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# **Expanding Complementary Pathways for Refugees and Displaced Persons: A Blueprint for the U.S. Government**

November 20, 2020

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## INTRODUCTION

The global scale of displacement, coupled with the recent Trump Administration announcement regarding the lowest Presidential Determination for refugees in U.S. history (for fiscal year 2021), makes ensuring alternative pathways to safety even more critical. This paper will present recommendations to increase access and to improve the functioning of complementary pathways<sup>1</sup> to the United States for refugees and their families. The sections include 1) Family Reunification 2) Humanitarian Parole 3) Special Immigrant Visas 4) Private Sponsorship 5) Labor Pathways and 6) Educational Pathways. Since refugee resettlement programs in the U.S. do not come close to meeting the global demand for protection by displaced persons and their families, these programs, often based more directly on refugee qualifications than need-based admissions, serve as an important complement to refugee pathways. They tend to also be better entrenched in existing law and thus harder for a xenophobic administration to eradicate on political whim.

## COMMON CHALLENGES FACED BY REFUGEES ACROSS COMPLEMENTARY PATHWAYS

### I. Discrimination and Barriers Related to Civil Documentation

Refugees and displaced persons often face great difficulty in accessing civil and legal documentation. War and civil strife along with the very act of having to swiftly and unexpectedly flee violence leave many displaced persons lacking the identification necessary for proving even the most rudimentary aspects of one's identity, such as family composition or nationality. For example, in 2017 seventy percent of Syrian refugees lacked access to basic documentation such as a national ID card.<sup>2</sup> This is a long standing issue that only gets worse over time. As early as 2015, a joint publication by Harvard and the Norwegian Refugee Council noted that "refugees lack awareness or information about civil documentation . . . implicat[ing] a range of universal human rights".<sup>3</sup> Our recommendations address the difficult and often discriminatory

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- 1 UNHCR defines complementary pathways as "safe and regulated avenues for refugees that complement resettlement by providing a lawful stay in a third country where their international protection needs are met," which "are additional to resettlement and do not substitute the protection afforded to refugees under the international protection regime," and "include existing admission avenues that refugees may be eligible to apply to, but which may require operational adjustments to facilitate refugee access." Office of the United Nations High Commissioner for Refugees Division of International Protection (DIP), *Complementary Pathways for Admission of Refugees to Third Countries*, 2019, 4, <https://www.refworld.org/pdfid/5cebf3fc4.pdf>
  - 2 Norwegian Refugee Council, *Briefing Note: Syrian refugees' right to legal identity: implications for return*, 2017, 1, <https://www.nrc.no/globalassets/pdf/briefing-notes/icla/final-syrian-refugees-civil-documentation-briefing-note-21-12-2016.pdf>
  - 3 International Human Rights Clinic at Harvard Law School, and Norwegian Refugee Council (Jordan), *Registering Rights: Syrian Refugees and the documentation of births, marriages, and deaths in Jordan*, 2015, 4-5, <http://hrp.law.harvard.edu/wp-content/uploads/2015/11/Registering-rights-report-NRC-IHRC-October2015.pdf>

barriers that refugees face in obtaining documentation necessary for a successful application. See Sections on SIVs (p.51), Labor (p.72), Education (p.76).

## II. Financial Barriers

Refugees often are some of the most vulnerable and low-income immigrants entering the U.S. upon arrival, though many refugees quickly contribute to their local economies and become an integral part of the economic fabric in their new communities.<sup>4</sup> However, financial barriers often impede refugee families' ability to come to the United States, particularly in light of new harsh policies enacted by the Trump Administration, such as changes to the public charge rule, dramatic fee increases on USCIS applications (see pp.33-35), and barriers to employment authorization for beneficiaries of Humanitarian Parole (see p.45). Some existing pathways to the U.S. have such high costs associated with them as to make them virtually inaccessible for many vulnerable refugee populations. See sections on Labor (p.72) and Education (p.76).

## III. Processing Timelines

Current processing timelines for many of the processes outlined in this paper, as well as agency backlogs and other red tape, prolong family separation and delay many refugees' ability to reach safety. Our recommendations address such delays in family reunification pathways (pp.27-29) and for applicants for Special Immigrant Visas (pp.57-58) who often face wait times far longer than mandated by the statute and which cause irreparable harm to refugees.

## KEY RECOMMENDATIONS

This is a lengthy paper that attempts an in-depth assessment and analysis of how to develop, expand, and enforce six different areas of complementary pathways for refugees. Each section contains significant detail around legal requirements, implementation debates, and recommendations and relevant considerations.

For ease of reference, we provide here *brief* overviews of the key recommendations for each chapter. Significant additional detail is provided within the chapters themselves.

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4 In 2015, for example, the collective income of refugees nationally was over \$77 billion and they paid nearly \$21 billion in taxes. New American Economy, *From Struggle to Resilience: The Economic Impact of Refugees in America*, 2017, 2, [http://research.newamericaneconomy.org/wp-content/uploads/sites/2/2017/11/NAE\\_Refugees\\_V6.pdf](http://research.newamericaneconomy.org/wp-content/uploads/sites/2/2017/11/NAE_Refugees_V6.pdf)

## **I. Family Reunification**

- Issue a clear policy statement establishing the position of the Executive Branch that family unity is a national priority, and that it is socially and economically beneficial to the United States to reunite people living in the U.S. with family members whose physical or mental safety is threatened outside the U.S.
- Address undue delays through streamlining procedures, reducing redundancies, hiring and training appropriate staff and reviewing vetting procedures.
- Review and improve documentation requirements to bring them in line with applicable laws and norms, including clarifying that refugees do not require passports.
- Eliminate the two-year deadline on Follow-to-Join for refugees and asylees.
- Expand the definition of “marriage.”
- Reopen and properly resource and staff USCIS International Offices.
- Reduce financial barriers imposed by the Trump Administration on family reunification (such as the Public Charge Rule).

## **II. Humanitarian Parole**

- Issue an early Executive Order re-establishing “categorical parole” and emphasizing the need for a meaningful, systematic, transparent, and efficient mechanism by which individuals can apply for humanitarian parole.
- Rescind actions taken by the Trump Administration to restrict humanitarian parole or terminate parole programs, including section 11 of Executive Order 13767 of January 25, 2017 and Section K of Secretary John Kelly’s memorandum dated February 20, 2017 entitled, “Implementing the President’s Border Security and Immigration Enforcement Improvements Policies.”
- Restart suspended parole programs such as the Filipino World War II Veterans Parole Program, the Central American Minors Program, the Haitian Family Reunification Program, and the Cuban Family Reunification Program.
- DHS should initiate policymaking and rulemaking, where appropriate, to finalize guidance by the end of FY21 to consider family separation as an urgent humanitarian reason and family reunification as a significant public benefit that can merit an approval or humanitarian parole.

### III. Special Immigrant Visas

- Provide on the ground protection for U.S. allies facing threats so that immigration is not the only option and waiting for petitions to be adjudicated is not life-threatening.
- Create a permanent SIV program for loyal U.S. allies whose lives are in danger because of their work for or on behalf of the U.S.
- Work with Congress to ensure sufficient visas for existing Afghan and Iraqi programs.
- Create mandatory processing timelines to ensure expeditious adjudication and save lives.
- Allow senior diplomats to determine eligibility rather than resting authority with the Chief of Mission.
- Review and revise documentation requirements to ensure they are reasonable, particularly with regard to human resources documentation and recommendation requirements.

### IV. Private Sponsorship

- Ensure that all efforts to create new private or co-sponsorship models are *additional* to existing USRAP numbers.
- Ensure that any private sponsorship program has carefully thought through sponsorship selection, refugee selection, the role of the sponsor and the role of government agencies.
- Create an FY 2021 Private Sponsorship Initiative to allow up to 5,000 refugees to be resettled to the U.S. through a co-sponsorship model.
- Create a P-6 category for future private sponsorship admissions to ensure efficient processing and additionality.
- Create a permanent Private Sponsorship Initiative beginning in FY2022, with the first year acting as a bridge from the co-sponsorship model to a more fully private scheme.
- Establish a fixed percentage of the PD that will be set aside as *additional* private sponsorship slots (i.e., if the percentage is 10% and the PD is 100,000, there will be 10,000 private sponsorship slots, for a total of 110,000).

## V. Labor Pathways

- Within existing law, both DOS and USCIS should reverse the trend of requesting unnecessary and duplicative documentation. Instead, these agencies should exercise the full breadth of flexibility allowed by law for applicants to demonstrate their eligibility for a visa.
- Establish a labor referral pathway with UNHCR to ensure UNHCR assistance to eligible applicants in obtaining exit documents.
- Work with Congress to create a new non-immigrant visa category based on treaty visas allowing qualified nationals of certain countries to fulfill specific jobs within specialty applications.
- Invest in civil society matching programs to match qualified refugees with available jobs for Employee Sponsorship (such as Talent Beyond Boundaries).

## VI. Educational Pathways

- Look to existing educational pathways in other countries, such as World University Service of Canada or the Japanese Initiative for Syrian Refugees, to inform a U.S. Program.
- Create a U.S. refugee student visa whereby, upon successful completion of one academic year, a student can obtain a green card, thereafter feeding into the existing systems for green card holders. This program should have:
  - Less rigid requirements than existing student visas
  - No “intent to return” requirement
  - No fees or a fee waiver for visa applications and issuance
  - Accommodation for non-fluency of English
  - No prohibition against employment
  - Documentary flexibility
  - Pathways for family reunification so students are not choosing between their future and their family

## CHAPTER 1: FAMILY REUNIFICATION PATHWAYS

### I. Introduction

Family reunification pathways have been a cornerstone of our nation's immigration laws since the late 1800s allowing certain family members of those already in the U.S. to reunite with their loved ones. Congress, over decades of restrictive immigration law-making, has consistently carved out exceptions for family-based immigration rooted in the principle that keeping families together is of utmost importance to the success and character of the United States. Since many refugee families become separated during flight from persecution or conflict, maintaining pathways for family reunification and mitigating or removing barriers to such pathways is critical for refugees and asylum-seekers.

We argue that the United States also has an international obligation to secure access to family reunification pathways for refugees in light of the failure of USRAP to accommodate adequate admissions for refugees globally or for family members who may not be deemed eligible for resettlement under USRAP requirements.

This paper focuses on family reunification pathways outside of USRAP's processing priorities and standard processing procedures.<sup>5</sup> Many of the recommendations are small-scale executive actions that address key barriers and procedural delays that refugees face in navigating standard family reunification pathways.

There are many differences between the standard family reunification processes and refugee family reunification processes for family members who may be eligible to reunite within both systems:

- *Legal requirements:* In standard family reunification pathways, individuals are not required to be recognized as refugees and are admitted solely based on their family relationship with a legal permanent resident or U.S. citizen (in addition to satisfying all the regular eligibility criteria to immigrate to the U.S., such as medical and security checks). However, some inadmissibility criteria that are waived for refugees and their derivatives apply in standard family-based pathways, such as the "public charge" inadmissibility ground that the Trump Administration made much more difficult to meet, rendering reunification impossible in some instances.
- *Delays:* There are dramatic differences in delays for family members accessing the either standard family reunification or a refugee reunification pathway depending on the relationship, country of origin and/or personal circumstances. For example, in some cases an immediate relative applying

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<sup>5</sup> Some recommendations relate to Follow-to-Join refugee and asylee petitions for the separated immediate family members of refugees and asylees who qualify for derivative status. Although Follow-to-Join refugees are admitted with refugee status and are part of the USRAP admissions quota, Follow-to-Join procedures differ significantly from the process that USRAP principal applicants go through. Moreover, given the requirement that the refugee or asylee file a family-based petition and role of consular officers, many of the recommendations for improvements for the standard family-based immigration process apply.

through the I-130 process can complete processing much faster than through the regular U.S. Refugee Admissions Program. However, for certain categories of relatives, like a refugee's sibling once that refugee has naturalized, it can be faster to enter via USRAP.

- *Complexity:* Both standard and refugee family-based immigration programs require a U.S.-based relative to begin the process and can be complex. However, for refugee family reunification pathways that lead to access to USRAP as a principal applicant, Resettlement Support Centers work with USRAP refugee applicants to complete forms and coordinate between various agencies for the refugee applicant (although lawyers still play an important role in assisting with making substantive claims or challenging wrongful denials). In contrast, standard family reunification (as well as refugee Follow-to-Join processes and USRAP access processes that rely on standard family reunification petitions) requires that a U.S.-based relative file an extensive form in English along with supporting civil documentation in order to begin the process, and for the beneficiary overseas to file similarly lengthy forms and civil documentation, often online. Various government agencies have jurisdiction over different parts of the process, and without a lawyer to navigate the process, individuals can make mistakes that can cost time, money, and potentially the possibility of reuniting.
- *Costs and Support:* Costs relate to both the costs of the process, and the costs of resettlement and post-arrival support. USRAP is free and without fees. In contrast, standard family-reunification pathways require filing fees of over \$500 per petition; potential DNA testing to prove family relationships of over \$1000 per applicant; visa application fees of over \$300 per visa; and medical check fees for each visa applicant that can cost several hundred dollars per applicant. Altogether, the process could cost thousands of dollars for larger families before considering the costs of travel or resettling in the United States. One of the starkest differences between standard family reunification and USRAP is that refugees entering through USRAP have access to travel loans and coordination services, housing, cash assistance, other public benefits, and support from resettlement agencies. These types of support are minimal or non-existent for refugees outside of USRAP.

Given these various factors, for many refugees with heightened levels of vulnerability, accessing a non-USRAP pathway is virtually impossible.

## II. Impact on the Refugee Cap

The primary purpose of USRAP is to serve as a humanitarian program for the relocation of vulnerable refugees. The importance of accessible non-USRAP pathways for family reunification is amplified by the need to maintain USRAP “slots” for vulnerable populations. Using the USRAP process to meet the demand for family reunification may have the unintended impact of eroding the focus on vulnerability for refugee admissions. Advocates for refugees are, therefore, hesitant to seek an expansion of mechanisms to reunite

refugee families independent of vulnerability claims if such individual cases would be counted against the refugee cap.

Accordingly, this paper does not advocate for a significant expansion of access to USRAP for refugees with family links (such as beneficiaries of I-130 petitions), independent of a vulnerability assessment, unless such an expansion is additional to the quota designated for resettlement of vulnerable refugees. In light of very limited quotas, any time we replace one person within USRAP with a non-vulnerability-based referral, we risk that individual taking the place of a highly vulnerable person. This logic has been used to argue that, for example, I-130 beneficiaries often have other pathways to enter the U.S. and should not warrant a spot intended for a vulnerable refugee without an additional vulnerability analysis under USRAP for family-based beneficiaries.

There are a number of mechanisms to achieve increased access to family reunification without cutting against USRAP overall numbers or vulnerability criteria. As indicated in the Humanitarian Parole section, IRAP recommends the creation of a family-reunification focused Humanitarian Program to address this issue. Another way to ensure family reunification remains viable for all refugees is to process such cases through a private sponsorship program (see section on private sponsorship). Most importantly, complementary pathways such as family reunification must be in addition to, not instead of, traditional resettlement avenues for vulnerable refugees. It is critical that complementary pathways remain independent of USRAP and that a focus on increasing access and operation of such programs not negatively impact funding or attention to USRAP programs serving the most at-risk individuals. There are also political benefits to this, since the statutory schemes around family reunification tend to be more robust, and increase more access to courts and procedural protections than USRAP. This is one of the most important complementary pathways, both because of the number of people eligible and the relative fortitude of this programming to withstand political swings against refugees and immigrants more broadly.

### **III. Family Reunification Options Outside the U.S. Refugee Admissions Program**

This section gives a brief overview of the historical context of family reunification within U.S. immigration law and describes the different processes available to refugees in the U.S. to reunify with their family members *outside of USRAP* processing priorities and standard processing procedures.

Family reunification has historically been a central pillar of U.S. immigration policy and is firmly rooted in the Immigration and Nationality Act (INA) passed in 1952. In 1965, Congress amended the INA with the Immigration and Nationality Act of 1965, also known as the Hart–Celler Act, which abolished the previous system of national origin quotas, and created a system centered around family reunification. The statute itself lays out a system increasing family-based pathways and decreasing employment categories, which had been weighted more equally under the previous framework. This framework, with its focus on family

reunification as a primary goal of U.S. immigration policy, remains a defining feature of our immigration system today.

The INA specifies numerical limits for five categories of family-based immigrants as well as per-country limits on family-based immigration overall. The five categories include immediate relatives (spouses, minor unmarried children, and parents) of U.S. citizens (which are unlimited) and four other family-based categories as listed below.

**Outline of Existing Family-Sponsored Preferences:<sup>6</sup>**

**First: (F1)** Unmarried Sons and Daughters of U.S. Citizens

**Second:** Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents

A. **(F2A)** Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. **(F2B)** Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.

**Third: (F3)** Married Sons and Daughters of U.S. Citizens.

**Fourth: (F4)** Brothers and Sisters of Adult U.S. Citizens.

Every year, there are far more individuals seeking to reunite with family members under these family-sponsored preference categories than permitted by the numerical caps. As a result, the U.S. has a visa queue of foreign nationals who qualify as immigrants under the INA (as indicated by an approved petition by U.S. Citizenship and Immigration Services), and who are seeking to reunify with close family members, but who are made to wait for a visa because the U.S. has met its cap.

The Department of State (DOS) maintains a Visa Bulletin listing “cut-off dates” for each category, which states when petitions that are currently being processed for a numerically limited visa were initially approved. These cut-off dates range between 23 months and 23 years, depending on the derivative’s country of origin and family relationship with the USC or LPR petitioning relative.<sup>7</sup> As a result, family separation can last for years, or even decades, greatly impacting the ability of refugee families to settle comfortably and causing emotional distress. For families in unsafe situations (i.e., a family member awaiting a visa from Venezuela), the added wait time also exposes family members to unnecessary and prolonged danger.

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6 U.S. Department of State (DOS), “Visa Bulletin for November 2020,” October 12, 2020, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-november-2020.html>

7 *Id.* See also, William A. Kandel, “U.S. Family-Based Immigration Policy,” Congressional Research Service, 2018, Summary. <https://fas.org/sgp/crs/homesec/R43145.pdf>

Family reunification has been proven to foster integration for refugees who arrive alone in a new country far from everything they have ever known.<sup>8</sup> Family members provide critical emotional and psychological sustenance for refugees and promote the full economic and cultural integration of refugees. To ensure families reunite, Congress should pass legislation to increase the number of visas available to family members who have “waited their turn,” often over a decade, to reunite with their family members. Family-based immigrants work and contribute to the economy, countering some of the arguments of those who advocate for sacrificing family-based categories for employment-based preferences. For those who have lost their country, home, and everything they know, family reunification is key to restoring a sense of normalcy and stability in the U.S.

Below we recommend a series of policy changes that would address barriers to expeditious and dignified family reunification under U.S. immigration law. Our recommendations also address additional barriers, such as stringent and often discriminatory documentation requirements and antiquated systems which create additional hurdles to family reunification for refugees outside of USRAP.

#### **IV. I-730 Refugee/Asylee Relative Petition (The Follow-to-Join Process)**

The first available path to family reunification for resettled refugees and asylees is through the Follow-to-Join process. The statutory basis for this pathway is found in the sections of the INA governing refugee resettlement and asylum, which allow for the spouse and children of refugees and asylees to either accompany or Follow-to-Join the principal refugee or asylee.

Eligible individuals may file a *I-730 Refugee/Asylee Relative Petition* with USCIS on behalf of their spouse or unmarried children within two years of admission to the U.S. as a refugee or within two years of an asylum grant. There are key differences in the processes for refugees and asylees. A naturalized citizen cannot file an I-730; they must use the I-130 process (see below). USCIS has discretion to grant an extension to the two year filing period based on humanitarian reasons.<sup>9</sup> USCIS adjudicates this petition based on proof of the petitioner’s relationship with the beneficiary. If at any point in the process USCIS needs more evidence to adjudicate the petition, they will issue a Request for Evidence (“RFE”) requesting additional documentation or a Notice of Intent to Deny (“NOID”). If such documentation is not provided or is not adequate, the petition is denied. After USCIS completes an initial review of the petition, the beneficiary is interviewed. For beneficiaries in the United States, the interview occurs at a USCIS office. For overseas beneficiaries, the

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8 Council of Europe, Commissioner for Human Rights, *Time for Europe to get migrant integration right*, 2016, 12-13. [https://rm.coe.int/ref/CommDH/IssuePaper\(2016\)2](https://rm.coe.int/ref/CommDH/IssuePaper(2016)2)

9 What qualifies as acceptable “humanitarian reasons” is left solely to the discretion of USCIS and varies widely from case to case. Some examples of humanitarian reasons for granting an extension to the two-year filing deadline include petitioner illness, inability to locate beneficiaries, and receiving faulty immigration advice.

case is sent to the National Visa Center, which will in turn forward it to a USCIS field office or a U.S. Embassy abroad based on the beneficiary's location.

For overseas processing, known as the Visas 92 (for asylees) or Visas 93 (for refugees) processing, the relevant USCIS field office or consular office will request documentation, a medical exam, and an interview with the beneficiary. Beneficiary interviews are an important step in the process because interviewing officers screen beneficiaries for inadmissibility and verify the beneficiaries relationship with the petitioner. In spite of the critical nature of these interviews, refugee beneficiaries abroad generally are not permitted to have counsel at interviews and often minors appear without an adult present.<sup>10</sup>

If the officer believes that the eligibility criteria are met and the petition can be approved, the applicant moves forward with the process. Officers who interview the beneficiary generally do not provide a rationale for a denial, only written confirmation that the application has been returned to USCIS for reconsideration. USCIS will then issue an RFE or NOID and the applicant will have an opportunity to rebut the findings of the consular officer. If successful, the applicant will be called back for a second interview. After a petition is approved, beneficiaries face further delays for mandated medical exams and security checks. Each step in this process can take many months, with refugee beneficiaries often needing to travel to distant consular offices in far corners of their home countries or in another country for each interview, increasing the cost to the applicant as well as the danger if they are criss-crossing an unsafe country.

## V. Priority 3 Family Reunification for Refugees and Asylees

In addition to the Follow-to-Join program for refugees and asylees to bring spouses and children as derivatives, the State Department has designated the spouses, parents, and children of refugees and asylees to be of "special humanitarian concern" and has given access to USRAP through "Priority 3" P-3 family reunification. Although our recommendations are focused on processes outside of USRAP, we describe the P-3 process here for context and to highlight its limitations.

Some asylees and refugees are able to simultaneously file both a form I-730 *Refugee/Asylee Relative Petition* and pursue reunification through P-3 family reunification. The P-3 process begins with the U.S.-based refugee or asylee filing an Affidavit of Relationship (AOR) through a Resettlement Agency. Some key differences between the Follow-to-Join and P-3 programs are:

- *Refugee Claim:* Follow-to-Join refugees and asylees are derivatives so there is no requirement to be a refugee or meet the refugee definition. Derivatives may apply from their home country or may have

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10 USCIS permits legal representatives for beneficiaries within the U.S. but states that interviews abroad follow "DHS and DOS procedures for refugee and asylee derivative interviews in the specific country." USCIS, "Form I-730 Instructions." September 17, 2019, 5-6. <https://www.uscis.gov/sites/default/files/document/forms/i-730instr.pdf> Recommendations related to the USRAP program that all refugee applicants and derivatives, and asylee derivatives, being interviewed overseas be allowed to have counsel present should address this issue.

a different nationality and not be a refugee. In contrast, P-3 allows a spouse, parent, or minor child to apply as a principal refugee applicant. This means they must meet the refugee definition.

