Ass'n*, 590 U.S. 604, 635 n.16 (2020) (Sotomayor, J., dissenting) ("[S]tatutory interpretation is supposed to start with statutory text."). Moreover, by failing to even consider the statutory text, structure, or history, the Board had no way to determine whether the serious consequences imposed by § 204(c) were a feature or a "bug" of the statute.

Instead of analyzing the IMFA itself, the Board pointed to other provisions of the INA—such as §§ 204(a)(2)(A), 204(g), and 245(e)(3) —where Congress expressly imposed a "clear and convincing evidence" standard to rebut fraud presumptions. But those provisions prove the opposite point: when Congress intends to raise the standard of proof, it says so directly. In each instance cited by the Board, the heightened burden was enacted *by Congress*—not created through regulation or agency interpretation.

Moreover, those provisions were designed to *facilitate* fraud findings by shifting the burden and raising the rebuttal threshold—not to protect aliens from enforcement.

The Board's failure to begin with the text of § 204(c) led it to invert the proper interpretive sequence. The statute is silent on the applicable standard of proof and contains no language departing from the ordinary preponderance burden. Under settled principles, that silence reinforces—not displaces—the default standard. Instead, the Board treated the regulation as dispositive and offered no explanation for how its interpretation aligned with the statutory language or structure.

Indeed, the Board entirely ignored the structure of the IMFA, which was enacted to streamline fraud enforcement and eliminate procedural barriers. IMFA introduced multiple fraud-focused mechanisms, including the conditional residency framework, the joint petition requirement, and the bar in § 204(c). The placement and purpose of these provisions reflect Congress's intent to empower administrative agencies to detect fraud at the earliest stages—not to raise hurdles to enforcement.

The Board also dismissed the legislative history in a footnote, claiming that it provided no guidance on the applicable evidentiary standard. That assertion is also baseless. The extensive legislative history of the IMFA makes it crystal clear that Congress intended to make it easier, not harder to make fraud findings. The Board's failure to engage with that history—let alone acknowledge its relevance—renders its claim of statutory silence legally incomplete and incorrect.

Finally, the Board disregarded binding Supreme Court precedent. Under *Steadman v. SEC*, 450 U.S. 91 (1981), when a statute is silent on the standard of proof in administrative adjudications, the default is a preponderance of the evidence. That principle governs civil proceedings broadly, including informal agency determinations such as I-130 adjudications. *Singh* neither cited nor distinguished *Steadman*, and instead adopted a novel, intermediate standard not grounded in statute, case law, or the APA. In doing so, it substituted agency preference for law.

For all of these reasons, *Singh* must be corrected. The Board's interpretation of the "substantial and probative evidence" standard is ultra vires, analytically unsound, and incompatible with the IMFA. The deficiencies in *Singh* are addressed in detail below.

b. Plain Meaning of § 204(c) Requires a Preponderance Standard

i. Preponderance is the Default Standard

The starting point for any statutory construction "is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring); *see also Greyhound Corp. v. Mt. Hood Stages, Inc.*, 437 U.S. 322, 330 (1978); *Santa Fe Industries, Inc. v. Green*, 430 U.S. 462, 472 (1977). And "unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42 (1979).

In the case of INA § 204(c), the statute does not mention a specific standard of proof for determining whether an alien has entered into "a marriage for the purpose of evading the immigration laws". However, this statutory silence should not be confused with ambiguity. As the Supreme Court has held, mere statutory silence is "inconsistent with the view that Congress intended to require a special, heightened standard of proof." *E.M.D. Sales, Inc. v. Carrera*, 604 U.S. 45, 52 (2025) (quoting *Grogan v. Garner*, 498 U.S. 279, 286 (1991)).

A settled principle of statutory interpretation, affirmed by the Supreme Court, is that "Congress legislates against the backdrop of existing law." *McQuiggin v. Perkins*, 569 U.S. 383, 398 n.3 (2013). This includes longstanding evidentiary principles. "[C]ourts apply the default standard unless Congress alters it or the Constitution forbids it." *Carrera*, 604 U.S. at 55 (Gorsuch, J., concurring). "To do otherwise would be to 'choose sides in a policy debate,' rather than to declare the law as our judicial duty requires." *Id.*

The Supreme Court has repeatedly affirmed that in federal administrative proceedings—including those involving allegations of fraud—the applicable standard of proof is preponderance of the evidence. *See Herman & MacLean v. Huddleston*, 459 U.S. 375, 389-90 (1983); *Steadman*, *supra*, at 95.

Circuit courts have followed suit, consistently applying the preponderance standard in administrative adjudications and noting that it is the standard contemplated by the Administrative Procedure Act. *See Yzaguirre v. Barnhart*, 58 F. App'x 460, 462 (10th Cir. 2003); *Jones for Jones v. Chater*, 101 F.3d 509, 512 (7th Cir. 1996); *Gibson v. Heckler*, 762 F.2d 1516, 1518 (11th Cir. 1985); S*ea Island Broadcasting Corp. v. FCC*,

627 F.2d 240, 243 (D.C. Cir. 1980); *Collins Securities Corp. v. SEC*, 562 F.2d 820, 823 (1977); *Breeden v. Weinberger*, 493 F.2d 1002, 1005-06 (4th Cir. 1974).

The Board itself had long applied the same preponderance standard in visa petition proceedings. "In visa petition proceedings, the petitioner has the burden of establishing eligibility for the benefit sought under the immigration laws," the Board wrote in *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). "This burden is the ordinary one applicable in civil matters, i.e., a preponderance of the evidence." *Id.; see also Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); *Matter of Patel*, 19 I&N Dec. 774, 782–83 (BIA 1988); *Matter of Pineda*, 20 I&N Dec. 70, 73 (BIA 1989).

This was the legal backdrop against which Congress enacted § 204(c). At the time, the default evidentiary standard in visa petition proceedings was well-settled: preponderance of the evidence. Congress's decision not to include a different standard in § 204(c)—particularly when it included heightened standards elsewhere in the INA—did nothing to disturb that default. Consistent with *Herman*, *Steadman*, and *Carrera*, Congress's silence must be construed as preserving the preexisting evidentiary rule.

ii. A Heightened Standard is Wholly Inapplicable

The evidentiary standard applicable to INA § 204(c) determinations falls squarely within the category of proceedings governed by the default rule reaffirmed in *Steadman* and *Herman*. In both cases, the Supreme Court declined to adopt a heightened standard of proof—even though the proceedings involved allegations of fraud and carried serious reputational or professional consequences.

In *Steadman*, the SEC sought to bar an individual from practicing before the Commission—a penalty that would end his career. The respondent urged the Court to require clear and convincing evidence. The Court refused, holding that the applicable standard in administrative enforcement proceedings was preponderance of the evidence, consistent with the Administrative Procedure Act. 450 U.S. at 103.

Likewise, in *Herman*, the Court declined to require a heightened standard in a civil suit alleging securities fraud. "Preponderance of the evidence," the Court emphasized, "is the standard generally applicable in civil actions, and we discern no reason to depart from that rule here." 459 U.S. at 390.

Section 204(c) determinations present far less compelling grounds for an elevated standard than either *Steadman* or *Herman*. They arise in informal, non-adversarial, benefit-based adjudications conducted without a hearing or formal discovery. They concern only whether a foreign national is statutorily eligible to apply for a discretionary benefit—not whether an individual should lose a professional license, suffer civil liability, or be barred from a regulated industry.

If the Court refused to apply a heightened standard in *Steadman* or *Herman*, it follows with even greater force that no such standard applies in § 204(c) determinations. In *Herman*, the Court acknowledged that there are rare exceptions to the application of the default standard of proof. "We have required proof by clear and convincing evidence," the Court explained, "where particularly important individual interests or rights are at stake." 459 U.S. at 389. These exceptions include:

- Termination of parental rights, *Santosky v. Kramer*, 455 U.S. 745 (1982);
- Involuntary civil commitment, *Addington v. Texas*, 441 U.S. 418 (1979);
- Deportation proceedings, *Woodby v. INS*, 385 U.S. 276 (1966).

In the first two cases, the Court elevated the evidentiary burden to protect fundamental constitutional rights. In *Woodby*, the burden was raised due to the severity of removing a noncitizen already lawfully present in the United States. But § 204(c) involves none of these interests. It concerns the eligibility of a noncitizen for a benefit not yet conferred—far removed from the kinds of rights or status that have historically triggered heightened evidentiary safeguards.

Section 204(c) determinations are fundamentally different than *Santosky*, *Addington*, and *Woodby*. Not only do these determinations not involve a U.S. citizen or lawful permanent resident, they involve no legal right whatsoever. The Supreme Court has repeatedly affirmed that immigration is a privilege, not a right under the INA and the U.S. Constitution. *See United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) ("[A]n alien who seeks admission to this country may not do so under any claim of right."); *see also Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972). Most recently, in *Dep't of State v. Muñoz*, the Court reaffirmed this important principle:

> "From this Nation's beginnings, the admission of noncitizens into the country was characterized as 'of favor [and] not of right.' And when Congress began to restrict immigration in the late 19th century, the laws it enacted provided no exceptions for citizens' spouses. And while Congress has, on occasion, extended special immigration treatment to marriage, it has never made spousal immigration a matter of right."

602 U.S. 899, 901 (2024) (citations omitted).

If heightened standards are reserved for proceedings involving the loss of protected rights, they are wholly inapplicable in adjudications where no such rights exist.

Even where civil sanctions are severe, the Supreme Court has refused to impose a heightened burden of proof. For example, in *United States v. Regan*, 232 U.S. 37, 48–49 (1914), the Court held that the preponderance of the evidence standard applied in a civil suit involving conduct that could also expose a party to criminal prosecution. "[I]t is settled," the Court stated, "that in civil cases a mere preponderance of evidence is sufficient to authorize a recovery, even though the act complained of amounts to a crime." That principle confirms that seriousness of consequence alone does not justify a departure from the default evidentiary rule.

Thus, the seriousness of the allegation—whether reputational, financial, or even potentially criminal—is not the benchmark for altering the standard of proof. The governing standard turns on the nature of the interest at stake and the source of any heightened protection.

Finally, even if Congress's silence in § 204(c) necessitated the adoption of a standard of proof, the responsibility to prescribe that standard rests with the judiciary—not the Executive Branch. In *Herman*, the Court stated: "Where Congress has not prescribed the standard of proof and the Constitution does not dictate one, we must prescribe one." 459 U.S. at 389 (emphasis added). That "we" is decisive—it refers to Article III courts, not to Article II agencies.

Neither the Attorney General nor the Board had authority to invent a new evidentiary threshold. The "substantial and probative evidence" standard—first announced in

Tawfik without any statutory basis, and later codified in regulation—was ultra vires. Its reaffirmation in *Singh* only compounded that error. The Board cannot substitute its policy preferences for the evidentiary rule Congress declined to provide.

c. Plain Meaning Is Reinforced by the Statutory Structure

Statutory structure is a powerful indicator of congressional intent. When a statute is silent on a particular question, courts interpret its provisions "in context and with a view to [their] place in the overall statutory scheme." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000); *see also Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 632 (2012). The "whole-text" canon of interpretation instructs courts to consider "the entire text, in view of its structure and the physical and logical relation of its many parts." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (Thomson/West 2012).

Every structural feature of the IMFA confirms what the text of § 204(c) already suggests: Congress intended to make it easier—not harder—for immigration officials to detect and deny fraudulent marriage-based petitions. It sought to strengthen enforcement, close loopholes, and bar fraud before benefits were conferred. Most tellingly, Congress lowered the standard of proof for marriage fraud in removal proceedings—which applies after benefits were already received.

Against that backdrop, the regulation at 8 C.F.R. § 204.2(a)(1)(ii) and the Board's decision in *Singh* cannot be squared with the structure or purpose of the IMFA. By imposing a heightened evidentiary standard, they directly conflict with the statute, frustrate congressional intent, and undermine the very objectives § 204(c) was enacted to achieve.

i. Congress Lowered the Standard for Marriage Fraud

The clearest structural evidence that Congress intended to preserve the default preponderance standard under § 204(c) is its explicit decision to lower the evidentiary burden for proving marriage fraud elsewhere in the IMFA.

Before the IMFA, marriage fraud findings in deportation proceedings were governed by *Woodby v. INS*, 385 U.S. 276 (1966), which required proof by "clear, unequivocal, and convincing evidence." But IMFA expressly abandoned that heightened burden.

In two separate provisions, Congress codified a *lower* evidentiary standard—**preponderance of the evidence**—for proving marriage fraud in removal proceedings:

- **§ 216(b)(2)**: "In determining whether an alien is deportable… based on a fraudulent marriage, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the marriage was entered into for the purpose of evading the immigration laws."

- **§ 216(c)(3)(D)**: In removal proceedings following the termination of conditional residency, "the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence," that the petitioning couple's representations about the marriage were false.

These provisions reflect a deliberate and unambiguous decision by Congress to lower the evidentiary standard for marriage fraud determinations. That choice is not implicit or ambiguous—it is textual, explicit, and repeated. It would defy logic and legislative coherence to conclude that Congress intended to make it easier to prove marriage fraud after a noncitizen has obtained legal status, yet harder to establish fraud before any immigration benefit has been conferred.

ii. Congress Intentionally Declined a Heightened Standard

Where Congress includes specific language in one section of a statute but omits it in another, courts presume the omission was intentional. *See NLRB v. SW General, Inc.*, 580 U.S. 288, 302 (2017); *Russello v. United States*, 464 U.S. 16, 23 (1983). That canon applies with particular force to evidentiary standards—especially when the statute addresses fraud or other serious findings using clear and deliberate language.

In multiple provisions of the INA, Congress has explicitly imposed heightened burdens of proof when it intended to:

- **INA § 240(c)(3)(A)** – Deportability must be established by "clear and convincing evidence";

- **INA § 318** – Denaturalization requires "clear, unequivocal, and convincing evidence";

- INA § 208(a)(2)(B) – Asylum applicants must prove, by "clear and convincing evidence," that their application was filed within one year of arrival.

These provisions confirm that Congress knows how to require a heightened evidentiary standard—and does so explicitly when it deems such a standard appropriate. By contrast, Congress said nothing about the standard of proof in § 204(c), even though that section was enacted for the express purpose of preventing and responding to marriage fraud.

The absence of any heightened standard in § 204(c), juxtaposed against the specific standards set elsewhere in the INA, must be understood as deliberate. As the Supreme Court has made clear, statutory silence is not an invitation for agencies to supply their own policy preferences. When Congress intended to raise the standard of proof, it said so. Where it didn't, courts must presume that silence was by design—not oversight.

iii. A Heightened Standard Undermines the IMFA Purpose

The regulation at 8 C.F.R. § 204.2(a)(1)(ii) and the Board's interpretation in *Matter of P. Singh*, 27 I&N Dec. 598 (BIA 2019), have fundamentally undermined the purpose of the IMFA. Congress enacted the IMFA to address a serious, widespread, and growing threat to the integrity of the legal immigration system. At the time, there was unanimous, bipartisan agreement that marriage fraud posed a systemic problem requiring decisive legislative action. *See Fraudulent Marriage and Fiancé Arrangements to Obtain Permanent Resident Immigration Status: Hearing Before the Subcomm. on Immigration & Refugee Policy of the S. Comm. on the Judiciary*, 99th Cong. (1985).

The IMFA represented Congress's comprehensive response: a multilayered antifraud system designed to prevent and respond to marriage fraud at every stage of the immigration process. Section 204(c) was one critical component of this architecture. It was intended to work in tandem with other complementary antifraud tools—conditional residency, joint petition requirements, streamlined termination procedures, and new criminal penalties. Its purpose was not only to screen out perpetrators of marriage fraud, but to deter others from doing the same.

By manufacturing a heightened standard of proof for § 204(c) determinations, the DOJ effectively disabled a critical component of the antifraud machine that Congress carefully built in the IMFA. The consequences have been disastrous. The DOJ's

interpretation has stripped § 204(c) of its deterrent force, created operational hesitancy within USCIS, and further eroded already waning public confidence in the agency's ability to prevent fraud. It has turned what Congress intended as a categorical, zero-tolerance safeguard into a hollow formality—frustrating the legislative purpose and enabling the very abuse IMFA was designed to prevent.

2. Erroneous Definition of Marriage Fraud

In addition to imposing a heightened evidentiary standard, the Board has adopted a definition of "marriage fraud" under INA § 204(c) that contradicts the statutory text. Rather than applying the plain language—requiring a determination that the marriage was entered into "for the purpose of evading the immigration laws"—the Board has substituted two atextual inquiries: whether the marriage was entered into with the primary purpose of evading immigration laws, and whether the couple intended to establish a life together. Neither test appears in the statute. Both elevate subjective relational inquiries above objective evidence of immigration fraud. And both impose legal hurdles that make it harder for federal agencies to identify and act on fraud, while disproportionately benefiting foreign nationals at the expense of U.S. citizen victims.

a. The Current Definition and Its Origins

The Immigration and Nationality Act allows U.S. citizens to file visa petitions on behalf of immediate relatives, including their foreign spouses. *See* INA § 201(b)(2)(A)(i). To be eligible to file for a foreign spouse, the marriage must meet two tests:

- **Legal Validity**—The marriage must be valid under the laws of the jurisdiction where it was celebrated (i.e., the place of celebration rule). *See Matter of P—*, 4 I&N Dec. 610 (A.G. 1952); *Matter of B—*, 5 I&N Dec. 659, 659–60 (BIA 1954); *Matter of Koehne*, 10 I&N Dec. 264, 265 (BIA 1963); *Matter of Napello*, 10 I&N Dec. 370, 371 (BIA 1963).

- **Bona Fide for Immigration**—Even if a marriage is valid where celebrated, it must also be bona fide for federal immigration purposes. *See generally* INA § 204(c); *Lutwak v. United States*, 344 U.S. 604 (1953); *Matter of P. Singh*, 27 I&N Dec. 598 (BIA 2019).

Congress has never disturbed the place of celebration rule, which continues to govern the legal validity of marriage in immigration proceedings. But Congress has taken clear and deliberate action to define what constitutes a bona fide marriage for immigration purposes under INA § 204(c).

i. The Statutory Text of INA § 204(c)

Congress first enacted a statutory marriage fraud bar in 1961 in INA § 205(c). That provision barred the approval of a visa petition where the alien had already received immigration status through a fraudulent marriage. Congress relocated this provision to § 204(c) in 1965 without material change. At that point, the statute applied only when the alien had already been accorded status based on a fraudulent marriage.

In 1986, however, Congress dramatically expanded the statute through the IMFA. It amended § 204(c) to include attempted and conspiratorial marriage fraud—even where no benefits were conferred and regardless of whether the fraud occurred in the past or present. The statute, which has remained unchanged since the IMFA, now provides:

> [N]o petition shall be approved if— (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

See Pub. L. No. 99-639, § 5(a), 100 Stat. 3537, 3543 (1986) (codified at 8 U.S.C. 1154(c)).

ii. The Board Narrowed § 204(c) Without Authority

In *Singh*, the Board defined marriage fraud as a marriage "entered into for the *primary* purpose of circumventing the immigration laws." *Id.* at 601 (citing *Matter of Laureano*, 19 I&N Dec. 1, 2 (BIA 1983)) (emphasis added). The Board further declared that "[t]he 'central question' in determining whether a sham marriage exists is whether the parties 'intended to establish a life together at the time they were married.'" *Id.* (citing *Laureano*, 19 I&N Dec. at 2-3 and *Matter of McKee*, 17 I&N Dec. 332 (BIA 1980)).

Neither "primary purpose" nor "intent to establish a life together" appears anywhere in § 204(c). The statute establishes a different standard: whether the marriage was entered into "for the purpose of evading the immigration laws." That language is clear, specific, and controlling. The Board's gloss is not grounded in the statutory text, structure, or purpose, and the cases it relies on predate the current version of § 204(c).

By injecting narrower, extra-textual standards into the statutory definition of marriage fraud, the Board has improperly narrowed the statute's reach. Accordingly, the Board's definition is legally incorrect, ultra vires, and after *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), is entitled to no deference.

(a) The "Primary Purpose" Test is Baseless

In *Singh*, the Board declared that a marriage must have been entered into for the "primary purpose" of circumventing immigration laws to trigger § 204(c). 27 I&N Dec. at 601. But the statute states that "no petition shall be approved" if the marriage was entered into "*for the purpose of evading the immigration laws.*" INA § 204(c) (emphasis added). There is no "primary," "dominant," or "overriding" qualifier in the statute. *See* INA § 204(c).

