



Statement for the Record of
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U.S. House Committee on the Judiciary

“Policy Changes and Processing Delays at USCIS”

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I. Introduction and CLINIC Background

My name is Jill Marie Bussey. I am the Director of Advocacy at the Catholic Legal Immigration Network, Inc. (CLINIC). I am a Maryland-licensed attorney with over 20 years of experience in the field of immigration law and policy. Before joining CLINIC in early 2015, I was in private practice primarily representing clients before the U.S. Citizenship and Immigration Services (USCIS) with employment-based petitions, lawful permanent residency (LPR) applications, applications for naturalization, and humanitarian forms of immigration relief such as Deferred Action for Childhood Arrivals (DACA). I would like to thank the House Committee on the Judiciary, as well as the Committee Chair, Representative Jerrold Nadler (D-NY), and the Ranking Member, Representative Doug Collins (R-GA), for this invitation to testify; and the Chair of the Subcommittee on Immigration and Citizenship, Zoe Lofgren (D-CA), and Ranking Member, Ken Buck (R-CO), for holding this critical hearing to examine USCIS' extreme processing delays and the resulting consequences on immigrants, their families, and American businesses.

Established in 1988, CLINIC's work is guided by its Catholic identity and Christian mission to welcome the stranger (Matthew 25:43) and thereby promote the rights and dignity of immigrants. CLINIC achieves its mission by serving and representing the nation's largest network of nonprofit immigrant legal services organizations. CLINIC's network primarily serves low-income immigrants and regularly advises and assists individuals in filing family-based immigration applications, naturalization applications, humanitarian forms of immigration relief, and more. This network includes over 370 separately incorporated nonprofits with 501(c) status operating in 49 states and the District of Columbia. CLINIC's network employs an estimated 2,300 staff, including attorneys and Department of Justice-approved accredited representatives who, in turn, serve hundreds of thousands of immigrants each year.

CLINIC supports its network and improves immigrants' access to legal assistance and justice through a variety of services. CLINIC's Training and Legal Support team conducts training and provides technical support to CLINIC affiliates, partners, and the public with a focus on serving low-income immigrants with family-based residency, humanitarian immigration issues, and naturalization.¹ CLINIC's Defending Vulnerable Populations project was created to help meet the needs of the rapidly growing population of immigrants at risk for deportation through increasing capacity to represent people in immigration court proceedings. CLINIC's Center for Citizenship and Immigrant Communities team helps to address rising demands for affordable immigration legal services by helping nonprofits begin providing authorized immigration legal services and expand services to serve the most vulnerable. CLINIC's Religious Immigration Services team specializes in assisting international religious workers and their United States organizational sponsors.

Over several decades and across administrations, CLINIC's advocacy team tracked and analyzed information provided by the thousands of attorneys and accredited representatives in our network, allowing us to identify trends and troubleshoot systemic issues at USCIS in collaboration with career staff. This long-standing and mutually beneficial partnership between CLINIC and USCIS resulted in more streamlined processing, improved consistency and fairness in adjudications, faster response times to errors, and enhanced customer service. In turn, we have been able to advise our network agencies of best practices that improve their internal processes and help improve the quality of applications USCIS receives. For example, CLINIC worked closely with USCIS to develop Form I-912, Request for Fee Waiver, which offers applicants a standardized application process. CLINIC worked extensively with legacy INS to create policies and Form N-648 aiding persons with disabilities to access naturalization and U.S. citizenship. CLINIC assisted USCIS' Office of Citizenship in updating the naturalization test.

¹ In 2018, CLINIC attorneys trained approximately 10,000 people online and in-person.

CLINIC also worked closely with INS and later USCIS in the creation and updating of Form I-864, Affidavit of Support under INA Section 213A.

Since its founding, CLINIC has zealously advocated for fair and just policies and processes at USCIS. Some problems have been persistent and recurring across administrations. However, the current departures from past practice, unprecedented policy decisions, and sharp deviation from USCIS mission and mandate have created crisis-level backlogs and chaos in the system. These changes have led to the agency becoming significantly less operationally efficient and wasteful (by operationally efficient, we mean processing cases in the most cost-effective manner possible while still ensuring high quality of adjudications, service, and support). They have resulted in serious consequences to immigrants and their families, immigrant legal service providers, and American businesses and communities. Accordingly, CLINIC's written testimony documents specific changes in USCIS structure, policy, and mismanagement under the current administration, the pain and consequences these issues are causing, and CLINIC's recommendations to restore and improve USCIS so that it fulfills its Congressional mandate.

II. USCIS Policy Changes Cause Widespread Harm and Conflict with its Congressional Mandate

USCIS is the agency dedicated to the administration and adjudication of immigration benefits. When USCIS was created under The Homeland Security Act of 2002, it was specifically designed to be a service-oriented immigration agency separate and distinct from immigration enforcement agencies.² USCIS has a unique role and opportunity in welcoming newcomers to our land, becoming part of their immigrant journey. For people fleeing violence and persecution, seeking to remain or reunite with their family members, or eager to work and provide for themselves and their families, USCIS is the gateway to their chance at achieving their American dream. Over the years, CLINIC has been honored to work with many dedicated public servants at USCIS who play a crucial role in building our country and assisting our immigrant brothers and sisters in understanding and accessing immigration benefits. Accordingly, USCIS' mission statement since its founding until late recognized and clearly named the agency's role in securing America's promise and serving customers navigating the system.

Since the current administration took office, USCIS has transformed into a very different agency, electing to change priorities and focus in a way that does not honor its Congressionally-assigned purpose or its obligations to its customers. In February 2018, USCIS changed its mission statement to remove references to the United States as a "nation of immigrants" and to the people it serves as "customers."³ This signaled that USCIS would be departing from its mandate and mission to properly manage immigration administration functions, to an enforcement-focused approach. Then-USCIS Director L. Francis Cissna posited the new mission statement somehow corrected an "erroneous belief that applicants and petitioners, rather than the American people, are whom we ultimately serve."⁴ Yet our immigration laws as written make clear that USCIS must serve both immigrants and the American citizens and businesses who petition for them—their cases are intertwined, as are our futures as contributors to American society.

Over the past two years, massive and persistent policy changes, agency restructuring, errors, irregularities, and mismanagement have created crisis-level processing delays and other problems that have left USCIS' customers facing serious, life-altering consequences. This is despite applicants paying fees, putting forth sensitive information in trust, and doing everything asked of them. Timely case processing, receiving fast

² Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 213 (codified as amended in scattered sections of 6 U.S.C.), available at www.dhs.gov/sites/default/files/publications/hr_5005_enr.pdf; LISA M. SEGHELLI, CONG. RESEARCH SERV., RL31388, IMMIGRATION AND NATURALIZATION SERVICE: RESTRUCTURING PROPOSALS IN THE 107TH CONGRESS 2 (2002), available at <https://fas.org/sgp/crs/RL31727.pdf>.

³ Richard Gonzales, *America No Longer a 'Nation of Immigrants,' USCIS Says*, NPR (Feb. 22, 2018), www.npr.org/sections/two-way/2018/02/22/588097749/america-no-longer-a-nation-of-immigrants-uscis-says.