- *Processing Locations:* P-3 applicants cannot be processed in their home country or in the U.S. Follow-to-Join derivatives can be processed anywhere, including in the U.S.
- *Eligible Relatives:* P-3 is open to the spouse, unmarried minor children, and parents of refugees and asylees. Follow-to-Join is not open to parents.
- *Nationality:* P-3 is limited to specific nationalities designated by the State Department. Follow-to-Join derivative status is open to individuals of any nationality.
- *Filing Deadline:* P-3 is available to asylees and within 5 years of having been granted that status. Follow-to-Join petitions must be filed within two years, subject to certain exceptions.
- *DNA testing:* P-3 requires mandatory DNA testing for parent-child relationships. Follow-to-Join does not.
- *Derivatives:* P-3 applicants are principal applicants and may travel with their own derivatives. Follow-to-Join beneficiaries are seeking derivative status so resettle without further derivatives.
- *Adjudications:* P-3 applicants are treated as USRAP principal applicants, with applications prepared by Resettlement Support Centers and generally adjudicated on USCIS circuit rides. Follow-to-Join beneficiaries are generally not subject to USRAP processing for the purposes of adjudication, will usually prepare their own applications, and may have their applications adjudicated by a State Department consular officer or a USCIS officer.
- *USRAP benefits:* All P-3 applicants resettle through USRAP, with their admissions counting towards the USRAP refugee cap for that fiscal year. Follow-to-Join are derivatives that enter with the status of their petitioning relative, so while relatives of refugees do count towards the total USRAP admissions, relatives of asylees do not. Because of this, Follow-to-Join asylees do not receive refugee travel loans or resettlement supports.

Given the significant differences in eligibility, processing locations, benefits, derivatives, and processes, it is vital for family reunification that both processes be accessible to refugees seeking to reunite with their family members. Recommendations related to USRAP processing that would impact P-3 family reunification are covered in the separate USRAP chapter.

## **VI. 1-130 Petition for Alien Relative**

Once a refugee in the U.S. has adjusted status to become a Lawful Permanent Resident (LPR) or naturalized as a U.S. citizen (USC), they can submit an I-130 *Petition for Alien Relative* with USCIS on behalf of certain

family members.<sup>11</sup> This process is available for certain family members, as outlined above: LPRs filing for spouses or unmarried children of any age and USCs filing for spouses, children of any age and any marital status, siblings, and parents. The first step is to file the I-130 *Petition for Alien Relative* with USCIS. Similar to the I-730 process described above, USCIS will adjudicate this petition based on the documentation submitted to verify the family relationship. The same RFE and NOID processes apply to the I-130 adjudication. Once approved, the relatives who are already physically present in the U.S. must file a Form I-485 *Application to Register Permanent Residence or Adjust Status*. Immediate relatives are permitted to file both petitions together in order to ease the process. This process is handled by USCIS. Those outside of the country must file a DS-260 *Immigrant Visa Application* with the U.S. Department of State's (DOS) Bureau of Consular Affairs along with its associated forms. This leads to a number of steps culminating in an interview at an Embassy or Consulate in the location noted in the I-130 petition, often the relative's home country. In both cases, once approved, DOS must determine whether a visa is available for the foreign national's immigrant category. Available visas are issued by "priority date," the filing date of their permanent residence petition. There are myriad barriers to speedy family reunification that impact the I-130 process, including many of the same barriers mentioned above regarding I-730 processing.

## VII. Recommendations

In this section, we discuss recommendations to address the myriad bureaucratic hurdles faced by refugee families seeking to reunite under U.S. immigration law under both the I-730 and the I-130 processes. These recommendations would allow refugees in the U.S. to reunite with family members under a humane and reasonable timeline and address some of the other barriers to reunification, such as severe backlogs, unreasonable documentation requirements, and an adjudication system that is antiquated and outdated and has harmful effects on our overall immigration system.

Through Executive Order, ideally on Day One, a new administration should:

- State that the policy of the executive branch is that, generally, family unity is a national priority, and that it is socially and economically beneficial to the United States to reunite, in the U.S., people living in the U.S. with family members whose physical or mental safety is threatened outside the U.S.
- Address undue delays: Within 90 days of this Order, the Secretary of Homeland Security shall conduct a review of the adjudication capacity of applications for parole under Section 212(d)(5) of the Act, including a review of staffing, infrastructure, and processes, and develop a plan to expand this adjudication capacity to handle an increased caseload with minimal backlogs that shall be implemented within 180 days of this memorandum.

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<sup>11</sup> The I-130 process is available to any LPR or USC, not just resettled refugees who adjust status or naturalize. For the purposes of this paper, we are focusing on recommendations related to the experience of resettled refugees accessing this process.

## VIII. Executive Actions for First 100-200 Days

### A. Discrimination and Barriers Related to Civil Documentation

**Case Example:** ‘Murad’ and ‘Malik’ are brothers from Iraq. ‘Murad’ assisted the U.S. military during the war in Iraq. He faced severe persecution because of that assistance and eventually immigrated to the U.S. on a Special Immigrant Visa (SIV), a Congressionally authorized program designed to help people in his situation. ‘Murad’ eventually naturalized and became a U.S. citizen. ‘Malik’, who was living in a town in northern Iraq in 2014, fled to Jordan after ISIL took over the area and unleashed unprecedented violence on its inhabitants. ‘Malik’ and his family had to leave on a moment’s notice and did not think to take with them their birth certificates. ‘Malik’ approached the IRAP office in Amman, Jordan. Although our attorneys identified an option to resettle to the U.S. and be reunited with his brother ‘Murad’ through an approved I-130 *Petition for Alien Relative*, ‘Malik’ needed to collect any documentation he could to prove that he and ‘Murad’ were indeed siblings. However, try as he may, he was unable to acquire the primary evidence of relationship required by USCIS or any of the alternative documents identified by the Department of State. ‘Malik’ could not go back to Iraq himself because of the ongoing violence. If he had attempted to do so, and even if he survived, he may not have been able to reenter Jordan - resulting in a tragic separation from his wife and children. Either way, it was unlikely that his house and the birth certificates were still intact and unclear that the government office in his hometown responsible for re-issuing such documentation was still around. ‘Malik’ had nobody in Iraq who he could call upon to go to that office on his behalf even if it *was* still around. IRAP placed the case with a *pro bono* team, fully expecting that USCIS will issue a Request for Evidence (RFE) and that ‘Murad’ and ‘Malik’ will have to scramble to provide DNA testing, which they are not allowed to provide at initial submission, at great cost and delay to their case.

The ability of refugees and displaced persons to be reunited with their U.S. citizen and permanent resident family members is regularly hampered by very specific and at times erroneous requirements for the presentation of legal and civil documentation. For example, Sudanese refugees in Kenya find it almost impossible to access birth certificates.<sup>12</sup> However, this is a basic form of documentation required by USCIS to prove birth and parentage. The necessity to provide USCIS with such documentation in order to prove the relationship between a petitioner and a beneficiary can be especially difficult, burdensome, and ultimately impossible when one or both parties are or were displaced. This is a widely recognized problem. In 2018, UNHCR noted:

Beneficiaries of international protection often face great difficulties providing the extensive documentation required for family reunification. The documents needed may have been left

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12 Fatuma Abdullahi, “Promoting access to legal identity and documentation” *Norwegian Refugee Council*, 2018. <https://www.nrc.no/news/2017/december/promoting-access-to-legal-identity-and-documentation/>

behind in haste, lost or destroyed during flight. Seeking replacements may expose family members of the beneficiary of international protection to repeated contact with the authorities of the country of origin, which may put them in a difficult situation or even in direct danger. It may simply be impossible to obtain documents if the country of origin is a failed State or in the midst of serious conflict or indeed if the beneficiary is stateless.<sup>13</sup>

Nonetheless, U.S. family reunification petitions continue to require documentary evidence of relationship even from persons who cannot reasonably be expected to have such evidence. The instructions for the I-130 *Petition for Alien Relative* caution petitioners that they must “prove that there is a family relationship between you and the beneficiary.”<sup>14</sup> It then goes on to list documentation, such as a copy of one’s marriage certificate, evidence of joint ownership of property, and birth certificates that displaced persons often do not have. Even the I-730 *Refugee/Asylee Relative Petition*, specifically designed to assist displaced persons in reunifying with their close relatives, nonetheless requests petitioners to submit documentation “show[ing] that a relationship exists between you and your relative.”<sup>15</sup> It goes on to list a similar array of evidence such as birth, death, marriage, and divorce certificates. In the absence of such evidence, I-730 petitioners can submit affidavits. However, the bar for such affidavits to “overcome the absence of primary and secondary evidence”<sup>16</sup> is high and difficult to meet. Even when evidence is presented, USCIS may still refuse to consider it on account of any number of minute technicalities. One reason why USCIS may reject a petition loaded with evidence is if it believes that the issuance or registration of the documentation is not sufficiently contemporaneous with the event it seeks to prove.

**Case Example:** ‘Mona’ and ‘Sumaya’ are sisters from Iraq. They belong to the Assyrian minority, a Christian community with ancient roots. ‘Mona’ currently lives in Wyoming and is a naturalized U.S. citizen. ‘Sumaya’ and her family are refugees in Jordan, having fled their hometown of Mosul in northern Iraq in 2014 after ISIL seized the city and viciously persecuted members of minority religions and Shiite Muslims. After ‘Sumaya’ approached the IRAP office in Amman, Jordan, we took up her case. IRAP jointly represented ‘Mona’ and ‘Sumaya’ in what should have been a simple I-130 *Petition for Alien Relative*. Like most Iraqis, the sisters did not have their birth certificates (*shahadat al wiladah*) since that document was withdrawn by the Iraqi government upon issuance of the Iraqi Civil ID Card. The I-130 petition that IRAP submitted was replete with documentation, including baptismal certificates of both sisters, a letter from the Iraqi

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13 Frances Nicholson, *The “Essential Right” to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, 2018, 70 (emphasis added). <https://www.unhcr.org/5a8c413a7.pdf>

14 USCIS, “Form I-130 Instructions.” February 13, 2019, 6. <https://www.uscis.gov/sites/default/files/document/forms/i-130instr.pdf>

15 USCIS, “Form I-730 Instructions.” September 17, 2019, 4. <https://www.uscis.gov/sites/default/files/document/forms/i-730instr.pdf>

16 *Id.* at 5.

Consulate General in Detroit, and sworn affidavits by both parents. All of the documentation clearly showed that ‘Mona’ and ‘Sumaya’ were sisters. When USCIS nonetheless issued a Request for Evidence (RFE), IRAP submitted new documentation that ‘Mona’ and ‘Sumaya’ were able to acquire the ‘Copy of Entry 57, a certified copy of an Iraqi census record identified by the State Department as a sufficient alternative to birth certificates. Nonetheless, USCIS would not approve the petition because the ‘Copy of Entry 57’ documents were issued many years after ‘Mona’ and ‘Sumaya’ were born. However, to the extent that this document is a *certified copy* of an original housed within the Iraqi Ministry of Interior, it will almost *always* be issued many years after one’s birth only when it is needed. IRAP persisted and represented ‘Mona’ and ‘Sumaya’ in a second I-130 petition at great cost and delay to both sisters. Incredulously, the same evidence was submitted the second time around ... and the petition was approved.

The result of all these onerous documentary requirements is that refugees and asylees are often unable to reunify with their relatives. This is an untenable situation that could easily be addressed if all of the government agencies involved recognize the unique situation facing refugees and displaced persons.

**US Citizenship and Immigration Services (USCIS) should:**

- 1. Issue guidance mandating that adjudicators accept and consider all forms of persuasive secondary evidence from refugees and displaced persons with the initial submission of a family reunification petition.** The State Department reciprocity schedule often lists a variety of different types of documentation for every country that are deemed potentially persuasive for the purpose of proving familial relationship. However, USCIS considers a very small number of these documents as ‘primary evidence’. Thus, no matter how much evidence is presented in a family reunification petition, even if it is all recognized by the State Department, petitions lacking that critical piece of ‘primary evidence’ often face a low chance of being approved by USCIS. This can be especially frustrating for refugees and displaced persons. Adjudicators should accept and consider any information and evidence about the applicant’s displacement or refugee status that could affect the ability to collect required documentation. This is important given that primary and secondary evidence is often reasonably unavailable to refugees and displaced persons. To the extent that primary evidence is unavailable, USCIS should consider secondary evidence sufficient. Only in the absence of all of the above should adjudicators then issue requests for evidence. Even then, those requests should explicitly provide the opportunity to submit mitigating information about displacement or refugee status including sworn affidavits.
- 2. Issue guidance addressing the overbroad requests for secondary evidence for nationals of countries where births are not contemporaneously registered.** As discussed above, USCIS requests that primary evidence presented in support of an I-130 petition be contemporaneous with the event in question. However, there is no bright-line standard for what is deemed to be

a delayed registered birth certificate. Recently, USCIS has begun requiring secondary evidence from applicants in spite of the fact that applicants submitted primary documentation that under previous practice USCIS found legally sufficient. This particularly impacts refugees who flee from countries where births are often not documented contemporaneously with their occurrence as a matter of culture, convenience, or necessity. Many of IRAP's Syrian clients, particularly those from more rural and agricultural areas, will often register births or marriages months or years after their occurrence when they eventually visit the city. In other instances, the type of document is by its very nature non-contemporaneous. For IRAP's Iraqi clients, for example, the 'Copy of Entry 57' is accepted as a birth certificate alternative. This is a certified copy of a type of census record only issued when requested. The date of issue is therefore often many years after the date of birth. USCIS has liberally rejected such documentation, even though it is clearly recognized by the State Department reciprocity schedule as acceptable, because it lacks contemporaneity with the event it is presented to prove. To the extent that refugees and displaced persons provide official documentation proving that an event occurred and that a particular relationship exists, USCIS has discretion to accept it and should do so.

- 3. Mandate country conditions training and specialization for immigration officers tasked with adjudicating family based petitions** like the I-130 *Petition for Alien Relative* so that they can recognize and properly deal with the documentary difficulties facing refugees and displaced persons. This will remedy the fact that USCIS officers tasked with adjudicating the validity of family relationships often lack expertise in country documentation and are unaware of the challenges and discriminatory practices affecting access to documentation for refugees. These country conditions resources must include language on the challenges that petitioners and beneficiaries may face in obtaining civil documentation. Declarations submitted about the inability to obtain such documents due to displacement should be afforded great weight.

**The State Department should:**

- 1. Undertake a complete revision of the Country Reciprocity Schedule.**<sup>17</sup> The schedule is the authoritative guide on worldwide forms of civil and legal documentation for the purpose of U.S. immigration. Unfortunately, the schedule is often outdated or wrong. Such mistakes and omissions lead to erroneous family reunification denials. In reviewing the reciprocity schedule, the State Department must consult with its Embassies and consulates abroad that have substantial knowledge of the various documentary issues present in their posts. It must also consult INGOs and NGOs as well as international organizations, notably the UN High Commissioner for Refugees, the International Organization for Migration, and the

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17 DOS, "U.S. Visa: Reciprocity and Civil Documents by Country," <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html>

various Resettlement Support Centers. Furthermore, there must be regular communication and coordination between the officials from the USCIS Refugee Affairs Division and the State Department who are tasked with preparing the reciprocity schedule. Where challenges and discriminatory practices affecting access to documentation, particularly primary evidence, are identified, a remedy should be clearly listed. This remedy can include a list of alternative evidence, permission for the submission of affidavits, or recognition that secondary evidence will be treated as primary. A feedback mechanism should be created to allow the general public to comment on inaccuracies in the reciprocity schedule, taking advantage of the potential to crowdsource such a task.

2. **Train consular officers so that they are empowered with the information and background necessary to make appropriate decisions when documentary issues do come up in the course of the adjudication of an immigration petition.** Such training should occur in concert with UNHCR, INGOs, and NGOs who have relevant expertise in the challenges and limitations facing refugees in obtaining legal and civil documentation. Where such training does exist, update existing manuals to include a non-exhaustive list of alternative documentation that can be submitted in lieu of primary evidence in recognition of the documentary challenges that refugees face. This will address the fact that consular officers in countries with significant refugee and displaced populations often lack the country-specific knowledge about the documentation in a refugee's home country or will assume documents that are available to host country nationals are available to refugees even if that is not the case.
3. **Amend the Foreign Affairs Manual to specifically state that refugees should be exempt from the requirement to present a passport and to allow for alternative proof of nationality.** Currently, the Foreign Affairs Manual ("FAM") has provisions allowing for travel without a passport only for persons who are stateless, are the accompanying spouse or unmarried child of a stateless person, or are a national of a Communist-controlled Country (See 9 FAM 201.2-4). However, no such leniency is granted to refugees. On the contrary, 9 FAM 201.2-4(1)(e) is a provision that specifically makes clear that refugees should not receive similar treatment in this regard to stateless persons. Although waiver provisions do exist, it is necessary to mitigate the use of discretion on the part of consular officers to ensure that all refugees can travel even if they do not have a passport. To that end, where no such documentation is available or attainable, alternative documentation establishing registration for protected status such as a certificate from UNHCR should be accepted. National Visa Center staff and consular officers should be trained on the exceptions to the requirement for a passport for visa issuance and how it applies to refugees. They must also be instructed to provide information to the International Committee for the Red Cross, which issues travel documents to refugees around the world.

4. **Amend the Foreign Affairs Manual and undertake rule-making for 8 CFR § 211.1 to allow immigrant travel without a visa for children born to refugees or asylees in possession of a valid refugee travel document or other documentation.** Refugees or asylees who must leave the U.S., usually due to emergency circumstances, and have a baby while abroad, should be treated like other immigrants and not have to choose between the risk of abandoning their status while waiting for their baby's immigration documentation or abandoning a newborn baby.

**The U.S. Citizenship and Immigration Services, the State Department, and the Attorney General should jointly:**

1. **Recognize as spouses for purposes of U.S. immigration law such individuals who are unable to marry or to register their marriage due to restrictions in law or practice,** including for individuals in same-sex, interfaith, or other marriages where discriminatory policies make legal marriage practically unavailable. In many jurisdictions, individuals in committed life partnerships are unable to secure a marriage license due to discriminatory laws and unjust regulations. These persons are often unable to submit the marriage certificates that are so crucial to ensure spousal unity in the US. These new regulations should also take into account that individuals who cannot marry and LGBTI individuals in particular, may be unable to present many common forms of evidence of a bona fide marriage, such as jointly owning or leasing property, raising children together, or living public lives as a couple, because doing so would put them at personal risk.
  - a. **Alternatively, amend guidance and train officers to grant humanitarian parole to individuals in committed life partnerships who are unable to marry** because legal marriage was not possible due to discriminatory prohibitions in host countries but where the marriage would have been possible in the United States.

## **B. Simplifying Family Reunification Procedures to Ensure Efficiency and Consistency in Processing**

Procedural and administrative barriers have suffocated the family reunification process. This is bad for applicants who may wait indefinitely to receive even initial answers, and bad for government agencies who waste time with redundant and often unnecessary processes. The following recommendations are responsive to the challenges that refugees and displaced persons face in accessing and navigating family reunification processes and aim to ameliorate the harms of this complicated process.

1. **The State Department should engage in rulemaking to eliminate the two year deadline on Follow-to-Join processing such that refugees and asylees can petition for eligible relatives at any point after arrival, as is consistent and faithful to the goals of family**

**reunification.**<sup>18</sup> As a practical matter, financial requirements, linguistic barriers, legal literacy, and other impediments often delay an individual's ability to access this benefit within the first two years of arrival. In the alternative to eliminating the two year deadline, USCIS officers should be instructed to consider these barriers as a basis for extending the timeline for humanitarian reasons. Although refugees may also petition for family members after the two-year deadline through the I-130 process once they are Lawful Permanent Residents, the I-130 *Petition for Alien Relative* is significantly more expensive, burdensome and difficult to navigate, has no fee waiver, and often requires substantial wait times. These additional requirements of the I-130 process acutely burden refugees as they are the same, yet heightened, hurdles that make accessing the I-730 pathway in the required two year time frame particularly difficult. This process also subjects family members of refugees to various inadmissibility standards, such as public charge, that they would otherwise not be required to meet. Availability of the I-130 process alone therefore does not remedy the complications refugees face in accessing family reunification pathways.

2. **USCIS should promptly send approved family reunification petitions to the National Visa Center (NVC). For Syrians and Iraqis, for whom an approved I-130 means eligibility for USRAP, USCIS should also send approved petitions promptly to the Refugee Processing Center (RPC).** In order to further monitor timely processing of petitions, USCIS should **regularly report on the time it takes** for them to transfer approved petitions to these centers. Once USCIS has transferred the petition to the applicable center, the State Department should continue to report on processing times for post-USCIS processing. The State Department should further provide adjudicators the option to select more specific case status options such as "transferred to RPC" to increase clarity and transparency about at which stage the application is in and ensure that applications are being processed in a timely manner. Opacity regarding how petitions were transferred between centers has caused considerable confusion about who is responsible for processing applications. Prompt transfer between centers and transparency about these timelines will mitigate delays and enable USCIS and the State Department to efficiently process family reunification applications.
3. **The State Department should provide asylee derivative Follow-to-Join/Visa 92 beneficiaries with the opportunity to go through the International Office of Migration (IOM) for the arrangement and management of travel to the United States.** IOM offers to coordinate flights and provide travel loans to refugees and Follow-to-Join Visa 93 beneficiaries, which they agree to pay back once they arrive in the United States. Currently, family members of

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18 The Foreign Affairs Manual outlines the basis for applicants and derivatives following-to-join and notes that "There is no statutory time period during which the following-to-join alien must apply for a visa and seek admission into the United States" as long as the requisite relationship exists with the principal applicant. 9 FAM 502.1-1(C)(2)(b)(2)(a). <https://fam.state.gov/FAM/09FAM/09FAM050201.html>

asylees are not eligible for this travel loan from IOM even though they too may face significant financial burdens in preparing for an international move. Extending this option to asylees reuniting with their families would ease the initial logistical stress of resettlement and reduce financial strain as a barrier to prompt family reunification. Alternatively, the State Department should provide Visa 92 beneficiaries with information about Miles4Migrants and any other nonprofits that provide free travel assistance to asylees and refugees reuniting with their families.

4. **The State Department should direct consular posts to provide an online feature for beneficiaries in the I-730 process to select I-730 when scheduling consular interviews, as currently the only options are immigrant or nonimmigrant visas.** Visa units process I-730s, but beneficiaries arrive as refugees, and so allowing this option would avoid confusion and inform the embassy of the unique processing required. Further, it is often extremely challenging for refugees to travel internationally for visa processing. The State Department should also allow flexibility for Visas 92/93 beneficiaries who are unable to travel for a visa post for processing, and provide alternatives including, but not limited to, interviews by USCIS officers on circuit rides or videoconference interviews. These flexible alternatives will allow refugees to actually take the steps necessary to complete processing and reunite with their families.

### C. Reduce Processing Timelines for Family Reunification

The extended delays in the family reunification process unnecessarily prolong family separation and place refugees and displaced persons at continued risk of harm. These delays are caused by a number of issues, including shuttered offices and increased and opaque security screenings. The following recommendations will alleviate these delays and promote prompt family reunification.