To support its extratextual test, the Board cited only *Laureano*, a decision that predated the IMFA entirely and, therefore, is irrelevant to interpreting the § 204(c) provision that Congress rewrote three years later. In addition, *Laureano* did not even cite to a statute, let alone the 1961 marriage fraud bar that was in existence at the time.

The authority *Laureano* relied on was also fundamentally flawed. It cited *Matter of McKee*, 17 I&N Dec. 332 (BIA 1980), which defined marriage fraud as a marriage "entered into for the primary purpose of circumventing the immigration laws." But *McKee* cited three sources for that definition—all of which are totally irrelevant for purposes of interpreting § 204(c):

- ***Lutwak v. United States*, 344 U.S. 604 (1953)**: This case interpreted the War Brides Act, not the INA, and was decided nearly a decade before the original marriage fraud bar was enacted in 1961. It did not even mention, let alone endorse, a "primary purpose" requirement.

- ***McLat v. Longo*, 412 F. Supp. 1021 (D.V.I. 1976)**: This case was a district court decision from the Virgin Islands and was not controlling authority. Like *Lutwak*, it did not even mention, let alone endorse, a "primary purpose" requirement.

- ***Matter of M—*, 8 I&N Dec. 118 (BIA 1958)**: This Board decision concerned the definition of a "child" under § 101(b)(1) of the INA—not marriage fraud. Like *Lutwak*, it predated the original marriage fraud bar fraud of 1961 and also did not mention, let alone endorse, a "primary purpose" requirement.

The Board failed to cite the first Board decision that used the "primary purpose" language, namely *Matter of Romero*, 15 I&N Dec. 294, 295 (BIA 1975). But even that decision mischaracterized the applicable test in that case. The district director in *Romero* had denied the petition based on the petitioner's failure to prove the marriage was not entered into "for the purpose of obtaining immigration benefits"—not the "primary purpose." The Board added that gloss itself and cited *Matter of M—* and *Matter of Kitsalis*, 11 I&N Dec. 613 (BIA 1966), neither of which support the formulation.

In short, the Board—not Congress—invented the "primary purpose" test. This test was based on case law that predated the IMFA, and either did not purport to interpret § 204(c), or did not even mention a "primary purpose" requirement, or did not even pertain to marriage fraud at all. When Congress enacted the IMFA, it retained the language "for the purpose" and declined to codify the "primary purpose" requirement the Board had adopted. That legislative choice is dispositive. The Board's persistence in applying a higher standard reflects a rewriting of the statute, not an interpretation of it.

(b) The "Establish a Life" Test Was Superseded

In *Singh*, the Board further distorted § 204(c) by declaring that the "central question" in marriage fraud cases is whether the parties "intended to establish a life together at the time they were married." *Singh*, 27 I&N Dec. at 601. Again, that is not what the statute says. The statute directs adjudicators to deny a petition if the marriage was entered into "for the purpose of evading the immigration laws." INA § 204(c).

Nothing in this language *requires* evaluating the couple's level of commitment—now often measured through superficial and easily manipulated documents like leases, bank statements, or utility bills—which has led to decades of distraction. Under the Board's

"establish a life" test, such superficial artifacts have become dispositive under a statute that Congress intended to be one of the most categorical antifraud bars in immigration law. So long as a couple can present some outward indicia of mutual commitment—regardless of whether the marriage was timed, arranged, or entered into for the purpose of evading immigration laws—adjudicators are routinely constrained by Board precedent to treat the petition as valid even if other obvious facts may suggest the marriage was entered into for the purpose of evading immigration laws. The Board did not merely narrow the statute's reach; it replaced the statutory test entirely.

To justify this "establish a life" test, the Board again relied on *Laureano* and *McKee*. As previously discussed, *Laureano* was decided three years before Congress enacted the IMFA and, therefore, is inapplicable. More significantly, *Laureano* cited *Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975)—a case that did not interpret § 204(c), or any statutory fraud bar. *Bark* simply borrowed language from *Lutwak v. United States*, 344 U.S. 604 (1953), a criminal conspiracy case under the War Brides Act that not only predated the IMFA, but also predated the original 1961 marriage fraud bar and the Immigration and Nationality Act of 1952. *Bark* did not analyze, or even acknowledge, the statutory phrase "for the purpose of evading the immigration laws." *Laureano's* reliance on *McKee* is equally problematic because *McKee* adopted the same flawed *Bark* framework.

Although not addressed by the Board in *Singh*, the first Board decision to use the "establish a life" test language was actually *Matter of M—*, 8 I&N Dec. 217, 219-220 (BIA 1958). In that case, the Board adopted only part of the test articulated by the Supreme Court in *Lutwak*, defining marriage fraud as a union "not entered into to establish a life together." However, that was not the standard announced in *Lutwak*. The *Lutwak* Court described a bona fide marriage as one in which "the two parties have undertaken to establish a life together *and assume certain duties and obligations*." By omitting the "duties and obligations" prong, the Board abandoned the more concrete, behavior-based element of the test in favor of a vaguer inquiry into subjective intent. The *Lutwak* decision also predated not only the IMFA but the original marriage fraud bar of 1961.

This entire framework—drawn from pre-INA criminal conspiracy cases and adopted without reference to the statutory text—was superseded by Congress's enactment of

§ 204(c), which establishes a categorical, purpose-based bar that leaves no room for administratively or judicially invented tests untethered from the language of the statute.

(c) Most Circuits Reject the Board's Tests

When Congress enacted the IMFA, it created both the marriage fraud bar in INA § 204(c) and a new felony criminal offense at INA § 275(c). Both provisions use nearly identical language. Section 204(c) uses the phrase "for the purpose of evading the immigration laws", while § 275(c) uses the phrase "for the purpose of evading *any provision of* the immigration laws".

Since these provisions were enacted within the same statute, the *presumption of consistent usage* canon applies. In short, "identical words and phrases within the same statute should normally be given the same meaning." *Powerex Corp. v. Reliant Energy Services, Inc*., 551 U.S. 224, 232 (2007). Thus, a court's interpretation of marriage fraud in either § 204(c) or § 275(c) are instructive.

Nearly every federal circuit to consider the issue has rejected the Board's and the Ninth Circuit's interpretation:

- **Second Circuit**: In *United States v. Mehta*, 919 F.3d 175, 184 (2d Cir. 2019), the court rejected the defendant's request for a jury instruction incorporating the "establish a life" test under § 1325(c), reaffirming that marriage fraud is defined as one "entered into by the defendant only f*or the purpose of evading the immigration laws*." (Emphasis added.)

- **Fourth Circuit**: In *United States v. Sonmez*, 777 F.3d 684, 689-90 (4th Cir. 2015), the court rejected the Ninth Circuit's "establish a life" test, noting that it "does not rely on the text of Section 1325(c), but imposes a requirement completely apart from the statutory language."

- **Fifth Circuit**: In *United States v. Ortiz-Mendez*, 634 F.3d 837, 840 (5th Cir. 2011), the court found that the "establish a life" test would require reading an element into the statute that is absent. *See also United States v. Ongaga*, 820 F.3d 152, 160 (5th Cir. 2016).

- **Seventh Circuit**: In *United States v. Darif*, 446 F.3d 701, 709-10 (7th Cir. 2006), the court rejected the "establish a life" test, explaining that it "is not supported

by the language of the statute" and reasoning that even if a defendant "intended to establish a life with [his spouse], he still could have entered into the marriage for purposes of evading the immigration laws."

- **Tenth Circuit**: In *United States v. Zaheer Ul Islam*, 418 F.3d 1125, 1128 (10th Cir. 2005), the court rejected the "establish a life" test as the exclusive standard, acknowledging however that it may be relevant for "determining whether a marriage was entered into for the purpose of evading the immigration laws." The court also stated that if evidence shows an alien married to obtain a green card and bypass normal immigration procedures, the jury could infer that the marriage was entered into for the purpose of evading the immigration laws.

At one point, the First Circuit in *Cho v. Gonzales*, 404 F.3d 96, 102-03 (1st Cir. 2005), appeared to be the first and only court to flirt with the Ninth Circuit's view. However, as recently as 2018, the court declined to take a position on this issue in *United States v. Akanni*, 890 F.3d 355, 357 (1st Cir. 2018).

The Third Circuit has incorporated *both* the "evasion" test and the Board's "life" test in interpreting § 204(c). *Watson v. AG United States*, No. 24-2290, 2025 U.S. App. LEXIS 11076, at *5 (3d Cir. May 8, 2025).

The Board's continued reliance on the Ninth Circuit's "establish a life" test—despite near-universal rejection by federal appellate courts—raises a more fundamental concern: selective adherence to circuit precedent that happens to benefit foreign nationals at the expense of U.S. citizen fraud victims. The Board has long acknowledged that "published case law from a United States court of appeals must be followed within the same circuit, except in unusual circumstances." *Matter of K— S—*, 20 I&N Dec. 715, 718 (BIA 1993). Yet in *Singh*, the Board elevated a minority and marginalized view—one that consistently favors foreign nationals at the expense of statutory enforcement—to nationwide applicability without even acknowledging, let alone addressing, the overwhelming weight of contrary authority.

This practice undermines uniformity, encourages forum shopping, and erodes public trust in the integrity of the immigration system. When an agency selectively applies outlier precedent while disregarding nearly universal circuit court precedent, it is not interpreting the law—it is making it.

To restore legal coherence and institutional credibility, the Board should adopt a rule of neutrality: *where federal circuits are divided over the meaning of a statute, the Board will follow the majority view unless and until the Supreme Court directs otherwise.* This approach ensures respect for Congress's intent, doctrinal stability across jurisdictions, and the fair and consistent administration of immigration law.

b. Plain Meaning of § 204(c) Requires Only the "Evasion" Test

i. Rules of Construction

A fundamental canon of statutory construction is that, unless otherwise defined, words must be given their ordinary, contemporary, and common meaning. *Perrin v. United States*, 444 U.S. 37, 42 (1979). When the language of a statute is clear, the inquiry ends. "The sole function of the courts is to enforce it according to its terms." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). "[W]hen the meaning of the statute is plain, judicial inquiry is complete." *Rubin v. United States*, 449 U.S. 424, 430 (1981). This rule is reinforced by the principle that statutory text must be given effect unless doing so would produce absurd or impracticable results. *United States v. Mo. Pac. R. Co.*, 278 U.S. 269, 278 (1929).

Section 204(c), as amended by the IMFA, establishes a mandatory bar against the approval of visa petitions where the beneficiary has engaged in certain marriage fraud conduct. The statute provides:

> [N]o petition shall be approved if— (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

ii. Introductory Clause

The introductory clause of § 204(c)—"**No petition shall be approved if**"—establishes a categorical and nondiscretionary bar to petition approval, triggered upon a factual

finding under clause (1) or (2). Once those predicate conditions are satisfied, the statute leaves no room for adjudicatory discretion.

(a) "Petition"

The word "**petition**" is general and unqualified. Under the general-terms canon, general words must be given their "full and fair scope" and "are not to be arbitrarily limited." *Scalia & Garner*, *supra*, at 101. Courts presume that Congress says what it means and means what it says—especially when it uses general terms without limitation.

In the immigration context, a "petition" refers to a visa petition—a term encompassing:

- **Immigrant visa petitions**, including Forms I-130 (family-based), I-751 (removal of conditions), I-140 (employment-based), I-360 (special immigrant), and I-526 (EB-5 investor); and
- **Nonimmigrant visa petitions**, including Forms I-129 (e.g., H-1B, L-1, O-1) and I-129F (K-1 *fiancé* visas).

Congress did not qualify the term "petition" under §204(c) by using phrases such as "immigrant petition," "petition under this section," or "nonimmigrant petition." Its choice not to do so reflects a deliberate legislative decision. This interpretation was confirmed by the Board in *Matter of R. I. Ortega*, 28 I&N Dec. 9, 14 (BIA 2020), where the Board applied § 204(c) to nonimmigrant petitions. Accordingly, the word "petition" applies to any visa petition whatsoever.

(b) "Shall"

The word "**shall**," following "petition," conveys a mandatory command. It means "[h]as a duty to; more broadly, is required to." *Shall*, BLACK'S LAW DICTIONARY 1657 (12th ed. 2024). When paired with the negation "no," the phrase "No petition shall be approved if" expresses a binding legal obligation: approval is strictly prohibited if the statutory conditions are met. The agency has no discretion to override this mandate.

(c) "Be Approved"

The phrase "**be approved**" is the operative outcome barred by § 204(c). Grammatically, it is a passive construction in the future tense, with a conditional clause ("if") following the main clause. Its function is to define a result that must not occur when the

conditions in clause (1) or (2) are met. The auxiliary verb "be" functions as a linking verb, indicating a future state—namely, that the petition shall receive final approval.

"Approved" is the past participle of "approve." Legally, "approve" means "[t]o give formal sanction to; to confirm authoritatively" or "[t]o adopt." *Approve*, BLACK'S LAW DICTIONARY 126 (12th ed. 2024). In the visa petition context, to "be approved" means to receive the agency's formal grant of the immigration classification sought.

Because an approval is a type of "decision" subject to appellate review under 8 C.F.R. § 1003.1(b)(5), the phrase "be approved" necessarily refers to the culmination of the adjudicative process. A petition is not "approved" in the legal sense until the administrative process concludes and final agency action is taken. Accordingly, § 204(c)'s bar remains operative throughout that process, including during the pendency of a properly filed appeal.

iii. Clause (1)

Clause (1) of § 204(c) provides that no petition shall be approved if:

> the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws.

Based on the unambiguous meaning of the words defined below, clause (1) bars the approval of any Form I-130 petition for an alien spouse if the spouse has ever been the beneficiary of a previously filed Form I-130 petition—whether approved or not—based on a marriage determined to have been entered into *for the purpose of evading the immigration laws*.

(a) "Alien"

The term "**alien**" is defined as "any person not a citizen or national of the United States." INA § 101(a)(3). In the context of § 204(c), "alien" refers to the beneficiary of a petition filed under § 204. We know this because § 204 governs the process by which a U.S. citizen or lawful permanent resident files a petition on behalf of a noncitizen

relative, and only the beneficiary may be accorded or seek to be accorded a spousal immigration classification.

(b) "Previously"

The adverb "**previously**" modifies both "been accorded" and "sought to be accorded." It is defined as "beforehand, hitherto". *Previously*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1798 (unabr. ed. 2002). Accordingly, whether the classification was actually granted or merely sought, the relevant conduct must have occurred in the past.

(c) "Been Accorded"

The phrase "**been accorded**" includes the past participle of "been," used as an auxiliary verb to indicate that something occurred in the past or began in the past and is still ongoing. The verb "accord" means "[t]o furnish or grant." *Accord*, BLACK'S LAW DICTIONARY 21 (12th ed. 2024). Together, the phrase refers to a past agency act of granting a spousal-based immigration classification—specifically, an immediate relative or preference status under INA § 201(b)(2)(A)(i) or § 203(a)(2)(A). In practice, this means that a Form I-130 petition has been approved.

(d) "Has Sought to Be Accorded"

The phrase "**has sought to be accorded**" refers to an alien's past attempt to obtain a spousal-based immigration classification. The term "sought" is the past of "seek". *Sought*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2176 (unabr. ed. 2002). The term "seek" means "to inquire for: ask for". *Id.* at 2055. In this context, the "ask" or request occurs when a U.S. citizen or lawful permanent resident files a Form I-130 on the alien's behalf. Thus, the phrase covers any instance in which the alien was previously named as a beneficiary in a Form I-130 petition, regardless of whether that petition was ultimately approved.

(e) "An Immediate Relative…"

The phrase "**an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence**" identifies the specific immigration classifications covered by the bar. It includes:

- Immediate relative classification under INA § 201(b)(2)(A)(i), which encompasses spouses of U.S. citizens; and

- Family-sponsored preference classification under INA § 203(a)(2)(A), which includes spouses of lawful permanent residents.

(f) "By Reason Of"

The phrase "**by reason of**" introduces a causal requirement: the immigration classification must have been sought or obtained because of the marriage. The bar is not triggered unless the classification request—whether successful or not—was based on the existence of the marriage in question. If the alien sought status on some other independent basis (e.g., employment or a different family relationship), clause (1) does not apply. The statute demands a direct connection between the marriage and the spousal classification sought or accorded.

(g) "Marriage"

The word "**marriage**" means a "legal union of a couple as spouses." *Marriage*, BLACK'S LAW DICTIONARY 1160 (12th ed. 2024). Prior to the IMFA, the Attorney General had already adopted the place-of-celebration rule, under which a marriage is considered valid for federal immigration purposes if it is legally valid under the law of the jurisdiction where it was celebrated. *See Matter of P—*, 4 I&N Dec. 610 (A.G. 1952). That rule had been in place for decades when § 204(c) was enacted in 1961 and expanded by the IMFA in 1986.

Congress has never defined the term "marriage" under the INA. By leaving that background rule undisturbed, Congress is presumed to have ratified the agency's longstanding interpretation: a marriage is valid for immigration purposes if it is valid under the law of the place where it was performed.

(h) "Determined By the Attorney General…"

The phrase "**determined by the Attorney General to have been entered into for the purpose of evading the immigration laws**" establishes the core fraud finding requirement of § 204(c). It authorizes the Attorney General to make a decision regarding whether a marriage was entered into for the purpose of evading the immigration laws. Although the statute refers to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, tit. XV § 1517, 116 Stat. 2135, 2311 (2002), transferred many of these functions to the Secretary of Homeland Security, including visa petition adjudications, which are now carried out by USCIS. *See* 6 U.S.C. § 557.

Therefore, this clause now applies to the authority of DHS to make marriage fraud determinations under § 204(c).

(i) "Entered Into For…"

The remainder of the phrase—"**entered into for the purpose of evading the immigration laws**"—defines the legal standard for marriage fraud under both clause (1) and clause (2) and is the core operative language of § 204(c). Because this phrase governs the statutory scope of the marriage fraud bar under both clauses, it is addressed separately below.

iv. Clause (2)

Clause (2) of § 204(c) provides that no petition shall be approved if:

> the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

This clause creates a separate and independently sufficient basis to bar petition approval. It applies even if no marriage was completed, no petition was filed, and no benefit was granted.

(a) "The Attorney General Has Determined"

The phrase "**the Attorney General has determined**" means that an administrative finding has been made that the alien engaged in the specified conduct. As explained in Clause (1), the reference to the Attorney General now encompasses the Secretary of Homeland Security. The word "determined" refers to an agency-level conclusion based on evidence in the record; it does not require a criminal conviction, prosecution, or judicial proceeding.

(b) "Alien"

The word "**alien**," as used in this clause, refers to the beneficiary of the petition. This mirrors its use in Clause (1) and reflects the statutory structure of INA § 204, under which citizens or lawful permanent residents file petitions on behalf of noncitizen relatives. *See* INA § 101(a)(3).

(c) "Has Attempted"

The phrase "**has attempted**" is not defined in the INA. The word "has" is the present-tense third-person singular of have, used here to form the present perfect tense, indicating a completed action with continuing relevance.

The word "attempted" is the past participle of attempt, which means "[t]he act or an instance of making an effort to accomplish something." *Attempt*, BLACK'S LAW DICTIONARY 156 (12th ed. 2024). In federal law, "attempt" requires (1) the intent to commit the underlying offense and (2) a substantial step toward its commission. *See Braxton v. United States*, 500 U.S. 344, 349 (1991); *United States v. Resendiz-Ponce*, 549 U.S. 102, 107 (2007); *Matter of Onyido*, 22 I&N Dec. 552 (BIA 1999). This standard has been adopted in immigration law and applies here. *See Matter of Richardson*, 25 I&N Dec. 226, 229 (BIA 2010). Because § 204(c) uses the same operative language as the criminal marriage fraud statute at 8 U.S.C. § 1325(c), this definition governs.

(d) "Or Conspired To"

The phrase "**or conspired to**" contains the disjunctive conjunction "or," which signifies that either attempt or conspiracy is independently sufficient to trigger the statutory bar. There is no requirement that both be proven; proof of one is enough.