⁴ *Id.*

and correct information, and other services from USCIS means the difference between a family having an income or not, being able to drive to medical appointments or school, being able to put a roof over a child's head and food on the table, or a survivor of violence being able to leave their abuser. These breakdowns and failures at USCIS rip at the seams of a person's life and have a ripple effect across society, affecting employers, the economy, and our communities.

III. USCIS Policy Changes Contribute to Backlogs and Inefficiencies

Both deliberate policy choices by the current administration and mismanagement created the current crisis at USCIS that is upending the stability of survivors, families, and businesses across the country. These policy decisions have limited applicants' ability to quickly resolve administrative problems with their cases, and created unnecessary burdens on the agency's time and resources.

While many policy changes at USCIS have created the current crisis, there are a few primary drivers. The unnecessary expansion of in-person interview requirements⁵ and related "extreme vetting"⁶ adds time and burden to the process. USCIS did not provide sufficient evidence that existing vetting procedures were insufficient.⁷

New rules regarding Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)⁸ create needless redundancies and drain resources. Cases with small errors or issues that were previously resolved through customer service and moved along through the system are being denied, forcing applicants to start from the beginning and resulting in USCIS repeat adjudicatory steps. This also places an unfair financial burden on applicants, forcing people to pay filing fees to refile a case. At the extremes, this policy can result in an applicant not being able to access the immigration benefit at all.

USCIS also eliminated the 90-day processing requirement for Employment Authorization Documents (EADs).⁹ When cases languish in review, applicants cannot make long-term plans for their future. Travel within the United States and abroad may become more complicated or impossible, and their work authorization may lapse, leading to loss of jobs, driver's licenses, and other hardship for families.

Another way that USCIS is no longer holding itself accountable to its customers is through the Information Services Modernization, or InfoMod, Program, which has been rolling out across the country since March 2018. The stated objective was to modernize how applicants and petitioners communicate with USCIS; the actual effect was to drastically narrow the options and points of access for stakeholders to request information and services regarding their pending cases.

The program ends self-scheduling of in-person InfoPass appointments at field offices, which had worked satisfactorily for USCIS and applicants alike for two decades. Now it requires applicants and legal representatives to use the USCIS Contact Center for all types of inquiries. Under the program, applicants

⁵ Press Release, U.S. Citizenship and Immigration Services, USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants (Aug. 28, 2017), available at www.uscis.gov/news/news-releases/uscis-to-expand-in-person-interview-requirements-for-certain-permanent-residency-applicants.

⁶ Exec. Order No. 13780, 82 Fed. Reg. 13,209 (March 6, 2017), available at www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states-2/.

⁷ *Deconstructing the Invisible Wall: How Policy Changes by the Trump Administration Are Slowing and Restricting Legal Immigration*, American Immigration Lawyers Association, (Apr. 24, 2018), available at www.aila.org/infonet/aila-report-deconstructing-the-invisible-wall.

⁸ Memorandum U.S. Citizenship and Immigration Services, U.S. Dep't of Homeland Security, On Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b) (July 13, 2018), available at www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FINAL2.pdf.

⁹ Press Release, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP'T OF HOMELAND SECURITY, USCIS Publishes Final Rule for Certain Employment-Based Immigrant and Nonimmigrant Visa Programs (Nov. 18, 2016), available at www.uscis.gov/news/news-releases/uscis-publishes-final-rule-certain-employment-based-immigrant-and-nonimmigrant-visa-programs.

must call the USCIS Contact Center to request an in-person appointment; an officer determines whether the appointment is appropriate, and, if so, schedules one.

This program exacerbates USCIS' inefficiency and creates an additional barrier for applicants and their legal representatives to obtain critically needed services. USCIS has failed to provide data that explains how it determined which mode of contact is best to resolve inquiries. Further, the program fails to take into account language barriers that could hinder communication between USCIS Service Representatives and *pro se* applicants who may not be fluent in English. Prior to this policy change, many *pro se* applicants often brought along their own interpreters to in-person appointments to get information about their pending cases. USCIS should end the InfoMod program and restore self-scheduling InfoPass appointments for in-person inquiries and other services.

In addition to adjudicatory policies, USCIS is mismanaging its resources. As a fee-funded agency, USCIS is intended to use revenues collected as filing fees in order to timely and accurately adjudicate cases. However, USCIS is diverting resources to enforcement-focused activities that contradict the agency's Congressional mandate. CLINIC opposes such a profound departure from the agency's mission, including an unjustified redirection of funds to establish an office and hire personnel to inspect thousands of already-approved naturalization cases.¹⁰ It also attempted to transfer more than \$200 million to U.S. Immigration and Customs Enforcement (ICE) to support enforcement activities.¹¹ At a time when USCIS is failing to fulfill its Congressionally-mandated purpose, diverting customer-paid funds to other purposes besides adjudication is particularly egregious and requires Congressional oversight and action.

A. Consequences of USCIS Policy Decisions and Mismanagement

USCIS' policy changes and the massive backlogs have contributed to significant consequences on individuals and families, their employers, legal services providers, USCIS, and other agencies.

Delay in a case is more than a bureaucratic inconvenience; it has a cascading effect on a person's life. When EADs are delayed, people may face discrimination, lose pay, or lose their jobs altogether. Work authorization delays also cost people their individual driver's licenses (as well as commercial driver's licenses). Loss of a driver's license may mean someone cannot get to work, pick up household necessities, drive to health care appointments or attend school, enter their child's school, and more. Affected people have told CLINIC that delayed immigration adjudications result in stressful and difficult interactions with police at routine traffic stops. We have information about people's inability to secure student loans, and losing access to accounts at banks that require proof of immigration status. The impact of these delays can put a strain on employment, such as having to take time off repeatedly to attend appointment after appointment at the Department of Motor Vehicles to try to sort out driver's license problems.

Legal services providers like CLINIC's affiliates are also affected by these policy changes. Our affiliates lose efficiency of service and process in having to refile cases, having to make repeated inquiries and conduct advocacy around egregiously delayed cases, educating clients about their options related to frequent and sudden policy changes, and much more. American businesses are also losing under USCIS' operational failure. Employers lose key workers, productivity, and faith in the ability of the government to meet their needs in a changing labor market. Failure to timely adjudicate also has impacts on other government agencies, such as state motor vehicle agencies and the CIS Ombudsman, which has to handle customer service complaints about USCIS backlogs.

¹⁰ Seth Freed Wessler, *Is Denaturalization the Next Front in the Trump Administration's War on Immigration?*, N.Y. TIMES (Dec. 19, 2018), available at www.nytimes.com/2018/12/19/magazine/naturalized-citizenship-immigration-trump.html.

¹¹ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, FISCAL YEAR 2019 CONGRESSIONAL JUSTIFICATION (2019), available at www.dhs.gov/sites/default/files/publications/U.%20S.%20Citizenship%20and%20Immigration%20Services.pdf.

USCIS as an institution also faces consequences. As an agency that collects fees in exchange for providing adjudicatory services to customers, USCIS loses the confidence of the public, opens itself to legal challenges when it fails to perform its core duties, and allows cases to languish for years on end.