1. **USCIS must reinstate recently shuttered International Operations Field Offices.** During the past administration, USCIS shut down most of its Field Offices,<sup>19</sup> which has nearly obliterated the agency's capacity to offer key services to applicants, and particularly refugees and others seeking to reunite with their families. This has dramatically increased processing times for beneficiaries seeking to reunite with their refugee family members in the United States, effectively bringing to a halt this important pathway for family reunification. In order for the I-730 petition to be a meaningful pathway for family reunification, the IO Field Offices must be reopened so that USCIS can support refugee processing and efficiently adjudicate petitions from overseas refugees.
2. **USCIS and the Department of State should address exponentially increased processing timelines in the I-730 refugee process.**

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19 USCIS, "USCIS Will Adjust International Footprint to Seven Locations," August 9, 2018, <https://www.uscis.gov/news/news-releases/uscis-will-adjust-international-footprint-to-seven-locations>

- a. **These agencies must address delays due to security vetting**, particularly for designated nationalities subject to additional security vetting processes. As IRAP has recommended elsewhere,<sup>20</sup> a new administration must review security check processes to make sure that they are efficient, meaningful, and fair.
  - b. **USCIS should address delays due to the Department of State's role.** The current system of having both the Department of State and USCIS conduct adjudications causes delays in processing, unnecessary costs for USCIS, and divergent adjudications. Ideally, the Department of State should no longer have I-730 adjudication responsibility, and USCIS should dedicate sufficient resources to adjudicate I-730s. Options for doing so include: reopening International Operations offices in I-730 processing locations as discussed supra; scheduling Refugee Officer circuit rides exclusively dedicated to I-730 processing, like the one sent to Kenya in Q2 of FY20; and/or sending individual Refugee Officers on long-term TDY assignments (up to 6 months) to I-730 processing locations, tasking them with exclusively adjudicating and processing I-730s.
3. **USCIS should process I-130 *Petition for Alien Relative* forms within six months of receipt for immediately available and current visas or for beneficiaries of nationalities that qualify for USRAP access based on an approved I-130 petition.** Cases for family members whose visas are immediately available or current are not considered out of the normal processing time until they have been pending for more than fourteen months in most service centers, adding significant time to a reunification process that already takes years. This is particularly detrimental for Iraqi and Syrian beneficiaries who qualify for P-2 access to USRAP if their I-130 petition is approved.
4. **USCIS should create a mechanism for applicants with applications pending in security checks for more than one year to receive case status information and the opportunity to submit additional evidence to address any security issues.** USCIS should consider this evidence particularly for refugees who lack access to government-issued identity documents, especially given the new and heightened security and background checks for family members of refugees in the I-730 process.<sup>21</sup> Applications remain pending security checks for extremely lengthy periods of time, sometimes indefinitely, and this process will allow applicants to address any issues and mitigate some delays in processing timelines resulting from these new background checks. Through this process, USCIS will be able to consider additional information

20 International Refugee Assistance Project, *Debunking "Extreme Vetting": Recommendations to Build Back the U.S. Refugee Admissions Program*, 2020. <https://refugeerights.org/wp-content/uploads/2020/10/Vetting-Report-2020.pdf>

21 USCIS, "USCIS Is Strengthening Screening for Family Members Abroad Seeking to Join Refugees in the United States," February 6, 2018 <https://www.uscis.gov/news/alerts/uscis-is-strengthening-screening-for-family-members-abroad-seeking-to-join-refugees-in-the-united>

that will assist them in making informed and prompt decisions and reduce the number of cases that remain pending indefinitely.

**5. The State Department should ensure that refugees who are resettled to the United States are provided with full and accurate information on how to reunite with their families.**

Because of the distinct and complicated pathways for family reunification, refugees may not fully understand the options available without clear information provided in a language they understand. To this end, the State Department should update its website to include detailed information on the various pathways of family reunification, including USRAP Priority Programs, and how to seek assistance in reuniting with their families.<sup>22</sup> Resettlement Agencies and their affiliates should also provide this information during orientation and disseminate information on how to seek assistance if they are not already providing it. In particular, Resettlement Agencies should inform refugees of all available pathways, including the USRAP Priority Programs and the process by which an Afghan or Iraqi SIV who relocates to the United States without their spouse or unmarried child under 21 can be reunited through the Follow-to-Join process. This will allow for enhanced clarity and empower refugees to utilize these pathways and obtain legal assistance to reunite with their family members.

**D. Expedite Refugee and Asylee Family Reunification**

In order to further promote timely family reunification for refugees and asylees, USCIS should implement the following recommendations with respect to expedited processing:

- 1. Approve expeditious adjudication of family reunification petitions submitted on behalf of beneficiaries currently under international protection or who have fled an outbreak of war in their home country when visas for such persons are immediately available or current.** Currently, this encompasses spouses and children of U.S. citizens and Lawful Permanent Residents. USCIS should also modify the I-130 *Petition for Alien Relative* form such that evidence of international protection in support of expedited processing can be provided in the first instance upon submission of the I-130.
- 2. Approve expeditious adjudication of I-130 *Petition for Alien Relative* eligible for U.S. Refugee Admissions Program through the Priority 2 Direct Access Program with proof of the beneficiary's nationality.** Currently, this includes Iraqis and Syrian beneficiaries.
- 3. Reinstate recently removed language from the USCIS Policy Manual that specifically referenced “outbreak of war in the home country” as a clear example of a situation where**

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<sup>22</sup> IRAP has made many such resources available in several languages on its website for refugees and SIV applicants, [iraplegalinfo.org](https://iraplegalinfo.org).

**an expedite request would be granted.** Previously, this language was included in USCIS Policy Manual, Volume 1, Part A, Chapter 12, Footnote 3.

## **E. Streamline and Modernize USCIS and State Department Operations<sup>23</sup>**

Various technological and operational deficiencies restrict meaningful access to family reunification and other immigration services. The State Department and USCIS should reform its online platforms and establish feedback and communication mechanisms to ensure streamlined, fair, and accessible processing.

- 1. USCIS should invest resources in redeveloping its Information Technology (IT) Systems and provide more IT support to users.** Attorneys and applicants rely on USCIS online tools for application processing, case status inquiries, oversight mechanisms, and other forms of assistance. Currently, technological malfunctions, discrepancies between online and paper filings, and cumbersome user interface undercut the potential value of having these tools available and diminishes stakeholders' ability to rely on these for case status updates and other features. Providing additional IT support would allow for more efficient and streamlined use of USCIS online tools.
- 2. USCIS should address technological deficiencies in the electronic filing of I-130 *Petition for Alien Relative* forms.** Electronic submission is an important option that eliminates burdens and complications in printing and mailing forms to USCIS. However, in order for online filings to be a viable alternative to paper filings, USCIS must ensure it is an accessible option for all petitioners. Attorneys currently cannot submit an I-130 online on behalf of a client due to technological deficiencies, including error messages, that have been flagged to USCIS repeatedly. Further, the online version has limited categories of documentations that an applicant can submit, which does not always capture the type of evidence refugees and displaced persons can submit in support of an I-130 petition, a limitation that does not exist with paper filings. To remedy this, the form should also include a section such as "Additional Evidence" that allows an applicant to submit additional evidence in support of the I-130 petition that is not necessarily covered by the other delineated categories.
- 3. The State Department should create a viable complaint and assistance mechanism for visa applicants similar to the [USCIS Ombudsman's office](#).** The State Department's Office of the Inspector General does not handle visa issues and there is no way to address improper rejections or ongoing, systemic issues. Creating such a body would provide a reliable means to continue to improve State Department operations.

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23 Please note that many of the recommendations in this section would also be relevant to U.S. visa processing generally.

4. **USCIS should establish a mechanism by which persons who have submitted a petition and been assigned to a USCIS Service Center can communicate directly with that Service Center regarding their petition.** In the past, Service Centers had specific email addresses, although the use of those was discontinued, so there is no current method of communication with these Service Centers that are responsible for processing applications.<sup>24</sup> Establishing these lines of communication will allow applicants and attorneys to directly confirm their case status with these Service Centers and address potential issues, whether that be through reinstating email addresses or updating USCIS website so that case status inquiries can include more detailed information specific to their assigned Service Center.
5. **USCIS should consolidate and streamline the various online USCIS portals currently available.** In particular, merging egov.uscis.gov and myaccount.uscis.gov would help create a centralized mechanism to make case inquiries. These tools should also provide more detailed information about case statuses, such as a history of the actions taken on a case and specific details on where a file has been transferred, so that stakeholders can effectively rely on information provided online. Omission of this information often leads to stakeholders making case-specific inquiries to the USCIS Contact Center. Providing more information online will mitigate this and allow the online tools to be reliable sources of information. Further, USCIS should overhaul and modernize [ustraveldocs.com](https://ustraveldocs.com), the main portal used by immigrants and non-immigrants in processing and / or applying for a visa.
6. **USCIS should improve upon the quality of services that is offered by the USCIS Contact Center.** Tier 1 USCIS Customer Service representatives are often unable to provide meaningful assistance to callers, and so USCIS should provide them with the necessary information and training to properly assist callers. USCIS should also increase the number of Tier 2 Specialists on hand to assist with complicated requests for assistance.

#### **F. Reduce Financial Barriers to Family Reunification Imposed by the Previous Administration**

The Trump Administration has taken a series of steps to impose new barriers to the migration of low-income populations through sweeping changes to the public charge rules, dramatic fee increases for affirmative immigration applications, and the elimination of all non-statutorily required fee waivers. All of these changes were intended to stem migration to the U.S., and particularly the migration of poorer immigrants (the public charge rules have often been called a “wealth tax”) yet proposed under the pretext of raising funds for an underfunded federal agency. The various

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24 See USCIS, “Update on Case Assistance by Service Centers,” December 21, 2018, <https://www.uscis.gov/archive-alerts/update-on-case-assistance-by-service-centers#:~:text=Nebraska%20Service%20Center%3A%20NSCFollowup.NCSC,ncscfollowup%40uscis.dhs.gov>

financial hurdles outlined below are simply insurmountable to many arriving refugees and asylum-seekers seeking to reunify with close family members. Our recommendations below would reverse these Trump-era anti-immigrant policies to make family reunification pathways more accessible and thus more viable for refugee populations. It is in our nation's interest to reduce economic barriers to allow refugee families to reunite and participate in the economy.

- 1. DHS and DOS must immediately rescind the new “public charge” rules which serve as a deterrent to family reunification.** The Department of Homeland Security's (DHS) revised “public charge” regulations issued by USCIS on August 14, 2019,<sup>25</sup> along with the parallel rules issued by the Department of State (DOS),<sup>26</sup> which are currently subject to pending litigation, are a dramatic change in the prior interpretation of the statute and direct USCIS and the DOS to deny applications from individuals applying for admission to the U.S. or for adjustment of status based on a sweeping change in analysis of an applicant's or their family's members' use, or future use, of need-based benefits, including medicaid, SNAP (food stamps), and housing assistance. While “public charge” has been a concept in the immigration laws of the U.S. for over 100 years, the new rules include sweeping changes in the interpretation of public charge, creating a new and often insurmountable hurdle to family reunification for low-income refugee families. While refugees, asylees, and a few other populations are exempt from “public charge” policies under (INA § 209(c), 8 USC 1157, 8 USC § 1159(c)), once these individuals adjust their status and have a green card, their use of benefits<sup>27</sup> are fair game under the new rules, and USCIS guidance states that a family member's use of benefits may be considered in a public charge analysis, thus impacting an applicant's ability to reunify with family members through non-refugee pathways. The public charge rule has, specifically, already had a “chilling effect” on immigrant families in need of testing and treatment for COVID-19. Although most people who are eligible for benefits such as Medicaid, SNAP, and housing assistance, are unlikely to ever be impacted by a public charge determination, the confusion surrounding the rules has already

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25 USCIS, “Public Charge,” last updated September 22, 2020, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>

26 DOS, “Update on Public Charge,” last updated August 7, 2020. <https://travel.state.gov/content/travel/en/News/visas-news/update-on-public-charge.html>

27 The sponsor's use of public benefits *while holding a green card* could impact their ability to successfully petition for a relative. However, if an individual was in receipt of public benefits while in an exempt status, those benefits would not be considered in a public charge analysis, even if the immigrant applies for adjustment through a pathway that is subject to a public charge determination.

caused immigrants and their family members to pass up critically needed benefits, even before the new rule was implemented.<sup>28</sup>

2. **In the alternative, DHS should create an exception for family reunification petitions where the petitioner had *their* public charge requirement waived.** Refugees, asylees, SIVs, and other humanitarian immigrants are not subject to public charge rules. However, those who marry or have a child *after* entering the U.S. are subject to the public charge rules. As a matter of fairness, due to the financial hardship of refugee families, these rules should be waived for family members of refugees as well as for the refugee herself.
3. **USCIS should rescind their recent rule changes to dramatically increase application fees and eliminate fee waivers where not mandated by statute.** The changes include fee increases in many USCIS applications and the creation of a first-ever fee for asylum applications. These new rules exponentially increase the fees associated with multiple forms of immigration relief and would disproportionately impact low-income immigrants and their families, creating new and often insurmountable barriers to family reunification.
  - a. **DHS should rescind the first-time application fee and work authorization fee for asylum-seekers.** The new final rule imposes a fee, for the first time ever, on asylum-seekers, in stark contrast to our nation's obligations under international and domestic law and in stark contrast to our neighbors around the globe.<sup>29</sup> This change now makes the United States one of only *three other countries* party to the 1951 Refugee Convention that charge a fee for asylum applications -- Iran, Fiji (both of which have a fee waiver process), and Australia. Asylum applications should continue to be exempt from fees, like other humanitarian applications currently exempted under statute. DHS should also rescind the part of the rule which imposes a fee on the associated employment authorization application for first-time asylum applicants. An asylum seeker's first application for employment authorization should be free, as it has been historically, in recognition of the fact that asylum seekers cannot lawfully work prior to receiving such permission, and many do not have family in the U.S. to support them while their cases are pending.

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28 In 2018, after DHS announced the rule changes, an Urban Institute survey found that about 1 in 5 adults in low-income immigrant families reported foregoing a non-cash benefit program due to the public charge revised rules. Jennifer M. Haley, et. al., "One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019" *Urban Institute*, 2020, 2, [https://www.urban.org/sites/default/files/publication/102406/one-in-five-adults-in-immigrant-families-with-children-reported-chilling-effects-on-public-benefit-receipt-in-2019\\_1.pdf](https://www.urban.org/sites/default/files/publication/102406/one-in-five-adults-in-immigrant-families-with-children-reported-chilling-effects-on-public-benefit-receipt-in-2019_1.pdf) The double impact of an economic recession and the COVID-19 pandemic have had a disproportionate impact on immigrant communities in the United States.

29 The United States is mandated to accept asylum applicants who seek protection under both the Refugee Act of 1980, which establishes the basis of U.S. adjudication of asylum applications, and under our obligations as a signatory to the 1951 Convention Related to the Status of Refugees. Congress, which has amended the Refugee Act, has never sought to include an application fee in any amendment to the Act.

- b. DHS should rescind the fee increase for naturalization.** Naturalization is a critical stepping stone to integration for refugee families and once naturalized an immigrant can not only vote but also becomes eligible for jobs in government, the military and the defense industry.<sup>30</sup> Overall, refugees naturalize at high rates, higher than most other immigrants who are eligible to naturalize.<sup>31</sup> As with the new asylum application fee, the new rules exponentially increase the naturalization fee (by 81% from \$640 to \$1,160). Additionally, it will eliminate the option to request a reduced fee of \$320 using Form I-942 as well as fee waivers for the N-400. This will increase the burden on low-income immigrants seeking to naturalize, further delaying their access to citizenship. Once naturalized, a citizen can sponsor an increased range of family members and do so much faster than an LPR. A U.S. citizen can sponsor an immediate relative (spouse, unmarried child under 21, and a parent of an adult U.S. citizen) without a numerical cap imposed by the U.S. government (see above) and these relatives can become LPRs immediately assuming they meet other standard eligibility criteria.
- c. USCIS should reverse their new rules eliminating most fee waivers.** USCIS has historically acknowledged that fee waivers are in the public interest because immigrant beneficiaries rely on them to access immigration relief otherwise unattainable and to achieve family reunification goals, including financial stability, integration, and self-reliance. Fee waivers eliminated by the new rules include those for applications associated with naturalization, adjustment of status, green card replacement and renewals, and employment authorization.<sup>32</sup> The elimination of fee waivers has a disproportionate impact on low-income immigrants, including refugees and asylum-seekers. The rules would also harm larger families that might have to stagger petitions for reunification if they cannot afford the filing fees for all members at the same time.
- d. Fee waivers should be made available for I-130 petitioners as they are for I-730 petitioners due to the financial hardships faced by refugee families.** High application fees, expounded by recent fee increases, are a significant barrier to family reunification. Fee waivers could be made available contingent on a showing of financial hardship or in cases where the beneficiary or petitioner is a refugee or asylee. Additionally, as discussed earlier, refugees are often unable to produce sufficient primary evidence to support their I-130 petitions, resulting in requests to submit DNA

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30 After five years living as a permanent resident in the U.S., a refugee may apply for citizenship if they meet other requirements such as a basic understanding of English, U.S civics, they are 18 years of age and they can pay the fee.

31 Nadwa Mossaad, et. al., "Determinants of refugee naturalization in the United States," *Proceedings of the National Academy of Sciences of the United States of America*, 115, no. 37, (September 11, 2018): 1. <https://www.pnas.org/content/115/37/9175>

32 As of the date of publication, the final rule eliminating fee waivers is enjoined by the U.S. District Court for the Northern District of California pending final litigation challenging its legality.

evidence as proof of relationship. This DNA testing places a huge financial burden on the refugees and their petitioning relatives and the cost should be waived for petitioners and beneficiaries who can show financial hardship and otherwise qualify for the I-130 fee waiver.

- e. In the alternative, fee waivers should be available for refugees, asylees, and immigrants who were eligible for a public charge waiver in their immigration process.** Fee waivers for any individual who was exempt from public charge rules (refugee, asylee, humanitarian immigrants like SIV, VAWA, etc.).

- 4. Create private and co-sponsorship mechanisms to allow donors to fund travel for beneficiaries of humanitarian immigration programs.** Refugees are required to travel to the United States on flights arranged by IOM. Refugees must then repay the costs of travel starting within six months of arrival in the United States. Afghan and Iraqi SIVs have the option to travel with IOM arrangements and to repay the costs of the loan, or to make their own arrangements and to pay their own travel costs up front. This prepaid travel is essential to allowing refugees and SIV applicants to travel to the United States without paying large sums upfront. However, the costs to repay loans can be onerous, especially for large families. The Departments of State and USCIS should establish a means for private donors to contribute financially or to provide airline tickets for SIV applicants and refugees, including refugees who are resettled through private sponsorship. They should also partner with private donors to identify beneficiaries of other humanitarian immigration programs who are not currently eligible for IOM travel benefits and who may face severe hardship to fund travel to the U.S.--namely, beneficiaries of humanitarian parole and Follow-to-Join asylees.

## **G. Reverse Trump Era Notice to Appear (“NTA”) Enforcement Policy to Incentivize Family Reunification**

- 1. USCIS should reverse the 2018 NTA policies through implementing memoranda to encourage family reunification.** In June of 2018, USCIS issued a new policy memorandum<sup>33</sup> that dramatically expanded the circumstances under which USCIS must refer a case to ICE for removal. Previously USCIS had issued NTAs (Notice to Appear, Form I-862), initiating removal proceedings in immigration court, in only a limited manner often involving cases of alleged fraud, criminal conduct, or national security concerns. The new policy requires USCIS to issue an NTA and refer an individual for removal proceedings when an application submitted to USCIS is denied and the beneficiary does not have lawful status, except in very limited circumstances.

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33 USCIS, “Policy Memorandum: Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens,” June 28, 2019 <https://www.uscis.gov/sites/default/files/document/memos/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>

This sweeping policy change vastly increases the risk to individuals submitting affirmative applications to USCIS because, if denied, they run the risk of deportation. Applicants submitting I-130 petitions as well as I-730s may be subject to the initiation of removal proceedings if they are in the United States without lawful status. To add an additional layer of risk, information in the submitted petition itself may now be used as a basis for initiating removal proceedings or as evidence in such a proceeding. Collectively, these policies have a profound chilling effect on family reunification in certain circumstances. The risk that such applications, if denied, could trigger removal proceedings or that information submitted in such applications could later be used in such proceedings, disincentives many with valid pathways to family reunification and legal status from pursuing such pathways. Sound policy dictates that we provide every opportunity for individuals to take advantage of legal pathways provided by congress. Doing so would promote family reunification and would support the pathway of refugee families as they seek to integrate and attain financial stability in the United States.

## CHAPTER 2: HUMANITARIAN PAROLE

U.S. law provides another pathway for individuals outside the United States to seek relief from harm by entering the United States: humanitarian parole. Specifically, the Secretary of Homeland Security may “in his discretion parole [any non-U.S. citizen seeking admission] into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit...”.<sup>34</sup>

This section of the paper discusses humanitarian parole for both urgent humanitarian reasons and significant public benefit, covering the key challenges and debates in its application, and recommends how it can be used further to complement and reinforce the U.S. refugee protection system.

### I. Key Challenges

#### A. Structural Limitations

Stemming first from statute and then through implementation, humanitarian parole faces several structural limitations that have prevented its wider application. As laid out in the applicable statute, a grant of humanitarian parole is discretionary, temporary, and decided on a case-by-case basis for urgent humanitarian reasons or significant public benefit.<sup>35</sup> Furthermore, parole is neither a nonimmigrant or immigrant status, nor an admission of the individual for immigration purposes.<sup>36</sup> At the end of the parole period, the individual must return or be returned or obtain another status.<sup>37</sup> Lastly, the statute specifically states that a refugee cannot be paroled unless “compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee...”.<sup>38</sup>

Regulations implementing humanitarian parole do not provide much further detail on how it is to be administered for people outside the United States. They do indicate that the government may require “reasonable assurances” that the person will depart the United States when required, which can include a sponsor, bond, community ties, or conditions such as periodic reporting.<sup>39</sup>

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34 8 U.S.C. § 1182(d)(5)(A).

35 Id.

36 Id.

37 Id.

38 8 U.S.C. § 1182(d)(5)(B).

39 8 CFR § 212.5(d).

Jurisdiction for authorizing parole into the United States for urgent humanitarian reasons or for significant public benefit falls to the Department of Homeland Security (DHS).<sup>40</sup> Within DHS, several agencies adjudicate humanitarian parole requests: U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP).<sup>41</sup> This discussion of humanitarian parole as a complementary pathway focuses on requests made outside the United States and adjudicated before the person travels to a U.S. port-of-entry, and administration of this use of humanitarian parole is generally delegated to USCIS.<sup>42</sup> Within USCIS, adjudication of humanitarian parole applications falls to either a service center or the International and Refugee Affairs Division (IRAD), formerly the International Operations Division (IO) of the Refugee, Asylum and International Operations Directorate. In Fiscal Year (FY) 2016, IO adjudicated 2,170 cases, granting 40% (844) and denying 60% (1,263).<sup>43</sup>

USCIS guidance has traditionally emphasized the limited nature of humanitarian parole. For example, training materials articulate the theme that “[p]arole is not intended to be used solely to circumvent normal visa processing procedures and timelines, to bypass inadmissibility waiver processing, or to replace established refugee processing channels.”<sup>44</sup> Similar guidance exists in the relevant chapter of the Foreign Affairs Manual, which also outlines the process for U.S. government agencies, such as the Department of State, to submit a request for humanitarian parole to DHS on behalf of a person outside the United States.<sup>45</sup>

## **B. Trump Administration Limitations**

Over the last four years, the Trump Administration has made concerted efforts to limit the use of humanitarian parole. Specifically, within days of taking office, President Trump issued an executive order on January 25, 2017 that stated, “[t]he Secretary shall take appropriate action to ensure that parole authority under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) is exercised only on a case-by-case basis in accordance with the plain language of the statute, and in all circumstances

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40 Homeland Security Act of 2002, Public Law 107-296, Section 402.