The term "conspired" is not defined in the INA. However, federal law defines conspiracy at 18 U.S.C. § 371 as an agreement between two or more persons to commit an unlawful act, coupled with at least one overt act in furtherance of that agreement. This definition has been expressly adopted in the immigration context. For example, the Board has applied the federal criminal law standard when interpreting conspiracy in civil immigration proceedings. *See Matter of Obshatko*, 27 I&N Dec. 173, 175 (BIA 2017); *Matter of R. I. Ortega*, 28 I&N Dec. 9, 13 (BIA 2020).

No criminal conviction is required for conspiracy. *See id.* at 13. The statute refers only to a "determination" by DHS. Congress could have required a conviction, as it has in other INA provisions, but chose not to do so. Under the omitted-case canon, courts and agencies may not insert language that Congress deliberately excluded. Accordingly, an administrative finding that the alien conspired to enter into a fraudulent marriage is sufficient to trigger the bar, even in the absence of criminal charges.

(e) "To Enter Into A Marriage"

The phrase "**to enter into a marriage**" means to form a legally valid marriage, consistent with the place-of-celebration rule discussed in clause (1). A marriage is considered valid for federal immigration purposes if it is legally valid under the law of the jurisdiction where it was celebrated. *See Matter of P—*, 4 I&N Dec. 610 (A.G. 1952).

In the context of clause (2), however, the phrase "to enter into a marriage" necessarily encompasses preparatory or inchoate conduct—not just the formal act of marrying. This interpretation is compelled by the inclusion of the terms "attempted" and "conspired" earlier in the clause. An "attempt" refers to purposeful conduct undertaken in furtherance of an unconsummated marriage. A "conspiracy" requires an agreement, plus at least one overt act in furtherance of that agreement. Thus, clause (2) applies even where no marriage was finalized, so long as the alien took substantial steps toward forming one.

Additionally, nothing in clause (2) limits the term "marriage" to the marriage underlying the petition. Clause (1) expressly references an alien who has been "accorded, or… sought to be accorded" status based on a specific marriage. Clause (2) does not. Instead, it bars approval of *any* petition if the agency finds the alien has attempted or conspired to enter *any* marriage for the purpose of evading the immigration laws. The absence of narrowing language—particularly when contrasted with clause (1)—reflects Congress's intent to reach beyond the petitioning marriage. The operative marriage under clause (2) need not be tied to a pending petition at all.

(f) "For the Purpose Of…"

The phrase "**for the purpose of evading the immigration laws**" appears in both clauses of § 204(c) and supplies the controlling legal standard for what constitutes marriage fraud under the statute. Because this phrase governs the scope of both clauses (1) and (2), it is addressed in detail in the following section.

v. "For the Purpose of Evading the Immigration Laws"

The controlling phrase in both clauses (1) and (2) of § 204(c) is "for the purpose of evading the immigration laws." This is the statute's central definitional standard—commonly understood as the threshold for determining whether a marriage constitutes

"marriage fraud" or, conversely, whether it is "bona fide" for federal immigration purposes.

(a) "The Purpose"

The word "**purpose**" is not defined in the INA, but its ordinary meaning is "an objective, goal, or end." *Purpose*, BLACK'S LAW DICTIONARY 1495 (12th ed. 2024). In context, it means the alien's intended goal in entering into, attempting, or conspiring to enter into a marriage.

The word "**the**" is "used as a function word to indicate that a following noun or noun equivalent refers to… something… clearly understood from the context" a unique or a particular member of its class." *The*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2369 (unabr. ed. 2002). Here, the "something" refers to the specific type of goal that must exist to trigger the § 204(c) bar—namely, the intent to evade the immigration laws.

There is nothing in the statute that suggests "the purpose" must be the alien's *sole* or *primary* purpose. The definite article specifies the object of inquiry, but it does not render that purpose exclusive unless the statute says so. Several interpretive canons confirm this reading:

First, interpreting "the purpose" to mean "sole" or "primary" purpose would violate the omitted-case canon, which holds that nothing should be added to a statute that does not already exist. *Scalia & Garner*, *supra*, at 93. If Congress had intended to narrow § 204(c) to cases where immigration evasion was the sole or primary objective, it could have said so. The absence of narrowing language is presumed intentional.

Second, such a reading would violate the presumption against ineffectiveness canon, which requires statutes to be construed to effectuate, not undermine, their purpose. *Id.* at 63. Aliens who engage in one-sided marriage fraud often do so for a multitude of reasons aside from immigration benefits, including sexual exploitation and financial exploitation of fraud victims, employment opportunities, etc. Indeed, the legacy INS Commissioner testified not only about "marriage fraud" but also "finance fraud" in the Senate hearing in advance of the IMFA. *See Fraudulent Marriage and Fiancé Arrangements to Obtain Permanent Resident Immigration Status: Hearing Before the*

Subcomm. on Immigration & Refugee Policy of the S. Comm. on the Judiciary, 99th Cong. 3 (1985) (testimony of Alan C. Nelson).

If § 204(c) applied only when evading the immigration laws was the sole or primary motive, nearly all marriage fraud would fall outside its reach. For example, if an alien entered a one-sided marriage intending both to gain a green card and to exploit the U.S. citizen financially or sexually, the statute would not apply—resulting in an absurd result. Such a reading would gut the provision and contradict the IMFA's stated purpose: to make it easier, not harder, to prevent and penalize marriage fraud. This may, in fact, help explain USCIS's internal statistics showing "zero percent" fraud. *See supra §* IV.B.4.

Third, nearly every federal appellate court to interpret this exact phrase in the companion criminal statute, 8 U.S.C. § 1325(c), has rejected the "sole purpose" requirement. *See United States v. Sonmez*, 777 F.3d 684, 689 (4th Cir. 2015); *United States v. Khidirov*, 538 F. App'x 877, 880 (11th Cir. 2013) (defining the statutory requirement as "the purpose" not "sole purpose"); *United States v. Ortiz-Mendez*, 634 F.3d 837, 840 (5th Cir. 2011); *United States v. Darif*, 446 F.3d 701, 709-10 (7th Cir. 2006); *United States v. Islam*, 418 F.3d 1125, 1128-30 (10th Cir. 2005); *United States v. Chowdhury*, 169 F.3d 402, 407 (6th Cir. 1999); *see also United States v. Akanni*, 890 F.3d 355, 357 (1st Cir. 2018) (declining to decide the issue).

(b) "Evading"

The word "**evading**" is not defined in the INA. In the phrase "for the purpose of evading the immigration laws," *evading* is a nonfinite verb that heads a gerund clause functioning as the object of the preposition "of." Within that clause, "the immigration laws" serves as the direct object of *evading*. The full prepositional phrase operates as a purpose modifier, identifying what the alien intended to avoid by entering into, attempting to enter into, or conspiring to enter into the marriage—namely, the immigration laws.

The word "evade" means "to get away from (a pursuer or enemy) by dexterity or stratagem", or "to avoid facing up to (a fact or condition)". *Evade,* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 786 (unabr. ed. 2002). The related noun "evasion," means "[t]he deliberate avoidance of what one has responsibility for doing, esp. by cleverness or deceit", or a "means of avoidance, a dodge or subterfuge." *Evasion*,

BLACK'S LAW DICTIONARY 695 (12th ed. 2024). These definitions emphasize not only the act of avoidance, but the intentional and strategic quality of that act.

Critically, *evading* is distinct from *violating*, which is defined as "an infraction or breach of the law." *Violation*, BLACK'S LAW DICTIONARY 1887 (12th ed. 2024). While *evading* necessarily encompasses violations—because deliberately avoiding what one is legally required to do includes, by definition, acts that breach the law—it is not limited to them. Had Congress intended to restrict § 204(c) to unlawful conduct alone, it could have said so. It did not.

Instead, *evading* also includes conduct that may not technically violate the law but nonetheless seeks to avoid, circumvent, or manipulate the requirements, procedures, or purposes of the immigration system—whether by exploiting loopholes, accelerating timelines, or staging technical compliance. This reading reflects the long-standing principle that immigration is a privilege, not a right. *See Dep't of State v. Muñoz*, 602 U.S. 899, 901 (2024). Section 204(c) codifies Congress's judgment that this baseline of integrity is not too much to ask of those who seek to enter and reside in our country.

Evasion may take innumerable forms. Here is a non-exhaustive list of the most common ways an alien enters, attempts to enter, or conspires to enter into a marriage to evade the immigration laws:

1. **To qualify for an I-130 petition**: An alien may pursue a marriage to become eligible for classification as a spouse under INA § 201(b) or § 203(a)(2), thereby enabling the filing of a Form I-130 immigrant visa petition in pursuit of the immigration benefits that flow from petition approval.

2. **To manufacture the predicate for VAWA self-petitioning**: An alien may pursue a marriage with the intent to fabricate or exaggerate claims of abuse in order to self-petition under the Violence Against Women Act of 1994, Pub. L. No. 103-322, tit. IV, § 40701, 108 Stat. 1796, 1902 (1994) (codified as amended at 8 U.S.C. § 1154(a)(1)(A)(iii)) and bypass the ordinary joint petition requirement.

3. **To qualify for a waiver of inadmissibility**: An alien may pursue a marriage to obtain a qualifying relationship for purposes of seeking a waiver of inadmissibility under INA § 212.

4. **To prolong or legitimize an unauthorized stay**: An alien may pursue a marriage as a mechanism to remain in the United States beyond the terms of lawful admission, to cure a visa overstay, or to gain access to adjustment pathways not otherwise available.

5. **To avoid removal**: An alien may pursue a marriage with the objective of forestalling removal or gaining access to benefits—such as adjustment of status or administrative closure—that may delay or terminate removal proceedings.

6. **To financially exploit the I-864 sponsor**: An alien may pursue a marriage to invoke the legally enforceable obligations of a Form I-864 affidavit, including the ability to bring suit against the sponsor for financial support. *See* 8 U.S.C. § 1183a.

When evaluating whether an alien has entered into, attempted to enter into, or conspired to enter into a marriage for the purpose of evading the immigration laws, adjudicators should consider a range of evidentiary factors. These factors are not legal tests or elements; they are analytical tools that may assist in assessing an alien's intent under the statutory standard of proof. In this regard, the Board's extratextual "establish a life" test may be relevant in evaluating an alien's intent, but that should not be confused with the statutory standard itself. *See United States v. Zaheer Ul Islam*, 418 F.3d 1125, 1128 (10th Cir. 2005).

To assist the Board and adjudicators in more faithfully applying the statutory standard, the following non-exhaustive factors should be considered:

1. **Whether the alien would have pursued the marriage at the same time, at the same place, or in the same manner, *but for* potential immigration benefits**:

   This factor isolates whether immigration benefits motivated the alien's decision to pursue the marriage. If the alien would not have pursued the marriage but for the potential of immigration benefits, the statutory standard would be satisfied. The immigration laws are designed to support marriages that already exist, not to induce or manufacture them (except in nonimmigrant K-1 cases).

2. **Whether the alien intended to assume the duties of a spouse, consistent with the historical and traditional expectations of marriages in the United States at the time § 204(c) was enacted**:

This factor assesses whether the alien intended to actually perform core traditional duties of a spouse, including but not limited to:

- **Duty of Integration**: To merge one's life with one's spouse through shared living arrangements and financial interdependence.
- **Duty of Support**: To contribute materially or domestically to the well-being of the other spouse, including financial assistance and household responsibilities.
- **Duty of Fidelity**: To maintain exclusive physical and emotional commitment to one's spouse, precluding romantic or sexual involvement with others.
- **Duty of Care**: To care for the other's physical, mental, and spiritual needs, and—when applicable—the needs of any dependents.
- **Duty of Honesty**: To act transparently and disclose material facts that affect the marital relationship, including immigration motives, finances, or personal history.

If not, an adjudicator could conclude the alien pursued the marriage to evade the immigration laws.

3. **Whether the alien paid or received consideration for the marriage**:

   This factor examines whether a marriage was pursued for financial gain or other consideration, aside from legal fees. If so, an adjudicator could conclude the alien pursued the marriage to evade the immigration laws.

4. **Whether other circumstances or conduct indicate the intent to evade the immigration laws**:

   This catch-all factor encompasses any other indicia that the alien was seeking to evade the immigration laws, including but not limited to a pattern or propensity to commit fraud, sexual exploitation, financial exploitation, etc.

These factors provide a principled framework for distinguishing legitimate marriages from those pursued for the purpose of evading the immigration laws, in accordance with the plain meaning of § 204(c).

(c) "The immigration laws"

Finally, "**the immigration laws**" is a defined statutory term. Under INA § 101(a)(17), it encompasses "all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, or expulsion of aliens."

This definition has most often been interpreted in the context of sentencing guidelines. In that setting, some courts have construed the phrase narrowly to include only those Title 18 offenses that "criminalize conduct necessarily committed in connection with the admission or exclusion of aliens." *United States v. Pineda-Garcia*, 164 F.3d 1233, 1235 (9th Cir. 1999); *see also United States v. Polar*, 369 F.3d 1248, 1257 (11th Cir. 2004); *United States v. Sotelo-Carrillo*, 46 F.3d 28, 29 (7th Cir. 1995).

Other courts have adopted a broader view. For example, the Eighth Circuit held that the phrase "immigration laws" includes Title 18 criminal offenses that were originally enacted as part of the INA, calling the definition "a broad one." *United States v. Lazaro-Guadarrama*, 71 F.3d 1419, 1421 (8th Cir. 1995).

Despite these differences, there is consensus on one core principle: "the immigration laws" at minimum encompass the INA. Therefore, for purposes of INA § 204(c), this baseline confirms that the statute prohibits marriages undertaken to evade the INA.

c. Statutory Structure Confirms the Breadth of § 204(c)

The structure of the IMFA confirms that Congress designed § 204(c) to operate as a broad and categorical bar—not the narrow limitation the Board has superimposed through its extratextual "primary purpose" and "establish a life together" tests. The IMFA expanded the government's enforcement tools at every stage of the immigration process, and deliberately lowered the standard of proof for marriage fraud in removal proceedings, making it easier—not harder—to detect, deter, and deny fraudulent marriage-based petitions. The Board's narrowing gloss contradicts this structural design and is therefore ultra vires.

d. The Board's Definitions Are Ultra Vires After Loper Bright

The statutory definition of marriage fraud under INA § 204(c) is, unambiguously, *whether the alien entered into, attempted to enter into, or conspired to enter into a marriage for the purpose of evading the immigration laws*. The Board's extratextual formulations—such as whether the parties intended to "establish a life together" or whether immigration was the "primary purpose" of the marriage—may be relevant evidentiary considerations, but they are not, and have never been, the legal standard.

Nor does § 204(c) require an actual violation of law. The term "evading" also encompasses efforts to avoid, circumvent, or manipulate the immigration laws, even where the conduct does not technically violate a statute or regulation. Section 204(c) sets forth a broad and categorical prohibition focused exclusively on fraudulent intent to misuse the immigration system—a standard that is unambiguous.

By imposing extratextual requirements that conflict with the statute's text, structure, and purpose, the Board has acted ultra vires. Its interpretation is legally invalid and must be rejected—either by the Board itself or by an Article III court.

C. Systemic Failures to Enforce INA § 204(c)

The Board's erroneous interpretations of INA § 204(c) have distorted both the legal standard for proving marriage fraud and the definition of fraud itself—making it significantly harder for federal agencies to identify and act upon it.

The Board's actions have contributed to a broader collapse of enforcement across federal agencies. Despite decades of congressional action, these cascading failures have left U.S. citizen petitioners vulnerable, unprotected, and without meaningful recourse—creating a vacuum in which fraud flourishes, victims are retraumatized, and fraudulent beneficiaries face no accountability.

1. DOJ: Failure to Prosecute Marriage Fraud

In 1986, Congress enacted the IMFA to make marriage fraud a standalone felony offense to deter, punish, and remove those who exploit the immigration system through deceit. INA § 275(c). This was driven in part by testimony from multiple victims of one-sided immigration marriage fraud. *See Fraudulent Marriage and Fiancé Arrangements*

to Obtain Permanent Resident Immigration Status: Hearing Before the Subcomm. on Immigration & Refugee Policy of the S. Comm. on the Judiciary, 99th Cong. 42–48 (1985) (statements of Amita Narielwala and Patricia Beshara).

Despite Congress's clear intent to deter and punish immigration marriage fraud, the DOJ has failed to meaningfully enforce § 275(c). The DOJ's own Bureau of Justice Statistics website tracks prosecutions by statute dating back to 1994, and the available data are shocking. Since Congress relocated the marriage fraud offense to 8 U.S.C. § 1325(c) in 1996,[2] only 16 cases have been filed under the provision, and only 7 cases have been closed. *See* U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *Federal Criminal Case Processing Statistics (FCCPS)*, https://fccps.bjs.ojp.gov/. Marriage fraud is deemed such a low enforcement priority that DOJ's own *Prosecuting Immigration Crimes Report (PICR)* does not even track prosecutions under this provision. This assumes that the Departments public data is accurate, which if not, would be of equal concern for oversight bodies.

Even when marriage fraud was explicitly elevated to a national enforcement priority during the first Trump Administration, no significant change occurred. For example, on April 11, 2017, the Attorney General explicitly directed all U.S. Attorney's Offices to "consider for felony prosecution under 8 U.S.C. § 1325" any case where a defendant knowingly entered into a fraudulent marriage. U.S. DEP'T OF JUSTICE, *Memorandum on Renewed Commitment to Criminal Immigration Enforcement* (Apr. 11, 2017) (Jeff Sessions, Att'y Gen.). Yet despite this directive, DOJ failed to file a single case under 8 U.S.C. § 1325(c) between 2017 and 2020, based on the Department's own data compiled in the *Federal Criminal Case Processing Statistics*.

The consequences for U.S. citizen victims are devastating. Without meaningful enforcement, fraudulent alien spouses face no meaningful risk of criminal prosecution. Victims who muster the courage to report fraud are retraumatized when they discover that no consequence likely awaits their perpetrator, absent extraordinary efforts and expense. For example, according to the U.S. Government Accountability Office, only

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[2] *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, div. C, title I, § 105(a), 110 Stat. 3009–556 (1996) (codifying the marriage fraud provision at subsection (c) and inserting a new subsection (b) concerning reentry after removal).

three percent of USCIS online fraud tips result in the *opening* of a fraud investigation—not a finding of fraud, not an enforcement action, merely an initial inquiry. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, *Immigration Benefits: Actions Needed to Address Vulnerabilities in USCIS's Antifraud Efforts*, GAO-22-105328, at 19 (2022). The result is a system where fraudsters are emboldened, and victims are systematically abandoned.

Congress criminalized marriage fraud precisely to stop this form of exploitation. By refusing to faithfully enforce the statute, the DOJ has stripped victims of one of their few available protections and undermined the entire antifraud regime.

2. ICE: Failure to Investigate Marriage Fraud

The systemic failure to prosecute marriage fraud is compounded by an equally serious failure to investigate it. Immigration and Customs Enforcement (ICE), through Homeland Security Investigations (HSI), is the principal agency tasked with opening criminal investigations of immigration benefit fraud—including marriage fraud. Yet ICE has abdicated this responsibility.

Today, victims who report credible evidence of marriage fraud are routinely told that ICE does not pursue individual cases. In some jurisdictions, ICE offices have been restructured, or reprioritized to such an extent that they no longer maintain any immigration benefit fraud enforcement capability whatsoever. *See generally* Forrest G. Read IV, *The Rebrand of Homeland Security Investigations*, Nat'l L. Rev. (June 12, 2024), https://natlawreview.com/article/rebrand-homeland-security-investigations.

A dangerous feedback loop has taken root: the DOJ does not prosecute marriage fraud because ICE is not forwarding cases, while ICE does not investigate because of the DOJ's reluctance to prosecute these cases. This "chicken and egg" dynamic has created a complete vacuum of enforcement that emboldens perpetrators to exploit the system with impunity.

Even if ICE declines criminal prosecution, it still has authority to pursue administrative enforcement. After all, marriage fraud renders an alien removable under INA § 237(a)(1)(G). Yet ICE routinely fails to exercise even this basic administrative

authority by issuing Notices to Appear under § 204(c) and does not even publicly disclose these statistics.

The problem is not merely one of resource allocation or prosecutorial discretion. In discussions between undersigned counsel and a senior leader of a Document and Benefit Fraud Task Force within what is likely the most active HSI office, it became clear that even high-ranking officials responsible for antifraud enforcement are totally unaware that one-sided marriage fraud is a felony under 8 U.S.C. § 1325(c), constitutes a ground of inadmissibility and removability, and was the primary problem Congress sought to address through the IMFA. This is clearly indicative of the pressing need for fundamental retraining of the HSI workforce, and/or more fundamental reform if ICE is not ready and willing to assume this role.