B. Recommendations to Combat Processing Delays Caused by Policy Changes

To resolve the problems created by the policies detailed above, USCIS must rescind the policies that have caused or exacerbated backlogs and restore the proper mission and focus of USCIS. USCIS may claim that increasing filing fees is necessary to reduce backlogs, but until policies and practices are reformed to ensure that the funds and resources USCIS already has are being used for their proper adjudicatory purpose, additional funding is likely to be mismanaged and would not effectively reduce backlogs. Higher filing fees would also further erode public faith in an agency that has continuously increased filing fees over the years but fails to deliver timely service.

Specifically, USCIS must rescind its expansion of in-person interviews to ensure that USCIS personnel are available to adjudicate more petitions in a timely manner. USCIS has not demonstrated that expanding in-person interview requirements has significantly improved the accuracy of adjudications, but this policy change certainly overburdens the time and resources of USCIS personnel.

USCIS must also rescind its 2018 policy regarding RFEs and NOIDs. This policy allows USCIS to summarily deny a case without issuing an RFE or NOID, which would allow the applicant to correct the mistake and then resume case processing. When cases are denied, applicants lose the filing fee they paid, and must start over. This policy wastes the time and resources of applicants, their legal representatives, and USCIS, which must restart the adjudication process when the applicant re-submits. In some cases, the applicant may be time-barred from refiling, denying them justice.

The RFE and NOID policy also intersects with another policy change that enables USCIS to issue a Notice to Appear (NTA) or refer a case to ICE to begin the removal process automatically upon case denial.¹² In combination with unnecessary denials, the referral of cases where the applicant is substantively qualified for the immigration status for which they applied, but was denied due to a mistake in the paperwork, also wastes the resources of and adds to the backlog of the immigration court system. These policies create undue expense, time, and emotional stress for immigrants who may be placed in removal proceedings over easily-curable errors. Both the RFE policy and the NTA policy should be rescinded.

The regulation requiring USCIS to adjudicate EADs within 90 days or issue an interim EAD if it is unable to do so must be restored. USCIS must not be allowed to disrupt the lives of applicants with impunity. Access to employment authorization for qualified applicants is an issue of human dignity, and must be carefully administered. USCIS' mismanagement of EAD processing has caused lost income and jobs, business disruptions, and lapsed driver's licenses. This causes struggles to meet basic nutrition and housing needs for immigrants and their family members and employers, some of whom are U.S. citizens. USCIS should restore the regulations that hold them accountable for such significant consequences.

USCIS should re-establish robust communications with stakeholders, expanding, rather than contracting, the ways in which applicants can request information about specific cases and USCIS practices and procedures. InfoPass appointments should be more readily available to applicants with a much broader range of needs.

¹² Memorandum, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP'T OF HOMELAND SECURITY, Updated Guidance for the Referral of Cases and issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens (June 28, 2018), available at www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf.

Leadership at USCIS should restore its mission statement to what it was before February 2018. It should resume its dedication to the immigrants and U.S. citizen family members and employers who are paying customers and who USCIS is responsible for serving. This administration's determination that USCIS should not serve its customers has resulted in unacceptable backlogs, poor communication, and policy changes that are counterproductive to USCIS' central purpose.

Finally, USCIS must stop mismanaging its resources by diverting customer-paid fees away from adjudication of applications and petitions and toward enforcement-focused activities that contradict the agency's Congressional mandate. In relation to all of these recommendations, we hope that USCIS will commit to responsible management and transparency with stakeholders to ensure that USCIS' mission returns and remains focused on serving its stakeholders.

IV. Processing Delays for Humanitarian Forms of Relief

USCIS' processing delays are particularly damaging and disproportionate in the context of humanitarian relief. In addition to keeping families apart and disrupting their livelihoods, these delays regularly lead to more severe consequences.

A. Temporary Protected Status and Deferred Enforced Departure

In the context of Temporary Protected Status (TPS), USCIS has significantly delayed processing re-registration applications and associated work authorization applications.¹³ CLINIC has written at length about these delays and the hardships they inflict on families and TPS holders.¹⁴ Overall, these delays affected approximately 20,000 Salvadorans, more than 4,500 Haitians, over 300 Syrians, and an unknown number of Hondurans.¹⁵ Due to USCIS' failure to publicly share adjudication data on TPS, the backlog's effect on other countries with TPS designations is unknown. However, due to the widespread nature of the backlogs it is likely that all country designations are affected. These customers paid approximately \$495 in filing fees, many for one final period of TPS before termination, only to have USCIS fail to meet its obligation of timely and fair processing. According to USCIS' own metrics, as of July 8, 2019, the Vermont Service Center is processing TPS re-registrations for El Salvador and Honduras in 10.5 to 14 months.¹⁶ The Nebraska Service Center is even more problematic, with an estimated range of 17.5 to 22.5 months.¹⁷ While the estimated time range for processing TPS applications at the California Service Center for Haiti is a much lower three to five months, this reported processing time did not prevent USCIS from failing to timely adjudicate close to 5,000 Haitian TPS re-registrations.¹⁸

For nearly 30 years and under each administration during that time, USCIS was able to timely process re-registration requests before the expiration of the automatic Federal Register Notice extension, an

¹³ CATHOLIC LEGAL IMMIGRATION NETWORK INC., TEMPORARY PROTECTED STATUS: COMPREHENSIVE BACKGROUNDER (2019), available at <https://cliniclegal.org/resources/temporary-protected-status-comprehensive-backgrounder> ("USCIS, the agency that adjudicates these applications, was slow to approve renewals. The delays affected: (a) upwards of 20,000 Salvadorans, (b) 4,500 Haitians, and (c) 335 Syrians. The delays caused confusion for employees and employers alike; and USCIS was forced to automatically extend work authorization using a new, untested practice that, to date, continues to cause issues.").

¹⁴ CATHOLIC LEGAL IMMIGRATION NETWORK INC., USCIS PROCESSING DELAYS AND THE RESULTING CONSEQUENCES TO TPS HOLDERS AND THEIR FAMILIES (2019), available at <https://cliniclegal.org/resources/uscis-processing-delays-and-resulting-consequences-tps-holders-and-their-families> ("Extreme processing delays at U.S. Citizenship and Immigration Services have resulted in Temporary Protected Status...[h]olders not receiving their new Employment Authorization Documents prior to the expiration of their current work authorization, despite timely submission and paying nearly \$500 in government filing fees.").

¹⁵ *Id.*

¹⁶ *Check Case Processing Times*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP'T OF HOMELAND SECURITY, <https://egov.uscis.gov/processing-times/> (last accessed July 8, 2019). (Select "Form I-821 | Application for Temporary Protected Status" under the "Form" field; select "Vermont Service Center" under "Field Office or Service Center" field; and click "Get processing time.").

¹⁷ *Id.* (select "Nebraska Service Center").