41 Immigration and Customs Enforcement (ICE), “Parole Authority Memorandum of Agreement,” September 2008, <https://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf>.

42 Although USCIS grants the parole authorization, U.S. Customs and Border Protection makes the actual decision whether to parole an individual when the individual arrives at the port of entry in the United States on a case-by-case basis. See 9 FAM 202.3-2(A)(d), <https://fam.state.gov/fam/09FAM/09FAM020203.html>.

43 USCIS, “AILA-USCIS International Operations (IO) Division Liaison Meeting Agenda, Questions and Answers,” April 6, 2016, <https://www.aila.org/infonet/uscis-international-operations-liaison-meeting>; USCIS, “AILA-USCIS International Operations (IO) Division Liaison Meeting Agenda, Questions and Answers,” November 9, 2016, <https://www.aila.org/infonet/uscis-intl-ops-liaison-meeting-q-and-a-11-09-16>.

44 USCIS, *International Operations Officer Training Course: Humanitarian and Significant Public Benefit Parole Training Module*, March 8, 2017, <https://refugeerights.org/wp-content/uploads/2020/04/HP-FOIA-min.pdf>.

45 9 FAM 202.3.

only when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole.”<sup>46</sup>

In implementing the executive order, then-DHS Secretary John Kelly wrote in February 2017, “in my judgment, [parole] authority should be exercised sparingly....The practice of granting parole to certain [individuals] in pre-designated categories in order to create immigration programs not established by Congress, has contributed to a border security crisis, undermined the integrity of the immigration laws and the parole process, and created an incentive for additional illegal [sic] immigration.”<sup>47</sup>

Soon after, USCIS stopped offering parole to applicants in the Central American Minors (CAM) program and later in 2017, DHS moved to terminate the parole portion of the CAM program.<sup>48</sup> Further, citing President Trump’s executive order, USCIS announced in August 2019 that the agency would be moving to terminate the Haitian Family Reunification Parole program and the Filipino World War II Veterans Parole program, arguing that “the expedited processing that was made available to these populations in a categorical fashion” is inconsistent with the law.<sup>49</sup> Further restrictions to humanitarian parole were proposed in a Republican-sponsored Senate bill that passed out of the Senate Judiciary Committee.<sup>50</sup>

## II. Key Debates

### A. Categorical Parole

As explained above, the decision whether to grant a request for humanitarian parole is made on a case-by-case basis by USCIS officers trained in such adjudications. Over the last decade and despite built-in structural limitations, USCIS oversaw several parole programs, such as the Haitian Family Reunification Parole Program and the Cuban Family Reunification Parole Program. In 2014, the Central American Minors Refugee/Parole Program (CAM) was created for certain children from El

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46 Executive Order, “Border Security and Immigration Enforcement Improvements”, Section 11(d), January 25, 2017, <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>.

47 Sec. of Homeland Security John Kelly, “Memo: Implementing the President’s Border Security and Immigration Enforcement Improvement Policies,” February 20, 2017, [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf).

48 Department of Homeland Security (DHS), “Notice: Termination of the Central American Minors Parole Program”, DHS Docket No. USCIS-2017-0003, 82 F.R. 38926, August 16, 2017, <https://www.govinfo.gov/content/pkg/FR-2017-08-16/html/2017-16828.htm>.

49 USCIS, “USCIS to End Certain Categorical Parole Programs,” August 2, 2019, <https://www.uscis.gov/news/news-releases/uscis-to-end-certain-categorical-parole-programs>.

50 S. 1494, “Secure and Protect Act of 2019,” Introduced on May 15, 2019. <https://www.congress.gov/bill/116th-congress/senate-bill/1494/text>.

Salvador, Guatemala, and Honduras.<sup>51</sup> CAM was created, in part, to address the increase in children fleeing those three countries to reunite with family members in the United States. Opponents to this program derided CAM as an extension of a policy that favored “unfettered borders and de minimis deportations.”<sup>52</sup>

The Trump Administration’s claims that parole was abused and contributed to the border security crisis stemmed from that same rhetoric. However, in lieu of providing evidence to support those assertions, the Administration advanced the idea that these “categorical parole” programs were contrary to the law’s requirement that parole be granted on a case-by-case basis. According to USCIS, “[c]ategorical parole refers to programs designed to consider parole for entire groups of individuals based on pre-set criteria,” even though, in the same statement, USCIS conceded that parole programs simply created expedited processing for certain groups of people.<sup>53</sup>

The Administration did not argue that parole programs granted parole for entire categories of people because that is not how these programs operate. For example, USCIS explains in its public instructions for the Filipino World War II Veterans Parole Program (FWVP): “The grant of parole is not automatic. We will use our discretion to authorize parole on a case-by-cases basis. We will generally only authorize parole to beneficiaries who meet the FWVP guidelines and also:

- Pass criminal and national security background checks;
- Pass a medical exam; and
- Warrant a favorable exercise of discretion.”<sup>54</sup>

These programs gave groups of people expedited access and processing, but still required a full case-by-case analysis and adjudication of each case. To the degree that this debate involves the question of fraud and abuse, the Administration and opponents of parole programs have not provided evidence of fraud or abuse aside from the sweeping characterizations of parole programs as undermining the integrity of the immigration system. Thus, the contention that “categorical parole” programs are inconsistent with the law is not supported, despite the debate.

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51 USCIS, “In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors – CAM)”, last updated November 14, 2017, <https://www.uscis.gov/CAM>.

52 Dan Cadman, “‘Truthiness’ about the Central American Minors Program”, Center for Immigration Studies, May 4, 2015, <https://cis.org/Cadman/Truthiness-about-Central-American-Minors-Program>.

53 USCIS, “USCIS to End Certain Categorical Parole Programs,” August 2, 2019, <https://www.uscis.gov/news/news-releases/uscis-to-end-certain-categorical-parole-programs>.

54 USCIS, “Filipino World War II Veterans Parole Program”, last updated August 7, 2019, <https://www.uscis.gov/humanitarian/humanitarian-parole/filipino-world-war-ii-veterans-parole-program>.

## **B. Benefits of an Expedited Process**

Categorical humanitarian parole programs, if used purposefully and in a targeted fashion, can be employed to expeditiously respond to a humanitarian crisis. For example, in early 2010, within about a week of a major earthquake in Haiti, DHS created the Special Humanitarian Parole Program for Haitian Orphans.<sup>55</sup> This program allowed Haitian children who were in the process of intercountry adoption by U.S. citizen parents to be quickly paroled into the United States while the adoption process was pending. Through the program, the United States was able to bring in over 1,100 children within a few months.<sup>56</sup>

In reflecting on the speed of the program, the former USCIS IO Branch Chief for Programs contrasted it with how the slower refugee process provided different results for the “Lost Boys of Sudan,” whose pathway to protection in the United States took two decades.<sup>57</sup> On the parole program she writes, “In the aftermath of the earthquake, this process could have taken years.... We were very careful in crafting the eligibility criteria, screening the children and the families, and building safeguards into the program right from the beginning. Although we moved fast, we followed a painstaking process.” She continues, “The Special Humanitarian Parole Program for Haitian Orphans was the first program of its kind, and it can become an important precedent. In a humanitarian crisis, we can use the parole authority established by U.S. immigration law as part of the immediate relief effort to bring people already on a path to permanent immigration out of harm’s way.”<sup>58</sup>

These targeted parole programs may also call into question whether adjudicators are granting parole on a case-by-case basis, as required, or making categorical approvals, as suggested by the Trump Administration. The answer is rightfully the former. Even though the parole program for Haitian Orphans provided expedited access and processing for a class of individuals that *could* qualify for humanitarian parole, each application was judged on its own merits. In fact, roughly one-third of the submitted applications in that program were denied.<sup>59</sup> Moreover, the creation of parole programs generally reflects the government’s recognition that a specific vulnerable set of people in a particular dangerous context are likely to meet the statutory parole requirements, and parole programs are designed to meet those needs. Thus, any argument that high approval rates suggest

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55 DHS, “Secretary Napolitano Announces Humanitarian Parole Policy for Certain Haitian Orphans,” January 18, 2010, <https://www.dhs.gov/news/2010/01/18/secretary-announces-humanitarian-parole-policy-certain-haitian-orphans>.

56 Whitney A. Reitz, “Reflections on the Special Humanitarian Parole Program for Haitian Orphans”, *New York Law School Law Review* 55(3) (January 2011), p. 794, [https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1618&context=nyls\\_law\\_review](https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1618&context=nyls_law_review).

57 *Id.*, p. 796.

58 *Id.*, p. 797.

59 *Id.*, p. 794.

a lack of case-by-case analysis is an oversimplification: high approval is equally consistent with effectively tailored parole programs.

### C. Humanitarian Parole for Protection Reasons Versus Refugee Protection

As discussed, the parole statute explicitly excludes a noncitizen from consideration for parole unless there are “compelling reasons in the public interest with respect to that particular alien [which] require that the alien be paroled into the United States rather than be admitted as a refugee...”.<sup>60</sup> This is further complicated by USCIS’ lack of operational ability to conduct interviews of parole applicants to assess protection needs and credibility and the reality that adjudicators are often not refugee or asylum officers. However, agency guidance interpreting this exception for refugees is broader than has traditionally been implied or applied.

Specifically, in training materials, USCIS describes its understanding of the refugee exclusion provision in the statute: “This generally means that parole should not be used to parole in someone for whom a formal determination has been made that the [individual] meets the definition of refugee, but cannot be admitted as a refugee. **It generally is not applicable to the situations when someone seeks parole for reasons of protection from harm, but USCIS is not making a formal determination that the individual is a refugee** (emphasis added).”<sup>61</sup>

USCIS guidance details such scenarios where humanitarian parole can be granted: people affected by natural disasters, civil conflicts, and even targeted harm.<sup>62</sup> For these situations, the agency advises officers to balance factors including the applicant’s particular vulnerability, imminent risk of serious harm, living conditions, accessibility of existing relief mechanisms, ability to relocate, and the length of the parole request.<sup>63</sup>

The decline of the U.S. Refugee Admissions Program (USRAP) and the growth of the international refugee crisis suggests the possibility that protection through refugee resettlement is not a viable option for large swaths of people and may support expansion of humanitarian parole. Moreover, previous and existing parole programs, such as the Haitian Family Reunification Parole program, indicate that family unity during times of targeted or generalized violence may also be an urgent humanitarian reason or significant public benefit justifying humanitarian parole.

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60 8 U.S.C. § 1182(d)(5)(B).

61 USCIS, *International Operations Officer Training Course: Humanitarian and Significant Public Benefit Parole Training Module*, March 8, 2017, 53, footnote 17, <https://refugeerights.org/wp-content/uploads/2020/04/HP-FOIA-min.pdf>.

62 Id. at 53-63.

63 Id.

Furthermore, U.S. government agencies may request parole on behalf of individuals, and these requests are often based on the need for protection to avoid targeted harm.<sup>64</sup> These applications often couple urgent humanitarian reasons with significant public benefit reasons, such as advancing foreign policy goals of democracy, human rights, religious freedom, or freedom of the press. Current agency guidance states that “[a]s a matter of policy, however, if the finding of urgent humanitarian reasons is based solely on targeted harm due to membership in an at risk group, you generally should exercise discretion to deny the request, absent other compelling factors or a special parole program designed for individuals of that group.”<sup>65</sup> That this is a matter of policy leaves the door open for the adoption of a different policy, following the proper procedures, that could allow for wider application of parole in cases of targeted harm.

Lastly, the duration of parole status must be discussed when looking at cases of targeted harm. Often the threat of this harm will last for years. USCIS contemplates this in its training guidance and discusses the authorization of parole when the requester establishes a “colorable” or “viable” asylum claim by providing “credible evidence” and “corroborative documentation.”<sup>66</sup>

The idea here is that parolees who meet this standard can be granted parole temporarily because they can enter the United States and apply for and potentially receive asylum in the United States. This type of screening use of humanitarian parole is limited by its nature as a paper-based adjudication. Moreover, the backlogged asylum process in the United States, exhaustion of appellate remedies, and removal of applicants who do not qualify, are lengthy and unpredictable. Nonetheless, the opportunity exists for a more robust application of this process and similar programs, such as Temporary Protected Status (TPS), to expand the pathways available to those fleeing targeted harm – especially because it is the same agency, USCIS, that generally adjudicates affirmative asylum and TPS applications.

#### **D. Significant Public Benefit**

USCIS officers may grant humanitarian parole for significant public benefit reasons. This is a less common pathway and traditionally these requests are often based on considerations involving law enforcement, national security, or foreign or domestic policy.<sup>67</sup> However, there is no statutory or regulatory definition of significant public benefit.<sup>68</sup> Therefore, a viable question exists as to whether this is a category that can or should be expanded within and beyond its current understanding.

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64 Id. at 60.

65 Id. at 61.

66 Id. at 62-63.

67 Id. at 24.

68 Id.

An example of this is the International Entrepreneur Parole program (IEP) designed by the Obama Administration, which implemented a parole program for certain entrepreneurs who could create jobs through rapidly growing new businesses.<sup>69</sup> The economic impact was considered to be a significant public benefit within the meaning of the statute. Note that the Trump Administration has moved to terminate IEP, although the termination is still pending.<sup>70</sup> Nonetheless, IEP presents an example of how the significant public benefit definition can be used to address emerging scenarios.

Building on other formal parole programs, the issue of family unity or family reunification as a significant public benefit could be explored and expanded such that it could serve as the principle basis of successful individual humanitarian parole requests or larger parole programs. USCIS writes in its training materials that “[f]amily unity in and of itself does not constitute an urgent humanitarian reason for parole nor does it present a significant public benefit. Parole is not intended to be used as a vehicle to circumvent normal visa-processing or statutory provisions governing family-based visas. As such, a parole request based solely on the desire for family unity generally will not constitute an urgent humanitarian reason; however, family unity is a factor to take into account in evaluating the totality of the circumstances.”<sup>71</sup>

In order to broaden the use of family unity or family reunification to serve as the basis of humanitarian parole, policy statements and agency guidance such as this would need to be rescinded and revised following proper procedures.

## **E. Temporary Nature of Parole and Re-Parole**

Although the statute requires parole to be temporary, it does not prescribe a maximum duration of time after which parole would be considered permanent. The current practice is that immigration officers determine the length of parole, but most approvals of parole are for a few months to a year.<sup>72</sup> Furthermore, there is currently a mechanism for a parolee to remain in the United States beyond the period of authorized stay by requesting “re-parole” from the agency that initially granted parole.

Thus, the existing framework leaves the door open for revised agency guidance to more customarily grant parole for two years or longer through a longer initial parole authorization and remove

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69 DHS, “International Entrepreneur Rule”, CIS No. 2572-15, DHS Docket No. USCIS-2015-0006, 82 F.R. 5238, July 17, 2017, <https://www.federalregister.gov/documents/2017/01/17/2017-00481/international-entrepreneur-rule>.

70 USCIS, “International Entrepreneur Parole”, last updated May 25, 2018, <https://www.uscis.gov/humanitarian/humanitarian-parole/international-entrepreneur-parole>.

71 USCIS, *International Operations Officer Training Course: Humanitarian and Significant Public Benefit Parole Training Module*, March 8, 2017, 49, <https://refugeerights.org/wp-content/uploads/2020/04/HP-FOIA-min.pdf>.

72 Id. at 27-28.

barriers to re-parole. At the same time, lengthening the duration of parole may invite arguments that a longer parole is no longer temporary.

## **F. Discretion, Financial Support, and Employment**

As laid out in statute, humanitarian parole is a discretionary benefit. To adjudicate an application, officers must consider the totality of circumstances to determine when discretion should be exercised favorably. Thus, the conversation of whether and how to expand humanitarian parole must review what positive and negative factors adjudicators consider and how much weight is assigned to each fact.

Available guidance on this issue provides no clear instruction for officers on how to carry out this analysis. Officers are told “You should exercise discretion based on articulable, objective, and relevant facts. It is inappropriate to exercise discretion arbitrarily, inconsistently, or based upon speculation.”<sup>73</sup> Yet they are also told to consider the “[c]haracter and conduct of the parties” and that “the urgent humanitarian reason or significant public benefit is not in itself determinative and may be outweighed by the negative factors present in a case”.<sup>74</sup>

Structural limitations placed on humanitarian parole through statute necessitate the consideration of factors, such as evidence of the temporary nature of the parole request or that the beneficiary would depart prior to expiration of parole. However, a rethinking or expansion of the humanitarian parole pathway may place more emphasis on the urgent humanitarian or significant public benefit reasons requiring parole and less of an emphasis on factors that are not explicitly outlined in statute, such as the option to require proof of financial support or a sponsor, which is provided in regulation.<sup>75</sup>

The subject of financial support has been important to the Trump Administration’s immigration agenda, as evidenced by the public charge rule. However, the relevance of requiring financial support or a sponsor for humanitarian parole is questionable when the requestor has established sufficient urgent humanitarian reasons for parole. Yet, any debate on the expansion of parole will need to discuss how certain potential costs, such as health care and housing, would be addressed.

An important factor mitigating the financial issue is that existing regulations and policy allow for parolees to apply for an Employment Authorization Document (EAD) to legally work in the United States.<sup>76</sup> Similar to the authorization of humanitarian parole, the adjudication of employment

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73 Id. at 25.

74 Id. at 25-26.

75 8 CFR § 212.5.

76 8 CFR § 274a.12(c)(11).

authorization is discretionary (this is a recent change made by the Trump Administration to restrict this benefit) and involves the same weighing of similar positive and negative factors.<sup>77</sup> But the possibility that parolees can work in the United States while they await a grant of permanent immigration status should weigh in favor of parolees when considering the totality of circumstances in their humanitarian parole application. Furthermore, a reimagining of humanitarian parole may benefit from a corresponding expansion of employment authorization for parolees: longer validity periods for EADs or a more robust fee waiver process.

### III. Key Recommendations

Despite the challenges laid out herein, expansion of humanitarian parole presents considerable opportunity to expand the protection for forcibly displaced persons. This section lays out specific recommendations on how those debates can be navigated to allow for a robust complementary pathway.

#### A. Week One Executive Order

Some of the damage wrought over the last four years can be undone through executive order. While parole is relatively too obscure to likely be considered for a standalone executive order, its humanitarian underpinnings make it a good fit to be included in a larger executive order focused on refugee protection. Further, because humanitarian parole is an essential element of restoring the Central American Minors program, an executive order addressing refugee protection in the Western Hemisphere must also ensure that Trump-era parole restrictions are rescinded.

The executive order should touch on both the legality of parole programs, rebutting arguments about the impropriety of “categorical parole” programs, as well as emphasizing the need for a meaningful, systematic, transparent, and efficient mechanism by which individuals can apply for humanitarian parole. On parole programs, the order should make clear that parole programs, as has been demonstrated in the past, are legal and applications shall be adjudicated on a case-by-case basis, as required by law. To that end, the order should require the restart of terminated parole programs; continuance of existing parole programs, and constant evaluation for the need for new programs.

As family reunification is an existing and meaningful, though heavily backlogged, pathway for adjustment for many potential parolees and family separation has been a tool used against forcibly displaced persons, the executive order should also emphasize, based on several important factors, including significant social and economic public benefits, that: (i) family unity is a national

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77 USCIS Policy Manual, “Chapter 2 - Parolees”, <https://www.uscis.gov/policy-manual/volume-10-part-b-chapter-2>.

priority and (ii) it is the policy of the United States to reunite people living in the United States with their family members whose physical or mental safety is being threatened outside the country. Furthermore, separating family members from each other, especially where one family member is living in a dangerous situation for a prolonged period of time due to immigration delays, can present an urgent humanitarian need. These policy statements would set the stage for a variety and wide slate of potential parole programs in the future, several of which are outlined below.

Finally, the order should rescind prior actions taken by the Administration to restrict humanitarian parole or terminate parole programs, including section 11 of Executive Order 13767 of January 25, 2017 and Section K of Secretary John Kelly's memorandum dated February 20, 2017 entitled, "Implementing the President's Border Security and Immigration Enforcement Improvements Policies."

## **B. DHS and USCIS Implementation Actions**

Within the first month of the next presidential term, DHS should issue an implementation memorandum on humanitarian parole, emphasizing the aforementioned executive order and its statements on categorical parole, case-by-case adjudications, and parole programs, as well as on the importance of a robust mechanism for individual humanitarian parole applications. This memo should also rescind any USCIS actions taken to terminate parole programs or restrict humanitarian parole.

USCIS should soon afterwards announce its intent to restart or renew the Filipino World War II Veterans Parole Program (FWVP), and initiate the proper process, including a 30-day public notice and comment period, for the policy change. FWVP is a relatively small and potentially bipartisan program that can set precedent for further larger programs. Furthermore, any opposition to the restart or renewal of FWVP should be quickly studied and used to iterate the prompt restart, renewal, or launch of other parole programs.

DHS, in consultation with DOS, should also establish a plan on how USCIS can expand and expedite parole adjudication capacity, including physical infrastructure, staffing, and streamlined processes, both in the United States at service centers and IRAD, as well as outside the United States for parole programs that may require interviews.

## **C. Family Unity**

Within the first month, DHS should initiate policymaking and rulemaking, where appropriate, to finalize guidance by the end of FY21 to consider family separation as an urgent humanitarian reason and family reunification as a significant public benefit that can merit an approval or humanitarian parole. This guidance would emphasize that each determination is made on a case-by-case basis

using objective criteria, but it would provide expedited access and processing to families who have been separated as a result of U.S. government immigration policies.

The International Entrepreneur Parole program (IEP) and the rulemaking that created it, can be looked at as to how to frame a parole program that provides a significant public benefit. In that case, advancing the economy was seen as justification for creating a particular parole program. In this case, USCIS should consult with experts on how best to frame these programs.

In addition to individual requests for parole, DHS should initiate and finalize policymaking and rulemaking, where appropriate, within the first year of the presidential term to restart and/or increase processing through the Haitian Family Reunification Program and the Cuban Family Reunification Program. The restart and/or expansion of these programs should build upon any lessons learned through the restart of the FWVP. Moreover, these programs should be similarly treated as test cases to draw out and study opposition strategies that can then be used to iterate the launch of an expanded family reunification program in the second year of the presidential term.

Within the second year of the presidential term, DHS should initiate and finalize policymaking and rulemaking to create a new family reunification parole program that spans multiple countries of particular concern. Similar to HFRP or CFRP, the program would designate certain countries wherein beneficiaries of approved family-based immigration petitions can request and receive humanitarian parole to enter the United States and be reunited with family while their immigrant visas become available. DHS, with consultation from DOS, should select countries for inclusion through an objective and transparent process that considers factors such as country conditions and processing times.

#### **D. Central American Minors (CAM)**

Within the first month, DHS should formally announce the immediate restart of the Central American Minors (CAM) program as well as the intent to expand it by the start of FY22, and should likewise pledge sufficient resources to maintain the long-term viability of the program. In doing this, DHS should initiate appropriate actions to improve CAM based upon the lessons learned from the original program, including by reducing processing times and application expenses; providing in-person processing closer to beneficiaries' homes; waiving sponsorship requirements; increasing access to pro bono legal resources, child protection advocates, and qualified attorneys; ensuring that CAM parolees are eligible for Office of Refugee Resettlement and Reception and Placement services; adequately funding resettlement agencies' CAM-related work; and ensuring children's safety while their applications are being processed.

USCIS should also review previous CAM applications of individuals (a) who had pending applications but never received a decision because the Trump Administration phased out the CAM Refugee program; and (b) who were denied refugee resettlement but never considered for parole because

the Administration terminated the CAM Parole program. USCIS should also review cases of CAM parolees whose parole period has already expired and who have left the United States, to determine whether those individuals qualify for refugee resettlement.