Instead of fulfilling the IMFA's congressional mandate, ICE's failure to investigate one-sided marriage fraud ensures that fraudulent beneficiaries continue to exploit U.S. citizens and the immigration system, while U.S. citizen petitioners are left unprotected, abandoned, and victimized. This institutional failure strips the IMFA of its intended force, signals to fraudsters that there are no meaningful consequences, and deeply undermines the credibility of family-based immigration programs.

3. USCIS: A Safe Haven for Marriage Fraud

In the vacuum left by DOJ's failure to prosecute and ICE's refusal to investigate, U.S. Citizenship and Immigration Services (USCIS) has, by default, become the primary federal agency responsible for addressing marriage fraud.

This is deeply problematic for a variety of reasons, none more important than the Government Accountability Office's shocking 2022 finding that USCIS does not even have a national antifraud strategy in place—decades after being established. U.S. GOV'T ACCOUNTABILITY OFFICE, *Immigration Benefits: Actions Needed to Address Vulnerabilities in USCIS's Antifraud Efforts*, GAO-22-105328, at 44 (2022). USCIS's operational posture reflects this strategic vacuum.

a. Collapse of Screening Safeguards

Despite IMFA's requirement for rigorous marriage-based adjudications, in recent years USCIS routinely waived interviews, removing arguably the most important opportunity to detect fraudulent marriages before lawful permanent residence is conferred. *See* USCIS, *Policy Alert PA-2022-13: Interview Waiver Criteria for Family-Based Conditional Permanent Residents* (Apr. 7, 2022).

Although USCIS does not publish statistics on the number of waived interviews, immigration attorneys across the country were acutely aware of the dramatic rise of waivers in the run up to the 2024 election:

- **Sharon Khunkhun, Esq.**: As one New York immigration attorney recounted in a blog post on November 20, 2024, "It's been an amazing run these last two years as 98% of our interviews have been waived." Sharon Khunkhun, *Will My USCIS Marriage Green Card Adjustment of Status Interview Be Waived?*, Khunkhun Law Blog (Nov. 20, 2024), https://immigrationlawnewyork.com/blog/will-my-uscis-marriage-adjustment-of-status-interview-be-waived.

- **Emmanuel Asiriuwa, Esq.**: A Texas-based immigration attorney similarly remarked in a blog post earlier that same year, "There has been a lot of waiver of Green Card interviews by USCIS in a bid to accelerate case processing times." Emmanuel Asiriuwa, *Are Marriage Green Cards Getting Approved Without Interviews?*, Law Office of Emmanuel Asiriuwa (Feb. 12, 2024), https://www.asirilaw.com/are-marriage-green-cards-getting-approved-without-interviews.

- **Gabriella Manolache, Esq.**: In August 2023, another immigration attorney noted "a fascinating trend we've observed at our law firm: green card approval without an interview having first been conducted for an increasing number of individuals applying for marriage-based adjustment of status." She added that her firm had begun seeing "multiple instances where applicants obtained their green cards swiftly without sitting down in person before an immigration officer" and that "interview waivers may be more common than initially anticipated." Gabriella Manolache, *USCIS Waives Some Green Card Interviews: New Emails Sent By USCIS*, Ashoori Law (Aug. 29, 2023),

https://www.ashoorilaw.com/blog/uscis-waives-some-green-card-interviews-new-emails-sent-by-uscis/.

- **Barrera Legal Group**: In April 2023, an immigration law firm wrote, "Despite the official position by USCIS that green card adjustment of status applications require an interview, we have recently noticed that USCIS has increased the waiver of the interview requirement in green card adjustment of status applications." The firm noted that these waivers were occurring "even in marriage based green card adjustment of status cases which are cases that were deemed to especially require an interview." *Is USCIS Waiving Interviews in Green Card Adjustment of Status Cases?*, Barrera Legal Group (Apr. 24, 2023), https://www.barreralegal.com/post/greencard-adjustment-of-status.

b. Extraordinarily High Fraud Waiver Approval Rates

USCIS grants waivers for fraud and misrepresentation (Form I-601) at *extraordinarily* high rates. As of Fiscal Year 2024, available data suggest that USCIS approved approximately 80% of all waivers—across all form types—including those involving fraud and misrepresentations. USCIS, *All USCIS Application and Petition Form Types (Fiscal Year 2024, Quarter 4)* (Dec. 18, 2024), https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2024_Q4.xlsx.

c. No Transparency in Fraud Enforcement

USCIS makes it impossible to determine how many fraud-based waivers were granted or denied, as USCIS does not disaggregate its data by waiver type or inadmissibility ground. Nor does it distinguish Form I-601 adjudications from other waivers (such as Forms I-191, I-192, I-212, I-602, and I-612), obscuring meaningful oversight. *Id.* This lack of transparency prevents oversight bodies from even evaluating whether the agency is faithfully executing its statutory duties or simply rubber-stamping waiver applications.

d. No Procedures to Protect Victims

USCIS has no standing processes to assist or protect U.S. citizen victims of immigration marriage fraud, except a rudimentary online tip form that the U.S. Government

Accountability Office (GAO) found rarely results in meaningful action. U.S. GOV'T ACCOUNTABILITY OFFICE, *U.S. Citizenship and Immigration Services: Additional Actions Needed to Manage Fraud Risks*, GAO-22-105328, at 19 (2022), https://www.gao.gov/assets/gao-22-105328.pdf.

As the GAO reported, the tipline is "the source of thousands of benefit fraud leads each year; however, relatively few of those leads have resulted in benefit fraud cases." While foreign nationals are provided extensive guidance on how to access immigration benefits, U.S. citizens have no designated contacts, no guidance materials, and no clear avenues for redress. In many cases, they are barred from even entering USCIS offices. Victims who report fraud are treated not as stakeholders deserving protection but as second-class citizens.

The problem is not one of ignorance or incapacity. USCIS's posture toward marriage fraud—waiving interviews, obscuring enforcement data, rubber-stamping waivers, and ignoring victims—is the result of conscious policy choices. The agency has become a safe haven not for those in genuine need of protection, but for those who manipulate the system with impunity.

D. "Zero Percent Fraud": USCIS Obfuscates the Fraud

Through the combined failure of the Board to interpret the statute faithfully, the DOJ to prosecute, and DHS to investigate, Congress's marriage fraud bar has been reduced to a hollow formality. Each actor has abdicated its role in the enforcement chain, and the result is predictable: marriage fraud is not merely underenforced—it is functionally unpoliced and our firm has obtained internal data that proves it.

1. Marriage-Based Immigration Dominates the System

By volume, marriage to a U.S. citizen is the single largest and most fraud-prone pathway to lawful permanent residence in the United States. In Fiscal Year 2023 alone, the United States granted lawful permanent resident (LPR) status to approximately 1.2 million individuals. U.S. DEP'T OF HOMELAND SEC., OFFICE OF HOMELAND SEC. STATISTICS, *U.S. Lawful Permanent Residents: 2023* 7 tbl.2 (Alicia Ward, Sept. 2024). Of these, 755,830 (64%) were family-sponsored immigrants, and 276,080 (23.5%)—nearly one in four—were spouses of U.S. citizens. *Id.*

2. USCIS Discloses No Fraud Statistics

Despite the huge numbers of marriage-based green cards, and the incredible magnet for fraud, USCIS does not publicize any statistics whatsoever showing how many marriage-based petitions are denied for fraud. This includes Form I-130s, I-751s, I-360s, and I-129Fs. Furthermore, it does not disaggregate denials by relationship type, nor does it identify the number of Form I-130 denials specifically under INA § 204(c).

These reporting failures render it impossible for the Board, the USCIS Director, the Secretary of Homeland Security, or congressional oversight committees to assess whether marriage fraud is being meaningfully detected and prevented—or is being systemically ignored entirely due to incompetence or more nefarious purposes by a deeply troubled agency.

3. USCIS Reports Zero Percent Fraud

Because USCIS refuses to publish fraud denial statistics, a private citizen was forced to file a Freedom of Information Act (FOIA) request to compel disclosure. In response, USCIS produced (years later) internal denial data from 2016 to 2019 for a broad range of benefit types.[3] USCIS, *Denied-Fraud By Fiscal Year and Quarter: Fiscal Years 2016–2021 (through Mar. 2021)* (FOIA response, released 2021). While the agency disclosed statistics across numerous categories, the data for marriage-based forms is most relevant—and most alarming.

The figures below, derived from USCIS's own production, show fraud denial rates for five principal forms used in marriage-based immigration adjudications:

2016-2019 Statistics Provided by USCIS				
Form	**Form Type**	**Adjudications**	**Fraud Denials**	**Fraud Rate**
I-129F	Fiancée Petitions	203,143	13	0.006%
I-130	Immediate and Preference Relatives	2,742,339	7,357	0.268%
I-485	Family-Based Adjustments	1,320,023	5,808	0.440%

[3] The data provided also included 2020, which was an anomaly due to the COVID-19 pandemic, and only partial data for the beginning of 2021.

I-751	Remove Conditions on Residence	567,808	2,024	0.356%
I-360	Immigrant Petitions	120,564	82	0.068%

These are not estimates—they are official USCIS figures. Rounded to the nearest whole number, **USCIS reports a 0% fraud rate across every major marriage-based immigration form**. This is not just implausible—it is a national scandal. A federal agency tasked with policing fraud in the most abuse-prone category of green card adjudications claims to find virtually none, leaving the American people exposed to untold national security and public safety risks.

This is not a data anomaly. It is a systemic failure that conceals fraud from view, deprives oversight bodies of insight, and allows systemic abuse to flourish behind a façade of administrative process. Congress cannot possibly fulfill its duty of oversight if the foundational data used to measure fraud is both implausible and opaque.

4. USCIS Simultaneously Waives Known Fraud

The absurdity and implausibility of USCIS's fraud denial data becomes even more indefensible when considered alongside its waiver adjudication practices. While reporting fraud denial rates that round to zero percent across all marriage-based benefit forms, USCIS simultaneously approves the overwhelming majority of waivers, including those for fraud and misrepresentation.

According to publicly available data, USCIS approves approximately 80% of all inadmissibility waivers—across all forms and all statutory grounds. USCIS, *All USCIS Application and Petition Form Types (Fiscal Year 2024, Quarter 4)* (Dec. 18, 2024), https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2024_Q4.xlsx.

These waivers include but are not limited to Form I-601, which is used to seek forgiveness for grounds of inadmissibility such as INA § 212(a)(6)(C)(i), applicable when an alien has committed fraud or willfully misrepresented a material fact in order to obtain an immigration benefit. These waivers are not issued for clerical errors or harmless mistakes—they are granted to aliens who readily admit they are inadmissible due to fraud.

Despite the gravity of this inadmissibility ground, USCIS refuses to disaggregate its waiver data. It does not publicly disclose how many waivers were granted specifically for fraud or misrepresentation. It does not distinguish Form I-601 waivers from other forms, such as I-191, I-212, I-602, or I-612. This lack of transparency again prevents Congress, agency leadership, and the public from assessing how often known fraud is forgiven—and whether agency enforcement patterns align with statutory intent.

As a result, the only conclusion available is that the same 80% approval rate likely applies to fraud-based waivers as well. If USCIS is excusing fraud at that rate, while denying virtually no petitions for fraud in the first instance, it is not merely failing to enforce the law—it is enabling the very fraud Congress intended to prevent.

This systemic pattern of waiver without accountability exacerbates the harm inflicted on citizen victims. It sends a devastating message: not only will fraud be tolerated, it will be forgiven without scrutiny. The result is a benefits system where perpetrators are rewarded and victims are abandoned.

5. Chain Migration Is a Fraud Multiplier

Marriage-based immigration does not end with the issuance of a single green card. It initiates a cascading chain of admissions that compounds over time and reshapes the U.S. immigration system far beyond the initial benefit. As one of the largest and least scrutinized categories of family-based immigration, spousal sponsorship acts as an accelerant for what has been called "chain migration." *See* Jessica Vaughan, *Chain Migration and the Immigration Multiplier Effect*, Ctr. for Immigr. Stud. (Sept. 2017), https://cis.org/sites/default/files/2017-09/vaughan-chain-migration_1.pdf.

Foreign nationals who acquire permanent residence through marriage to a U.S. citizen are exempt from numerical caps, have fast-tracked access to naturalization, and are uniquely positioned to sponsor additional relatives. Historical data show that immigrants admitted between 1996 and 2000 sponsored an average of 3.46 additional family members. Id. at 3. These include not only spouses and children, but also adult siblings and elderly parents—admissions that originate directly from the initial marriage-based green card. While approximately 276,080 spousal green cards were issued in FY 2023, the long-term derivative impact of those admissions is significantly larger, approaching 1 million new entrants.

And that figure only captures the first generation. Most marriage-based immigrants of childbearing age will go on to have U.S.-born children—who automatically acquire citizenship and fall entirely outside the scope of immigration enforcement. These children are not theoretical visa derivatives; they are permanent legal and demographic consequences of the originating fraud. Once born, they cannot be removed. The legal status of their parent—even if obtained by deception—becomes a fixture of their family unit and a shield against accountability.

These cascading effects underscore why enforcement of INA § 204(c) is so critical. Each time USCIS fails to detect fraud, each time the Board narrows the definition of fraud, and each time DOJ declines to prosecute, the government is not just conferring a single benefit. It is launching an immigration chain that can never be fully reversed.

Congress did not design the marriage-based immigration system to be a loophole for permanent fraud-based admission. But absent rigorous enforcement under § 204(c), that is exactly what it becomes. The Board must recognize that failure to apply § 204(c) at the front end of this process allows an entire class of immigration fraud to metastasize unchecked—through family sponsorship, automatic citizenship, and eventual naturalization. Reclaiming the statutory mandate of § 204(c) is not merely about stopping one fraud—it is about halting the exponential growth of fraud-based migration over time.

E. Victim Impact: Real Stories and Lasting Harm

While systemic failures and statistical data reveal the scope of marriage fraud, they do not begin to capture the human cost. For every fraudulent petition approved, there is a real person—a U.S. citizen—whose trust was exploited, whose life was destabilized, and who was left without protection or recourse. These victims are not rare exceptions—they are the predictable outcome of a system that fails to prevent and respond to marriage fraud.

1. Real-Life Examples

The following cases illustrate recurring patterns of immigration marriage fraud experienced by our clients. Each example is drawn from an actual legal matter and has

been approved by the client for anonymized public distribution. These are not outliers—they exemplify common schemes in which foreign nationals exploit the marriage-based immigration system while intentionally evading the duties inherent in a bona fide marital relationship. We have selected these cases to reflect the broad range of fraud typologies our firm routinely confronts in practice.

a. VAWA Self-Petition Fraud

- Subject, a foreign national from Russia, entered the United States on a tourist visa and overstayed unlawfully. She then targeted a U.S. citizen (Victim) into marriage in a known hotspot for foreign intelligence activity. Her conduct mirrored tactics common to foreign intelligence operations—for example, her sister reportedly recorded license plate numbers of older men who visited her prior to her relationship with Victim. When Victim discovered Subject's misrepresentations and declined to proceed with her green card application, Subject retaliated by falsely accusing him of domestic violence. She coordinated with multiple co-conspirators, including a nurse practitioner and individuals with Eastern European ties, to stage evidence and submit perjured affidavits. Victim was arrested, but prosecutors later dropped all charges, citing "factual innocence." Subject remains at large inside the United States.

b. Marriage Fraud (Immigrant Visa)

- Subject, a foreign national from Pakistan, married a U.S. citizen (Victim) through a family-arranged match. Victim complied with immigration law by filing a spousal petition in 2021 and awaiting Subject's immigrant visa approval. The couple agreed to delay their formal wedding celebration until after visa issuance. In late 2024, after the visa was granted, Victim traveled to Pakistan for the planned ceremony—unaware that Subject had already used the visa to secretly enter the United States to begin living apart from Victim. She concealed her travel, pretended to still be abroad, and made no attempt to reunite with Victim. When the deception was discovered, Subject's relatives admitted the marriage had been orchestrated solely for immigration purposes. Victim has filed for annulment, and Subject remains at large in the United States.

c. Marriage Fraud (Immigrant Visa with Military Infiltration)

- Subject, a foreign national from Bangladesh, entered the United States in 2022 on an immigrant visa based on marriage to a U.S. citizen (Victim). Although she represented her intent to reside with Victim in Arizona, Subject immediately absconded upon arrival at the San Francisco Port of Entry and severed all contact. She never joined Victim as required by immigration law. Subject later obtained employment at a U.S. military installation and falsely claimed to hold an SCI clearance—a sensitive designation restricted to U.S. citizens. Victim obtained an annulment based on immigration marriage fraud in 2023, but Subject remains at large in the United States. Her continued presence poses a potential national security risk and exemplifies the lack of enforcement mechanisms for post-entry marriage fraud.

- Subject, a foreign national from India, married a U.S. citizen (Victim) in 2019 after meeting through an online matrimonial service. Prior to the marriage, Subject falsely claimed to be a widower, expressed a desire to have children, and concealed his sterility from a prior vasectomy. The couple maintained a long-distance relationship while the Victim sponsored Subject's immigrant visa. Subject obtained lawful permanent residence in 2023 and moved to Texas, where he cohabited with Victim for one month before abruptly leaving with no intent to return. Victim later discovered that Subject had also concealed a prior deportation from Dubai for sexual misconduct and that his first wife had died by suicide, reportedly due to his abuse. A Texas court annulled the marriage in 2025. Subject remains at large in the United States.

d. Marriage Fraud (Adjustment of Status)

- Subject, a foreign national collegiate athlete from China, targeted a recently naturalized U.S. citizen (Victim) and breast cancer survivor as his F-1 visa neared expiration. After less than one month of dating, Victim was seriously injured in a car accident while riding with Subject's mother. During her bedridden and isolated recovery, Victim was subjected to unwanted sexual advances by Subject, resulting in an unplanned pregnancy that was later reported to law enforcement as sexual assault. Still recovering, and in a medically compromised and vulnerable state, Victim was coerced into a rushed civil marriage arranged entirely by Subject's mother—timed to prevent Subject's

loss of lawful status. Friends and family were shocked to learn that the wedding had occurred. Subject never assumed the duties of a spouse and later admitted that the marriage was solely for immigration purposes.

- Subject, an illegal alien from Mexico, deceived a young U.S. citizen (Victim) into marriage to obtain lawful status. Less than two years later, Victim discovered that Subject was homosexual and had never intended a genuine marital relationship. The marriage had been a calculated attempt to secure a Green Card. When Victim learned the truth, she made extensive efforts to stop the immigration process—sending letters, placing calls, and submitting formal notices to USCIS. Despite these efforts, USCIS waived the marriage interview and approved the I-130 petition. Victim obtained an annulment based on fraud. Subject remains at large in the United States.

e. I-751 Waiver Fraud

- Subject, a foreign national from Turkey, met U.S. citizen Victim through family connections and proposed during her three-week visit to Istanbul in November 2019. He gave her jewelry that later turned out to be fake. Though initially planning to wed in Turkey, Subject—on advice from a New York immigration attorney—illegally entered the U.S. on a B-2 visa with concealed intent to adjust status. Days before the visa expired, they married without a ceremony and filed for adjustment the same day. Subject falsely denied military service, misrepresented his health, and began planning for permanent residence. After receiving a work permit, he moved out, wired money overseas in violation of a court order, and discussed fabricating abuse claims to obtain an I-751 waiver. "I wanted to live [in the] US, so this is my charge," he wrote. He later claimed poverty to avoid support, then purchased an $83,000 luxury car. A Delaware court terminated the marriage based on allegations of immigration fraud. Victim suffered severe depression and medical complications. Subject remains at large.

f. I-751 Document Fraud

- Subject, a Lebanese national, entered the United States on a B-2 visitor visa in November 2017 and began pursuing a U.S. citizen (Victim) on a dating app shortly before his visa was set to expire. After an aggressive courtship, Subject coerced Victim into a quick civil marriage just weeks before his authorized stay

ended. Immediately after marriage, Subject instructed Victim to sponsor him for a green card. Once his conditional permanent residency was approved, Subject largely abandoned the marriage. He quit his job, concealed his finances, and spent more than 436 days living abroad. While residing overseas, he cohabited with another woman and leveraged international connections, including associates tied to weapons trafficking and Iranian oil sales. Subject later submitted an I-751 petition with the Victim's forged signature. Subject remains at large in the United States.

g. N-400 fraud

- A U.S. citizen met the Beneficiary in 2016, unaware that he had previously entered the country on a temporary work visa, overstayed, and attempted marriage fraud with another American just months earlier. After falsely claiming to be divorced and fabricating his background, the Beneficiary quickly moved in, isolated the Petitioner from her support system, and proposed within months—at the same location he had used for his prior spouse. The couple married in 2019, but Beneficiary concealed the marriage from the Petitioner's family, exploited her financially, and engaged in multiple extramarital affairs throughout the relationship. He admitted to others that the marriage was for immigration purposes. He was naturalized in 2024, after which Petitioner discovered explicit admissions of marrying her for a green card. She was granted an annulment in 2025. Subject remains a U.S. citizen.