¹⁸ *Id.* (select "California Service Center").

extension usually coupled with the announcement extending or re-designating TPS for a country.¹⁹ Under this administration, however, USCIS has consistently failed to process applications during this automatic re-registration period. Compounding these delays has been USCIS' inexplicable decision to adopt a novel, untested form of employment authorization extension, by issuing Notices of Continued Evidence of Work Authorization. CLINIC has requested that USCIS discontinue this practice as an unreasonable and ineffective departure from past practices. These unusual notices caused many TPS holders to lose their jobs because employers did not believe they were authorized to work.²⁰ Concurrently, more than 70 legal experts pointed out that these notices are potentially unlawful and insufficient for employment verification purposes.²¹

Hazem's story illustrates the negative affects USCIS processing delays and other issues, such as Temporary Protected Status Federal Register Notice publication delays, can have on an applicant's financial stability and quality of life. Hazem came to the United States as a student in 2011 as his home country of Syria erupted into war. In the U.S., Hazem studied to become an electrical engineer. Knowing it would be impossible to return to Syria, Hazem applied for TPS. With TPS, Hazem was able to get a good job at a small firm in Oregon. Hazem has faced numerous problems including keeping his driver's license and access to his bank account. He also faced strain and lost billable hours and income at work, having to take time off to go to the DMV and other appointments to deal with the consequences of USCIS issues. New to his job at the time, he worried constantly that his boss' patience would run out.

B. Advance Parole

Advance Parole allows individuals with TPS and other forms of immigration status and protection to request permission to leave and re-enter the United States. In many cases, these advance parole applications are supported by an underlying humanitarian need, such as the need to receive exigent medical treatment abroad or visit family who are grievously or terminally ill. Importantly, these applications require less adjudicatory capacity than other forms of immigration applications, as they are applications merely requesting the ability to travel versus seeking a more comprehensive immigration benefit. In the California, Nebraska, and Texas Service Centers, adjudication time is currently upwards of five months; in Vermont, six months; and the National Benefits Center, an astounding eight months.²²

Previously, an applicant for Advance Parole with a particularly urgent need to travel could submit an online request for an InfoPass meeting with an officer at their local USCIS office, and request an

¹⁹ 66 Fed. Reg. 35,270 (July 3, 2001), www.federalregister.gov/documents/2001/07/03/01-16745/automatic-extension-of-work-authorization-for-hondurans-and-nicaraguans-under-temporary-protected; 70 Fed. Reg. 39,325 (July 5, 2005), www.federalregister.gov/documents/2005/07/07/05-13401/automatic-extension-of-employment-authorization-documentation-for-honduran-and-nicaraguan-tps; 82 Fed. Reg. 12,629 (March 6, 2017), www.federalregister.gov/documents/2017/03/06/2017-04454/automatic-extension-of-employment-authorization-documentation-for-beneficiaries-under-el-salvadors.

²⁰ Letter from Jill Marie Bussey, Director of Advocacy, Catholic Legal Immigration Network, Inc. to L. Francis Cissna, Director, U.S. Citizenship and Immigration Services (Oct. 26, 2018), available at <https://cliniclegal.org/resources/clinic-letter-uscis-director-regarding-processing-delays>; Letter from L. Francis Cissna, U.S. Citizenship and Immigration Services, U.S. Dep't of Homeland Security, to Jill Marie Bussey, Director of Advocacy, Catholic Legal Immigration Network, Inc. (Dec. 6, 2019), available at www.uscis.gov/sites/default/files/files/nativedocuments/Work_Authorization_extensions_for_individuals_with_TPS_from_Haiti_El_Salvador_and_Syria_-_Bussey.pdf.

²¹ Letter from Jayesh Rathod, Professor Law, American University Washington College of Law et al. to Kirstjen Nielsen, Secretary, U.S. Dep't of Homeland Security (Nov. 28, 2018), available at <https://cliniclegal.org/resources/letter-70-law-professors-and-scholars-uscis-and-dhs-regarding-work-permit-extensions-tps>.

²² *Check Case Processing Times*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP'T OF HOMELAND SECURITY, <https://egov.uscis.gov/processing-times/>, (last accessed July 8, 2019). (Select "Form I-131 | Application for Travel Document" under the "Form" field; select the corresponding service center under "Field Office or Service Center" field; and click "Get processing time.").

emergency advance parole. Due to USCIS' Information Services Modernization, or InfoMod, Program²³ that has been rolled out over the past 16 months, many applicants can no longer self-schedule local InfoPass appointments and must call USCIS' Contact Center to request a meeting. Legal representatives at CLINIC affiliates report a multitude of problems with this system. These include difficulty or inability to convince an officer that an in-person appointment is necessary, expected callbacks from USCIS that never occur or occur at unreasonable hours, and callbacks to a client with a language barrier rather than to the legal representative. In many cases, the processing delays and challenges in requesting an emergency Advance Parole mean that the initial, underlying reason for travel becomes moot, such as a loved one passing away without the ability to say goodbye.

C. U Nonimmigrant Status, T Nonimmigrant Status, VAWA, and Special Immigrant Juvenile Status

Like other humanitarian benefits, processing times for U nonimmigrant status, T nonimmigrant status, VAWA, and Special Immigrant Juvenile Status (SIJS) are similarly problematic. Detailed descriptions of processing times and their consequences are explained below. In brief, it takes more than four years just to be placed on the waiting list for U nonimmigrant status; processing for T nonimmigrant status takes up to three years, and VAWA up to two years. In the SIJS context, we have seen dramatic increases in the number of RFEs, NOIDs, denials and many more pending cases. Importantly, these processing times for humanitarian relief do *not* include any additional processing time spent appealing negative determinations, including adjudications by the USCIS Administrative Appeals Office. That means for some, the wait times are much longer.

The consequences for delays of survivor-based applications are particularly detrimental and long lasting. These applicants are survivors of serious criminal activity; human trafficking; domestic violence; or parental abuse, neglect, or abandonment. They are particularly vulnerable in terms of mental and physical health and are at risk of re-victimization after deportation or during the pendency of their immigration case. Under decisions issued by former Attorney General Jeff Sessions, the ability of immigration judges to administratively close, or even continue cases, for people who have immigration applications pending before USCIS has been severely restricted.²⁴ Consequently, ICE can and does move forward with deporting these individuals, despite the applicants seeking to, in good faith, obtain immigration relief.²⁵

In the context of U nonimmigrant status, there is a tremendous backlog for applicants to even be placed on the waitlist for a visa. The processing times to determine whether an applicant will be placed on the waitlist at the Nebraska and Vermont Service Centers are at an unacceptable 50.5 to 51 months, or over four years.²⁶ This period does not include the time an applicant must then spend on the waitlist for a visa to become available. This means that a person applying for U nonimmigrant status could easily wait ten years to obtain protection through U status. While U visa applicants wait for deferred action, they have no

²³ See e.g. Press Release, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP'T OF HOMELAND SECURITY, USCIS to Expand Information Services Modernization Program to Key Locations, (Oct. 30, 2019), available at <https://www.uscis.gov/news/news-releases/uscis-expand-information-services-modernization-program-key-locations>.