Within the first year of the presidential term, USCIS should complete an evaluation of the potential expansion of CAM. Observers have noted various drawbacks of the original program, including, for example, how the requirement that petitioning parents have legal status disfavored Guatemala, which had never been designated for Temporary Protected Status.<sup>78</sup> USCIS should consider broadening eligibility to include qualifying relatives other than parents, regardless of immigration status, who may actually serve in the place of the parents, such as grandparents, adult siblings, aunts, and uncles. USCIS should also consider granting access to Central American children who live outside Central America, specifically, Mexico, where children may have fled, be detained, or are temporarily residing.<sup>79</sup> Finally, USCIS should consider expanding CAM eligibility to include parents outside the United States who have children living in the United States, regardless of the children's immigration status, where either the parent or the child is at risk.

Expanding CAM along these lines will broaden the pathway for protection for thousands of people who will likely not receive a formal refugee status determination and may reduce the likelihood of an individual choosing to instead enter the United States without immigration status. Thus, DHS should take appropriate action to restart, improve, and expand CAM, and should do so in accordance with the Administrative Procedure Act.

## **E. Travel Ban**

Within the first month, DHS should initiate policymaking and rulemaking, if necessary, to provide restitution to those harmed by the Trump Administration's Muslim and Africa travel bans through a humanitarian parole program. This program should be implemented by the end of FY21 and address the situation of individuals who would have been approved to travel to the United States on a visa, but were not permitted to do so due to a proclamation issued under Section 212(f) of the Act, 8 U.S.C. 1182(f). Specifically, this program would consider that the redress of discriminatory immigration policies, such as the travel bans, presents a significant public interest that can be addressed through humanitarian parole.

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78 Kids In Need of Defense (KIND), Letter to Sec. of Homeland Security Jeh Johnson, August 19, 2015, [https://www.uscis.gov/sites/default/files/document/foia/Central\\_American\\_Minors\\_Refugee-Parole\\_Program\\_CAM.pdf](https://www.uscis.gov/sites/default/files/document/foia/Central_American_Minors_Refugee-Parole_Program_CAM.pdf); Latin America Working Group, et. al, *Serve Your People: A Roadmap for Transforming Relations between the United States & the Northern Countries of Central America* (July 29, 2020), <https://www.lawg.org/wp-content/uploads/LAWG-Central-America-recommendationsFIN2.pdf>.

79 See e.g., KIND, Letter to Sec. of Homeland Security Jeh Johnson, August 19, 2015.

## **F. Individual Humanitarian Parole Applications**

Within the first month, DHS/USCIS and DOS should initiate a coordinated review of processes and capacity to adjudicate humanitarian parole applications. This would include formal parole programs generally adjudicated by service centers or individual requests handled by IRAD. This review should identify any restrictions enacted within the last four years, as well as any previously existing guidance or policy that can be seen as limiting the full use of humanitarian parole within its statutory limitations. For example, if policy guidance limits the issuance of most parole and re-parole requests to one-year periods, that guidance should be identified and reviewed as to whether it can and should be modified to allow for longer parole and re-parole requests.

By the end of the first year of the presidential term, DHS, USCIS, and DOS should have committed resources to increase processing capacity and modified guidance and policies to widen the humanitarian parole pathway. On completion of this increase in resources, DOS should begin sending cables out to embassies and consulates reminding staff that U.S. government agencies can submit humanitarian parole requests on behalf of individuals. DOS staff should be encouraged to seek out and identify cases where humanitarian parole may be appropriate.

Within the second year of the presidential term, DHS, in coordination with the Justice Department and DOS, should initiate and finalize policymaking and rulemaking, if appropriate, that expands the use of humanitarian parole for protection reasons. This includes formalizing a screening standard for asylum claims that would be consistent with the statutory limitations of humanitarian parole and outlining the asylum process that parolees would be subject to inside the United States.

## CHAPTER 3: SPECIAL IMMIGRANT VISAS

Iraqi and Afghan employees of the U.S. government serve alongside U.S. forces, diplomats, and aid workers, and, sadly, too often face threats and assassination because of their service. For more than a decade, the Iraqi and Afghan Special Immigrant Visa (SIV) programs have provided a pathway to safety for employees whose service to the U.S. endangered their lives. Tens of thousands of Iraqis and Afghans have been safely resettled to the United States through three SIV programs. These programs operate separately from the U.S. Refugee Admissions Program (USRAP); like USRAP, they offer a pathway to safety who face danger because of their identity.

Over the years, the SIV programs have been beset by technical, practical, and political obstacles. The obstacles have hampered their operation and threatened the promise that the U.S. government made to these allies for their service.

This section addresses two priorities for a new administration: first, establishing a permanent SIV program that can respond to new situations in which local employees of the U.S. government are threatened because of their work. Second, this section proposes reforms to the existing Afghan SIV program.<sup>80</sup> A new administration must advance both initiatives to ensure that wartime partners of the United States can access protection.

This section is based on IRAP's experience providing *pro bono* legal representation and legal advice to hundreds of Iraqis and Afghans applying for the SIV programs. IRAP also advocates for this program with Congress and executive agencies and publishes reports on the status of the programs.<sup>81</sup> IRAP also litigates on behalf of Iraqi and Afghan clients to challenge unreasonable delays in the SIV processes, including in an ongoing lawsuit, *Afghan and Iraqi Allies v. Pompeo*.<sup>82</sup> This report compiles information from this extensive advocacy in individual cases and for systemic reform.

IRAP published a full report, "Recommendations on the Reform of the Special Immigrant Visa Program for U.S. Wartime Partners," in June 2020.<sup>83</sup> This report includes many of the key recommendations made in that report.

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80 Applicants who have already submitted applications and, in many cases, endured years of processing should be allowed to complete those applications. A permanent program should be legislated for future applicants.

81 See IRAP's reports, "A Question of Honor: The Ongoing Importance of the Afghan Special Immigrant Visa Program" and "Fifteen Years On: Protecting Iraqi Wartime Partners", available at <https://refugeerights.org/publications/>.

82 *Afghan & Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the United States ex rel. Situated v. Pompeo*, Civil Action No. 18-cv-01388 (TSC) (D.D.C. Jan. 30, 2019); *Nine Iraqi Allies under Serious Threat Because of their Faithful Service to the United States v. Kerry et al*, 1:15-cv-00300 (D.D.C. 2016).

83 Available at <https://refugeerights.org/publications/>.

## I. Background

### A. Legislative Background

Given the urgent threats faced by Afghan and Iraqi employees in their countries, from 2006 to 2009 Congress created four programs to offer those individuals pathways to safety. Three of these programs offer a pathway to safety to Iraqis and Afghans outside USRAP.

The National Defense Authorization Act (NDAA) for Fiscal Year 2006 established a permanent SIV program called the 1059 SIV program that provides 50 visas per year to Afghan or Iraqi linguists with at least one year of employment and high-level recommendations.<sup>84</sup> That program continues to operate, though in a very limited scope.

The NDAA for Fiscal Year 2008 established the Iraqi SIV program, which provided immigrant visas to Iraqis with proof of at least one year of employment in a variety of capacities.<sup>85</sup> On September 30, 2014, the Iraqi SIV program closed to new applicants; only those who applied prior to that date are able to continue their applications.<sup>86</sup> The same legislation also established the Direct Access Program, which is a Priority-2 pathway into the U.S. Refugee Admissions Program (USRAP). Because that program falls within USRAP, it is not addressed here.

Finally, Congress established the Afghan SIV program in the Afghan Allies Protection Act of 2009 (AAPA).<sup>87</sup> The Afghan SIV program continues to operate and represents the significant majority of individuals who have ongoing SIV applications. For that reason, the Afghan SIV program is the focus of this section's recommendations for reforming.

The Afghan SIV program provides lawful permanent residence status in the United States to individuals who can demonstrate that:

- they are a national of Afghanistan;

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84 National Defense Authorization Act for Fiscal Year 2006, Public Law 109-163, Section 1059.

85 National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, Section 1244.

86 DOS, "Special Immigrant Visas for Iraqis - Who Were Employed by/on Behalf of the U.S. Government," <https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immig-visas-iraqis-employed-us-gov.html> ("The deadline to apply for COM approval was September 30, 2014. Applications submitted after this date cannot be accepted or processed.").

87 Afghan Allies Protection Act of 2009, Public Law 113-66, Section 602(b); Richard Lardner, "Top General Urges Lawmakers to Preserve Afghan Visa Program," *Military.com*, May 25, 2016, <https://www.military.com/daily-news/2016/05/25/top-general-urges-lawmakers-preserve-afghan-visa-program.html>.

- they were employed for at least two years by the U.S. government or a closely associated entity, as demonstrated by human resources records;<sup>88</sup>
- they provided faithful and valuable service to the United States, as demonstrated by a personal recommendation from a U.S. citizen supervisor; and
- they face a serious, ongoing threat as a result of their employment.<sup>89</sup>

## **B. Processing Background**

As the Congressional Research Service noted, despite “broad agreement that the United States should admit for permanent residence Iraqis and Afghans who assisted the U.S. government overseas, provided that they do not pose security risks . . . implementing the SIV programs intended to accomplish this policy goal has proven difficult.”<sup>90</sup>

The Afghan SIV application process consists of 14 steps.<sup>91</sup>

- 1) The applicant submits an application for approval by the Chief of Mission (COM approval) to the National Visa Center (NVC). Applicants must include a “statement of credible threat” detailing the ongoing threat to the applicant as a result of the applicant’s service, a letter of recommendation from a U.S. citizen supervisor attesting to the applicant’s “faithful and valuable service,” and other evidence described at greater length below.
- 2) NVC reviews the applicant’s documents for completeness.
- 3) DOS reports indicate that NVC then sends the application materials to COM in Afghanistan.
- 4) COM either approves or denies the applicant’s request for COM approval.
- 5) COM then advises NVC of the outcome of the application, which is communicated to the applicant. If denied, the applicant has a statutory right to appeal within 120 days (COM

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88 Prior to Nov. 25, 2015, applicants were required to demonstrate one year of service. See Afghan Allies Protection Act of 2009 as amended through National Defense Authorization Act (NDAA) for FY 2015, Public Law, 113-291, Section 1227. This period was raised to two years in the NDAA for Fiscal Year 2016, Public Law 114-92, Section 1216. Eligibility restrictions were further increased in the NDAA for Fiscal Year 2017, Public Law 114-326, Section 1214, limiting eligibility further based on the kind of work performed.

89 Afghan Allies Protection Act of 2009, Public Law 113-66, Section 602(b).

90 Andorra Bruno, “Iraqi and Afghan Special Immigrant Visa Programs,” *Congressional Research Service*, 19, updated April 2, 2020, <https://fas.org/sgp/crs/homesec/R43725.pdf>.

91 DOS and DHS, “Joint Department of State/Department of Homeland Security Report: Status of the Afghan Special Immigrant Visa Program,” July 2020, <https://travel.state.gov/content/dam/visas/SIVs/Afghan-Public-Quarterly-Report-Q3-July-2020.pdf>. It should be noted, though, that depositions of relevant officials during IRAP’s litigation revealed that their process deviates from these steps in several ways.

appeal). According to government reports, many COM appeals are successful and result in COM approval. The percentage of successful appeals in 2017 was as high as 66% for Afghan applicants.

- 6) If the applicant receives COM approval, the applicant submits a Special Immigrant Petition, or Form I-360, to the U.S. Citizenship and Immigration Services (USCIS) for categorization as a special immigrant.
- 7) USCIS adjudicates the Special Immigrant Petition and communicates the results to NVC.
- 8) If the applicant is approved, NVC sends a visa application and instructions to the applicant.
- 9) The applicant submits the visa application and required documentation to NVC.
- 10) NVC reviews the applicant's application and supporting documents for completeness.
- 11) NVC contacts the applicant to schedule an interview at the embassy in Afghanistan.
- 12) The applicant attends an interview conducted by a consular officer.
- 13) If the application is not denied, the applicant's case undergoes "administrative processing," the phrase used by the agencies to refer to final background checks.
- 14) If successful, the applicant is instructed to obtain a medical exam and is issued a visa.

Since their inceptions, the Iraqi and Afghan SIV programs have been plagued by bureaucratic difficulties,<sup>92</sup> extraordinary delays,<sup>93</sup> and political opposition due to misplaced concerns of brain drain.<sup>94</sup>

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92 Early on in the program's operation in Iraq, "Embassy staff mistranslated names out of Arabic or used different transliterations on different forms. Staff confused applicants with people carrying similar names. Reviewers had even shoved aside pages-long applications because they preferred the blank spaces in the form to be filled with "None," "N/A," or just left blank. . . . [T] here was no standard request — different reviewers had requested different responses." Eline Gordts, "America's Afghan And Iraqi Interpreters Risk Lives But Wait Years In Danger For Visas," *Huffington Post*, June 23, 2013, [https://www.huffingtonpost.com/2013/06/23/afghan-iraqi-interpreters-siv\\_n\\_3481555.html](https://www.huffingtonpost.com/2013/06/23/afghan-iraqi-interpreters-siv_n_3481555.html).

93 In 2014, Secretary of State John Kerry reported that: "Delays in processing applications and lack of transparency in making decisions created problems. Bluntly stated, the process wasn't keeping up with the demand. A full-scale State Department review revealed statistics and anecdotes that highlighted unconscionably long processing times for applicants, including on background checks conducted by other U.S. agencies. Some deserving people were simply falling through the cracks. This was unacceptable to me and to the president." John F. Kerry, "From John Kerry: We Need More Visas, Now, for our Afghan Allies," *Los Angeles Times*, Jun. 2, 2014, <http://www.latimes.com/opinion/op-ed/la-oe-0602-kerry-afghan-withdrawal-20140603-story.html>.

94 In 2010, U.S. Ambassador Karl Eikenberry wrote to Secretary of State Hillary Clinton that the SIV program "could drain this country of our very best civilian and military partners — our Afghan employees" and "will have a significant deleterious impact on staffing and morale, as well as undermining our overall mission in Afghanistan." "Visas stall for at-risk Afghans who work for the U.S.," *Associated Press*, August 9, 2011, <https://www.denverpost.com/2011/08/09/visas-stall-for-at-risk-afghans-who-work-for-the-u-s/>

## II. Recommendations

IRAP notes that immigration should be only one tool available to protect locally employed staff who face threats because of their employment. The U.S. government should also provide security training, safety equipment, secure transportation, and safe housing to local staff and their families. It should also support relocation for individuals who face threats and pay compensation to employees or their families when staff are injured or killed because of their work.

The remainder of this section recommends parameters for a permanent SIV program and reforms that will allow Afghan (and the remaining Iraqi) SIV applicants to access promised protection.

### A. The SIV program should be adaptable to new situations of threats against U.S. employees

The permanent SIV program should be available to individuals from **any nationality or situation in which local employees are at risk**. To date, immigration measures protect only Iraqis and Afghans. This is troubling, since local staff who work the U.S. government face risks in dozens of countries globally.<sup>95</sup> Further, staff who are stateless or who are nationals of another country and long-term residents of Iraq or Afghanistan are not eligible for SIVs under current eligibility criteria.

Congress should ensure that protection is available to individuals who face risks based on their service. To do this, Congress should legislate a permanent SIV program that can adapt to new situations. The permanent SIV program should allow senior officials within DOS and DOD to designate situations in which local employees can be considered for SIVs.

In addition, if an Afghan or Iraqi SIV applicant dies in the line of duty or at any point in the process prior to receiving I-360 approval, that individual's spouse and children cannot pursue a visa. The administration should support legislation, including within the permanent SIV program, that will ensure that spouses and minor children can apply for an SIV if their deceased spouse or parent was eligible for an SIV.

### B. The administration should advocate with Congress to allocate visas to the permanent SIV and Afghan SIV programs

This program must have a **regular allocation of visas** to establish a permanent program, and also to ensure that existing Afghan SIV applicants can continue to pursue their applications.

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95 Four Green Berets were killed in a raid in Niger—alongside their translator and four Nigerien troops. Thomas Gibbons-Neff and Eric Schmitt, "After Deadly Raid, Pentagon Weighs Withdrawing Almost All Commandos From Niger," *N. Y. Times*, Sept. 2, 2018, <https://www.nytimes.com/2018/09/02/world/africa/pentagon-commandos-niger.html>.

Most U.S. visa programs provide an annual allotment of visas, or make visas available for anyone who qualifies.<sup>96</sup> The Afghan and Iraqi SIV program allocated a significant number of visas annually, but these extended only for the first five years of the program's existence. This reflected hope that the United States would not require a significant, long-term presence in those countries.

DOS was authorized to issue 5,000 visas to Iraqi primary applicants in each of the first five years of the Iraqi SIV program.<sup>97</sup> In fiscal years 2009 to 2012, it issued 4,336 visas *total*.<sup>98</sup> DOS was authorized to issue 1,500 visas per year for each of the first five fiscal years of the Afghan SIV program.<sup>99</sup> In fiscal year 2010, DOS issued seven visas, and in 2011, it issued three.<sup>100</sup> IRAP estimates that at least 6,500 visas for Afghans expired between fiscal years 2009 and 2013, wasted by bureaucratic inaction.<sup>101</sup>

The Afghan SIV program ran out of visas entirely in 2014. Then-Secretary of State John Kerry published an op-ed admitting that the visa shortage stemmed from DOS delays and begged Congress to allocate additional visas. He warned that exhausting visas, even short-term, “leaves us in danger of stranding hundreds of deserving Afghans until a new batch of visas is approved . . . [i]t will be dangerous for applicants — and damaging to our national credibility the next time we have to rely on local knowledge.”<sup>102</sup> Congress took the rare step of passing a standalone bill—during a government shutdown—to authorize additional visas.<sup>103</sup> Another shutdown in 2017 also caused delays in scheduling interviews before Congress could allocate additional visas.<sup>104</sup>

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96 DOS, “Special Immigrant Visas for Afghans - Who Were Employed by/on Behalf of the U.S. Government,” <https://travel.state.gov/content/visas/en/immigrate/afghans-work-for-us.html>.

97 NDAA FY 08, Public Law 110-181, Section 1244(c)(1)

98 DOS, “SQ Number Use,” September 2015, <https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/SIV/SQNumbers0915.pdf>.

99 Afghan Allies Protection Act of 2009, Public Law 113-66, Section 602(b)(3).

100 DOS, “SQ Number Use,” September 2015, <https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/SIV/SQNumbers0915.pdf>.

101 Compare Afghan Allies Protection Act of 2009, Public Law 113-66, Section 602(b)(3) (authorizing 1,500 visas per year) with DOS, “SQ Number Use,” September 2015, <https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/SIV/SQNumbers0915.pdf> (showing actual visa authorization).

102 John F. Kerry, “From John Kerry: We need more visas, now, for our Afghan allies,” *Los Angeles Times*, Jun. 2, 2014, <http://www.latimes.com/opinion/op-ed/la-oe-0602-kerry-afghan-withdrawal-20140603-story.html>.

103 Emergency Afghan Allies Extension Act of 2014, H.R. 5195; Public Law 113-160; Office of U.S. Congressman Earl Blumenauer “Blumenauer, Kinzinger Hail Passage of the Emergency Afghan Allies Extension Act,” July 30, 2014, <https://blumenauer.house.gov/media-center/press-releases/blumenauer-kinzinger-hail-passage-emergency-afghan-allies-extension-act> (“Today, the House passed our bill, H.R. 5195, the Emergency Afghan Allies Extension Act of 2014. This bill secures 1,000 additional, emergency Special Immigrant Visas (SIVs) to bring Afghan translators, who served shoulder-to-shoulder with our troops, to safety in the United States. There was a need for immediate action because the State Department has confirmed they have completely exhausted all visas Congress authorized in December.”).

104 Fahim Abed & Rod Nordland, “Afghans Who Worked for U.S. Are Told Not to Apply for Visas, Advocates Say,” *New York Times*, Mar. 10, 2017, <https://www.nytimes.com/2017/03/10/world/asia/afghanistan-visa-program-united-states.html>; Consolidated Appropriations Act for FY 2017, Public Law 115-31, Section 7083.

Since then, the Afghan SIV program has relied on Congress to allocate visas on an ad hoc basis through the National Defense Authorization Act or through the appropriations process. This makes access to the program subject to political pressure on an annual basis to obtain more visas. Congress also amended legislation so that authorized SIVs would not expire.

Compromises to authorize additional visas, though, have led Congress to reduce eligibility. First, Congress increased eligibility from one year of qualifying employment to two years.<sup>105</sup> The following year, Congress required individuals to demonstrate not just employment with U.S. government funding, but also that they worked either as a linguist with DOS, USAID, or U.S. military personnel, or that they worked in a sensitive and trusted capacity.<sup>106</sup> The requirement to demonstrate work in a qualifying position, though, was removed three years later.<sup>107</sup> These changes cause uncertainty, increase processing timelines, and have meant that people have lost eligibility overnight despite continuing to experience threats.

The permanent SIV program should have an annual allocation of visas to ensure that there are no delays or political tradeoffs that prevent individuals who are eligible from accessing protection. It should also ensure that no authorized visa expires until it is issued. Further, with thousands of Afghan SIVs still in the pipeline, the administration should partner with Congress to ensure that at least 4,000 additional visas are authorized annually until all applications are completed.

**C. The administration should ensure that a permanent SIV program has mandatory processing timelines, and that the permanent and Afghan SIV programs meet those processing timelines.**

The program should also set **mandatory timelines** for DOS and other agencies to process applications. As noted above, early in the Iraqi and Afghan SIV programs DOS failed to issue visas, despite significant backlogs of applications. Noting that the Department of State was not issuing visas, Congress intervened in 2013 to require that Iraqi and Afghan SIV applications must be processed within nine months.<sup>108</sup>

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<sup>105</sup> NDAA for FY 2016, Public Law 114-92, Section 1216.

<sup>106</sup> NDAA for FY 2017, Public Law 114-326, Section 1214.

<sup>107</sup> NDAA for FY 2020, Public Law 116-92, Section 1219.

<sup>108</sup> National Defense Authorization Act for Fiscal Year 2014, Public Law 113-66, Section 1218. Note that this nine-month processing timeline applies to the Iraqi 1244 program and the Afghan 602 program, but not to the 1059 Afghan and Iraqi program.

Since then, average processing has far exceeded Congress's ceiling of nine months of processing time at every point.<sup>109</sup> In 2019, IRAP's ongoing litigation over unreasonable delays in SIV processing revealed that virtually every applicant (98%) in the final stage of SIV processing has waited longer than the statutorily-mandated nine months to have their case adjudicated.<sup>110</sup> Applicants waiting for COM approval were waiting an average of two years for COM decision; "All applicants waiting in [subsequent] stages have waited an average of nearly three years for final adjudication."<sup>111</sup> The nine-month mandate has, however, allowed congressional oversight and mandamus litigation to provide accountability.

The permanent SIV program should again **include nine-month mandatory processing timelines** with strong oversight and reporting requirements to ensure that DOS and its vetting partners are held accountable. Following passage of the legislation, the administration should engage the interagency process to monitor processing at each step and to ensure sufficient resources, staffing, and coordination to meet these mandated timelines.

The administration should also work with DOS to comply with processing timelines in the existing Afghan SIV process, and to resolve the small number of pending Iraqi SIV applications. Again, the administration should coordinate across processing and vetting agencies to ensure compliance with the nine-month timeline.