2. Devastating Impact on Fraud Victims

The systemic failure to prevent and respond to marriage fraud inflicts profound and lasting harm on U.S. citizen petitioners from all walks of life. Contrary to persistent myths that victims are somehow to blame—or that immigration marriage fraud is a victimless crime—the reality is starkly different. Foreign nationals who commit marriage fraud steal hearts, wallets, and reputations – sometimes all at once. The damage can last a lifetime. Far from being isolated or trivial, the consequences of marriage fraud often exceed the harm caused by other forms of alien-perpetrated crimes, precisely because of the intensely personal nature of the betrayal and the catastrophic aftermath that follows.

Victims are often not reckless or gullible individuals. In many cases, they are highly educated, thoughtful, and genuinely committed spouses who are deliberately deceived through calculated emotional manipulation. Fraudsters often engage in long-term schemes to gain trust, portray authentic affection, and mask their true immigration motives until the moment permanent status is secured. Once exposed, these betrayals leave U.S. citizens with overwhelming harms across multiple dimensions.

a. Mental Harm

Victims can suffer a profound loss of trust in others, particularly in romantic and intimate relationships. This rupture in trust is compounded by deep emotional trauma, including feelings of betrayal, abandonment, grief, and humiliation. The psychological consequences can be debilitating. Many victims develop new or intensified psychological disorders such as post-traumatic stress disorder (PTSD), anxiety, and depression. *See generally* Chenyang Wang, *Online Dating Scam Victims Psychological Impact Analysis*, 4 J. Educ., Human. & Soc. Sci. 149 (2022); Jie-Yu Chuang et al., *Romance Scams: Romantic Imagery and Transcranial Direct Current Stimulation*, 12 Front. Psychiatry 738874 (2021), https://doi.org/10.3389/fpsyt.2021.738874. The chronic stress associated with the fraud often leads to hypervigilance and difficulty forming new relationships. Even long after the fraud is uncovered, victims may experience lasting feelings of isolation and stigma that inhibit emotional recovery.

b. Financial Harm

Marriage fraud can result in significant and enduring financial harm. One of the most serious consequences is the indefinite federal liability imposed by Form I-864, Affidavit of Support, which contractually binds the petitioner to support the immigrant financially, regardless of divorce. In many cases, this liability is compounded by direct financial exploitation—such as emptied bank accounts, stolen personal property, and unauthorized debts incurred by the immigrant spouse. Victims are also burdened with substantial legal expenses, including the costs of annulment, divorce, or defending against fabricated abuse claims. Some suffer additional losses through adverse state court rulings, including alimony awards or property divisions based on false narratives that the marriage was abusive.

c. Physical Harm

Physical harm frequently accompanies or follows the discovery of marriage fraud. In some cases, the fraud scheme is intertwined with acts of physical and emotional abuse. Even where physical abuse is absent, the stress imposed by the deception and subsequent legal conflict can have serious health consequences. Victims often develop stress-related conditions such as hypertension, autoimmune disorders, IBS, and other chronic illnesses. Female victims, in particular, may lose critical childbearing years during the course of the fraudulent marriage and its aftermath, leaving them to confront diminished fertility and the emotional toll of delayed family formation. Some may be forced to undergo expensive and invasive procedures, such as in vitro fertilization (IVF), in an effort to recover lost opportunities.

d. Legal Harm

Fraudulent spouses also frequently file false accusations of criminal wrongdoing against innocent U.S. citizens as a tactical means of securing immigration benefits under the Violence Against Women Act (VAWA) or by requesting an I-751 waiver. These are essentially secret trials in which U.S. citizens are accused of crimes and have no due process to defend themselves before a government official. This reality was acknowledged by USCIS officials who admitted to the GAO that, "the self-petition program is vulnerable to fraud." U.S. GOV'T ACCOUNTABILITY OFFICE, *Immigration Benefits: Additional Actions Needed to Address Fraud Risks in Program for Foreign National Victims of Domestic Abuse*, at GAO Highlights, GAO-19-676 (Sept. 2019), https://www.gao.gov/assets/gao-19-676.pdf.

False allegations can result in ancillary legal actions, including the issuance of unfounded protective orders or adverse family court findings, and can cause lasting reputational damage, especially in the age of the Internet. Even after the fraud is exposed, petitioners often face persistent legal entanglement and a prolonged struggle to clear their names. The process of reversing the damage inflicted by fabricated claims is complex and emotionally draining, leaving a permanent mark on the petitioner's legal and personal record.

The profound harms inflicted on victims are not inevitable—they are the foreseeable result of systemic failures of the federal officials—in the so-called "Department of

Homeland Security"—to prevent and respond to perpetrators of marriage fraud. Congress acted to prevent these outcomes, but without vigilant enforcement, the protections it intended remain hollow. It is against this backdrop of institutional abandonment that the Board's duty becomes unmistakable: to reaffirm and enforce the antifraud mandates embedded in the immigration laws and to restore integrity, accountability, and public trust to a system that citizens are entitled to rely upon.

The Board now stands as the last institutional safeguard capable of protecting citizen victims, restoring congressional purpose, and closing the enforcement vacuum that fraudsters continue to exploit.

IV. The Solution: BIA Appeals, Revocation, and Fraud Court

In light of the overwhelming evidence, systemic failures, and personal devastation detailed above, one truth is now unmistakable: the United States must act. And it can—right now, under existing law. While there is much work to be done to repair a system that has long failed U.S. citizens targeted by immigration fraud, the most urgent and achievable priority is to establish a fair and formal process that gives victims a voice and puts their evidence before a federal decisionmaker.

The current "solution"—reporting fraud through an online tip form—is totally inadequate and serves to insulate USCIS from any oversight. It offers no rights, no answers, no action, and no appeal. Victims are left in the dark, locked out of the very system their abusers exploited. There is no right to information, no guarantee of review, no way to challenge inaction, and no pathway to court. This is not due process. It is a national disgrace.

But this can change immediately. With no need for new legislation, federal agencies already possess the legal authority to create a workable framework—one that restores accountability, respects the rule of law, and delivers real remedies for real victims. Three steps would transform the current void into a functional system of oversight:

(1) The Board of Immigration Appeals should formalize an appeals process for approved I-130 petitions based on newly discovered evidence of fraud;

(2) USCIS should stand up a permanent fraud revocation division with dedicated personnel and transparent protocols; and

(3) The Chief Immigration Judge should establish a specialized Fraud Court that provides expedited hearings for fraud-based cases that facilitates the swift removal of unindicted felons.

These are not theoretical fixes—they are practical, lawful, and ready to implement now. With moral clarity, political courage, and administrative will, the United States can finally offer victims something they have never had: a real process, a real forum, and a real chance to be heard.

A. BIA Appeals Process

The Attorney General or the Board of Immigration Appeals should issue formal guidance clarifying that U.S. citizens may appeal an approved I-130 petition based on newly discovered evidence of marriage fraud, and that equitable tolling applies.

1. Why Board Intervention is Critical

The Board, operating under authority delegated by the Attorney General, is the highest executive body responsible for enforcing immigration laws through an adjudicative function. Under 8 C.F.R. § 1003.1(d)(1), the Board has two core functions:

- To adjudicate individual cases within its jurisdiction in a manner that is timely, impartial, and consistent with the INA and regulations.
- To provide clear and uniform guidance—through precedential decisions—to DHS, immigration judges, and the general public on the proper interpretation and administration of the INA and its implementing regulations.

There has never been a more urgent moment for the Board to exercise these functions vigorously. The national marriage fraud crisis has metastasized into a systematic failure—one so far removed from the oversight and safeguards Congress intended that the Board's intervention is now imperative.

This imperative flows from the source and nature of the Board's authority. As an Article II executive entity, the Board derives its power from the President via the

Attorney General and is bound by the constitutional duty to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. That duty is affirmative. It requires executive adjudicators to ensure that the INA's mandates are not merely theoretical, but enforced in fact.

Although the Board must remain impartial in resolving individual appeals, that neutrality operates within a broader constitutional framework—one that empowers it to ensure the INA is carried out faithfully. Unlike Article III courts, which interpret laws, the Board plays an instrumental role in their enforcement. Where other agencies fail to act, the Board must step forward to preserve the rule of law and the coherence of the statutory scheme.

This responsibility is especially acute in the context of immigration fraud. Congress has repeatedly reaffirmed that marriage fraud poses a grave threat to the integrity of lawful immigration. Through statutes like the Immigration Marriage Fraud Amendments of 1986, Congress mandated that fraud be deterred, prosecuted, and categorically excluded from immigration benefits. INA § 204(c) is not a discretionary tool; it is a binding command. When credible evidence of fraud emerges, the Board must ensure that USCIS enforces that command and that systemic inaction does not render it meaningless.

This mandate was recently reaffirmed by EOIR itself. In February 2025, EOIR issued a policy memorandum explicitly recognizing that immigration fraud "constitutes a direct attack on EOIR's integrity," and emphasizing that the agency's institutional credibility depends on confronting fraud where it occurs. U.S. DEP'T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, PM 25-19, *Reviving and Strengthening the Anti-Fraud Program* (Feb. 5, 2025), https://www.justice.gov/eoir/media/1388586/dl. The memorandum explicitly acknowledged that fraud thrives in low-risk, high-reward environments—especially when enforcement bodies fail to act. That directive applies with full force to the Board.

The Board now stands as one of the last remaining institutional safeguards for victims of immigration marriage fraud. Each fraudulent I-130 petition left undisturbed encourages further abuse, erodes the legitimacy of the immigration system, and compounds the harm to U.S. citizens already exploited.

Congress did not treat marriage fraud as a technical defect—it criminalized it as a felony under 8 U.S.C. § 1325(c) and barred all immigration benefits flowing from it. When the agency responsible for administering those benefits ignores that mandate, the Board has both the authority and the obligation to intervene.

2. The Board Already Has Jurisdiction

a. Plain Meaning of the Regulation Includes Approvals

The regulation governing the Board's jurisdiction, which is delegated by the Attorney General, unambiguously authorizes the Board to hear appeals from *any* DHS decision on an I-130 petition, including prior approvals. Specifically, 8 C.F.R. § 1003.1(b)(5) provides that "[a]ppeals may be filed with the Board of Immigration Appeals from…[d]ecisions on petitions filed in accordance with section 204 of the [INA]." This provision was originally promulgated in substantially similar form in 1958. 23 Fed. Reg. 9117, 9118 (Nov. 26, 1958).

The phrase "petitions filed in accordance with section 204 of the [INA]" in 8 C.F.R. § 1003.1(b)(5) refers to immigrant visa petitions governed by INA § 204. Section 204 establishes the procedures through which U.S. citizens and lawful permanent residents may petition for classification of certain foreign relatives as *immediate relatives*, including foreign spouses. *See* INA § 204(a)(1)(A)(i). This classification makes the beneficiary eligible to apply for lawful permanent residence. Form I-130 is the standardized DHS petition used to initiate this classification process. *See* 8 C.F.R. § 204.1. Accordingly, a "petition filed in accordance with section 204" necessarily encompasses an I-130 petition seeking to classify a foreign spouse as an immediate relative.

The plain meaning of the term "decisions" in 8 C.F.R. § 1003.1(b)(5) encompasses any final adjudicative action taken by DHS on an I-130 petition, including both approvals and denials. The term is defined as a "judicial or agency determination after consideration of the facts and the law." *Decision*, BLACK'S LAW DICTIONARY 511 (12th ed. 2024). A determination necessarily presumes the existence of more than one possible outcome; otherwise, no act of decision-making would be necessary.

In the context of I-130 petitions, the Supreme Court has already defined "decision" to include approvals and denials. *Bouarfa v. Mayorkas*, 604 U.S. 6, 9 (2024) (referring to USCIS decisions on visa petitions as consisting of either approvals or denials). DHS itself acknowledges there are two final outcomes: approval or denial. The USCIS Policy Manual includes an entire chapter titled "Rendering a Decision" that explicitly describes both types of decisions. *See* U.S. CITIZENSHIP & IMMIGRATION SERVS., USCIS Policy Manual, vol. 1, pt. E, ch. 9:

- **Approvals**: "If the requestor properly filed the benefit request and the officer determines that the requestor meets all eligibility requirements, then the officer may approve the request. Upon approval, the officer updates all relevant electronic systems to reflect the approval."

- **Denials**: "If, after evaluating all evidence submitted (including in response to a Request for Evidence (RFE) or Notice of Intent to Deny (NOID), if applicable), the officer determines the requestor is ineligible for the benefit sought, the officer denies the benefit request."

Both outcomes are treated as final adjudications and consistently referred to as "decisions" in DHS practice and policy.

The term "appeal" is not defined in 8 C.F.R. § 1003.1(b)(5), but its ordinary meaning is well-established. The term means a "proceeding undertaken to have a decision reconsidered by a higher authority". *Appeal*, BLACK'S LAW DICTIONARY 120 (12th ed. 2024). This definition is concerned with the *process* by which a decision is reviewed—not the outcome of the underlying decision. Therefore, in the context of I-130 adjudications, the term appeal allows for any outcome of a DHS decision, including approvals and denials.

Taken together, the plain text of 8 C.F.R. § 1003.1(b)(5) unambiguously grants the Board jurisdiction over appeals from any DHS decision on a petition filed under INA § 204, regardless of the outcome of the decision.

b. Regulatory Context Reinforces the Plain Meaning

Even if the plain meaning of 8 C.F.R. § 1003.1(b)(5) was ambiguous—which it is not—the surrounding regulatory context confirms that it encompasses approvals of I-130 petitions.

The Supreme Court has repeatedly emphasized that legal interpretation is a "holistic endeavor," and that language appearing ambiguous in isolation may be clarified by examining surrounding provisions, particularly where "the same terminology is used elsewhere in a context that makes its meaning clear." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). Moreover, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972). This applies with equal force to regulatory interpretation.

Here, the regulation demonstrates that the drafters understood and deliberately distinguished between the terms "decision" and "denial." For example, in cases involving voluntary departure, the regulation limits Board review to "the immigration judge's *denial* of voluntary departure." 8 C.F.R. § 1003.1(d)(7)(ii) (emphasis added). This language expressly confines appellate jurisdiction to a particular type of adjudicative outcome—denials.

By contrast, § 1003.1(b)(5) contains no such limitation. It authorizes appeals from "decisions"—a broader, unqualified term that, by both ordinary meaning and contrast with neighboring provisions, must encompass both approvals and denials. The use of materially different terms within the same regulation is presumed to be deliberate. Accordingly, the regulatory structure confirms that "decisions" in § 1003.1(b)(5) includes all final adjudicative actions on I-130 petitions, including approvals.

c. The Board's Article II Duties Reinforce the Plain Meaning

Beyond the plain text of 8 C.F.R. § 1003.1(b)(5), the Board's jurisdiction must be understood in light of its structural role. The Board is not a disinterested appellate body—it is a law enforcement instrument within the Executive Branch, created to ensure that immigration benefits are not conferred contrary to law. Its jurisdiction

exists to carry out the Attorney General's duty to faithfully enforce the INA, including by correcting approvals that violate statutory mandates such as INA § 204(c).

All executive power is vested in the President. U.S. Const. art. II, § 1, cl. 1. As chief executive, the President is constitutionally required to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. This clause imposes an affirmative obligation on the Executive Branch—not merely to enforce laws, but to do so with fidelity to their text, purpose, and legal constraints.

At the time of the Founding, to act "faithfully" meant more than mere performance; it required honesty, vigilance, and integrity in the discharge of public duties. Samuel Johnson defined "faithfully" as acting "with strict adherence to duty" and "honestly; without fraud." *Faithfully*, 1 Samuel Johnson, A DICTIONARY OF THE ENGLISH LANGUAGE (7th ed. 1783). Noah Webster similarly defined it as acting "honestly, sincerely, truly, steadily." *Faithfully*, Noah Webster, A COMPENDIOUS DICTIONARY OF THE ENGLISH LANGUAGE 112 (1806). These sources reflect the founding-era understanding that faithful execution required more than mere compliance—it demanded vigilance, integrity, and an affirmative duty to prevent deception and abuse.

The President discharges this constitutional enforcement responsibility through principal officers, including the Attorney General, who serves as head of the Department of Justice—an executive entity under Article II. *See* 28 U.S.C. §§ 501, 503. The Attorney General is the President's "chief law enforcement officer," entrusted with supervising the enforcement of federal laws, including immigration laws. *See Trump v. United States*, 603 U.S. 593, 620 (2024).

This enforcement authority encompasses not only litigation and prosecution, but also administrative adjudication. By statute, Congress vested the Attorney General with authority to administer and enforce the INA, including the power to ensure DHS is administering immigration benefits properly and determining removability. *See* INA § 103(a). That authority is carried out both directly and through officers within the Executive Office for Immigration Review (EOIR), including the Board of Immigration Appeals.

Although the Board exercises adjudicatory authority, it remains fundamentally an executive body—not a judicial tribunal under Article III. It operates as an

administrative enforcement mechanism, implementing the Attorney General's statutory duties under Article II. Its purpose is not to declare abstract legal rights, but to enforce immigration law faithfully by reviewing and correcting improper or unlawful benefit grants.

d. INA § 204(c) Violations Require Corrective Action

The Board's obligation is clear in the context of INA § 204(c), which requires the denial of any petition where the alien has entered into, attempted to enter into, or conspired to enter into a marriage for the purpose of evading immigration laws. The statute's language is categorical: "no petition shall be approved." When USCIS violates this command, *and is made aware of that fact*, the Executive Branch has the duty to correct the error and prevent the unlawful conferral of benefits.

That corrective function lies principally with the Board on a properly presented appeal. A DHS decision approving such a petition is not merely flawed; it is an unauthorized act that undermines the faithful execution of federal immigration law. By adjudicating such cases on appeal, the Board enforces the statutory boundaries set by Congress and ensures that no benefit is conferred in defiance of law.

3. The Board Already Reviews INA § 204(c) Determinations

Once appellate jurisdiction vests under 8 C.F.R. § 1003.1(b)(5), the scope of the Board's review is governed by a separate regulatory provision: 8 C.F.R. § 1003.1(d)(3)(iii). That regulation states in clear and comprehensive terms that "the Board may review *de novo* all questions arising in appeals from decisions issued by DHS officers."

a. The Board May Review "All Questions" in DHS Appeals

The operative phrase—"all questions"—must be interpreted according to its ordinary meaning. The term "all" is defined as "the whole amount or quantity of" or "as much as possible". *All*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 54 (unabr. ed. 2002). The word is naturally inclusive and admits no implied limitation.

Although no controlling case law defines "all" as used in 8 C.F.R. § 1003.1(b)(5), the Supreme Court has repeatedly construed the word "all" in other contexts to mean without limitation. *See Norfolk & W. R. Co. v. Am. Train Dispatchers' Ass'n*, 499 U.S.

117, 129 (1991) (concluding that the phrase "all other law" indicates "no limitation"); *Williams v. United States*, 289 U.S. 553, 572–73 (1933) ("[T]he word "all" is comprehensive and excludes the idea of a limitation of quantity or the selection of a part."); *see also Montello Salt Co. v. Utah*, 221 U.S. 452, 462–63 (1911) ("all" excludes the idea of a limitation of quantity or the selection of a part").

The regulation does not say the Board may review "certain questions," "questions of law," or "issues preserved by DHS." It says "all questions"—a formulation that plainly includes factual matters such as whether a beneficiary entered into a marriage for the purpose of evading the immigration laws. Nothing in § 1003.1(d)(3)(iii) limits the Board's scope of review or excludes marriage fraud determinations.