²⁴ See Castro-Tum, 27 I&N Dec. 271 (A.G. 2018); see also *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018) (Imposing a restriction on continuances for adjudication of "collateral matters" that has made it difficult to obtain U and T status while in removal proceedings).

²⁵ GREISA MARTINEZ ROSAS & SANAA ABRAR, UNITED WE DREAM, THE TRUTH ABOUT ICE AND CBP: A COMPREHENSIVE ANALYSIS OF THE DEPORTATION FORCE BY THE IMMIGRANT YOUTH AND FAMILIES WHO KNOW IT BEST 26 (2019), available at <https://unitedwedream.org/the-truth-about-ice-and-cbp/> ("Even though the mother told ICE officers they had a pending U nonimmigrant status application pending, ICE still arrested the father."); *Id.* at 29 ("Henrico County Jail in Henrico, VA refused to release a young adult whose DACA expired in February 17th; and who had a pending application for U nonimmigrant status stemming from domestic violence. Instead of releasing the individual, the local jail complied with a detainer request from ICE.").

²⁶ *Check Case Processing Times*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://egov.uscis.gov/processing-times/>, (last accessed July 8, 2019) (Select "Form I-918 | Petition for U Nonimmigrant Status" under the "Form" field; select "Nebraska Service Center" under "Field Office or Service Center" field; and click "Get processing time.").

legal status or ability to work and are susceptible to removal. This undermines the Congressional intent of the U visa, which is to encourage crime victims to come forward and aid in the investigation and prosecution of criminal activity without fear of enforcement action.

For example, Jessica is a 29-year-old single mother from Honduras. She entered the United States in 2014 with her minor daughter. A few months after her arrival, she met her husband, David*, who became physically abusive towards her. One day, after a particularly violent episode in the presence of her two young children, Jessica called the police. They arrested David and provided an order of protection for Jessica. Jessica contacted her local Catholic Charities in New York, which filed a petition for a U visa based on the domestic violence, along with an EAD application. Both applications have been pending with USCIS since May 2017²⁷ If the current processing times continue, Jessica will have to wait three more years before she has the protection of deferred action and work authorization.*

T nonimmigrant status applicants with cases processing at the Vermont Service Center are currently waiting up to three years for adjudication.²⁸ They cannot obtain employment authorization until USCIS approves their application, which often undermines their dignity through lack of economic self-sufficiency and places them at heightened risk of being re-trafficked or otherwise exploited.

Like T nonimmigrant status applicants, VAWA applicants filing Form I-360 can only receive employment authorization upon approval of that form, which disproportionately affects applicants whose abuse centered on or was fostered by a lack of economic independence from their previous abuser. VAWA processing at the Vermont Service Center is currently at 18.5 to 24 months.²⁹

The case of Cheryl from New York exemplifies the cost of these processing delays for VAWA applicants. Cheryl lives in constant fear of deportation and separation from her children. Cheryl, a Jamaican national, left her husband after a violent altercation that resulted in his arrest, forcing her to depend on assistance from relatives for the past several months. Because her VAWA petition and EAD application have been pending since September 2018, she is unable to work and support herself. Recently, she was forced to move back in with her abuser because her extended family could no longer afford to support her and her children. As soon as Cheryl returned to the home, he began abusing her again. If Cheryl had employment authorization or residency, she would be able to work and would not need to rely on the financial support of her abuser.³⁰ Congress enacted VAWA protections precisely to prevent survivors of abuse like Cheryl from having no option but to remain with an abuser.*

In the last few years, we have seen significant increases in the number of RFEs and NOIDs issued in SIJS cases.³¹ In addition, there is a tremendous backlog of SIJS-based Forms I-360 currently pending.³² These

²⁷ For more case examples, see CATHOLIC LEGAL IMMIGRATION NETWORK INC., THE HUMAN IMPACT OF USCIS CASE PROCESSING DELAYS (2019), available at <https://cliniclegal.org/resources/human-impact-uscis-case-processing-delays>.

*Names have been changed for individuals' privacy.

²⁸ *Check Case Processing Times*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP'T OF HOMELAND SECURITY, <https://egov.uscis.gov/processing-times/>, (last accessed July 8, 2019) (Select "I-914 | Application for T Nonimmigrant Status Document" under the "Form" field; select "Vermont Service Center" under "Field Office or Service Center" field; and click "Get processing time.").

²⁹ *Id.* (Select "Form I-360 | Processing time for Petition for Amerasian, Widow(er), or Special Immigrant" under the "Form" field; select "California Service Center" under "Field Office or Service Center" field; and click "Get processing time.").

³⁰ For more examples, see CATHOLIC LEGAL IMMIGRATION NETWORK INC., THE HUMAN IMPACT OF USCIS CASE PROCESSING DELAYS (2019) available at <https://cliniclegal.org/resources/human-impact-uscis-case-processing-delays>.

³¹ Mica Rosenberg, *Exclusive: For migrant youths claiming abuse, U.S. protection can be elusive*, REUTERS (March 6, 2019), available at www.reuters.com/article/us-usa-immigration-abuse-exclusive/exclusive-for-migrant-youths-claiming-abuse-u-s-protection-can-be-elusive-idUSKCN1QOIDS.

³² U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP'T OF HOMELAND SECURITY, Number of I-360 Petitions for Special Immigrant with a Classification of Special Immigrant Juvenile (SIJ) by Fiscal Year, Quarter and Case Status Fiscal Year 2019, www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I360_sij_performancedata_fy2019_qtr2.pdf (2019).

factors have led to increased processing times, which result in this vulnerable population being without protection for extended periods of time.

D. Asylum and Derivative Applications

The United States is obligated under international law and the INA to adjudicate applications of those fleeing persecution and seeking asylum in the United States. As of January 2019, the USCIS asylum offices reported a backlog of 325,277 cases.³³ Many asylum seekers have been waiting for years in this backlog. In January 2018, USCIS instituted a “Last In, First Out” policy, meaning that most recent applicants would have their cases scheduled within a few weeks of filing, and any remaining interview slots would be filled with cases from the backlog, starting at those most recently filed.³⁴ While USCIS has claimed that implementing this policy would address the backlog by deterring fraudulent asylum filings, the backlog has instead continued to grow.³⁵ For those who have already been waiting for years for their cases to be heard, there is literally no end in sight as to when or whether their cases may be scheduled. Many of those in the backlog have left family members in dangerous situations and cannot visit them or petition for them while their cases are pending. USCIS must prioritize the hiring, training, and retention of asylum officers to allow the most vulnerable among us to stabilize their immigration status and reunite with family members.

In addition to the harmful backlogs that principal asylum applicants face, their children and spouses also suffer rapidly expanding processing delays. In FY 2016, the average processing time for Forms I-730 was 6.5 months. The most recent data indicates the processing time has now extended to 10.5 months. This is untenable to families seeking to reunite after suffering trauma and denies the sanctity of the family and dignity of family members who are often times in need of protection.