**D. The permanent SIV program should entrust the initial decision of whether an applicant is eligible with a senior diplomat rather than with the Chief of Mission**

The program should also **invest responsibility to determine initial eligibility with a senior foreign service officer**, rather than to the Chief of Mission (COM) in the location where the individual worked. Applicants to both the Iraqi and Afghan programs must obtain approval from the COM in Embassy Baghdad and Kabul, respectively, by demonstrating that they have qualifying employment. Security concerns in both Iraq and Afghanistan mean that only a small number of staff are based in those embassies at any given time, and that any U.S. consular or COM officer serves in Embassy Kabul and Baghdad for very brief periods. The COM process has been a primary source

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109 While publicly-available information about the nature of the delays remains elusive, the Senate Armed Services Committee explicitly raised alarm about delays in inter-agency security checks in 2018, requiring additional reports as a result of "reports that the SIV application process may be hampered by a breakdown in interagency coordination resulting in undue delay, needless stress on applicants, and a sizable drop in SIV admissions during the first and second quarters of fiscal year 2018." Committee on Armed Services, United States Senate, *Report Accompanying S.2987, The John S. McCain National Defense Authorization Act for Fiscal Year 2019*, June 5, 2018. p. 289.

110 *Afghan & Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the United States ex rel. Situated v. Pompeo*, Civil Action No. 18-cv-01388 (TSC) (D.D.C. Jan. 30, 2019), *Plaintiffs' Supplement In Further Support of Their Motion For Preliminary Injunction*, p. 8, ECF No. 68, June 11, 2019. <https://refugeerights.org/wp-content/uploads/2019/06/ECF-068-Plaintiffs-Supplement-ISO-Motion-for-Preliminary-Injunction-00014274xEBEF1.pdf>.

111 *Id.* at 86.

of delay in the Iraqi and Afghan SIV programs. In a permanent program, these problems would likely repeat. Locations that would be designated for SIV eligibility will, by definition, be unsafe and unstable for U.S. government personnel.

Rather than requiring approval from the COM in the country where the applicant was employed, a future SIV program should replace the Chief of Mission approval step with a requirement to demonstrate eligibility to a senior diplomat. This would preserve the same standards and procedural safeguards but allow for greater staffing flexibility and longer staff tenure.

**E. The administration should ensure that the permanent and Afghan SIV programs do not reject eligible applicants with unreasonable documentary requirements**

The permanent SIV program should avoid the mistakes and limitations of Afghan and Iraqi SIV program documentation requirements that burden and delay applicants without leading to better outcomes. In the permanent SIV program, applicants should only be required to provide evidence that they possess and that the State Department would need to verify their eligibility—their employment history, the names of their supervisors, and information about the threats they face. Because the State Department currently verifies employment information directly with third parties as part of its statutory duties, making applicants who are under threat track down and plead with government contractors, often located in the United States, to create new letters or send copies of U.S. government contracts is unnecessary and unfair. Requiring that applicants submit the facts and documents that they have about their employment and verifying those facts, rather than requiring applicants generate and submit extensive third party and government documentation, would lead to faster and more accurate decisions and better protect applicants who are under threat. The permanent SIV program should keep and improve upon the current program's procedural protections, which include a requirement that the State Department provide details in writing to applicants about any ineligibility and a right to an appeal, which gives applicants an opportunity to submit additional evidence or address any error in the original decision.

The administration should also review the current program's evidentiary requirements to reflect information that the U.S. government or its contractors may be better able to provide. In some cases, Afghan SIV applicants must submit information that the U.S. government already has to COM to demonstrate eligibility. In others, the government's own processing delays are a primary obstacle to COM approval.

The AAPA requires one specific document: a recommendation letter from a supervisor. DOS interprets the statute to require three elements to establish eligible employment:

- a human resources letter from the applicant's employer (called an employment verification or HR letter);

- a personal recommendation letter from a U.S. citizen supervisor; and
- documentation of contracts between the individual's employer and the U.S. government, establishing that the individual's employment was funded by the U.S. government.<sup>112</sup>

The HR and personal recommendation letters must include numerous specific elements. In addition, the applicant must submit a statement describing the threats that they face as a result of their work.

Clearly, DOS and its partners must verify that an applicant is qualified for an SIV. However, DOS should amend its informal requirements to reflect obstacles from government and contractor employers as well as delays on the part of DOS itself.

DOS then verifies each letter, but often delays several years to do so, meaning that the letter writer may no longer have the same contact information (or even be living). For both the Afghan SIV program and a permanent SIV program, to the extent that DOS independently verifies HR and recommendation letters, it should do so immediately after the applicant submits the documentation. Individuals who have some, but insufficient, qualifying employment should be permitted to submit HR information and recommendation letters for immediate verification.

Because these technical requirements are a barrier for thousands of SIV applicants, the next paragraphs make detailed recommendations for documentary requirements.

## **1. HR Documentation**

Afghan SIV applicants are required to provide documentation of employment. But the U.S. government did not require that contractors maintain records or provide the evidence required for SIV applications to employees. IRAP has witnessed hundreds of instances of Iraqis and Afghans who are unable to move forward with their applications because their former employers refuse to provide documentation of service to its current or former employees, keep incomplete or inaccurate records, or are now defunct.

DOS should reform its requirements to:

- Accept proof of employment from applicant's supervisors when it is impossible or impracticable to obtain HR letters for reasons beyond an applicant's control.
- Require all government agencies and U.S. government contractors to provide proof of employment to local employees upon request, including information on U.S. government contracts to demonstrate U.S. government funding.

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112 Embassy of the United States of America - Kabul, Afghanistan, "How to Apply for Chief of Mission Approval," [https://travel.state.gov/content/dam/visas/SIVs/Afghan\\_SIV\\_Guidelines\\_and\\_DS157\\_Instructions\\_Dec%202018.pdf](https://travel.state.gov/content/dam/visas/SIVs/Afghan_SIV_Guidelines_and_DS157_Instructions_Dec%202018.pdf).

- Allow an individual to establish that they provided faithful and valuable service by the totality of the evidence if an individual was terminated. If an individual can provide individual recommendations or other evidence that they should receive an SIV, a termination should not bar their eligibility.<sup>113</sup>
- Require DOS staff to review basic government contract databases before rejecting an SIV applicant for failure to prove U.S. government funding.
- Reopen applications when DOS makes errors, an employer has erroneous HR evidence, or an applicant is able to provide evidence from a previously-unresponsive employer or supervisor.

## **2. Letter of Recommendation**

Applicants are required to provide a personal recommendation letter from a U.S. citizen supervisor.<sup>114</sup> Military supervisors' email addresses change frequently, making it difficult for Iraqi and Afghan employees to maintain contact with their supervisors.<sup>115</sup> COM then requires that supervisors and employers verify those letters, but often reaches out to contact individuals years later, sometimes several times over the course of several years. This means that applicants may be asked repeatedly over long periods of time to obtain revised contact information for U.S. government employees or former contractors. Active duty military personnel, in particular, provide email addresses that are valid only for the period of their deployment. If an applicant cannot provide revised contact information, their application will likely be denied.

- DOS and DOD should provide an effective process to assist applicants to identify their former supervisors.
- DOS should accept letters of recommendation from supervisors contemporaneously with employment, and should not require re-verification of the information contained in the recommendation letters.
- If the SIV program needs to verify evidence, it should do so immediately after applicants, supervisors, or employers submit evidence.

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<sup>113</sup> 9 FAM 42.32(d)(2) N6.2.

<sup>114</sup> Afghan Allies Protection Act, Public Law 113-66, Section 602(b)(2)(iii).

<sup>115</sup> Christopher Harland-Dunaway, "Outside the Wire," *The Verge*, Nov. 19, 2019, <https://www.theverge.com/2019/11/19/20961811/taliban-afghanistan-radio-in-a-box-djs-news-war-us-army> ("Time passed, and when Afghans who worked for the U.S. went looking for their old bosses, they discovered email addresses no longer worked, phone numbers had changed, or contact information had been lost.").

- DOS should never deny an individual for unverified evidence unless DOS has made good-faith efforts to verify the evidence.

## CHAPTER 4: PRIVATE SPONSORSHIP

### I. Overview: Defining Private Sponsorship and the Needs and Challenges

Private sponsorship -- an “alternative” or “complementary” pathway to traditional government-led refugee resettlement -- can offer communities, organizations, companies, and philanthropies the opportunity to support the resettlement of additional refugees to the United States. Building upon the well-established model of the United States Refugee Admissions Program (USRAP), private sponsors could nominate or be matched with a refugee to be resettled in the United States and provide financial support as well as cultural orientation and community integration upon arrival.

By harnessing the interest and resources of private actors around the country, the United States can increase the number of refugees resettled annually as well as the resources available for resettlement. Private sponsorship would allow U.S. residents to engage more directly with refugees, improving integration outcomes and building a constituency of Americans personally invested in maintaining the American tradition of welcoming refugees and other immigrants. This community of supporters can serve as an important bulwark against efforts to restrict refugee resettlement.

Central challenges to be addressed through careful program design include avoiding privatization and displacement of the U.S. government’s commitment to resettle refugees; ensuring that vulnerability remains a central criterion for refugees’ eligibility in the program; ensuring that the program does not allow or facilitate any exploitation or discrimination on the basis of national origin, ethnicity, or religion; and accounting for the costs of training, oversight, and safety nets in the sponsorship relationship.

The most robust and longstanding model of private sponsorship today is in Canada. Established in 1979, Canada’s private sponsorship program has allowed Canadians to offer new homes to more than 275,000 refugees. The Canadian program operates on two main principles:

- “Additionality” - any refugees who are resettled via private sponsorship should be *in addition* to refugees who are resettled using government funds, rather than replacing any of the government-assisted quota, thus expanding rather than privatizing opportunities for refugees to reach safety; and
- “Naming” - sponsors can propose the individual refugees they wish to sponsor for resettlement.<sup>116</sup>

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116 Canadian Council for Refugees, “Private Sponsorship of Refugees,” <https://ccrweb.ca/en/private-sponsorship-refugees>.

The United States also has its own history of private sponsorship. Legal authority for a private sponsorship program exists in the 1980 Refugee Act.<sup>117</sup> In the late 1980s, then-President Ronald Reagan created the Private Sector Initiative (PSI) and established a special quota for the admission of refugees that would be supported by private sector funding, in addition to refugees supported by government funds. While 16,000 refugees were admitted through the PSI in five years, the program was discontinued in 1996 due to the steep and variable financial requirements for sponsors—in particular, around the health care costs of refugees in a pre-Affordable Care Act context—and a highly complex process for approving sponsors.<sup>118</sup> Other ongoing immigration programs have some similarities to private sponsorship, including humanitarian parole, which requires a U.S.-based sponsor to provide an affidavit of support; family reunification, which requires the U.S.-based relative to apply on behalf of their family member abroad; and the Lautenberg-Spector Program, which requires a refugee to have a U.S.-based tie to begin processing of their application.<sup>119</sup>

Since the PSI's discontinuation, other sponsorship models and practices have proliferated around the world. And in the United States, dozens of resettlement agency affiliate offices have been involved in mobilizing local communities to augment the financial and social resources for new arrivals by “co-sponsorship.”<sup>120</sup> Co-sponsorship can be understood as a limited type of private sponsorship where co-sponsors assist resettlement agencies with certain post-arrival services. The United States now has the opportunity to draw on these examples and utilize existing co-sponsorship infrastructure to create a robust, permanent private sponsorship program.

## II. Recommendations for a U.S. Program

### A. Year 0 (FY21): Private Sponsorship Pilot Initiative via Co-Sponsorship Expansion

In a Week One Executive Order, the President should utilize their authority under the Refugee Act of 1980 to order the Department of State, in consultation with the Department of Homeland Security and the Department of Health and Human Services, to pilot a private sponsorship initiative. This Pilot should allow up to 5,000 refugees, additional to the annual Presidential Determination number, to be resettled in the remainder of Fiscal Year 2021. The Secretary of State specifically should be directed to create a new Priority 6 (P-6) category for USRAP referrals of privately sponsored

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117 Pursuant to the Refugee Act of 1980, the President has authority to determine and establish the annual number of refugees to be admitted to the United States, and the Office of Refugee Resettlement (ORR) is required to incorporate the availability of private resources in its assessment of resettlement policies and strategies. Refugee Act of 1980, Public Law 96-212, Section 412.

118 David Bier and Matthew La Corte, “Private Refugee Resettlement in U.S. History,” *Niskanen Center*, Apr. 26, 2016, [https://www.niskanencenter.org/wp-content/uploads/old\\_uploads/2016/04/PrivateRefugeeHistory.pdf](https://www.niskanencenter.org/wp-content/uploads/old_uploads/2016/04/PrivateRefugeeHistory.pdf).

119 See Chapter 2, “Humanitarian Parole,” and Chapter 1, “Family Reunification Pathways,” of this paper.

120 Refugee Council USA, “Get Involved: Community Sponsorship,” <https://rcusa.org/get-involved/community-sponsorship/>.

refugees, whose cases would be counted against the separate 5,000 allocation rather than the Presidential Determination target for traditional government-assisted resettlement cases.

The Secretary of State should also be directed to complete, by the end of Fiscal Year 2021, an evaluation of the Pilot and introduce implementation of a permanent private sponsorship program with capacity for at least 5,000 refugees in the following fiscal year. The months between commencement of the Pilot and the introduction of a permanent program would give the Department of State and other relevant agencies time to design and develop new infrastructure for the initial permanent program.

In the first three months of the Pilot period, the Department of State should initiate a fast-tracked design process in coordination with select U.S. and international experts and strategists from both inside and outside government. An initial facilitated decision-making workshop should consider key policy questions; architecture and infrastructure requirements; the relationship between private sponsorship, co-sponsorship, and the traditional USRAP program; and considerations involved in rapidly setting up and scaling up a sponsorship program.

*Sponsor Selection:* As traditional USRAP infrastructure has been decimated over the past four years, and government agencies, as well as private actors traditionally involved in resettlement, will need time to rebuild and develop new infrastructure specific to private sponsorship, the Pilot can utilize resettlement agencies' experience with co-sponsorship as a starting point. Private sponsorships can be facilitated through one of the nine resettlement agencies and their local affiliates, who solicit and screen applications from potential sponsors in a given affiliate's area. Sponsors could be either groups of individuals or organizations, but for either scenario a minimum number of persons could be required on a sponsorship application to ensure sufficient capacity. If a group of individuals, then each member of the group can be screened individually and the group's collective plan can also be submitted for approval.

*Refugee Selection:* The new P-6 stream would operate similarly to the existing Priority 3 category (P-3), through which family reunification occurs for certain refugees and asylees.<sup>121</sup> The P-6 program would also enable family reunification, but for a broader spectrum of eligible family relationships and without nationality restrictions. Cases eligible in Year 0, which already have access to USRAP through P-3, would upon approval for resettlement be re-assigned to the new P-6 category to

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121 USCIS, "The United States Refugee Admissions Program (USRAP) Consultation and Worldwide Processing Priorities," <https://www.uscis.gov/humanitarian/refugees-and-asylum/refugees/the-united-states-refugee-admissions-program-usrap-consultation-and-worldwide-processing-priorities>. There are three categories of access for individuals to enter the USRAP pipeline currently in use: P-1 (individual referrals, usually identified and referred to USRAP by a U.S. embassy, UNHCR, or a designated NGO); P-2 (group referrals, or specific groups identified by law with an open-access model to allow individuals within the group to access the program directly, on the basis of certain criteria); and P-3 (family reunification, for members of designated nationalities who have immediate family members in the U.S. who either entered as refugees or were granted asylum).

distinguish their cases as additional to those coming through the existing P-3 which count towards the government-assisted Presidential Determination number for FY21.<sup>122</sup>

For Year 0, to ensure timely arrival of refugees during the remainder of FY21, sponsored refugees should be refugees who have already completed their Department of Homeland Security interview<sup>123</sup> and are either selected for private sponsorship by a Resettlement Support Center (RSC) or resettlement agency, or “named” by a relative in the United States. If identified by an RSC or resettlement agency, the refugee would be paired by a resettlement agency and/or local affiliate with sponsors. If named by a relative, the refugee would be paired with a sponsor group or organization that includes the U.S.-based relative(s). In either scenario, refugees are at an advanced stage of the screening process, enabling the government to promptly begin piloting private sponsorship even as it builds infrastructure for a larger program and to address existing USRAP backlogs.

*Sponsor Responsibilities:* In Year 0, the sponsor’s responsibilities should focus on the post-arrival aspects of resettlement and be determined by the resettlement agencies and local affiliates facilitating the sponsorships. Sponsors can take on significant financial and logistical responsibilities, but continue to share some responsibilities with the resettlement agencies and affiliates, bridging the gap to a broader private sponsorship program in fiscal years to come. The resettlement agencies and affiliates can utilize their co-sponsorship infrastructure to ensure appropriate training and oversight for sponsors until a more standardized scheme is developed.

*Government’s Role and Responsibilities:* As noted above, the Department of State should establish a new P-6 category for privately-sponsored refugees and work with resettlement agencies to facilitate the resettlement of 5,000 refugees via an expanded co-sponsorship model in FY21. The federal government would continue to bear refugees’ pre-arrival costs.

Simultaneously, the Department of State should monitor and evaluate the Pilot, and partner with the Department of Homeland Security and the Department of Health and Human Services - in particular, the Office of Refugee Resettlement (ORR) - to develop the infrastructure and resources for a permanent private sponsorship program, detailed below. A permanent private sponsorship program should be designed in coordination with key non-governmental actors, including the resettlement agencies, other stakeholder organizations and service providers, and resettled

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122 Although priority categories are traditionally conceptualized as avenues of access, and eligible refugees in Year 0 already have access through an existing category, reallocation to the new P-6 category will distinguish the reallocated cases as additional. In subsequent years, the P-6 category will also be the means of access for sponsor-nominated refugees who are not yet in the USRAP pipeline and do not already have access through another priority category.

123 The DHS interview pursuant to 8 CFR § 207.2(a) occurs at an advanced stage of USRAP processing. U.S. Citizenship and Immigration Services, “Flow Chart: United States Refugee Admissions Program (USRAP),” [https://www.uscis.gov/sites/default/files/document/charts/USRAP\\_FlowChart.pdf](https://www.uscis.gov/sites/default/files/document/charts/USRAP_FlowChart.pdf).

refugees themselves. In addition to utilizing data and analysis from the Pilot, the design process should also be informed by best practices in designing similar programs abroad. Organizations that conduct such work, such as the Global Refugee Sponsor Initiative, would be helpful to engage in this process.

## **B. Year 1 (FY22): A Permanent Private Sponsorship Initiative**

By October 1, 2021, the Secretary of State should introduce and begin implementing an initial permanent private sponsorship program building on the expanded co-sponsorship model used in the Year 0 Pilot phase. The President should allocate at least 5,000 additional private sponsorship slots for Fiscal Year 2022 when issuing the FY22 Presidential Determination.

Year 1 would be the start of a bridge from the co-sponsorship model used in Year 0 to a more robust private sponsorship scheme. Eventually, such a program would offer a more standardized model of private sponsorship; a mechanism for groups of individuals and organizations to assume a fuller responsibility for resettlement, perhaps independently of resettlement agencies; and a mechanism for sponsors to “name” refugees outside of the existing USRAP pipeline or with whom they do not have a family relationship.

*Sponsor Selection:* With standardized national processes for application and screening of sponsors - administered either by ORR or a private-public partnership - the private sponsorship program would continue to allow multiple types of entities to undertake sponsorship. These entities can include groups of individuals and organizations. Government agencies administering the program can continue to refine the application and screening process to incorporate learnings from ongoing monitoring and evaluation.

DOS, in consultation with HHS, can also establish a standardized mechanism for financial-only sponsors’ contributions for post-arrival services, both for general financial or in-kind contributions. This could also allow fully funding a privately-sponsored refugee enabling a sponsorship group or organization without financial resources to take on a sponsorship case and provide the logistical and integration support.

*Refugee Selection:* Year 1 should expand on the Year 0 process of re-routing refugees selected from the USRAP pipeline by resettlement agencies or nominated by U.S.-based family members by including refugees pre and post-DHS interview. Year 1 should also include the ability for sponsors to “name” refugees who have a U.S.-based family tie, but are not in the USRAP pipeline. Again, these refugees would be resettled in addition to the U.S. government’s FY22 Presidential Determination commitment.

Named refugees would still need to demonstrate that they meet the U.S. refugee definition and undergo the same processing and screening as a government-assisted refugee. Given the typical

length of this processing, named refugees not already in the U.S. pipeline would likely not arrive until the next fiscal year. But naming refugees with U.S.-based family ties would likely encourage additional private sponsors incentivized by the opportunity to help settle a particular refugee individual or family of their choosing. It would also reinforce public perception of the program's additionality, as beneficiaries not already in the pipeline would not necessarily be resettled through the government-assisted USRAP process if not for the P-6 category.

Drawing from the existing pipeline will ensure a steady stream of privately-sponsored arrivals in Year 1. However, DOS should work in consultation with other agencies and stakeholders, including HHS and DHS as well as resettlement agencies, to prepare a mechanism for naming of non-family-member refugees outside of the existing pipeline in the next fiscal year and beyond.

*Sponsor Responsibilities:* Sponsors in FY22 could take on a broader and standardized slate of financial and logistical responsibilities for the refugees they welcome. With sufficient screening and appropriate training and oversight, sponsors could take on more of the funding and services traditionally provided by a resettlement agency. Sponsors could also potentially take on the cost of refugees' travel to the United States this year. Certain sponsors could also provide services unique to that sponsor's identity. For example, sponsors could be affiliated with higher education institutions who may be able to provide access to tuition-free programs.<sup>124</sup>

An ongoing design process should carefully consider both how to achieve the best integration outcomes and questions of parity with refugees resettled through the traditional, government-assisted USRAP process. These goals are sometimes in tension: longer and more robust support may lead to better integration, but create unfairness and resentment between refugees who are privately sponsored and refugees who are not. However, varying support and responsibility in the private sponsorship program should be continually monitored, evaluated, and used to understand how increased initial support leads to better long-term integration outcomes. These considerations should inform the design process.

*Government Role & Responsibilities:* As the Pilot shifts into a permanent program, the government should play a more active role in facilitation of sponsorship applications and/or create a more standardized process for another entity to conduct the facilitation. The monitoring and evaluation begun in the Pilot phase should continue, to assess and improve the program.

However, with more robust policies and infrastructure for private sponsorship in place, sponsors can assume increased responsibility - and the government can reduce its post-arrival financial responsibility - for the cases resettled via private sponsorship. The government should continue to

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<sup>124</sup> For more information on how sponsorship could be used to decrease barriers to higher education for refugees in the U.S., see Chapter 6.

fund pre-arrival processing, but could other costs could be more fully owned by sponsors rather than the government channeling partial funding through resettlement agencies.

### **C. Years 2-4 (FY23-25): Expanding Private Sponsorship**

To ensure additionality, and to make this additionality transparent to the public, the President should utilize a number equal to a fixed percentage of the Presidential Determination set for government-assisted refugees in subsequent fiscal years. For example, the President could allocate a number equal to 10% of the FY23 PD. If the FY23 PD is set at 125,000, then there would be an additional 12,500 slots for privately-sponsored refugees, and a total of 137,500 refugees resettled in that fiscal year through a combination of government assistance and private sponsorship.

*Sponsor Selection:* In addition to a standardized process for groups of individuals and organizations generally, the program at this point should have a mechanism through which formal organizations, with demonstrated success at sponsorship and ability to take on increased liability for sponsorships, make formal agreements with the government to sponsor cases. These organizations, along the lines of the Canadian program’s “Sponsorship Agreement Holders,”<sup>125</sup> would not have to complete the full application process for each case they take on, and could sub-contract with smaller organizations to do the same. This mechanism would allow the development of sponsoring organizations with specialized expertise, including expertise in the sponsorship process generally and expertise specific to demographics they may regularly assist, such as LGBTQ+ refugees.<sup>126</sup>

*Refugee Selection:* Within the context of a permanent private sponsorship program, refugee eligibility should extend beyond those already in the USRAP pipeline and/or those with a U.S.-based family tie. Sponsors could “name” refugees who do not meet those requirements.