To the contrary, marriage fraud determinations are precisely the kind of questions the Board is equipped to review. The Board has decades of precedent interpreting INA § 204(c), often in contexts involving either adverse findings by USCIS or eligibility disputes concerning marriage-based petitions. Whether a petition was improperly approved in violation of a statutory fraud bar falls squarely within the category of "questions arising in appeals from decisions issued by DHS officers."

Even if the phrase "all questions" were viewed as ambiguous in isolation—which it is not—the surrounding regulatory structure confirms its breadth. Subsections (d)(3)(i) and (d)(3)(ii) impose express limitations on the Board's review of immigration judge decisions, including a clearly erroneous standard for findings of fact. By contrast, § 1003.1(d)(3)(iii) contains no such limitations. That structural distinction reinforces the plain reading: when acting under § 1003.1(d)(3)(iii), the Board is authorized to review every class of issue—legal, factual, or mixed—*de novo*.

b. The Board Reviews Those Questions De Novo

The second clause of § 1003.1(d)(3)(iii) confirms that "the Board may review *de novo* all questions arising in appeals from decisions issued by DHS officers." (Emphasis added.) The term *de novo* is a well-settled term of art in administrative and judicial review. In Latin, it means "anew," or as the Supreme Court has described, "without deference." *See Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 116 (2008); *see also Appeal De Novo,* BLACK'S LAW DICTIONARY 120 (12th ed. 2024) (defining "appeal de novo" as an "appeal

in which the appellate court uses the trial court's record but reviews the evidence and law without deference to the trial court's rulings").

Reviewing this case *de novo* means the Board is not bound by USCIS's prior findings or conclusions. *See, e.g.*, *Matter of P. Singh*, 27 I&N Dec. 598 (BIA 2019); *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). Rather, the Board may reexamine the entire factual record and apply the law independently to determine whether the petition was unlawfully approved. A contrary rule would render the appeal process illusory by shielding DHS's errors from meaningful scrutiny at a time when the Board's institutional oversight is most needed.

This language leaves no ambiguity. It grants the Board unqualified authority to consider any issue that arises in such appeals—whether legal, factual, or mixed—and to review those issues from a clean slate, without deferring to the prior conclusions of DHS. That authority necessarily encompasses the Board's ability to determine whether a petition was unlawfully approved in violation of INA § 204(c).

4. The Board Must Deny I-130 Petitions for Marriage Fraud

INA § 204(c) provides that "[n]o petition shall be approved if" the alien has entered into, attempted to enter into, or conspired to enter into a marriage for the purpose of evading the immigration laws. The term "shall" denotes a mandatory command. *Shall*, BLACK'S LAW DICTIONARY 1657 (12th ed. 2024). This bar is categorical. If the conditions of the statute are met, the agency lacks discretion to approve the petition.

The phrase "be approved" encompasses the full course of adjudication, including the appeal process. An I-130 petition is not "approved" in the final legal sense until the agency issues a final determination. Because 8 C.F.R. § 1003.1(b)(5) confers appellate jurisdiction over I-130 decisions—including approvals—the bar under § 204(c) necessarily applies through the pendency of that appeal. If sufficient evidence of marriage fraud emerges before a final decision is reached, the petition must be denied.

The Supreme Court's decision in *Bouarfa v. Mayorkas*, 604 U.S. 6 (2024), reinforces this. There, the Court confirmed that INA § 204(c)'s bar extends "to the point of approval" of the petition, which necessarily refers to final agency action. *Id.* at 16. However, there is no final agency action until a properly presented appeal is decided.

By its nature, an appeal to the Board is a continuation of the initial adjudication and relates back to the point of approval.

The Board's appellate review under 8 C.F.R. § 1003.1(b)(5) and § 1003.1(d)(3) is not a collateral or discretionary proceeding—it is an integral part of the original adjudication. The evidentiary record remains open, the agency's decision is not yet final, and the approval is subject to reversal. Therefore, under *Bouarfa*, the § 204(c) bar remains fully operative during the pendency of an appeal. If sufficient evidence of marriage fraud is introduced before final agency action, the petition must be denied.

5. Equitable Tolling Applies to Fraud-Based Appeals

Congress did not impose a statutory deadline for appeals from decisions of DHS officers to the Board. *See generally* INA § 204. Instead, federal regulations require that an appeal from a DHS decision be filed with the office having administrative control over the record of proceeding within 30 days of service of the decision. 8 C.F.R. § 1003.3(a)(2). The problem in marriage fraud cases is that fraud may not be discovered until long after the appeal deadline runs. However, equitable tolling applies in these cases. Even if it did not, the Board may still certify cases *sua sponte*.

a. Equitable Tolling Is Deeply Rooted in American Law

Equitable tolling has deep roots in Anglo-American law, originating in English common law under the doctrine of equity of the statute at a time when judicial and legislative functions were not fully distinct as they would become under the U.S. Constitution. *See* John F. Manning, *Textualism and the Equity of the Statute*, 101 Colum. L. Rev. 1, 36–37 (2001). *Equity of the statute* allowed judges to interpret laws flexibly to avoid unjust results. A prime example was equitable tolling, which permitted courts to extend deadlines where fairness required.

> [T]he doctrine allowed judges to restrict the general words of a statute when they produced harsh results apparently outside the statute's policy. Perhaps the most familiar example of this is the equitable tolling of the statute of limitations or the many steps taken by judges to mitigate the rigor of the statute of frauds. Judges also brought omitted cases within the reach of a statute, even when they admittedly lay outside its express terms.

Id. at 31 (citations omitted).

Prior to American independence, the *equity of the statute* doctrine was embedded in English legal culture. Sir Edward Coke described it as the judicial power to extend a statute's reach beyond its text to cases within its intended purpose, recognizing that lawmakers could not anticipate every scenario. *See* 1 Edward Coke, *Institutes of the Laws of England* 141 (1628). Similarly, Sir Edmund Plowden likened law to a nut, where the text is the shell, but its reason and purpose are the kernel, emphasizing that judges should adjust a statute's application as equity requires. *See Eyston v. Studd*, 75 Eng. Rep. 688, 695 (K.B. 1574).

The doctrine was later incorporated into Blackstone's *Commentaries on the Laws of England*, the most widely read legal treatise in late eighteenth-century America and a key influence on the Founders' understanding of statutory interpretation. *See* 1 William Blackstone, *Commentaries on the Laws of England* 59 (1765). Blackstone explained the problem this doctrine sought to solve:

> In general laws all cases cannot be foreseen; or, if foreseen, cannot be expressed: some will arise that will fall within the meaning, though not within the words, of the legislator; and others, which may fall within the letter, may be contrary to his meaning, though not expressly excepted.

Although there were marked differences between the English common law system and the constitutional republic established in the United States—such as the concentration of the power in the former and the separation of powers in the latter—certain common law rules that emerged from equity survived in the American legal system, including equitable tolling.

By the 19th century, American courts had firmly established equitable tolling as part of the fabric of American law, particularly in cases where a party was prevented from timely filing due to fraud or external barriers. *See Hanger v. Abbott*, 73 U.S. 532, 538–39 (1867) (tolling applied where the Civil War prevented access to courts); *Bailey v. Glover*, 88 U.S. 342, 349–50 (1875) (fraud tolls limitations where deception prevents timely filing); *Sherwood v. Sutton*, 21 F. Cas. 1303, 1307 (C.C.D.N.H. 1828) (fraud justifies tolling because a party cannot be expected to sue on a claim they did not know

existed); *First Mass. Tpk. Corp. v. Field*, 3 Mass. 201, 207 (1807) (tolling permitted where defendant's deception delayed discovery of a claim); *Johnson v. Diversey*, 82 Ill. 446 (1879) (wartime and fire damage excused failure to meet filing deadlines); *see also* 4 John Bouvier, *Institutes of American Law* 214 n.b (1851) (listing natural disasters as justifications for tolling).

These cases reinforced the fundamental role of equitable tolling in American law, ensuring that statutes of limitations fulfilled their intended function—preventing undue delay while still allowing claims where fairness required flexibility.

b. Equitable Tolling Is Presumed In Federal Law

Against this historical backdrop, the U.S. Supreme Court described equitable tolling as a "traditional feature of American jurisprudence." *Boechler, P.C. v. Commissioner*, 596 U.S. 199, 208-09 (2022).

> Equitable tolling—extending the deadline for a filing because of an event or circumstance that deprives the filer, through no fault of his own, of the full period accorded by the statute—seeks to vindicate what might be considered the genuine intent of the statute.

McQuiggin v. Perkins, 569 U.S. 383, 409 (2013) (Scalia, J., dissenting).

The Court continued to apply the doctrine throughout the 20th century, mainly between private litigants. For example, the Supreme Court allowed equitable tolling in situations where the claimant actively pursued judicial remedies by filing a defective pleading during a statutory period. *See Burnett v. New York Central R. Co.*, 380 U.S. 424 (1965) (holding that the FELA statute of limitations was tolled where the plaintiff timely filed suit in a state court of competent jurisdiction, served the defendant, and the suit was later dismissed for improper venue).

Similarly, the Court has allowed equitable tolling where a complainant was induced or tricked by an adversary's misconduct into allowing a filing deadline to pass. *See Glus v. Brooklyn E. Dist. Terminal*, 359 U.S. 231 (1959); *Holmberg v. Armbrecht*, 327 U.S. 392 (1946) (equitable tolling is read into all federal statutes of limitations in cases of fraud).

During this time, Court made clear that "exercise of a court's equity powers… must be made on a case-by-case basis." *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964).

In *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89 (1990), the Court extended equitable tolling to suits against the federal government. In short, equitable tolling is presumptively available in the context of all "statutory time limits" unless tolling would be "inconsistent with the text of the relevant statute." *Id.* at 95-96; *United States v. Beggerly*, 524 U.S. 38, 48 (1998). As the Court later explained, "Congress must be presumed to draft limitations periods in light of this background principle." *Young v. United States*, 535 U.S. 43, 49-50 (2002).

In more recent decisions, the Court has recast the issue as to whether a statutory deadline is jurisdictional or non-jurisdictional in nature.

- **Jurisdictional deadlines** strip a court or agency of equitable discretion and mark the bounds of a "court's adjudicatory authority." *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004).

- **Non-jurisdictional deadlines**, such as claim processing rules, are not intended to strip a court or agency of jurisdiction, but instead are designed "to promote the orderly progress of litigation by requiring parties to take certain procedural steps at specified times." *Henderson v. Shinseki*, 562 U.S. 428, 429 (2011). Filing deadlines have been described as "quintessential claim-processing rules". *Id.*

To determine whether a deadline is jurisdictional or non-jurisdictional, the Court established a "readily administrable bright line" rule in *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 515 (2006):

> If the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional, then courts and litigants will be duly instructed and will not be left to wrestle with the issue. But when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in character.

In other words, if Congress wants a provision to be jurisdictional, it should clearly say so. Congress need not "incant magic words," *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013), but the "traditional tools of statutory construction must plainly

show that Congress imbued a procedural bar with jurisdictional consequences," *United States v. Kwai Fun Wong*, 575 U.S. 402, 410 (2015). If the jurisdictional nature of a statutory deadline is ambiguous, it is treated as a claim-processing rule, subject to equitable tolling. *Boechler, supra*, at 199.

c. Equitable Tolling Requires Diligence and Extraordinary Circumstance

For statutory deadlines that are deemed non-jurisdictional in nature and subject to equitable tolling, the question is what is the standard a claimant must meet? In *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005), the Court announced, in the context of a federal habeas corpus petition, that "a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." *See also Lawrence v. Florida*, 549 U.S. 327, 336 (2007).

The Court reaffirmed this test in *Holland v. Florida*, 560 U.S. 631 (2010), also in the context of a federal habeas corpus petition. Notably, the Court added that the diligence required for equitable tolling purposes is "reasonable diligence", not "maximum feasible diligence." *Id.* at 653. To determine this requires an "equitable, often fact-intensive" inquiry, considering "in detail" the unique facts of each case to decide whether a litigant's efforts were reasonable in light of his circumstances." *Id.* at 653-654.

The Court later extended the *Pace-Holland* test to apply to other cases outside the habeas corpus context. For example, in *Menominee Indian Tribe v. United States*, 577 U.S. 250, 257 (2016), the Court added that while the diligence element addresses affairs within a litigant's control, the extraordinary circumstances element includes only circumstances that are outside the control of the litigant.

d. Equitable Tolling Applies to Agencies

Although most of the Supreme Court cases on equitable tolling have dealt with statutory deadlines in the context of Article III courts, the Court has noted that it also applies in other non-Article III contexts, including agency proceedings. *See Boechler, supra,* at 209, n.1 (citations omitted).

In addition, equitable tolling applies to regulatory deadlines. As one federal district court mentioned, "[c]ourts since *Irwin* have held that principles of equitable tolling apply not only to statutory deadlines, but also and equally to regulatory filing deadlines." *Dillard v. Runyon*, 928 F. Supp. 1316, 1323 (S.D.N.Y. 1996) (citing *Johnson v. Runyon*, 47 F.3d 911, 917 (7th Cir. 1995); *Wojik v. Postmaster General*, 814 F. Supp. 8, 8 (S.D.N.Y. 1993)).

Years later, another district court similarly noted, "our research has revealed that numerous courts have applied equitable tolling to regulatory filing deadlines." *Bradford Hosp. v. Shalala*, 108 F. Supp. 2d 473, 484 (W.D. Pa. 2000) (citing *Rager v. Dade Behring, Inc.*, 210 F.3d 776, 779 (7th Cir. 2000) (holding that equitable tolling is applicable to a Family and Medical Leave Act regulation which requires the employee to submit physician certification within 30 days); *Von Eye v. United States*, 92 F.3d 681, 684 (8th Cir. 1996) (concluding that equitable tolling applies to Food Security Act regulation which requires that conversion activities be completed by January 1, 1995); *Johnson v. Runyon*, 47 F.3d 911, 914 (7th Cir. 1995) (applying equitable tolling to EEOC regulation that requires claimant to "initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory."); *Bayer v. United States Dep't of Treasury*, 956 F.2d 330, 332 (D.C. Cir. 1992) (holding that EEOC regulation that requires complaint to be filed with counselor within 30 days of alleged discriminatory event is subject to equitable tolling); *Weber v. Henderson*, No. 99-2574, 2000 U.S. Dist. LEXIS 1793, at *6-7 (E.D. Pa. Feb. 9, 2000) (holding that equitable tolling may apply to EEOC regulation which requires claimant to bring claim to attention of counselor within 45 days of the date of the discriminatory event)).

e. The Board Has Already Adopted Equitable Tolling

i. Original Misapplication—Matter of Liadov

At one point, the Board rejected the idea that equitable tolling applied to its own proceedings. For example, in *Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006), the Board considered whether equitable tolling may be applied to a late filing of an appeal from a decision of an immigration judge under 8 C.F.R. § 1003.38(b) caused by a delay in delivery. The Board held that equitable tolling is not applicable because:

- A federal regulation and statute both explicitly set a 30-day deadline;

- The BIA Practice Manual explicitly mentioned that delivery delays do not excuse late filings; and

- The Supreme Court had previously stated in *United States v. Locke*, 471 U.S. 84 (1985) that "filing deadlines must be strictly applied".

The Board also noted in *Liadov* that in "exceptional circumstances" of a missed filing deadline, it also had authority to certify cases itself under 8 C.F.R. 1003.1(c) to address any injustice.

However, the Board's reliance on *Locke* was misplaced because the issue did not concern equitable tolling. Instead, *Locke* addressed whether a missed filing deadline constituted an unconstitutional taking under the Fifth Amendment. *See Locke*, 471 U.S. at 86. In fact, the Supreme Court in *Locke* explicitly acknowledged in footnote 10 that equitable tolling may apply to statutory deadlines—yet the Board in *Liadov* did not address this. The Board in *Liadov* also did not address more recent Supreme Court precedent concerning equitable tolling, including *Irwin* and its progeny.

ii. Course Correction—Matter of Morales

In the wake of *Liadov*, a number of federal appeals courts disagreed with the Board's holding. *See, e.g.*, *Boch-Saban v. Garland*, 30 F.4th 411, 413 (5th Cir. 2022) (per curiam); *Attipoe v. Barr*, 945 F.3d 76, 80-82 (2d Cir. 2019); *Irigoyen-Briones v. Holder*, 644 F.3d 943, 946-49 (9th Cir. 2011).

This led the Board to make "a course correction" and ultimately overturn *Liadov* in *Matter of Morales-Morales*, 28 I&N Dec. 708, 716 (BIA 2023). In *Morales*, the Board again addressed the issue of whether equitable tolling may be applied to a late filing of an appeal from a decision of an immigration judge under 8 C.F.R. § 1003.38(b) caused by a delay in delivery. Unlike in *Liadov*, the Board in *Morales* considered more recent Supreme Court decisions pertaining to equitable tolling and held that equitable tolling is available to appeals from decisions of immigration judges. *Morales*, 28 I. & N. at 716.

Notably, the Board incorporated the *Pace-Holland* test which, in the words of the Board, requires a party to show "diligence in the filing of the notice of appeal and that an extraordinary circumstance prevented timely filing." *Id.* at 714.

iii. Equitable Tolling for Fraud Extends to DHS Decisions

Despite overwhelming legal precedent supporting equitable tolling, the Board has never explicitly held that appeals from DHS decisions are subject to equitable tolling. The Board should now confirm that the same principles governing motions to reopen and appeals from immigration judges must also apply to appeals from DHS decisions, particularly when fraud prevented timely filing.

The 30-day deadline for filing appeals of DHS decisions under 8 C.F.R. § 1003.3(a)(2) is a "quintessential claim-processing rule." *Henderson*, 562 U.S. at 429. The Supreme Court has consistently held that when a deadline is a claim-processing rule, it is presumptively subject to equitable tolling. *See Kwai Fun Wong*, 575 U.S. at 410. Because Congress has not explicitly made this deadline jurisdictional, it must be treated as non-jurisdictional and subject to equitable tolling.

This presumption is even stronger because equitable tolling is especially favored in areas where equity has traditionally governed. *See Holland v. Florida*, 560 U.S. 631, 646 (2010) ("We will not construe a statute to displace courts' traditional equitable authority absent the clearest command.") (quoting *Miller v. French*, 530 U.S. 327, 340 (2000); *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979)). Fraud is one of the most well-established areas of equity. *See* 3 William Blackstone, *Commentaries on the Laws of England* 431 (1768) ("fraud, accident, and trust are the proper and peculiar objects of a court of equity").

Finally, the Board has already adopted equitable tolling in the context of appeals for the benefit of foreign nationals seeking immigration benefits from immigration judges. The need for equitable tolling is even more compelling when it serves to protect innocent U.S. citizens who have been victimized by foreign nationals fraudulently seeking benefits at their expense.

6. Standing Sue Sponte Certification for Fraud-Based Appeals

Regardless of the application of equitable tolling, the Board maintains existing regulatory to certify cases to itself sua sponte under 8 C.F.R. § 1003.1(c). Certification in these cases is particularly warranted for the following reasons:

- **Congressional intent**: The IMFA codified Congress's categorical prohibition on granting immigration benefits based on fraudulent marriages. Certification would fulfill that legislative mandate by ensuring that marriage fraud does not prevail due to procedural default.

- **To enforce statutory ineligibility under INA § 204(c)**: The Board has held that a finding of marriage fraud renders an alien permanently ineligible for immigration benefits. *See Matter of P. Singh*, 27 I&N Dec. 598, 606 (BIA 2019). Certification ensures enforcement of this statutory bar.

- **System integrity**: Permitting a fraudulently procured petition to stand solely because the fraud remained undetected past a filing deadline undermines confidence in the adjudicative process. Certification serves as a corrective to preserve the legitimacy of the immigration system.

- **Victim redress**: Denying review solely due to the timing of discovery would unjustly penalize victims while shielding perpetrators. Certification allows the Board to redress this inequity.

- **Deterrence of concealment-based fraud**: Marriage fraud should not be rewarded merely because it remained concealed until a filing deadline expired. Certification discourages strategic concealment and addresses this structural vulnerability.

- **Administrative efficiency and consistency**: Certification conserves agency resources, avoids unnecessary future filings, and facilitates fair and consistent adjudication of fraud-based petitions.