Nina is a mother and client of Catholic Charities in New York whose daughters’ stories exemplify the inherent danger in delaying derivative asylum applications. Nina is a survivor of domestic violence and Female Genital Mutilation (FGM) from Nigeria. She was forced to flee to the U.S., leaving her four children behind in the care of their father, her abuser. She arrived in the U.S. and eventually received asylum based on the domestic violence. She is currently petitioning for her four young children to come to the U.S. as derivative asylees. Once her abuser’s mother found out they would be coming to the U.S., she began to arrange for Nina’s three daughters to undergo FGM, which typically happens in August during the New Yam Festival. When her attorneys learned of the grandmother’s plans, they contacted USCIS, asking for expedited processing of their petitions on humanitarian grounds. USCIS denied their request without explanation. The petitions have been pending since January 2019 (7 months). Due to this delay, Nina’s innocent daughters will likely be subjected to the cruel and inhumane practice of FGM. Her senator’s office submitted an inquiry on her behalf to USCIS in June, but they have yet to take any action.*³⁶

³³ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP’T OF HOMELAND SECURITY, Affirmative Asylum Statistics, www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AffirmativeAsylumStatisticsJan2019.pdf (Jan. 2019).

³⁴ Press Release, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP’T OF HOMELAND SECURITY, USCIS to Take Action to Address Asylum Backlog, (Jan. 31, 2018), available at www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog

³⁵ In October 2018, the backlog stood at 323,389 cases. Thus in three months’ time the backlog grew by 1,888 cases. U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP’T OF HOMELAND SECURITY, Affirmative Asylum Statistics www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AffirmativeAsylumStatisticsOct2018.pdf (Oct. 2018).

³⁶ For more examples, see CATHOLIC LEGAL IMMIGRATION NETWORK INC., THE HUMAN IMPACT OF USCIS CASE PROCESSING DELAYS (2019) available at <https://cliniclegal.org/resources/human-impact-uscis-case-processing-delays>.

E. Recommendations to Combat Processing Delays for Humanitarian Forms of Relief

To combat the delays in processing time for TPS holders, we reiterate our recommendation from Section I above that USCIS refrain from diverting customer-paid funds away from adjudication activities and toward enforcement activities that are the intended duties of other DHS agencies. The accurate and timely adjudication of applications and petitions must be the operational and financial priority of USCIS based on its Congressionally-defined role.

To combat the hardships caused by processing delays for TPS, CLINIC restates its recommendation from Section I above USCIS should reinstate the regulation requiring that USCIS adjudicate EAD applications within 90 days or issue an interim EAD if final adjudication is not possible in that time period. As beneficiaries of a humanitarian form of relief, TPS holders rely on the protection and stability provided by the United States government to ensure their safety and that of their families. Congress charged DHS and USCIS to carry out the TPS program as it intended, but these policy changes have led to the program's mismanagement and have caused hardship for the families who rely on that protection.

Those with humanitarian forms of relief that allow for Advance Parole must be able to access it quickly in order for the travel to serve its intended purpose. Processing times must be reduced through the recommendations described above, and applicants must be able to obtain in-person assistance at their local USCIS offices in order to request emergency advance parole. Long processing times and the inability to quickly address emergencies exacerbates trauma and family tragedy.

Processing times for the categories of applicants who are survivors of serious criminal activity, human trafficking, domestic violence, or parental abandonment have reached unacceptable levels. There needs to be immediate action to address the backlog of survivor-based applicants, and limitations on processing time must be imposed. Congress created these categories of survivor-based benefits in order to protect victims and ensure that perpetrators do not escape justice due to their victims' vulnerabilities. USCIS must administer these programs in a way that achieves these goals; backlogs leaving victims unprotected for years on end certainly undermine them.

USCIS must fulfill its promise to asylum seekers that their applications be fairly adjudicated and within a reasonable timeframe. USCIS should rescind its "Last In, First Out" policy and hire sufficient asylum officers to address the backlog.

V. Processing Delays in Family-Based Immigration Cases

Family unity is recognized as a fundamental human right, enshrined in international law.³⁷ U.S. immigration policy also reflects the importance of family reunification. In FY 2016, 68 percent of the foreign nationals admitted as LPRs were admitted on the basis of family ties.³⁸ Similarly, the sanctity of the family is a dominant element of Catholic social teaching and a high priority of the Catholic Church. Research shows that helping immigrants achieve family unity benefits immigrants and U.S. citizens alike, improving the health, social, psychological, and economic conditions of families and American society at large.³⁹

³⁷ Family unity as a protected right can be found in: Final Act of the 1951 U. N. Conference of Plenipotentiaries on the Status Of Refugees and Stateless Persons, Recommendation B.; U.N. International Covenant on Civil and Political Rights, art. 23, (March 23, 1976); U.N. Convention on the Rights of the Child, art. 9, (September 2, 1990); General Comment 6 to the Convention, "Treatment of Unaccompanied and Separated Children Outside their Country of Origin" (CRC 2005).

³⁸ WILLIAM A. KANDEL, CONGRESSIONAL RESEARCH SERVICE, *Summary to U.S. FAMILY-BASED IMMIGRATION POLICY* (Feb. 9, 2018), available at <https://fas.org/sgp/crs/homsec/R43145.pdf>.

³⁹ See generally Zoya Buberskaya and Joanna Dreby, *US Immigration Policy and the Case for Family Unity*, 5 J. MIGRATION & HUM. SECURITY 417 (2017).

A. Immediate relative

USCIS processing delays hinder the multi-step family-based adjudication process. In the case of an individual seeking LPR status (also known as green card status), a qualifying relative must first petition the immigrant by submitting a Form I-130, Petition for Alien Relative. Upon approval of the I-130 petition, the family member must file the Form I-485, Application for Adjustment of Status, in order to get a green card. In some instances, both applications can be filed concurrently. The USCIS website shows current processing times for I-130 petitions range from 11 months to four years, depending on the service center.⁴⁰ Processing times for family-based Forms I-485 at various field offices range from 9.5 to 44 months.⁴¹

U.S. citizens and lawful permanent residents wishing to sponsor a loved one must add up processing times for both the I-130 petition and the I-485 application to get an estimate of how long the process could take. Depending on the field office, the entire process could take up to 43 months, more than three years. Due to lack of transparency in how the agency calculates processing times, these 43 months may not account for time spent on adjudicating requests for additional evidence, such as DNA testing or submission of additional documents.

These delays not only affect family unity, they cause a great deal of financial strain on individuals and their families. For example, most I-485 applicants are required to pay for and complete medical screening exams to obtain an approval of their application. These exams are valid for up to two years. If the application is still pending in the backlog when the medical exam expires, the applicant must then pay additional fees to a USCIS certified medical provider to redo the exam and issue an updated medical report.

People with pending I-485 applications may apply for work authorization documents, which are valid for one year, and then the applicant must apply for a renewal EAD. USCIS estimates the agency spends between a few weeks to ten months to adjudicate these applications. While there are no additional fees to file EAD applications based on a pending I-485 application, the delay in processing can affect the applicant's ability to maintain employment and provide for their families. USCIS automatically extends an individual's authorized work status for 180 days while it adjudicates a timely filed renewal application; however, the adjudication process often lasts well beyond the 180-day extension, causing the applicants to lose their jobs and driver's licenses, which is Elizabeth's* case.