As discussed, named refugees would need to meet the same eligibility, processing, and screening requirements as a government-assisted refugee and those not in the pipeline would likely not arrive until the next fiscal year. But this broader naming would likely further incentivize private sponsorship and emphasize the program’s additionality to the government-assisted USRAP process.

A challenge of the expanded naming process is to ensure that certain groups of refugees are not unfairly privileged at the expense of other groups and that private sponsorship does not unduly deprioritize vulnerability. In order to prepare to meet this challenge, DOS, in coordination with DHS,

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125 Government of Canada, Immigration, Refugees and Citizenship Canada, “Sponsorship Agreement Holders,” last modified Aug. 25, 2020, <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-outside-canada/private-sponsorship-program/agreement-holders.html>.

126 See, e.g., the “rainbow” sponsor groups in Canada, which have developed specialized expertise to meet the particular vulnerabilities and needs of the LGBTQ+ refugees they welcome to Canada via sponsorship. These include organizations like Rainbow Railroad (see <https://www.rainbowrailroad.org/whatwedo>) and Rainbow Refugee Vancouver (see <https://www.rainbowrefugee.com/about-us>).

should maintain robust data collection, monitoring, and evaluation to inform and continually revise the private sponsorship program as it is expanded and normalized.

An option to ensure that vulnerability is still prioritized would be for PRM, working with DHS, to set out a non-exhaustive list of vulnerability criteria or utilize criteria created by UNHCR.<sup>127</sup> These criteria would be made publicly available in advance for review by potential sponsors and then utilized in the screening and approval of nominated cases. The benefit of this would be to ensure that the U.S. continued to prioritize vulnerable cases in refugee admissions. The downside would be placing additional limitations on who can come in through private sponsorship, as well as introducing potential inefficiencies by adding an additional screening criteria.

*Sponsor Responsibilities:* In Years 2-4, the program should incorporate a mechanism for a “full” private sponsorship, with sponsors assuming virtually all of the post-arrival costs and services currently provided by a resettlement agency. These would include housing with furnishings and utilities, food, basic income support, language courses, assistance finding jobs, school and ESL enrollment, assistance making doctor appointments, etc.

A few responsibilities will be more challenging to pass on to sponsors. Healthcare would be the most challenging cost for sponsors to assume, as it can vary widely by location and by individual. Privately-sponsored refugees could receive Medicaid like their government-assisted counterparts, which would enable sponsorship nationwide, but this could encounter some resistance from certain state governments. Alternatively, sponsorships cases could be focused in states with more robust public or subsidized insurance offerings, which would make the costs of healthcare more predictable and affordable for sponsors.

At this point, it is not recommended that within Years 2-4, private sponsors would cover pre-arrival costs of processing. These costs may be difficult to estimate, not all agencies may be willing to accept fees or donations, and other countries with private sponsorship programs usually do not require sponsors to pay for pre-arrival costs. Thus, it is more feasible to focus sponsor responsibility on post-arrival costs and refugees’ travel to the United States, which is easier to estimate and cover.

If some sponsorships are happening without direct facilitation by resettlement agencies and their local affiliates, each sponsorship case should be “assigned” to one of the closest affiliate offices in case of a break in the sponsorship relationship. Sponsors or the assigned affiliate office could hold a certain percentage of the sponsors’ financial responsibility in trust, and/or obtain insurance in

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127 UNHCR utilizes several “submission categories” for resettlement referrals based on vulnerability, including legal and/or physical protection needs; survivors of torture and/or violence; medical needs; women and girls at risk; family reunification; children and adolescents at risk; and lack of foreseeable alternative durable solutions. UNHCR, *UNHCR Resettlement Handbook*, 2011, 245, <https://www.unhcr.org/46f7c0ee2.pdf>.

advance of the refugee's arrival, in case the resettlement agency must step in to assist the refugee in this worst-case scenario.

*Government Role & Responsibilities:* As the program develops, the government's role will shift from sharing responsibilities via co-sponsorship in Year 0 to administering a program which sponsors take on more complete responsibility for the cases they sponsor. However, the government should continue to bear responsibility for certain costs, including pre-arrival processing and potentially post-arrival healthcare. Finally, the success of private sponsorship will require a well-resourced system of rigorous ongoing data collection, monitoring, and evaluation. The government should commit to transparency and accountability in how the private sponsorship program is designed and administered, so that government resources are allocated efficiently and fairly. Principally, the monitoring and evaluation system should ensure that private sponsorship is leading to additionality and not replacing the government-assistant refugee resettlement target. The system should also ensure that the expansion of naming in private sponsorship preserves access to the program for the most vulnerable refugees. Finally, the monitoring and evaluation framework should examine the outcomes for refugees after they are resettled through private sponsorship, as well as the effect of the program on sponsors and communities.

## CHAPTER 5: LABOR PATHWAYS

### I. The Need

Many thousands of refugees globally have strong skills in areas in which the U.S. continues to face labor shortages. Labor shortages in healthcare, technology, and skilled trades continue even in the midst of the pandemic-related recession. **Refugees could help meet these labor shortages and fill the need for highly-skilled workers, especially in the tech sector.**<sup>128</sup>

For businesses, hiring a refugee can mean filling a vacancy while also providing a refugee family with a pathway to safety. For a refugee, employment-based immigration represents the opportunity to relocate to safety and with financial stability. It also represents the opportunity to be viewed in light of the refugee's skills and qualifications rather than needs. Because of its prevalent role in hiring for specialty occupations, the H-1B visa is the most promising visa pathway for highly-skilled refugees, though some may qualify for more tailored visas as well. Nonetheless, this still visa pathway still poses challenges:

### II. Challenges

#### A. Proving Nonimmigrant Intent

Applicants for nonimmigrant visas must demonstrate that they intend to leave the United States after their visa expires and that they have a "residence in a foreign country which he has no intention of abandoning."<sup>129</sup> The H-1B visa is slightly more relaxed, allowing for dual intent, meaning that an applicant may intend to stay in the United States if their visa status allows. However, refugees often have no country to which they can safely return, or return at all. Thus, their applications are likely to face additional scrutiny and may require documentation of ties that they cannot prove.

#### B. Documentation

Employment-based visas require the applicant to present extensive documentation (in addition to documents from the employer). Under the current administration, far from utilizing flexibility to facilitate employment of skilled workers, H-1B applicants have faced frivolous and repetitive Requests for Evidence.

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<sup>128</sup> For discussions on refugee labor market access, and improving training for refugees during and after resettlement to the United States, see National Conference on Citizenship and the Penn Biden Center for Diplomacy and Global Engagement, *A Roadmap to Rebuilding the U.S. Refugee Admissions Program*, 2020, <https://global.upenn.edu/penn-biden-center/refugee-admissions-project>.

<sup>129</sup> INA § 101(a)(15)(H)(i), 8 U.S.C. § 1101(a)(15)(H)(i).

- **Civil Documents.** An applicant must present civil documentation like birth and marriage certificates. DOS lists alternative evidence that may suffice if primary documents are unavailable, which will benefit some applicants. Some refugees may not be able to provide either primary or alternative documents.
- **Valid Travel Documents.** Likewise, many refugees are unable to obtain passports. In other cases, approaching an embassy could place them or their families at risk. Others still may have to pay fines to the government that persecuted them to obtain a passport. DOS has the ability to waive a passport requirement.<sup>130</sup> It should do so where a refugee is otherwise eligible for a visa.
- **Proof of Qualifications.** An applicant must present documentation of educational and professional qualifications, as well as documentation of years of work experience.<sup>131</sup> There is some flexibility already allowed in the law: H-1B visa applicants without a bachelor's degree can present evidence of years of work experience that, combined with educational qualifications, establishes qualifications for a specialty occupation. Thus, an applicant who has a bachelor's degree but has lost all documentation of the degree, but who also has work experience, could establish eligibility with documentation of their work history. Ultimately, each applicant must have enough documents to meet the minimum requirements, which some qualified refugees will be unable to meet.

### C. Costs and Challenges for Employers

- **Logistical challenges.** Many exceptionally qualified refugees may be eager to fill a position but would face challenges in the application process. For example, an applicant may lack regular internet access, which would limit her ability to fill out applications, to complete video interviews, or to correspond with the employer during the hiring and visa application process. Once hired, individuals may need an exit permit.
- **Delays.** Current delays in visa processes have impacted employment-based applications as well as humanitarian and family-based applications. These delays have made the process of sponsoring a foreign national less predictable for employers. Worse still, applicants of certain nationalities frequently face long security check delays--processing time when the applicant is told only that they are pending "administrative processing." These nationalities that tend to face long delays, like Iranians and Syrians, correlate with nationalities from which refugees also face long delays and high rejection rates.

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<sup>130</sup> 22 CFR § 41.113(b); 9 FAM 403.9.

<sup>131</sup> See, e.g., USCIS, "Checklist of Required Initial Evidence for Form I-129 (for informational purposes only)," last updated October 16, 2018: <https://www.uscis.gov/i-129Checklist>.

- **Costs.** Sponsoring a person for employment is always more costly to the employer than employing a person with work authorization. This is by design. Employing a foreign national requires filing costs, legal fees, as well as costs of documenting compliance measures. Employers of refugees may face still higher costs, with more complex applications to compile the documents listed above. Simply coordinating logistics will pose an additional challenge. Refugees may need funding for their travel or for their initial housing costs. These costs may be covered in some cases through partnerships with nonprofit agencies.

All of this means that, for refugees to be hired in large numbers, employers must be motivated to hire them. Employers may be determined by an exceptional candidate or by a desire to include refugees in their workforce. They may seek to reap documented benefits of hiring refugees, such as higher retention rates and brand recognition for their work to employ refugees.<sup>132</sup>

### III. Recommendations

All of this means that, for refugees to be hired in large numbers, employers must be motivated to hire them. Employers may be determined by an exceptional candidate or by a desire to include refugees in their workforce. They may seek to reap documented benefits of hiring refugees, such as higher retention rates and brand recognition for their work to employ refugees.

Within existing law, both DOS and USCIS should reverse the trend of requesting unnecessary and duplicative evidence. Instead, these agencies should **exercise the full breadth of flexibility allowed by law for applicants to demonstrate their eligibility for a visa**. By addressing system-wide delays and backlogs, DOS and USCIS can also make employing refugees a better option for employers.

As noted elsewhere in this paper, the U.S. government should advocate with UNHCR for it to establish a central process for refugees who are pursuing a complementary pathway to receive **UNHCR's help obtaining applicable exit permits** or overstay fines from their country of origin, as it would do for a refugee seeking refugee resettlement.

Congress could also address many of the practical obstacles listed above by **creating a new nonimmigrant visa category** based on treaty visas like the E-3 treaty visa for Australians or H-1B1 visa for Chileans and Singaporeans. These visas allow a national who is qualified and has a job offer to fill a position in a specialty occupation. Congress could create a small visa category with similar requirements. Instead of limiting by nationality, the visa could require documentation as a refugee. It should relax the requirement of nonimmigrant intent. At a minimum, it should, like the H-1B, allow for dual intent. Establishing this new visa

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132 See Tent Foundation and Fiscal Policy Institute, *Refugees as Employees: Good Retention, Strong Recruitment*, 2018, [https://www.tent.org/wp-content/uploads/2018/05/TENT\\_FPI-Refugees-as-Employees-Report.pdf](https://www.tent.org/wp-content/uploads/2018/05/TENT_FPI-Refugees-as-Employees-Report.pdf)

would enhance an employer's incentive to employ refugees: these visas, unlike H-1Bs, could only be filled by refugees.

In practice, large-scale refugee labor mobility will probably require significant nonprofit involvement to match refugees with employers and to facilitate refugees' integration to the United States. The nonprofit organization Talent Beyond Boundaries established a Talent Catalogue, inviting refugees in Jordan and Lebanon to document their skills, education, and employment history. Using this Catalogue, they have connected refugees to enthusiastic employers in Canada and Australia. Talent Beyond Boundaries helps refugees to compile or update resumes and to coordinate internet access for the interview process. Matching employers and refugees will require expanding this model to the United States. Once refugees are accepted for employment, they may also need assistance with initial resettlement services.

These recommendations draw heavily on publications and recommendations from Talent Beyond Boundaries, a nonprofit founded to promote refugees' access to labor mobility pathways.<sup>133</sup>

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133 See especially Talent Beyond Boundaries, *Enhancing labour mobility for refugees through Australia's Migration Program*, February 2, 2018, <https://www.talentbeyondboundaries.org/s/TBBSubmissionAustraliaMigrationProgram.pdf>; Talent Beyond Boundaries, *The Promise of Labour mobility: How skills can be a passport out of displacement for refugees*, Dec. 2019, <https://static1.squarespace.com/static/5dc0262432cd095744bf1bf2/t/5ed20b4cdef8546a019d216b/1590823775767/TBBGRFReport2019.pdf>.

## CHAPTER 6: EDUCATION

### I. The Need

According to UNHCR, only three percent of refugees worldwide of relevant age obtain a post-secondary education.<sup>134</sup> Refugees are often not able to obtain higher education because of their precarious living situations, a lack of access to education in countries of first asylum, and difficult application processes. Student visas have the potential to provide an important pathway for refugees not only to come to the United States, but also to improve the lives of their families and communities, obtain expanded opportunities for socioeconomic inclusion and mobility, and integrate quickly into a new country.

However, the current U.S. F-1 student visa requirements<sup>135</sup> and process make these visas inaccessible to most refugees. The changes that would have to be implemented to the current F-1 visa to make it a viable option for refugees are so significant that it would be advisable to instead create a new student visa specifically for refugees. **In order to make student visas a realistic pathway for refugees to access safety and education, Congress should pass legislation to create a special visa category that allows recognized refugees to come to the United States, obtain an education, and stay if they so choose.** Not only would this fulfill the United States' moral and international obligation to resettle refugees, like other aspects of the U.S. Refugee Admissions Program, it would fast-track refugees to becoming integrated, self-sufficient, and contributing members of the U.S. economy and society, and would therefore also be an investment in American communities.

Many other countries have already piloted or implemented special student programs for refugees. The United States' delay in developing a program, coupled with its policies restricting immigration by refugees and asylum seekers, is a missed opportunity for this country to resettle refugees who could contribute to sectors across our economy.

### II. Challenges

The current F-1 student visa structure in the United States makes these visas unrealistic for most potential refugee applicants. A new visa category for refugee students must address and eliminate the following barriers in the requirements and application process for F-1 visas.

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134 UNHCR, *Stepping Up: Refugee Education in Crisis*, 2019, <https://www.unhcr.org/steppingup/wp-content/uploads/sites/76/2019/09/Education-Report-2019-Final-web-9.pdf>.

135 While there are several categories of student visas, this section will focus only on F-1 visas because they are the broadest category and most relevant to refugee populations.

## A. Current Requirements

In order to obtain student visas, applicants must show that they (1) are enrolled in an academic program with a school accredited by the Student and Exchange Visitor Program (SEVP), (2) are a bona fide student who will pursue a full course of study, (3) are entering the United States temporarily for the sole purpose of studying and intend to depart after their studies are complete, (4) have a residence in a foreign country and have no intention of abandoning it, (5) are proficient in English or will receive training to become proficient, and (6) possess sufficient financial resources to cover expenses during their studies so that they will not have to resort to unauthorized employment.<sup>136</sup> The two primary areas of challenges for refugee students are the intent to leave the United States and employment and finances.

### 1. Intent to Abandon Foreign Residence

International students must prove that they are non-immigrants, meaning that they do not intend to abandon foreign residences and intend to depart from the United States after their studies. In the visa adjudication process, USCIS officers are instructed to look only at present intent.<sup>137</sup> That an applicant may hypothetically change their mind or attempt to adjust status is irrelevant, as are facts such as whether there are employment opportunities in their field of study in their home country or whether their field of study seems useful back home.<sup>138</sup> In order to prove an intent to depart after completing their studies, applicants can demonstrate ties to another country such as employment, substantial business or financial connections, close family ties, or a strong cultural or social association.<sup>139</sup> Applicants can also satisfy this requirement by demonstrating that they intend to live in a country other than their home country after their studies are complete.<sup>140</sup>

This requirement alone makes most refugees ineligible for student visas because they do not have a country or residence to return to after completing their studies. By definition, refugees have fled their home countries and cannot go back due to fear of persecution. Many refugees also live in countries of first asylum that do not offer them a pathway to permanent residency or allow them to return after they depart. Furthermore, many of these countries prohibit refugees from working, making countries of first asylum not a viable option for refugees to meet the “intent to depart” requirement. They may not have strong family or cultural ties, employment

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<sup>136</sup> USCIS, “Students and Employment,” last reviewed/updated August 13, 2020, <https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/students-and-employment>.

<sup>137</sup> 9 FAM 402.5-5(E).

<sup>138</sup> 9 FAM 402.5-5(E).

<sup>139</sup> 9 FAM 401.1-3(F)(1)

<sup>140</sup> 9 FAM 401.1-3(F)(1).

opportunities, or financial interests in the country of first asylum to support their student visa applications. Because they do not have permanent and safe residences abroad or a present intent to live in a different country, refugee students need an option that allows them to settle permanently in the United States and does not require them to leave after completing their studies.

Furthermore, this requirement forces the United States to lose refugees who could make valuable contributions to the American economy and society to other countries. By admitting refugee students to academic programs in U.S. colleges and universities and granting student visas, the U.S. government and those schools would be making a significant investment in students' education. Forcing refugee students to leave the United States after their studies are complete can not only be dangerous and destabilizing for the refugees, but also does not serve the nation's economic interests.

## 2. Employment and Finances

Student visa applicants and their families are severely limited in their ability to work. During their first year of school, F-1 student visa holders may only work on campus for a maximum of 20 hours per week when school is in session.<sup>141</sup> Authorized employment includes on-campus jobs that serve students, such as at a bookstore or school cafe, or off-campus jobs that are associated with the school's curriculum, such as research positions.<sup>142</sup> F-1 visa holders may only work in authorized positions full time when school is not in session and during annual vacation.<sup>143</sup>

After the first year, a Designated School Official (DSO) can apply for work authorization for the F-1 holder to work off campus if the student is in good standing and is experiencing severe economic hardship due to unforeseen circumstances beyond their control.<sup>144</sup> The student must carry a full course of study and can still only work for a maximum of 20 hours per week when school is in session.<sup>145</sup> In order to work off campus, the student must submit an economic hardship application for employment authorization and pay a \$410 fee.<sup>146</sup>

In certain past instances, the Secretary of the Department of Homeland Security has suspended requirements and restrictions on employment by F-1 visa holders. These have typically revolved around natural or societal disasters, and include students affected by the Nepalese earthquake

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<sup>141</sup> 8 CFR § 214.2(f)(9)(i).

<sup>142</sup> 8 CFR § 214.2(f)(9)(i).

<sup>143</sup> 8 CFR § 214.2(f)(9)(i).

<sup>144</sup> 8 CFR § 214.2(f)(9)(ii)(A); 9 FAM 402.5-5(N).

<sup>145</sup> 9 FAM 402.5-5(N)(2)

<sup>146</sup> 8 CFR § 214.2(f)(9)(ii).

of 2015 and the ongoing conflicts in Libya and Syria. In these situations, students were allowed to seek employment and take a reduced course load due to severe economic hardship.<sup>147</sup>

An F-1 visa holder's spouse and children, who are able to join the primary visa holder on F-2 derivative visas, cannot work under any circumstances.<sup>148</sup> Although F-2 children can attend school, F-2 spouses are prohibited from studying, except for avocational or recreational courses.<sup>149</sup>

These restrictions on employment make higher education in the United States unrealistic for many refugee families and can set them up for failure. The default rule that F-1 holders can only work part-time on-campus during the school term may allow some international students to live comfortably and pay for expenses. However, for refugees who do not have significant financial resources and support, a part-time job is insufficient to pay for tuition, room and board, and other living expenses. Furthermore, refugees would have to compete against all other students for those limited on-campus jobs. If they are not hired, they will have few options to earn a living.

While refugees have the option of applying for work authorization in the event of unforeseen economic hardship, the application is a bureaucratic process and approval is not guaranteed. Additionally, the \$410 filing fee would put additional financial strain on students facing economic hardship.

Two additional requirements, considered in conjunction with the prohibition against employment for student visa holders and their families, further prevent refugees from being able to take advantage of student visas. First, applicants must show that they have access to sufficient funds to sustain them during their entire course of study such that they will not have to resort to unauthorized employment. Second, student visa holders must maintain a full course of study.

To have sufficient funds to cover all expenses while maintaining a full course of study with only limited options for employment is untenable for refugees. "Sufficient funds" can include scholarships, fellowships, loans, and money from financial sponsors.<sup>150</sup> However, scholarships and fellowships are extremely competitive, and refugees may not have connections to identify

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147 See, e.g., 83 Fed. Reg. § 11553, March 15, 2018; 76 Fed. Reg. § 33970, June 10, 2011; 80 Fed. Reg. § 69237, November 9, 2015.

148 9 FAM 402.5-5(N)(9).

149 8 CFR § 214.2(f)(15)(ii)(A).

150 9 FAM 402.5-5(G).

financial sponsors or the credit history or assets to secure loans. Additionally, refugees applying for visas from outside of the United States are not eligible to receive federal financial aid.<sup>151</sup>

Even if refugees were able to obtain approval for employment, they may struggle to balance working to support themselves and their families with a full course load. Students can take on a reduced course of study in certain situations, such as initial difficulties with English and medical conditions.<sup>152</sup> However, financial burden is not an eligible reason and the DSO must authorize the reduced course load, meaning it is not guaranteed.

Refugee families also cannot gain extra income through the work of the spouse or children. These rules severely limit the family's income and how family members on F-2 visas can spend their time, integrate into their new communities, and develop personally and professionally. Furthermore, they place the burden of providing for the family entirely on the shoulders of the refugee student, who must support their family on a part time on-campus job while maintaining a full course load. Refugee families should not have to endure a bureaucratic process in order to obtain work authorization and avoid this from happening.

Without a significant funding source, the best option to ensure that refugees have sufficient funds to sustain them throughout their academic program is to allow them and their families to work. Offering the option of a reduced course load that includes a simple approval process would contribute significantly to making this option viable.

While past suspensions of the strict requirements around employment demonstrate that the Department of Homeland Security acknowledges that students cannot study full time when faced with severe economic hardship, these suspensions have been temporary and have not gone far enough to include all students who face hardship. Natural disasters and financial crises are not the only events that create economic hardship, as many refugees can attest to. A student visa program for refugees must acknowledge that refugees arriving to a new country face constant and serious economic hardship and need to balance school with earning a living.

## **B. Process**

In addition to the visa requirements discussed above, the current F-1 application process itself is complex, burdensome, and presents additional barriers for many refugees.

After a student is accepted into an academic program for an SEVP-approved school, the school will issue an I-20 form and the student must pay a fee of \$350 to register for the Student and Exchange

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<sup>151</sup> U.S. Department of Education, "Federal Student Aid, Eligibility for Non-U.S. Citizens," <https://studentaid.gov/understand-aid/eligibility/requirements/non-us-citizens>.

<sup>152</sup> 8 CFR § 214.2(f)(6)(iii).