The Board should adopt a standing certification protocol for cases in which credible, substantiated allegations of marriage fraud are discovered after the expiration of relevant deadlines. *See* App. C (Proposed Sua Sponte Standing Order). Under such a protocol, *sua sponte* certification would be triggered by a submission from a licensed practitioner who, under penalty of perjury, affirms that they have:

- Carefully reviewed the evidence of fraud presented on appeal;

- The evidence is credible and warrants the Board's review; and

- Petitioner has acted with diligence in pursuing their rights.

Establishing such a protocol would reinforce the statutory mandate of INA § 204(c) and the core legislative purpose of the IMFA. It would also provide a critical procedural safeguard for U.S. citizens victimized by foreign nationals who exploit marriage to obtain immigration benefits. Formalizing a consistent mechanism for post-deadline certification in fraud cases would promote fairness, enhance administrative efficiency, and preserve the integrity of the immigration system.

B. USCIS Revocation Division

To complement the BIA appeals process, USCIS should establish a permanent Revocation Division under 8 U.S.C. § 1155, dedicated to reviewing and revoking erroneously approved visa petitions and issuing Notices to Appear. This division should be staffed with fraud-trained adjudicators vested with binding authority over all other USCIS components, and empowered to take immediate action when credible evidence of fraud presented.

1. USCIS Often Ignores Fraud Until the Alien Seeks a New Benefit

At present, USCIS frequently fails to revisit previously approved petitions—even when provided with credible evidence of marriage fraud or other statutory ineligibility—unless and until the beneficiary applies for a new immigration benefit. This creates a perverse enforcement gap: even clear fraud may go unaddressed for years unless the alien voluntarily seeks further benefits. That policy is not only absurd, it invites abuse. It allows removable aliens—including national security risks, public safety threats, and serial fraud perpetrators—to remain in the United States indefinitely, simply because the agency elects not to act.

2. Federal Law Already Authorizes Revocation

Federal law already provides the statutory authority to remedy these errors. Under 8 U.S.C. § 1155, the Secretary of Homeland Security already has authority to retroactively revoke visa petitions, effective as of the original approval date.

In *Bouarfa v. Mayorkas*, 604 U.S. 6 (2024), the Supreme Court recently confirmed that § 1155 is a classic grant of discretion, allowing the Secretary to act "at any time" and for "what he deems to be good and sufficient cause." The Court emphasized that the statute "places no conditions on the exercise of that discretion. When credible evidence of

fraud, USCIS should revoke the benefit and refer the case immediately to the Immigration Fraud Court discussed below.

3. Specialized Infrastructure Is Needed to Enforce the Law

Despite USCIS's sweeping revocation authority, it has no dedicated infrastructure for reviewing past cases for fraud. A permanent Revocation Division would fill this institutional void. It should be centrally located, insulated from the pressures of local field offices and regional service centers. To support its mission, the Division should include a specialized investigative arm focused solely on post-approval fraud. This unit would conduct follow-up investigations, corroborate and authenticate evidence, interview witnesses, and coordinate with other federal agencies when criminal or national security concerns arise.

4. Fraud-Trained Adjudicators Should Have Superseding Authority

Officers within the Revocation Division must be fraud-trained adjudicators. Marriage fraud and related benefit fraud often involve complex deception and staged conduct designed to mislead officers. These cases demand adjudicators trained in pattern recognition, evidentiary analysis, and the application of statutory bars such as INA § 204(c), § 212(a)(6)(C), and § 237(a)(1)(A). The goal is not to undermine good-faith petitioners, but to restore lawful standards, deter fraud, and uphold statutory limits enacted by Congress.

5. BIA Findings Must Trigger Mandatory Revocation Review

The Revocation Division must be structured to receive and act on decisions issued by the Board of Immigration Appeals. Where the Board makes a marriage fraud finding under INA § 204(c), the Division should immediately revoke any downstream immigration benefits derived from that petition, including adjustment of status, work authorization, and derivative family benefits.

Even where the Board stops short of a definitive § 204(c) determination, the Revocation Division should independently assess the full record and determine whether revocation is still nonetheless appropriate. The mere presence of unresolved fraud concerns—especially where new evidence is introduced on appeal—should trigger mandatory internal review. Upon revocation, a Notice to Appear shall be issued.

6. Revocation Is Not a Substitute for BIA Appeals

Finally, it is essential to clarify that the Revocation Division is not a replacement for the BIA appeals process. Victims must retain the ability to independently initiate appellate review and obtain formal adjudications. Otherwise, victims will remain stuck in an unresponsive bureaucracy that routinely ignores them and allows fraud to fester. However, the Revocation Division should complement the BIA appeals process. Together, these mechanisms form a dual system of accountability: the BIA empowers victims to compel action, and the Revocation Division ensures the agency executes the law when action is required.

C. Immigration Fraud Court

The Chief Immigration Judge should establish a specialized Immigration Fraud Court to provide prioritized, in-person adjudication of fraud-based removal cases. This structural reform would ensure that individuals who have exploited the immigration system—often committing felony-level offenses against U.S. citizens—are adjudicated promptly, detained when appropriate, and removed without delay. The proposal requires no legislative action, as the Chief Judge already holds the necessary regulatory authority under 8 C.F.R. § 1003.9.

1. Fraudsters Remain in the United States For Years

Even when DHS issues a Notice to Appear based on credible findings of immigration fraud, individuals who have engaged in serious offenses—such as marriage fraud or willful misrepresentation—often remain in the United States for years. These are not technical or paperwork violations; they are intentional acts of deception against the U.S. government, often accompanied by harm to citizen victims.

Despite the availability of dispositive evidence in many cases, EOIR assigns these matters to the general non-detained docket, where cases are delayed for years, effectively allowing fraud perpetrators to live and work freely while removal proceedings stagnate. This undermines both deterrence and public confidence in the immigration system. Fraud-based NTAs should not be buried in a general backlog—they demand prompt resolution.

2. A Fraud Court Would Provide Prioritized Hearings

The Immigration Fraud Court would operate as a specialized docket within EOIR for adjudicating cases involving credible allegations of immigration fraud. These cases would be scheduled on a prioritized timeline, bypassing the years-long delay of the general docket. Respondents would be required to appear in person at their hearings, allowing immigration judges to conduct direct credibility assessments, ensuring judicial integrity, and enabling immediate post-hearing enforcement by ICE where appropriate.

Importantly, this is not expedited removal under INA § 235(b), which allows DHS to remove certain individuals without a hearing. The Immigration Fraud Court would operate entirely within the INA § 240 framework, preserving all procedural protections—including notice, the right to counsel, and the opportunity to contest removability or apply for relief. The key distinction is not the elimination of process, but the elevation of priority and enforcement coordination.

3. Immediate Detainment and Removal Upon Conviction

When the immigration judge sustains the fraud charge and issues a final order of removal, the respondent should be detained immediately at the conclusion of the hearing. Under INA § 241(a), ICE has clear statutory authority to detain and remove individuals subject to final orders. Because the respondent is physically present in court, ICE can take custody on site, reducing flight risk and ensuring that fraud-based removals are executed promptly. In appropriate cases, removal can occur within days—replacing systemic delay with operational discipline.

4. Specially Trained Judges

Fraud cases can be complex, especially circumstantial marriage-based fraud cases. They often involve document manipulation, staged conduct, false statements, and coordinated schemes involving third parties. Adjudication requires more than routine immigration training. Judges assigned to the Fraud Court should receive specialized instruction on fraud indicators, evidentiary standards, forensic analysis, and fraud-specific legal doctrines. This ensures consistency, reduces adjudicative error, and promotes factually grounded and legally sound decisions.

5. The Chief Immigration Judge Already Has Authority

The creation of a specialized docket for immigration fraud requires no new statutory authority. Under 8 C.F.R. § 1003.9(b), the Chief Immigration Judge—subject to supervision by the Director of EOIR—has broad regulatory powers to:

- "Set priorities or time frames for the resolution of cases";
- "Regulate the assignment of immigration judges to cases"; and
- "Manage the docket of matters to be decided."

These authorities are sufficient to create and manage a standing fraud docket. The regulation also authorizes the Chief Judge to issue operational and procedural instructions, and to provide targeted training for judges and staff. Together, these tools permit EOIR leadership to ensure that fraud-related matters are resolved by qualified adjudicators under uniform and expedited procedures.

Historically, EOIR has used this authority to benefit foreign nationals. It is time to apply the same structural framework to protect U.S. citizens and uphold the integrity of the immigration system.

6. Benefits of a Dedicated Fraud Docket

A standing Immigration Fraud Court would deliver multiple systemic benefits:

- **Deterrence**: Prioritizing fraud cases sends a clear message: immigration fraud will be met with swift and serious consequences. This deters sham marriages, false claims, and benefit fraud by eliminating the incentive to exploit procedural delays.
- **Victim Protection**: U.S. citizens deceived or coerced in fraudulent marriages are often trapped in prolonged legal and emotional entanglement. Prompt adjudication and removal would bring safety, closure, and dignity to victims—particularly in cases involving domestic violence, coercion, or identity theft.
- **Integrity**: A fraud docket reinforces the public's trust that immigration law is not aspirational, but enforceable. It affirms that those who lie, forge, or defraud their way into immigration benefits cannot remain indefinitely in legal limbo.

- **Efficiency**: Fraud cases share recurring fact patterns. Assigning them to trained judges on a specialized docket enables faster and more accurate adjudications, reducing backlog and improving institutional capacity.

- **Coordination**: The Fraud Court would enhance interagency coordination. EOIR fraud findings could be transmitted to USCIS for revocation under 8 U.S.C. § 1155, and to ICE for follow-on enforcement. This closes the loop between adjudication and administrative remedy, enhancing national security and public safety.

The Immigration Fraud Court would convert the enforcement of immigration fraud statutes from a discretionary ideal into a structural reality—through prioritized, in-person hearings, immediate detainment, and prompt removal. The authority exists. The harm is ongoing. The time to act is now.

V. Conclusion

Marriage fraud under INA § 204(c) is a national crisis. It directly harms U.S. citizens while presenting profound public safety and national security risks. The federal government has failed victims of fraud at every level. However, meaningful reform is possible under existing legal authority. As this testimony has shown:

- The Board of Immigration Appeals can review erroneously approved I-130 petitions based on newly discovered evidence of marriage fraud;
- USCIS has sweeping revocation authority under 8 U.S.C. § 1155; and
- The Chief Immigration Judge has the power to establish a dedicated Immigration Fraud Court to prioritize removal of unindicted felons.

Victims of fraud are waiting for our leaders to act—and to finally prioritize the rights and interests of U.S. citizens over the wants and wishes of foreign nationals. To assist the government, our firm has appended the following that could be adopted immediately:

- Model revisions to Form EOIR-29.
- Model revisions to the BIA Practice Manual.
- Model sua sponte certification order for the BIA.

Codias Law would be pleased to work with the Subcommittee on other more permanent legislative solutions and to provide additional legislative support for other high-risk programs—including VAWA self-petitions, I-751 waivers, and U visas—as well as the structural failures enabling systemic fraud.

Appendices

Appendix A. Form EOIR-29 Revisions

1. Model Form EOIR-29

WHERE TO FILE THIS APPEAL:

Do not file this directly with the Board of Immigration Appeals.

This Notice of Appeal must be filed with the Department of Homeland Security (DHS) within 30 calendar days after service of the decision of the DHS Officer. Fraud Appeals are subject to equitable tolling. Please read the complete instructions on the back of this form.

Appeal Type

1. Identify which type of appeal you are filing by checking the appropriate box:

☐ **I am filing an appeal from a decision of a DHS Officer** (e.g., Visa Petition (I-130) decision), **not involving fraud**:

Name of Beneficiary:
A-Number, if any, of Beneficiary:
Petition Form Number:

☐ **I am filing an appeal from a decision of a DHS Officer** (e.g., Visa Petition (I-130) decision) **based on newly discovered evidence of marriage fraud**:

Name of Beneficiary:
A-Number, if any, of Beneficiary:
Petition Form Number:

☐ **I am filing a different type of appeal from a decision of a DHS Officer** (e.g., carrier and fine decision, INA § 212(d)(3)(A)(ii) waiver decision, permissible DHS bond decisions):

Name:

A-Number, if any:
Carrier and fine number:
Any other relevant information:

2. I hereby appeal to the Board of Immigration Appeals from the decision of the _____ issued by _____,
(Title of DHS Officer) (Office Where DHS Decision was Issued)

dated _____ in the above titled case.
(Title of DHS Officer)

3. Specify reasons for this appeal and continue on separate sheets if necessary. Please refer to Instruction #2 for further guidance.

***Warning**: If the factual or legal basis for the appeal is not sufficiently described, the appeal may be summarily dismissed.*

_____
_____
_____
_____
_____

4. Do you desire oral argument before the Board of Immigration Appeals?

☐ Yes ☐ No

5. Do you intend to file a separate written brief or statement after filing this Notice of Appeal?

***Warning**: If you indicate "yes" and fail to do so the appeal may be summarily dismissed. Please refer to the Instructions for further information.*

☐ Yes ☐ No

Fraud Appeals (if applicable)

This section applies to any appeal filed pursuant to BIA Practice Manual § 9.3(c)(2), in which the petitioner seeks appellate review of a previously approved visa petition based on newly discovered evidence of marriage fraud.

1. **Representation Requirement**: For fraud appeals, a petitioner must be represented by a licensed attorney practitioner, as defined in 8 C.F.R. § 1001.1(f) and who is subject to the EOIR rules and procedures governing professional conduct.

2. **Practitioner Certification**: By signing below, the practitioner hereby certifies, pursuant to BIA Practice Manual § 9.3(d)(5)(ii), under penalty of perjury under the laws of the United States, that they have:

    - Carefully reviewed the evidence of fraud presented on appeal;
    - The evidence is credible and warrants the Board's review; and
    - Petitioner has acted with diligence in pursuing their rights.

3. **Evidence Submission**: Petitioners must submit all fraud-related evidence concurrently with this Notice of Appeal. When such evidence is reviewed by USCIS prior to transmittal to the Board, it will not be considered "new evidence" for purposes of Board review, and no separate motion to remand is required.

Signature Block

By signing below, I certify under penalty of perjury under the laws of the United States that the information provided in this Notice of Appeal is true and correct.

_____ _____

Date Signature of Appellant/Petitioner (or Attorney or Representative)

_____

Print or Type Name

_____

Address (Number, Street, City, State, Zip Code)

2. Model Instructions for Form EOIR-29

GENERAL INSTRUCTIONS

(Please read carefully before completing and filing Form EOIR-29)

1. General Information

You are the "appellant" if you are filing an appeal from a decision of a Department of Homeland Security (DHS) Officer. This form allows you to request review by the Board of Immigration Appeals (the "Board") of certain DHS decisions, including visa petition determinations. Only the petitioner, or a qualified self-petitioner, may file this appeal.

2. Appeal Type

You must indicate the nature of the appeal by checking one of the following boxes on the form:

☐ I am filing an appeal from a decision of a DHS Officer (e.g., Visa Petition (I-130) decision), not involving fraud.

☐ I am filing an appeal from a decision of a DHS Officer (e.g., Visa Petition (I-130) decision) based on newly discovered evidence of marriage fraud.

☐ I am filing a different type of appeal from a decision of a DHS Officer (e.g., carrier and fine decision, INA § 212(d)(3)(A)(ii) waiver decision, permissible DHS bond decisions).

If you are appealing a decision by a USCIS Officer denying a visa petition (I-130), list the name and "A" number of the beneficiary. The beneficiary is not allowed to sign Form EOIR-29. Only the petitioner, a self-petitioner, or an authorized representative is allowed to sign the form.

3. Filing Deadline

For most appeals, you must file Form EOIR-29 within 30 calendar days of the date the DHS decision was served (physically or by mail). If mailed, the appeal must be *received* within 30 days, not merely postmarked.

For fraud appeals filed under BIA Practice Manual § 9.3(c)(2), the 30-day deadline is subject to equitable tolling where the petitioner acted with diligence after discovering newly available evidence of marriage fraud. *See* section 6 below.

4. Where to File

For most appeals, you must file this form with the DHS office that issued the decision, in accordance with the instructions included with the decision. Do *not* file this form directly with the Board.

For fraud appeals, you must file this form with the DHS office having administrative control over the petition record, or through any online portal DHS may designate. If DHS fails to confirm the location of the petition record after reasonable inquiry from the petitioner's representative, the petitioner may file the appeal with the DHS Office of Chief Counsel. This constitutes constructive service if the representative certifies under penalty of perjury that DHS failed to disclose the record's location despite good-faith efforts. *See* BIA Practice Manual § 9.3(d)(2)(ii)(aa).

5. Review by the Board

Most appeals are reviewed by a single Board Member. You may request review by a three-member panel if your appeal involves:

- Precedent-setting legal or procedural questions;
- A decision by DHS not in conformity with law or precedent;
- A case or controversy of major national import; or
- A reversal of DHS's decision, other than under 8 C.F.R § 1003.1(e)(5).

Appeals are generally reviewed in the order received unless expedited review is granted. Fraud Appeals filed under BIA Practice Manual § 9.3(c)(2) are subject to a presumption of expedited review, and no motion is required if the appeal is certified by counsel under § 9.3(d)(5)(ii). For all other appeals, expedited review must be requested by motion and justified by urgent and compelling circumstances.

6. Fees

A fee of one hundred and ten U.S. dollars ($110.00) must be paid for filing this appeal. It cannot be refunded regardless of the action taken on the appeal. **All fees must be submitted in the exact amount. Do not mail cash.**

- Payment by bank drafts, cashier's checks, certified checks, personal checks, and money orders must be drawn on U.S. financial institutions and payable in U.S. funds.

- If you live in the United States or its territories, make the check or money order payable to U.S. Department of Homeland Security (not "USDHS" or "DHS").

- If you live outside the United States or its territories, and are filing your application or petition where you live, contact the nearest U.S. Embassy or consulate for instructions on the method of payment.

- When a check is drawn on the account of a person other than the appellant, the name of the appellant must be entered on the face of the check. Personal checks are accepted subject to collectability. If you pay by check, USCIS will convert it into an electronic funds transfer (EFT). This means USCIS will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours and your bank will show it on your regular account statement. You will not receive your original check back. USCIS will destroy your original check, but will keep a copy of it. If USCIS cannot process the EFT for technical reasons, you authorize USCIS to process the copy in place of your original check.

- If you are filing your form at a USCIS Lockbox facility, you have the option to pay for your form filing fees using a credit card. Please see Form G-1450, Authorization for Credit Card Transactions, athttps://www.uscis.gov/g- 1450 for more information.

- If you are filing your form at a USCIS Field Office, cash, a cashier's check or money order cannot be used to pay for the filing fee. The only payment options accepted at a field office are payment through pay.gov via a credit card, debit card or with a personal check.

- Payment that is uncollectable does not satisfy a fee requirement and may result in the rejection of the appeal.

7. Counsel

An appellant may be represented, at no expense to the Government, by an attorney or other duly authorized representative. An attorney or authorized representative must file Form EOIR-27, Notice of Entry of Appearance, with this EOIR-29, Notice of Appeal. In presenting and prosecuting this appeal, DHS may be represented by appropriate counsel.

Fraud appeals must be filed by a licensed attorney practitioner, as defined in 8 C.F.R. § 1001.1(f) and who is subject to the EOIR rules and procedures governing professional conduct. The practitioner must certify under penalty of perjury that they have: 1) carefully reviewed the evidence of fraud presented on appeal; 2) the evidence is credible and warrants the Board's review; and 3) petitioner has acted with diligence in pursuing their rights.

8. Briefs & Fraud Evidence

Supporting briefs (if any) are filed with DHS at the same location where the appeal was filed, within the time frame specified by DHS. *See* 8 C.F.R § 1003.3(c)(2). If you state on the form that a brief will be filed but fail to do so, the appeal may be dismissed. For fraud appeals, evidence of the fraud must be submitted with EOIR-29. Failure to submit the fraud evidence with the appeal may also result in dismissal.

9. Oral Argument

You may request oral argument, which will be granted at the discretion of the Board. The Board will decide all appeals based on the written record unless oral argument is specifically approved.