Elizabeth arrived from Ghana in April 2016 on a K-1 visa, married her U.S. citizen fiancé, and filed her LPR and EAD applications. She received her initial EAD within a few weeks. In March 2017, she attended her LPR interview accompanied by her husband and their three-year old U.S. citizen child. At the interview, the officer informed her that a decision would be forthcoming. As of July 2019, USCIS has provided no update on her case. She filed an application for a renewal EAD, which has been pending since October 2018 with no update from the agency. Elizabeth is unable to work or renew her driver's license.

B. Provisional Waivers

An immigrant pursuing LPR status may trigger the unlawful presence ground of inadmissibility if they have accrued more than 180 days the United States without lawful presence. In some cases, a noncitizen

⁴⁰Check Case Processing Times, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP'T OF HOMELAND SECURITY, <https://egov.uscis.gov/processing-times/>, (last accessed July 8, 2019) (Select "Form I-130 | Petition for Alien Relative" under the "Form" field; select "Nebraska Service Center" under "Field Office or Service Center" field; and click "Get processing time.") (last accessed July 8, 2019) <https://egov.uscis.gov/processing-times/>.

⁴¹ *Id.* (Select "Form I-485 | "Application to Register Permanent Residence or Adjust Status" under the "Form" field; select "Baltimore" under "Field Office or Service Center" field; and click "Get processing time").

may be eligible to seek a provisional waiver of unlawful presence from within the United States if a U.S. citizen or permanent resident relative would suffer extreme hardship if the applicant were required to reside outside the United States for either a three- or ten-year period.⁴²

Processing times for Forms I-601A have steadily increased during the last two years. For example, in FY 2015, the reported processing time was 2.7 months. During the last fiscal year, the reported processing time doubled to 5.4 months. Currently, the time has almost doubled again, with the reported average waiting time over eight months.

CLINIC affiliates report waiting times of over a year. During this time, the applicant's life is essentially put on hold, given that these applicants usually do not qualify for employment authorization or other benefits afforded those who can adjust status. These families have demonstrated in their waiver applications that they are particularly vulnerable due to the factors that would cause extreme hardship to the U.S. citizen or LPR family member if they were forced to reside here without the applicant. Moreover, noncitizens seeking provisional waivers are not protected from removal. Thus, with each day that passes for a noncitizen awaiting adjudication of a provisional waiver, the applicant and their family members must worry that the applicant may be subject to detention and removal, and the family may suffer the hardship they fear.

C. Recommendations to Combat Processing Delays in Family-Based Immigration Cases

To combat the delays in processing time for family-based immigration cases, we reiterate our recommendations from Section I above that USCIS refrain from diverting customer-paid funds away from adjudication activities and toward enforcement activities. We also repeat our recommendation that USCIS reinstate the regulation requiring that EAD applications be adjudicated within 90 days or issue an interim EAD if final adjudication is not possible in that time period. These recommendations would help to alleviate the backlogs in family-based applications for lawful permanent residence and provisional waivers, and ensure that applicants and their families retain the dignity of employment and self-sufficiency through continuous employment authorization.

VI. Processing Delays in Applications for Renewal and Replacement of Permanent Resident Cards and Naturalization

CLINIC's affiliates report each year in a formal survey that naturalization is the first or second most-requested legal service. As such, CLINIC has prioritized the majority of its flow-through project funds, up to \$20 million, to facilitate naturalization for low-income immigrants. For eight years, CLINIC has been a national partner of the New Americans Campaign (NAC) and other initiatives that assist LPRs to realize their full potential by assisting them with the naturalization process through the development of innovative approaches and technologies and exchanging best practices. Through the NAC, CLINIC provides funding and technical assistance to 29 local affiliate agencies to expand and strengthen their existing services. CLINIC has an extensive collection of naturalization resources for service providers, including a detailed toolkit for organizing naturalization workshops; a free study guide for the citizenship test; a graphic novel of the naturalization interview; a flow chart of the disability waiver process; webinar trainings on various topics; how-to guides; and other resources developed through our naturalization initiatives.⁴³ Thus, CLINIC and our network agencies have a vested interest in reducing the unprecedented naturalization application backlogs.

⁴² Immigration and Nationality Act of 1952, § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) (2019).

⁴³ *Citizenship Toolkit*, CATHOLIC LEGAL IMMIGRATION NETWORK, INC., https://cliniclegal.org/clinic_toolkit/citizenship (last accessed July 8, 2019).

For the purposes of our verbal and written testimony, we defer to our long-time partner in the NAC, the Immigrant Legal Resource Center (ILRC), to share their expertise on issues surrounding delays in naturalization application processing.

VII. Processing Delays in Religious Worker Applications

CLINIC's Religious Immigration Services program represents approximately 150 Catholic dioceses and religious communities throughout the United States and over 800 international religious workers at any given time serving the Catholic Church in the United States. CLINIC is very concerned about the impact of processing delays on adjudication of nonimmigrant and immigrant applications for ministers and religious workers, and the consequences for the religious institutions they serve.

A. R-1 Visa Renewal Applications

USCIS policy changes have hindered the ability of religious institutions to petition for and maintain the religious workers necessary to carry out their faith-based missions. Changes such as refusing to give deference to their own previous approval decisions and withdrawing a category of expedited processing frequently used by religious workers have caused significant problems and left religious institutions without essential personnel. The backlogs in processing I-485 applications for Permanent Resident Status have additional negative affects on religious workers due to limitations specific to the R-1 visa.

USCIS has ended the operationally efficient practice of giving deference to its own previous approvals of nonimmigrant status when considering a renewal without any material change of employer or position.⁴⁴ The practical significance of this policy is also one of fundamental fairness, in that petitioners and beneficiaries should be able to rely upon the agency for consistency in adjudications. This policy change has caused significant hardships for religious institutions and religious workers, and created duplicative work for legal representatives and USCIS adjudicators. Beneficiaries and petitioners for R-1 religious status had already demonstrated to USCIS' satisfaction that they met all the requirements of the visa category, and upon renewal, were required to simply provide evidence that the conditions remain the same.

However, following this policy change, USCIS has subjected renewals to in-depth reviews of the conditions of employment and the sufficiency and validity of documentation that was already submitted, examined, and approved. These reviews have resulted in extensive RFEs for information and documentation that has never previously been required for an R-1 visa. Responding to these RFEs costs religious institutions and their legal representatives considerable time and resources, unnecessarily delays case processing, and limits ministries in their ability to grow and serve.

B. Adjustment of Status to LPR for Religious Workers

If a religious institution would like a religious worker already in the United States to remain in that position indefinitely, there is a two-step process for seeking LPR: (1) the religious institution submits Form I-360, Petition for Special Immigrant; and then (2) the beneficiary files Form I-485, Application to Adjust to Permanent Resident Status. The average USCIS processing time for step one, Form I-360, was 4.8 months in FY 2017 and is now 16.9 months in FY 2019 (up to March 2019). Further, the average USCIS processing time for step two, Form I-485, has nearly doubled over the same timeframe.⁴⁵ Under

⁴⁴ Memorandum, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP'T OF HOMELAND SECURITY, Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status (Oct. 26, 2019), available at www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-10-23Rescission-of-Deference-PM6020151.pdf.