Visitor Program (SEVIS), a program that is operated by SEVP on behalf of Immigration and Customs Enforcement (ICE).<sup>153</sup>

After the student obtains the I-20, they must complete the visa application (DS-160) in English.<sup>154</sup> In order to complete the form, the student must have a passport, evidence of travel history and future itinerary if they have already made plans to come to the United States, and a resume or curriculum vitae.<sup>155</sup> The applicant must also pay a visa application fee of \$160.<sup>156</sup>

After submitting the DS-160, the student will need to schedule an interview with the U.S. embassy or consulate. At this interview, they must present an I-20, a DS-160 submission confirmation page, visa application fee payment receipt, a valid passport, and passport-sized photographs.<sup>157</sup> During the interview, the consular officer may request additional documentation, such as evidence of academic preparation (including transcripts, degrees, and test scores), proof of intent to depart from the United States after completion of the course of study, and proof of financial support.<sup>158</sup> After the visa is approved, the student may have to pay a visa issuance fee depending on their nationality.<sup>159</sup>

F-1 visa holders can be admitted into the United States up to 30 days before the indicated start date of the academic program listed on the I-20.<sup>160</sup> If an F-1 visa holder wishes to enter the country earlier than 30 days before the start of the program, they must obtain a separate visitor visa and change their visa classification before their studies begin.<sup>161</sup>

The various steps and requirements in the application process, ranging from the prohibitively expensive filing fees to the required documentary evidence to the restrictions on arrival, combine to make it nearly impossible for refugees to be able to successfully complete the application and prepare to study in the United States.

#### 1. Fees

The current student visa application process is prohibitively expensive. Applicants must pay hundreds of dollars for the process and no fee waivers are available. Together with the higher

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153 ICE, “I-901 SEVIS Fee Frequently Asked Questions,” Last Reviewed/Updated June 24, 2019, <https://www.ice.gov/sevis/i901/faq>.

154 DOS, “DS-160: Frequently Asked Questions,” <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/forms/ds-160-online-nonimmigrant-visa-application/ds-160-faqs.html>.

155 *Id.*

156 DOS, “Student Visa,” <https://travel.state.gov/content/travel/en/us-visas/study/student-visa.html>.

157 8 CFR § 214.2(f)

158 DOS, “Student Visa,” <https://travel.state.gov/content/travel/en/us-visas/study/student-visa.html>.

159 *Id.*

160 8 CFR § 214.2(f)(5).

161 9 FAM 402.5-5(R)(2).

tuition that schools charge for international students, the cost of traveling and setting up life in a new country, and incidental costs such as obtaining new travel documents, **the current student visa program is out of reach for most refugees.** As noted above, refugees have little access to financial aid or other financial support to help offset these expenses.

Although schools may pay for some application costs, it is not guaranteed that all schools will cover these expenses. Furthermore, some schools may be deterred from accepting refugees if the cost of acceptance is significantly higher than that of other international students.<sup>162</sup> The support of schools is critical to a refugee student visa program, so for any student visa program to be realistically accessible to and functional for refugees, it must not involve fees.

A no-cost application process would not be without precedent, as most immigration processes, such as resettlement and adjustment of status, waive filing fees for refugees.

## 2. Challenges Inherent in the Application Process for Academic Programs

Like other international students, refugees must be accepted to a specific academic program and navigate a student visa application in order to obtain a visa and come to the United States to study. However, refugees face several unique challenges that make these processes far more difficult and complicated than they are for the average international student.

First, refugees do not necessarily have the support systems and resources to make them aware of different educational programs and visa processes. While other international students may have entire departments at their colleges or universities dedicated to helping them navigate the process of studying abroad, or at least regular access to the Internet to research their options, refugees may not have reliable access to either.

Second, refugees may not have the skills, credentials, or background required for many programs. Many refugees had to interrupt their studies due to war and violence, and therefore may not meet all eligibility requirements for many undergraduate or graduate programs.

Even if refugees did complete prerequisites and obtain the required credentials, they may not have documentary evidence that the applications require. Refugees often must flee their homes quickly to escape danger, and cannot take important documents with them. If their homes and academic institutions are destroyed due to war, they have no way of retrieving these documents. Therefore, qualified refugees may miss out on higher education, a safe place to live, and the chance to improve the lives of their families because they are not aware of programs or cannot complete rigid application processes due to factors beyond their control.

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<sup>162</sup> Jon Marcus, "The Higher Education Crisis Beneath a Civil War," *The Atlantic*, October 25, 2016, <https://www.theatlantic.com/education/archive/2016/10/the-higher-education-crisis-beneath-a-civil-war/504947/>.

3. Documentary Evidence for Visa

Refugees who are able to surmount obstacles in academic applications and gain acceptance to a program should not have to face further challenges in the visa application process. First is the issue of documentary evidence. Not all refugees have passports, transcripts, or resumes, all of which may be required to complete the DS-160 and pass the interview. Refugees may not even have regular access to printing, which is required to bring copies of the DS-160 confirmation page and form I-20 to the interview.

Additionally, although there is no requirement that students be proficient in English when they enter the United States and begin their studies, they must complete the DS-160 form in English. While some international students may have resources or people to help accomplish this, refugees who are not already fluent in English will have difficulty with this form.

4. Arrival 30 Days Before Program

A refugee who is able to overcome all of the burdens in applying for academic programs and for a visa will face the additional challenge of having to start a new life in 30 days, the maximum a student visa holder can enter the country prior to the commencement of their program. While this may be enough for some students, such as single students who have ties in the United States or are familiar with American society and culture, many refugees will be starting from square one in a new country. They will need to adjust to life in the United States, understand their new homes and cities, and develop support networks so that they can have a chance of succeeding in school. Refugee students who have families also need time for their spouses and children to adjust to new lives and enroll in school. This cannot be accomplished in the 30 days before the refugee student is required to begin a full course of study.

### **III. Catching up with Other Countries: Existing Student Visa Programs for Refugees**

In order for refugees to access student visas and succeed in the United States, the above-mentioned challenges must be addressed. A refugee student visa program must take into account the realities that refugees face: they cannot return to their home countries and live in precarious situations with little access to money, technology, and other resources. It must recognize that refugees are not the same as other international students, although they can thrive when provided a supportive higher education environment just as any other international student can. The current F-1 visa falls short in providing a viable pathway for refugees and the United States should develop a new program. Many countries have already begun to design student programs for refugees, and the United States should learn from and expand upon those models in designing a new visa program for refugee students.

## A. Existing Models

Student visa programs specifically designed for refugee students are not a novel concept. For decades, World University Service of Canada (WUSC) has facilitated access to higher education for refugees in six countries of asylum through its Student Refugee Program. More recently, other countries around the world have developed and launched programs with similar goals. While the programs differ in size and scope and operate in countries with vastly different immigration systems, they collectively demonstrate the possibility of higher education as a pathway for qualified refugee students to resettle, integrate, and contribute to their host communities in meaningful ways.

### Canada

The most robust model for refugee access to higher education is the Student Refugee Program (SRP), which is facilitated by WUSC, an international development organization based in Canada and operating in over 25 countries.<sup>163</sup> SRP is a refugee resettlement initiative that relies on Canadian youth and post-secondary institutions to fund scholarships for and support the admission and integration of refugee students. Over the last 40 years, WUSC has enabled over 2000 refugee students to pursue higher education across 100 universities in Canada.<sup>164</sup> Due to its success, SRP provides an excellent model of a program designed to address many of the challenges of the F-1 visa outlined above and, in turn, a program that meets the unique needs of refugee students.

To be eligible for SRP, students must live in one of six countries of first asylum, Jordan, Lebanon, Kenya, Malawi, Tanzania, or Uganda, and be officially recognized as a refugee by UNHCR. Additionally, they cannot have an available durable solution,<sup>165</sup> such as repatriation or local integration, and therefore must be eligible for Canadian resettlement. WUSC coordinates a matching process for candidates and academic programs, so the process is separate from that for other international students applying to the programs. Most SRP candidates are pursuing undergraduate coursework, although WUSC admitted an increased number of graduate students in 2016 in response to the Syrian refugee crisis.

After a pre-screening process of eligibility criteria by WUSC's implementing partners (such as the International Rescue Committee in Tanzania and Windle International Kenya in Kenya), interested students apply to the program in a process that includes a language assessment and, upon

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163 UNHCR and World University Service for Canada, *Building Educational Pathways for Refugees: Mapping a Canadian Peer-to-Peer Support Model*, 2017, [https://assets.wusc.ca/NEW%20website/02%20Impact/Reports%20and%20Publications/educationPathways\\_07.pdf](https://assets.wusc.ca/NEW%20website/02%20Impact/Reports%20and%20Publications/educationPathways_07.pdf).

164 Student Refugee Program, "About," <https://srp.wusc.ca/about/>.

165 UNHCR, "What We Do," <https://www.unhcr.org/en-us/solutions.html>.

acceptance, digital literacy courses and additional language training.<sup>166</sup> From pre-screening to travel, the process typically takes about two years and involves collaboration between students, implementing partners, Canadian immigration officials, and WUSC. Part of the program's success can be attributed to its promotion by implementing partners in countries of first asylum and the significant support provided to refugees throughout the application and pre-arrival process.

Each year, between 130 and 150 refugee students arrive and resettle across Canada at participating universities. As soon as admitted students arrive at their host institutions, a youth-to-youth sponsorship model provides both financial and cultural support with each student's integration into university life. Student constituency groups at each university organize a student levy to fund tuition, housing, food, and other needs, and these committees are similarly responsible for helping refugee students navigate the complexities of university life.<sup>167</sup> While the structure of each university's constituency group can vary, the peer-to-peer component of SRP helps drive its success. According to a 2007 study, 97 percent of sponsored students had completed or were working to complete their course, and about 85 percent found work in their chosen fields.<sup>168</sup> Students are successful in part due to the extensive funding and other forms of support they receive through their host institutions and other private actors.

The SRP, while largely student-driven, is ultimately a public-private partnership and could not operate without the support of Canadian embassies and Immigration, Refugees and Citizenship Canada (IRCC). The Canadian government serves an important role in SRP's implementation by processing students' visa applications, coordinating medical and security clearances, and liaising with the International Organization for Migration (IOM).<sup>169</sup> These contributions eliminate significant obstacles that would otherwise inhibit access to travel for refugee students.

In addition, the Student Refugee Program is folded into the Canadian Private Sponsorship of Refugees model (PSR).<sup>170</sup> The PSR is a partnership between the Canadian government and dozens of organizations and private individuals to identify and assess candidates for resettlement, facilitate their arrival, and provide financial and structural assistance for resettlement and integration. Refugee students are brought into Canada through this scheme as permanent residents and soon become eligible to naturalize and integrate fully into Canadian society. Permanent resident status allows refugee students to seek employment opportunities immediately upon arrival and to pursue

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166 Conversation with Michelle Manks, Senior Manager of Durable Solutions for Refugees, World University Service for Canada, Oct. 16, 2020.

167 Building Educational Pathways for Refugees, *supra* note 30.

168 Student Refugee Program, "About," *supra* note 31.

169 Building Educational Pathways for Refugees, *supra* note 30.

170 *Id.* For more information about private sponsorship, see Chapter 4.

various pathways to bring family members to Canada under the private sponsorship model.<sup>171</sup> This status eliminates some of the critical barriers facing refugee students pursuing an F-1 visa to the United States. Perhaps most notably, SRP is explicitly designed with the goal that students will stay in Canada after graduation.

While some elements of the private sponsorship model and SRP are unique to Canada, there are significant programmatic elements that may be transferable to the U.S. refugee resettlement process. Like SRP, a student refugee visa program in the United States could be constructed as a private-public partnership. While the government can implement and coordinate a visa program with as few obstacles as possible, private actors can help identify candidates and help refugees enroll in school and adjust to their new lives. Furthermore, Canada and the United States have similar higher education systems and robust programs for international students that can be adapted with refugees in mind. Even the student levy component of SRP can potentially be replicated in the United States.

#### Other countries

In addition to Canada, a handful of countries have created specific programs for refugee students. While SRP mainly focused on undergraduate students, programs in Japan and Italy provide graduate-level candidates the opportunity to pursue their Master's degrees. Most current programs are pilots of new models, and therefore have more specific eligibility requirements than SRP and the ideal program for the United States. Still, these pilot programs demonstrate global investment in expanding refugee access to higher education.

The Japanese Initiative for Syrian Refugees, for example, provides access to higher education in Japan for Syrian refugees recognized by UNHCR and currently located in Jordan and Lebanon.<sup>172</sup> Established by the Japan International Cooperation Agency (JICA), the program targets Master's level candidates with the potential to contribute to Syria's reconstruction. The program aims to recruit and enroll 100 Syrian refugees, with new participants accepted from 2017 to 2021.

In Italy, the University Corridors program provides slots for 20 refugee students currently in Ethiopia to attend 2-year Master's programs across 11 Italian universities.<sup>173</sup> To meet the eligibility threshold, applicants must be recognized as refugees by UNHCR and have an undergraduate degree issued in Ethiopia by an accredited higher education institution. Students are selected directly by participating universities on the basis of merit, and are provided full tuition fee waivers and scholarships. In this

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171 Conversation with Michelle Manks, *supra* note 33.

172 Japanese International Cooperative Agency, "Japanese Initiative for the Future of Syrian Refugees," <https://www.jica.go.jp/syria/english/office/others/jisr.html#:~:text=The%20objective%20of%20JISR%20is,Master's%20courses%20at%20Japanese%20universities>.

173 University Corridors for Refugees, <https://universitycorridors.unhcr.it/>.

public-private partnership, the Italian Ministry of Foreign Affairs and International Cooperation processes students' study visa applications in order for students to travel to Italy to begin their coursework.

Additional programs are being piloted in Mexico, Czechia, France, and Germany, among others.<sup>174</sup> While these programs are small in scope and often limited to refugee students from certain geographies, their existence demonstrates a global commitment to expanding pathways for refugee students and to acknowledging the particular needs of these populations. Consistent across most programs is a partnership between the government, civil society, and private sector actors. While the government processes student visa applications and assists with other documents, private institutions cover the costs of travel, lodging, and tuition and aid with integration efforts. This public-private collaboration ensures that refugee students not only have access to educational pathways, but are ultimately positioned to succeed upon arrival.

#### **IV. Recommendations for a U.S. Student Visa Program for Refugees**

As outlined above, the current F-1 visa is not a viable pathway for refugee students to study and live safely in the United States. Improving the F-1 visa for refugees would require an enormous amount of changes to the basic requirements and application process of the visa. Instead of making such fundamental changes to the existing visa or creating separate F-1 visa tracks for refugees and other international students, IRAP recommends the creation of a new student visa specifically designed for refugee students.

Post-secondary institutions are uniquely positioned to build upon prior experience working with international students to meet the needs of refugee students, and the government should do everything in its power to enable universities to take on this critical role in providing a pathway to safety and integration in the United States.

IRAP recommends a special refugee student visa whereby, upon successful completion of one academic year, a student can obtain a green card, thereafter feeding into the existing systems for green card holders. Rather than creating a new regulatory system, this process would fold the refugee student visa into current structures and allow refugees to obtain permanent residency and initiate family-based immigration petitions.

This visa program will necessarily require cooperation between the U.S. government, colleges and universities, and other implementing partners. The government should be responsible for (1) designing a

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<sup>174</sup> See, e.g., Proyecto Habesha, <https://www.proyectohabesha.org/english/index.html>; Caroline Schmidt and UNHCR, *Student Scholarships for Refugees: Expanding Complementary Pathways of Admission to Europe*, Dec. 2017, [https://www.resettlement.eu/sites/icmc/files/ERN%2B%20Student%20Scholarships%20for%20Refugees%20-%20Expanding%20complementary%20pathways%20of%20admission%20to%20Europe\\_0.pdf](https://www.resettlement.eu/sites/icmc/files/ERN%2B%20Student%20Scholarships%20for%20Refugees%20-%20Expanding%20complementary%20pathways%20of%20admission%20to%20Europe_0.pdf).

visa program with requirements that accommodate the special circumstances refugees face (for example, loosening financial sponsorship requirements and work limitations in instances where a student has a valid refugee claim), (2) training refugee adjudicators or partnering with implementing partners to identify potential candidates for the program, (3) developing and implementing a low-burden and no-cost visa application process that takes into account the realities that refugees face, and (4) allowing for accommodations to be made in the requirements for maintaining status such that refugees who must work or alter their schedule can do so without jeopardizing their visa.

In this system, colleges and universities must be willing to relax some of their admissions criteria to admit refugees who have not had the resources afforded to other international students. Schools or other private or non-profit organizations will likely also have to be involved to fundraise to assist refugee students who are new to the United States and to help them navigate school and other institutions. IRAP believes that there is appetite for this among schools and organizations in the United States, as we demonstrate in the next section.

More specifically, IRAP recommends the following modifications to current student visa programs in the creation of a new refugee student visa:

- 1. Broad program eligibility:** While current models of student refugee programs in other countries often target specific age groups and refugee populations, the United States should design a program with less rigid eligibility requirements. By permitting both undergraduate and graduate students and refugee students from different backgrounds to apply, a visa program can address the needs of various refugee populations rather than closing the door on certain students.<sup>175</sup>
- 2. No intent to return requirement:** The visa should be designed with an understanding that refugee students cannot and should not be expected to return to either their home countries or their countries of first asylum. Instead, the visa program should feed into the green card process with the goal of graduates' full integration into American life. This recommendation is in line with UNHCR's 2020 recommendations for higher education program design elements.<sup>176</sup> Eliminating this requirement would ensure that refugee students have a permanent pathway to safety and allow the United States to benefit from having invested in this population.

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<sup>175</sup> In terms of program size, IRAP suggests piloting this new program with a relatively small number of students each year and then increasing program size in subsequent years. Current pilots in Japan and Italy each have about 20 new students annually, so IRAP proposes a scaled up pilot based on the population of the United States. The initial pilot may benefit from more specific eligibility requirements, but the end goal should be broad program eligibility for a significant number of students each year.

<sup>176</sup> World University Service of Canada, UNHCR, and United Nations Educational, Scientific, and Cultural Organization, *Doubling our Impact: Third Country Higher Education Pathways for Refugees*, Feb. 2020, available at <https://www.unhcr.org/en-us/events/conferences/5e5e4c614/wusc-unhcr-unesco-doubling-impact-third-country-higher-education-pathways.html>.

3. **No prohibition against employment and reduced course load:** Refugees and their family members should be allowed to work full-time and off campus for the duration of their academic program. This allows for less dependence on government programs and expedites integration into the local community. Refugees should also be able to take on a reduced course load without jeopardizing their visa status after a simple approval process by their school so that they can work and support their families.
4. **No fees for visa application and issuance:** The new refugee student visa should not have the prohibitive fees of F-1 visas. By eliminating fees, refugee students will have fewer financial barriers in their application processes and schools will not be discouraged from admitting students due to the financial burden of covering visa fees on their behalf. Alternatively or in combination with eliminating application fees, the United States should develop or adapt a private sponsorship model to cover these fees and to provide refugee students with further financial support.
5. **Accommodation for non-fluency in English:** Like the current F-1 visa, the new refugee student visa can also require applicants to demonstrate that they are or will become enrolled in an English course. However, unlike the current visa, the new program should have all application forms in multiple languages so that refugees are not required to navigate complex immigration forms in a language in which they are not fluent. Language may continue to pose a barrier to eligibility for certain refugees. Replicating SRP, the U.S. program should consider building in an additional year so students can sharpen their English skills in the United States prior to beginning their academic course.
6. **Travel documents as valid ID and flexibility with other documentary evidence:** Refugee travel documents and UNHCR identity cards should be an acceptable form of identification if valid passports are not available. Similarly, there should be flexibility in the forms of evidence that refugees can offer in support of their visa applications, and electronic evidence submission at an interview stage should be allowed.
7. **Government support in program promotion:** Once a visa program is established, the government should advertise the new visa program, train refugee officers to identify potential applicants, work with implementing partners, and seek out additional measures to maximize transparency and equity. By implementing these measures, the government can ensure that access to the refugee visa program is as inclusive and expansive as possible.
8. **Longer time allotment for arrival:** While the F-1 visa allows students to arrive only 30 days before the academic program starts, most refugees will need more time to get settled. A new visa program should offer at least 90 days, recognizing the additional challenges to integration for refugee students and their families.

- 9. Pathway for family reunification:** Like the current F-1 student visa program, refugee students should be allowed to come to the United States with their spouse and children on derivative visas. Like other resettled refugees, refugee students should become eligible for green cards after one year in the United States so long as they successfully complete the requirements of their academic course, and would then be eligible to petition for other family members to come to the United States.
- 10. Engage host communities and students:** All efforts should be made to establish a program that engages host communities and students in the integration of refugee student visa holders and their families. As the SRP program in Canada highlights, programmatic success largely depends on the involvement of local actors. Although the government's primary responsibility is visa adjudication and processing, it can still play a leading role in developing a sustainable program that will allow for future engagement.<sup>177</sup>

## V. Broad Political Support

There is broad-based support in the United States for increasing access to education for refugees, and the beginning infrastructures necessary for a successful program are already in place. At the forefront of these efforts is the University Alliance for Refugees and At-Risk Migrants (UARRM), which brings together a broad coalition of researchers, practitioners, and policymakers who support higher education in the United States as an under-utilized pathway for refugees and other displaced people. UARRM focuses on six key action areas related to refugee education in the United States, including expanding access and overcoming barriers to entry, as well as providing on-campus and in-community assistance to displaced people upon arrival to the United States.<sup>178</sup> The organization has partnered with the Presidents' Alliance for Higher Education and Immigration, a group of over 400 university presidents committed to increasing refugee representation in American higher education.<sup>179</sup> UARRM's multi-pronged, well-networked approach demonstrates widespread interest in a robust refugee student visa program.

In addition to UARRM, organizations like Every Campus a Refuge (ECAR),<sup>180</sup> the Syrian Youth Empowerment Initiative,<sup>181</sup> No Lost Generation,<sup>182</sup> and the Mastercard Foundation<sup>183</sup> indicate growing support for education as a pathway for displaced and vulnerable populations. Additionally, higher education institutions such

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<sup>177</sup> *Id.*

<sup>178</sup> University Alliance for Refugees and At-Risk Migrants, "UARRM Action Areas," <https://www.uarrm.org/actionareas>.

<sup>179</sup> Presidents' Alliance on Higher Education and Immigration, <https://www.presidentsalliance.org/>.

<sup>180</sup> Every Campus a Refuge, "Who We Are," <https://everycampusarefuge.net/who-we-are/>.

<sup>181</sup> SYE Initiative, <https://www.sye-initiative.org/about>.

<sup>182</sup> No Lost Generation, <https://www.nolostgeneration.org/>.

<sup>183</sup> Mastercard Foundation, "Scholars Program," <https://mastercardfdn.org/all/scholars/>.

as Brandeis University in Massachusetts<sup>184</sup> and Columbia University in New York<sup>185</sup> have a longstanding focus on recruiting refugee students. Increased coordination across committed stakeholders like UARRM, nonprofit organizations, and both public and private institutions suggests that the United States is ripe to expand efforts in this space. However, despite increasing support for refugee students, visa restrictions, missing travel documents, and other obstacles continue to pose challenges. Ultimately, government support remains a limiting factor to access.

A successful student visa program for refugees will rely on collaboration between public and private entities, institutions and individuals. The necessary elements are in line. Governmental support moving forward can help establish a visa program that allows refugee students to come to the United States and thrive in both their studies and their communities.

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184 The Heller School for Social Policy and Management at Brandeis University, “Fellowships and Scholarships,” <https://heller.brandeis.edu/admissions/financial-aid/fellowships-scholarships.html>.

185 Columbia Global Centers, <https://globalcenters.columbia.edu/CUSDS>.