10. Summary Dismissal of Appeal

The Board may summarily dismiss an appeal if:

- The appellant fails to specify the reasons for the appeal;
- The only reason specified by the appellant for his/her appeal involves a finding of fact or conclusion of law which was conceded by him/her at a prior proceeding;
- The appeal is from an order that granted the appellant the relief that had been requested;

- The appeal is filed for an improper purpose, such as to cause unnecessary delay, or lacks an arguable basis in fact or law, unless the Board determines that it is supported by a good faith argument for extension, modification, or reversal of existing law;

- The appellant indicates on Form EOIR-29 that he/she will file a separate brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his/her failure to do so, within the time set for filing;

- The appeal does not fall within the Board's jurisdiction;

- The appeal is untimely or barred by an affirmative waiver of the right to appeal that is clear on the record; or

- The appeal fails to meet essential statutory or regulatory requirements or is expressly excluded by statute or regulation.

11. Privacy Act and Paperwork Reduction Action Notice

The information requested on this form is authorized by 8 C.F.R § 1003.3(a)(2) in order to appeal a decision of a DHS officer. The information you provide is mandatory and required to file an appeal. Failure to provide the requested information may result in rejection of your appeal. EOIR may share this information with others in accordance with approved routine uses described in EOIR's system of records notices, EOIR- 00l, Records and Management Information System, 69 Fed. Reg. 26,179 (May 11,2004), and EOIR-003, Practitioner Complaint-Disciplinary Files, 64 Fed. Reg. 49237 (September 1999), or their successors.

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is thirty (30) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

For further guidance please see the Board of Immigration Appeals Practice Manual which is available on the EOIR website atwww.justice.gov/eoir.

Appendix B. BIA Practice Manual Revisions

1. BIA Practice Manual § 6.4 – Expedite Requests

(a) Standards

Expedited review means the Board will prioritize adjudication of a case ahead of others on its docket. The Board may grant expedited review where a compelling issue warrants urgent attention to: (1) prevent irreparable harm to an individual; (2) protect the integrity of the adjudicatory process; (3) safeguard U.S. taxpayer resources; (4) protect the U.S. citizenry from potential public safety or national security threats; or (5) for other good cause shown.

(b) Types of Expedited Requests

Expedited review may be granted in one of two ways: presumptively or by motion.

(1) Presumptive Expedited Review

Appeals filed under § 9.3(c)(2) and certified by counsel under § 9.3(d)(5)(ii) are presumptively entitled to expedited review. These *Fraud Appeals* challenge previously approved visa petitions based on newly discovered evidence of marriage fraud that triggers a statutory bar under INA § 204(c). No separate motion is required.

This presumption reflects Congress's clear judgment in the Immigration Marriage Fraud Amendments of 1986 that marriage fraud is uniquely corrosive to the integrity of the immigration system and must be met with zero tolerance. In keeping with that mandate, these appeals receive priority review.

Such cases present compounding harms across multiple domains:

- **Harm to Individual Petitioners** – including prolonged financial liability under the Form I-864, false accusations of abuse, reputational damage, and significant emotional and psychological distress. The approved

petition may also be misused in family court proceedings or obstruct efforts to remedy legal consequences of the fraud.

- **Harm to the U.S. Citizenry** – including diversion of taxpayer-funded benefits, abuse of public trust, and diminished faith in the integrity of immigration and family law systems.

- **Harm to Federal Institutions and NGOs** – where scarce adjudicative, investigative, or humanitarian resources are misallocated to fraudulent claims, delaying relief for legitimate applicants and straining system capacity.

- **Harm to Lawful Immigrants** – by diluting public support for family-based immigration, fueling suspicion or stigma, and diverting processing capacity and credibility away from individuals who comply with legal requirements in good faith.

Additionally, credible allegations of marriage fraud may implicate public safety or national security risks—some of which may not yet be fully understood at the time of filing. Timely adjudication helps safeguard the visa petition system, prevent further misuse of immigration benefits, and ensure integrity in family-based immigration adjudications. The Board plays a vital role in protecting the integrity of the immigration system, including by exercising its authority to review prior approvals of marriage-based petitions and to serve as an essential check and balance on agency error, omission, or deception.

The Board may decline expedited treatment of a certified Fraud Appeal only where:

- The certification is materially deficient;

- The newly discovered evidence is prima facie not credible or material;

- The appeal is facially frivolous, repetitive, or pursued for an improper purpose; or

- Other extraordinary case management considerations require regular docketing.

(2) Expedited Review by Motion

In all other cases, expedited review may be granted only by written motion. These requests are disfavored and will only be granted where the moving party demonstrates compelling and urgent reasons for priority adjudication. Factors the Board may consider include:

- Systemic failures in adjudication;
- Imminent removal;
- A minor aging out of derivative status;
- Serious medical emergency;
- Risk of mootness or waste of judicial or governmental resources;
- National interest, public safety, or statutory integrity concerns; or
- Other good cause shown.

The motion must be filed in accordance with Chapter 5.2 (Filing a Motion) and be clearly labeled "MOTION TO EXPEDITE." The motion must include a caption with the case name and A-number, and a clear explanation of the:

- Basis for expedited review;
- Factual background of the case;
- Applicable law(s);
- Relief sought; and
- Why standard processing would cause undue prejudice.

Use of a cover page and supporting documentation is strongly encouraged. *See* Appendix E (Cover Pages). In a genuine emergency, a party may contact the Clerk's Office by telephone (see Appendix A), but a written motion must still follow immediately.

(c) Board Response

The Board will consider all properly filed requests for expedited review. If a request is granted, the Board will prioritize the case without notifying the parties. For administrative reasons, the Board does not issue written responses to most requests. However, if a certified Fraud Appeal under § 9.3(c)(2) is denied expedited treatment, the Board will notify the petitioner's counsel and briefly state the reason for the denial.

2. BIA Practice Manual § 9.3 – Visa Petition Decisions

(a) Jurisdiction

The Board has appellate jurisdiction over family-based immigrant visa petitions filed under section 204 of the Immigration and Nationality Act, with the exception of petitions on behalf of certain orphans. *See* 8 C.F.R. § 1003.1(b)(5); *see also* BIA Practice Manual § 1.4 (Jurisdiction and Authority).

(b) Standing

Only the petitioner, not the beneficiary or a third party, may appeal an adverse decision of a visa petition. *See Matter of Sano*, 19 I&N Dec. 299 (BIA 1985). Self-petitioners – including battered spouses, battered children, and certain relatives of deceased citizens – also have standing to appeal. *See* Immigration and Nationality Act §§ 204(a)(1)(A)(ii), (iii), (iv); 204(a)(1)(B)(ii), (iii), and 204(l); 8 C.F.R. § 204.2.

(c) Types of Appeals

Appeals from adverse decisions of visa petitions include:

(1) Denial Appeals – Petitioners may appeal a denial of a visa petition.

(2) Fraud Appeals – Petitioners may appeal a previously approved visa petition based on newly discovered evidence of marriage fraud that triggers a statutory bar under INA § 204(c).

***Note**: Unlike other forms of immigration fraud, which may be addressed through waivers or considered in discretionary contexts, marriage fraud directly affects statutory eligibility for petition approval. In many cases, sufficient evidence of the fraud may not be available until well after the original petition has been approved, necessitating a procedural mechanism for subsequent review.

(d) Filing the Appeal

(1) How to file – Appeals of visa petition decisions are filed using Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer. 8 C.F.R. § 1003.3(a)(2).

**Note*: This form is different from Form EOIR-26 used for appeals from decisions of Immigration Court proceedings.

The appeal form must be signed by the petitioner, not the beneficiary. The rare exceptions to that rule are those cases in which the alien "self-petitions," such as battered spouses and children, certain widows and widowers, and applicants seeking temporary admission despite being inadmissible (section 212(d)(3)(A) waiver).

(2) Where to file – Form EOIR-29 is filed directly with DHS, in accordance with the applicable regulations, any instructions provided in the DHS decision, any publicly available DHS guidance, and any instructions appearing on the reverse of Form EOIR-29. *See generally* 8 C.F.R. § 1003.3(a)(2).

(i) Denial Appeals – A *Denial Appeal* must be filed with the DHS office having administrative control over the petition record.

(ii) Fraud Appeals – A *Fraud Appeal* must be filed with the DHS office having administrative control over the petition record, or with any online portal that DHS may designate for appeals of previously approved visa petitions based on fraud.

If DHS fails to confirm the location of the petition record in response to a reasonable inquiry from the petitioner's representative, the petitioner may file Form EOIR-29 with USCIS Office of Chief Counsel which shall constitute constructive service, provided that the petitioner's representative certifies under penalty of perjury that DHS has failed to disclose the record's location despite reasonable inquiry and good-faith efforts to obtain it. *See* 6 U.S.C. § 271(d) (vesting ultimate responsibility for representing USCIS in visa petition appeal proceedings in the Office of the Chief Counsel).

***Note**: A good-faith effort shall include, at a minimum, contacting USCIS customer service and documenting the request in writing.

(3) When to file –

(i) Denial Appeals – The deadline for *Denial Appeals* is 30 days from the date of service of the decision being appealed. 8 C.F.R § 1003.3(a)(2).

(ii) Fraud Appeals – The deadline for *Fraud Appeals* is subject to equitable tolling, provided that: (1) the petitioner pursued their rights with reasonable diligence; and (2) extraordinary circumstances outside the petitioner's control prevented timely filing. *See Menominee Indian Tribe v. United States*, 577 U.S. 250 (2016); *Holland v. Florida*, 560 U.S. 631 (2010); *Lawrence v. Florida*, 549 U.S. 327, 336 (2007); *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990) (recognizing that equitable tolling may apply where a litigant "has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass" and citing prior fraud-based tolling cases); *accord Matter of Morales-Morales*, 28 I&N Dec. 708, 716 (BIA 2023).

(aa) Extraordinary Circumstance – Circumstances outside the petitioner's control may include:

- Marriage fraud committed by the beneficiary that was not reasonably discoverable earlier;

- Prior legal proceedings pursued in good faith to obtain evidence through discovery;
- An immigration attorney's refusal to provide the petitioner with proper access to a joint representation file likely to contain evidence of fraud;
- DHS failure to confirm the location of the petition record after documented, good-faith efforts to locate it.

(bb) Reasonable Diligence – Examples of diligence in pursuing appellate rights may include:

- Retaining a licensed attorney, as defined in 8 C.F.R. § 1001.1(f), who is subject to the EOIR's rules and procedures governing professional conduct, to: (1) investigate the facts underlying a fraud claim, including evidence collection and analysis, (2) verify whether the evidence constitutes a credible claim of marriage fraud under federal law, and (3) prepare a detailed evidentiary record for the Board's review.
- Pursuing rights in a state court in which formal discovery procedures may be available to collect material evidence to support a petitioner's appeal before the Board.

(4) Fee – The filing fee for a petition-based appeal is $110. *See* 8 C.F.R. § 1003.8(b). Unlike appeals of Immigration Judge decisions, the fee for a petition-based appeal is filed directly with DHS, in accordance with DHS instructions.

(5) Representation –

(i) Discretionary Representation –

(aa) Form Used – A practitioner may represent a petitioner before the Board by filing Form EOIR-27, Notice of Appearance.

*Note: This form is different from USCIS Form G-28, which is used to enter appearance before DHS. The Board does not recognize Form G-28 for appearances before the Board.

(bb) Place of Filing – Form EOIR-27 should be filed directly with DHS along with Form EOIR-29, Notice of Appeal. *See* 8 C.F.R. § 1292.4(a); BIA Practice Manual § 2.1 (Entering an Appearance as the Practitioner of Record).

(ii) Mandatory Representation – For *Fraud Appeals*, a petitioner must be represented by a licensed attorney practitioner, as defined in 8 C.F.R. § 1001.1(f) and who is subject to the EOIR rules and procedures governing professional conduct, who certifies under penalty of perjury that they have:

- Carefully reviewed the evidence of fraud submitted on appeal;
- The evidence is credible and warrants the Board's review; and
- Petitioner has acted with diligence in pursuing their rights.

(iii) Prohibited Representation – Limited appearances for document assistance using Form EOIR-60 are not permitted in visa petition appeals. Any Form EOIR-60 will be rejected. *See* Chapter 2.1(c)(3).

(6) Supporting briefs – Briefs, if submitted, should be filed with DHS at the same location as Forms EOIR-27 and EOIR-29, and within any briefing schedule DHS may set. *See* 8 C.F.R. § 1003.3(c)(2). The Board may, in rare circumstances, authorize direct filing of briefs. Unless otherwise directed, briefs should comply with Chapter 3.3 (Documents) and Chapter 4.6 (Appeal Briefs).

(7) Evidence –

(i) Denial Appeals – The Board does not consider new evidence for *Denial Appeals*. *See* BIA Practice Manual § 4.8(c).

(aa) New Evidence Allowed – If new evidence is submitted in the course of an appeal, the submission may be deemed a motion to remand the petition to DHS for consideration of that new evidence. If the petitioner wishes to submit new evidence, the petitioner should articulate the purpose of the new evidence and explain its prior unavailability. Any document submitted to the Board should comport with the guidelines set forth in Chapter 3.3 (Documents).

(bb) New Evidence Prohibited – The Board will generally not consider new evidence – or remand the petition – where the proffered evidence was expressly requested by DHS and the petitioner was given a reasonable opportunity to provide it before the petition was adjudicated by DHS. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(cc) Administrative Notice – The Board may take administrative notice of commonly known facts such as official government records. *See* 8 C.F.R. § 1003.l(d)(3)(iv)

(ii) Fraud Appeals –

(aa) Evidentiary Requirement – For *Fraud Appeals*, a petitioner must submit any and all evidence of marriage fraud at the time of filing Form EOIR-29. Any newly discovered evidence submitted at the time of filing Form EOIR-29 with DHS is considered part of the administrative record for purposes of Board review.

> ***Note**: This evidence is initially reviewed by DHS prior to transmittal of the petition record to the Board. Accordingly, such evidence shall not be treated as "new evidence" requiring remand, provided it was included with the original filing and reviewed by DHS.

(bb) No Motion of Remand Required – For *Fraud Appeals*, a separate motion to remand is not required under 8 C.F.R. § 1003.1(d)(3)(iv), as such evidence is not considered 'new' for

purposes of Board review. That regulation requires a motion to remand only where new evidence is submitted on appeal and has not been previously reviewed by DHS. Because fraud appeals filed through DHS allow for such evidence to be reviewed prior to transmittal, no additional motion is necessary.

If the Board determines that a remand is otherwise appropriate, it may do so under its general remand authority. However, the Board will not remand solely to permit reconsideration of fraud evidence that has already been reviewed by DHS in accordance with this chapter.

(cc) Final Judgments of Nullity – In evaluating the existence of a valid marriage under the place-of-celebration rule or in assessing whether a marriage was bona fide for federal immigration purposes, the Board will take administrative notice of final judgments of nullity issued by a court of competent jurisdiction. 8 C.F.R. § 1003.1(d)(3)(iv).

(8) Stipulations – The Board encourages the parties, whenever possible, to stipulate to any facts or events that pertain to the adjudication of the visa petition.

(d) Processing

Once an appeal has been properly filed with DHS and the petition record is complete, DHS forwards the petition record to the Board for adjudication of the appeal. After the Board receives the record from DHS, the Board issues a notice to the parties acknowledging it has the record and the appeal.

(1) Record on appeal – The record on appeal consists of all decisions and documents in the petition record, including some or all of the following items:

- Visa petition and supporting documentation;
- DHS notices and evidence requested by DHS notices;

- Notice of Appeal, including any briefs;
- Newly discovered evidence of fraud;
- The record of any prior DHS or Board action.

For *Fraud Appeals*, DHS is expected to review and incorporate all newly discovered evidence prior to transmitting the record to the Board. The Board will treat this evidence as part of the administrative record.

(2) Briefing schedule – Briefing schedules, if any, are issued by DHS and are to be completed prior to the forwarding of the record to the Board. Accordingly, the Board generally does not issue briefing schedules in visa petition cases, except in the cases of *Fraud Appeals*. *See* Chapter 9.3(c)(6) (Supporting briefs).

(3) Status inquiries –

(i) DHS – Until the record is received by the Board, all status inquiries must be directed to the DHS office where the appeal was filed. The Board has no record of the appeal until the petition record is received. Since the Board and DHS are distinct and separate entities, the Board cannot track or provide information on cases that remain within the possession of DHS.

(ii) Board – Confirmation that the Board has received a petition record from DHS may be obtained from the Clerk's Office. *See* Appendix A (Directory). The Board tracks petition-based appeals by the beneficiary's name and alien registration number ("A number"). All status inquiries must contain this information. *See* generally Chapter 1.6(a) (All Communications).

(5) Adjudication – Upon the entry of a decision, the Board serves the decision upon the parties by regular mail. An order issued by the Board is final unless and until it is stayed, modified, rescinded, or overruled by the Board, the Attorney General, or a federal court. An order is deemed effective as of its issuance date unless otherwise specified. See Chapter 1.4(d) (Board decisions).

Appendix C. BIA Standing Sua Sponte Certification Order

Operational Policy and Procedure Memorandum

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals
5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

To: All BIA Personnel & Interested Practitioners
From: The Chairman
Date: [TBD]
Subject: Standing Sua Sponte Certification for Fraud Appeals
Authority: 8 C.F.R. § 1003.1(a)(2)(i); 8 C.F.R. § 1003.1(d)

I. PURPOSE

This memorandum establishes a standing order for sua sponte certification and presumptive expedited review of certain "Fraud Appeals" filed under BIA Practice Manual § 9.3(c)(2). These appeals seek review of previously approved I-130 petitions based on newly discovered evidence of marriage fraud. The order implements uniform operational procedures under the Chairman's authority to direct and supervise the Board's internal processes.

II. BACKGROUND

Marriage fraud undermines the integrity of the U.S. immigration system. In the Immigration Marriage Fraud Amendments of 1986, Congress recognized this danger and codified a categorical bar under INA § 204(c). However, newly discovered evidence of fraud often emerges long after the initial adjudication. Without a formal process for post-approval review, victims—including U.S. citizens—lack recourse to protect themselves from immigration-related harm.

This memorandum formalizes a procedural mechanism for reviewing such fraud claims when they are timely pursued and credibly supported. It affirms the Board's commitment to ensuring that marriage-based petitions comply with federal law and to protecting petitioners from fraud-induced misuse of immigration benefits.

III. LEGAL AUTHORITY

Pursuant to 8 C.F.R. § 1003.1(a)(2)(i), the Chairman is authorized to "issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities." This order is issued under that authority and in coordination with amendments to the BIA Practice Manual and Form EOIR-29.

IV. STANDING CERTIFICATION AND EXPEDITED REVIEW ORDER

The Board hereby institutes a standing order that it will automatically certify *sua sponte* and grant presumptive expedited review to any appeal that satisfies all of the following criteria:

1. **Filing Basis**: The appeal is filed using Form EOIR-29 and identified as a "Fraud Appeal" under Section 1, consistent with BIA Practice Manual § 9.3(c)(2).

2. **Certification by Counsel**: The practitioner has signed the mandatory certification under § 9.3(d)(5)(ii), attesting under penalty of perjury that:

    a. They have carefully reviewed the evidence of fraud submitted with the appeal;

    b. The evidence is credible and materially relevant to an INA § 204(c) determination; and

    c. The petitioner has acted with diligence in pursuing their rights upon discovery of the evidence.

3. **Timeliness and Tolling**: The appeal was filed after the 30-day deadline and invokes equitable tolling based on newly discovered evidence of marriage fraud under applicable standards.

4. **Evidence Submission**: The newly discovered evidence of fraud is submitted concurrently with Form EOIR-29 and reviewed by DHS prior to transmittal to the Board. No separate motion to remand is required.

All such certified Fraud Appeals shall be docketed for expedited review under BIA Practice Manual § 6.4(b)(1). The Board shall prioritize these appeals unless:

- The certification is materially deficient;
- The fraud evidence is prima facie not credible or material;
- The appeal is frivolous or brought for an improper purpose;
- Extraordinary docket management constraints apply.

V. EFFECTIVE DATE AND IMPLEMENTATION

This order shall take effect immediately upon issuance. It shall apply prospectively to all appeals filed on or after the effective date and retroactively to any pending appeals that satisfy the criteria set forth herein.

VI. COORDINATION

This operational order shall be read in conjunction with:

- Revised BIA Practice Manual §§ 6.4 and 9.3;
- Revised Form EOIR-29 and instructions;
- Applicable provisions of 8 C.F.R. §§ 1003.1, 1003.3, and 1003.8.

Staff are instructed to identify eligible appeals during intake and to ensure priority docketing consistent with this order. Questions regarding implementation may be directed to the Office of the Chairman.

[Signed]
Chairman
Board of Immigration Appeals