⁴⁵ *Historical National Average Processing Time for All USCIS Offices*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP'T OF HOMELAND SECURITY, <https://egov.uscis.gov/processing-times/historic-pt> (last accessed July 11, 2019).

current USCIS policy, the immigrant petition and the application for adjustment to lawful permanent residency cannot be filed concurrently. Thus step one must be completed and approved by USCIS before step two can occur.

These lengthening processing times for permanent residency have detrimental effects on the sponsoring religious institution and the religious worker. When USCIS processing times extend, religious institution petitioners have to maintain the religious worker's underlying nonimmigrant status and/or seek renewed EADs. Extending the nonimmigrant status requires the institution to pay more government filing and legal fees, using precious resources that could be spent on ministries. As mentioned above, straightforward renewal requests are often met with extensive RFEs that, in turn, expend additional time and fees. When USCIS takes so long to process these religious worker cases, the religious worker and the communities they serve also suffer. This is exemplified by the case of a priest with the Diocese of Ogdensburg (NY).

Father Arjun is a Catholic priest, originally from India, serving in upstate New York, across a 160-mile rural, mostly low-income area. In his mission, Father Arjun celebrates Mass, religious education, conducts weddings, visits the sick, and presides over funerals. Father Arjun green card has been pending for over two years now. Not having his permanent residency has forced him and the diocese to submit application after application and pay fee upon fee in order to maintain work authorization, he will have to request a second medical examination now that the first expired, draining his diocese of resources. As a result of these delays, he has had tremendous difficulty maintaining his driver's license, the key tool that allows him to fulfill his calling.*

It is as serious as this: USCIS' mismanagement may lead to someone not having their priest with them by their deathbed.

Finally, when religious workers are nearing the end of their five-year maximum stay, they may be forced to leave the United States. This forces the nonprofit religious organizations to bear the cost of their international travel, as well as scramble to find a qualified worker to take their place. Once religious workers leave the United States, they often find it difficult to return through the petitions filed by their employers, and face long delays in completing the permanent residency process at consulates abroad.

C. Expedited Processing

In the circumstances described above, expedited processing is critical to ensuring that a case is adjudicated before a religious worker's visa expires. Nonprofit religious organizations and the communities they serve rely on expedited processing so that they do not suffer the disruption of the religious worker's absence. However, in May 2019, USCIS changed the criteria by which it evaluates expedited processing requests.⁴⁶ The criteria previously allowed a nonprofit organization whose request furthers the cultural and social interests of the United States to seek expedited processing so that religious institutions would not lose key workers, and communities would not lose essential sources of spiritual support and physical care. When USCIS revised the expedite criteria through a change to the Adjudicator's Field Manual without previous notice or consultation with stakeholders, religious institutions lost the ability to even submit a request for expedited processing.

These policy changes are stifling the process for cultivating new religious brothers and sisters who wish to join a religious order. Preparing a future religious brother or sister to take vows and enter the religious life may require them to come to the United States to immerse themselves in the life of their new religious

⁴⁶ Memorandum, U.S. Citizenship and Immigration Services, U.S. Dep't of Homeland Security, USCIS Public Services, www.uscis.gov/sites/default/files/policymanual/updates/20190510-PublicServices.pdf (May 10, 2019).

family. Due to the policy changes described above, future religious brothers and sisters have been experiencing difficulty maintaining R-1 status throughout their period of formation. The expansion of religious orders by welcoming new brothers and sisters is essential to their ability to continue to serve their congregations and communities. Further burdening and complicating the process to maintain R-1 status threatens orders' ability to carry out their religious vocation.

D. Recommendations to Combat Processing Delays in Religious Immigration

To combat the delays in processing time for religious immigration cases, CLINIC recommends withdrawing USCIS guidance that instructs adjudicators not to give deference to USCIS' own previous determinations based on the same set of facts. This would enable USCIS to adjudicate religious immigration applications more quickly and consistently, enabling religious institutions to better plan for the future needs of their ministries.

Particularly in connection with religious workers' long-pending applications for LPR status, CLINIC reiterates its recommendations from Section I above that revenue from filing fees be used to carry out adjudication activities and not routed into improper enforcement activities, and that the regulation should be reinstated to obligate USCIS to process EADs in 90 days or issue an interim EAD.

Finally, CLINIC recommends that USCIS restore the expedited processing criteria that it changed in May 2019. The removal of the expedited processing category for nonprofit organizations furthering a cultural and social interest of the United States leaves religious institutions and their workers with a hard deadline at the end of R-1 status eligibility, long USCIS processing time backlogs, and no access to expedited processing. This unreasonable situation places a high financial and logistical burden on nonprofit religious institutions that serve American communities.

VIII. Recommendations

CLINIC recommends USCIS take the following immediate actions to address its burgeoning backlog:

- 1. Realign the focus of USCIS to ensure that adjudication, not enforcement, are the priorities, and restore the promise of customer service.**
 - a. Restore the USCIS mission statement to its previous version.
 - b. Ensure that agency resources are prioritized on adjudication and not enforcement.
 - c. Enhance stakeholder engagement and transparency.
 - d. Restore USCIS' customer service focus by rolling back the InfoMod Program's limitations on access to information and services.
- 2. Rescind counterproductive regulatory and policy changes that increased processing times.**
 - a. Restore provisions at 8 CFR § 274a.13(d) that direct USCIS to adjudicate employment authorization applications within 90 days of filing and to issue interim employment authorization documents if the EAD adjudication is delayed beyond the 90-day period.
 - b. Rescind the 2017 policy that requires in-person interviews for employment-based green card applications and Forms I-730.

- c. Rescind the July 13, 2018 Policy Memorandum (PM-602-0163) that provides USCIS adjudicators with the discretion to immediately deny petitions or applications deemed to be incomplete or ineligible without first issuing an RFE or NOID.
 - d. Rescind the 2018 USCIS Policy Memorandum (PM-602-0050.1) that allows USCIS to place individuals into the removal process, even due to simple administrative mistakes.
 - e. Restore longstanding guidance directing USCIS adjudicators to give deference to prior determination of eligibility in the adjudication of petitions for extension of nonimmigrant status (PM3020151)
 - f. Restore the expedited processing criteria to their pre-May 2019 version.
 - g. Rescind the Asylum Office “Last In, First Out” policy and hire enough asylum officers to adjudicate asylum applications languishing in the backlog.
- 3. Take immediate action to adjudicate the backlog of survivor-based applicants, and place limitations on processing times to ensure the protection of vulnerable immigrants.**

IX. Conclusion

We appreciate the House Immigration Subcommittee’s attention to this important issue. We encourage all members of Congress to ensure that USCIS is carrying out its intended adjudicatory function with a promptness that respects the human dignity of its immigrant customers as they plan their futures and provide for their families. As a Catholic organization, we are dedicated to our gospel mission to “welcome the stranger” and we stand ready to work with our partners in Congress and USCIS to ensure that immigrants have access to justice in immigration adjudications.