

August 14, 2023

BY ELECTRONIC MAIL to

Secretary Mayorkas % Angela Kelley, [angela.kelley@hq.dhs.gov](mailto:angela.kelley@hq.dhs.gov)

The Honorable Alejandro Mayorkas  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
245 Murray Lane, SW  
Washington, DC 20528

The Honorable Ur M. Jaddou  
Director  
U.S. Citizenship and Immigration Services  
20 Massachusetts Avenue, NW  
Washington, DC 20529

**RE: Letter in Support of the Massachusetts Delegation’s Request for Streamlined  
Work Authorization for Parolees**

Dear Secretary Mayorkas and Director Jaddou:

We are nonprofit legal services advocates in Massachusetts, and we write on behalf of low-income parolees whom DHS has determined merit a favorable exercise of discretion upon entry due to humanitarian reasons or significant public benefit.<sup>1</sup> These parolees and re-parolees urgently need employment authorization documents (EADs), but slow processing times, coupled with an unnecessarily short parole duration and a lack of timely re-parole prevent them from obtaining meaningful work authorization that is effective for the duration of parole status.<sup>2</sup>

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<sup>1</sup> As you know, the Secretary of Homeland Security has authority to parole non-citizens “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.” 8 U.S.C. § 1182(d)(5)(A). U.S. Citizenship and Immigration Services, “Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States,” last updated May 2, 2023, <https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-individuals-outside-united-states>.

<sup>2</sup> As legacy INS recognized when parole was added to the list of categories for which EADs were available, the ability to work lawfully may inhere in the grant of parole itself. *See* 46 Fed. Reg. 55920, 55921 (Nov. 13, 1981)[adding 212(d)(5) parolees, who’d been omitted from a codification of employment authorization policies months earlier, to the EAD regulations, because “Although section 212(d)(5)(A) of the Act authorizes the exercise of discretion regarding the conditions of parole for such alien, and *which implies work authorization*, this new class of aliens is added... to avoid any uncertainty.”][Emphasis supplied.]

We extend our unequivocal support for the three reforms proposed in the recent letter submitted to your office from the Massachusetts Congressional delegation.<sup>3</sup> These proposed solutions would provide streamlined, uninterrupted EADs for parolees from the time of their EAD application throughout renewal. This would allow more rapid access to work authorization desperately needed by the parolees we serve and uninterrupted work authorization thereafter, which benefits both parolees and their employers while also reducing burdens on USCIS in processing and issuing EADs. We suggest the following complementary improvements to parolee EAD reform:

1. DHS could streamline the process of applying for EADs at the border by designating USCIS employees to assist with EAD applications there so that parolees could immediately apply for EADs<sup>4</sup> and more quickly be issued the provisional EADs proposed by the delegation as well as the ordinary EADs. This has been done previously on a smaller scale. USCIS employees processed the I-765 applications of Afghans at Fort Lee as part of Operation Allies Welcome, and EADs were issued within weeks or even days of arrival.<sup>5</sup>
2. DHS could streamline the re-parole process for individuals who entered on parole in the last two years and remain eligible for parole. Some parolees in Massachusetts did not have their re-parole adjudicated in a timely manner despite the continuation of circumstances that warrant parole and re-parole.<sup>6</sup> This has resulted in some families losing housing, food, and meaningful work. Given that DHS has wide authority to grant parole, the agency could standardize a clearer re-parole process by memo as was done for the Afghan Parolees.<sup>7</sup> Alternatively, DHS could direct adjudicators to presumptively re-parole previously paroled individuals barring exceptional or unusual circumstances.
3. DHS could decide, if necessary, to consider a “temporary rule change” to automate a temporary employment authorization for parolees with pending I-765s in response to

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<sup>3</sup> Massachusetts Delegation Letter Urging the Biden Administration to Streamline Work Authorizations for New Arrivals Paroled into the United States (July 31, 2023), available here: <https://www.warren.senate.gov/imo/media/doc/2023.07.31%20Letter%20to%20DHS%20and%20USCIS%20on%20expediting%20work%20authorizations%20for%20humanitarian%20parolees1.pdf>

<sup>4</sup> Congress provided the DHS Secretary with broad authority over immigration matters, and the DHS Secretary may designate any employee to discharge functions otherwise delegated by regulation. *See* 8 U.S.C. § 1103(a)(1) and 8 U.S.C. § 1324a(h).

<sup>5</sup> *See* Wisconsin Department of Children and Families Fort Lee SIV FAQs (August 6, 2021) (“USCIS will adjudicate Form I-765 onsite”), available at: <https://dcf.wisconsin.gov/files/w2/ops-memos/pdf/21-26attachment4.pdf>. *See also* White House Press Release, Operation Allies Welcome Announces Departure and Resettlement of Last Afghan Nationals from Fort Lee, Virginia (November 17, 2021) available at: <https://www.dhs.gov/news/2021/11/17/operation-allies-welcome-announces-departure-and-resettlement-last-afghan-nationals>; White House Press Release, DHS Announces Fee Exemptions and Streamlined Processing for Afghan Nationals as they Resettle (November 8, 2021), available at: <https://www.dhs.gov/news/2021/11/08/dhs-announces-fee-exemptions-streamlined-processing-afghan-nationals-they-resettle>

<sup>6</sup> This could be due to a number of reasons including the recurrent cavils over which DHS agency is responsible for re-parole, as led to litigation in MA several years ago that DHS settled. *See* T.M. v. McAleenan, No. 1:19-cv-11280-ADB (D. Mass. May 1, 2020)

<sup>7</sup> *See* Afghan re-parole/EAD renewal by memo, available at: <https://www.uscis.gov/humanitarian/information-for-afghan-nationals/re-parole-process-for-certain-afghans>.

delays in adjudicating EADs, as it has in the past to address the injury to many noncitizens whose EAD applications were trapped in the USCIS backlog.<sup>8</sup>

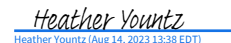
4. Finally, DHS could move the I-912 Request for Fee Waiver online. DHS is promoting the online EAD process as more efficient and convenient than the previous paper system.<sup>9</sup> However, parolees seeking fee waivers are unable to access this faster process. Moving the I-912 online would allow low-income parolees access to more rapid EAD adjudications.

None of the proposals listed in the delegation letter or here would require legislation or statutory modifications, and all can be implemented through either a memorandum or other sub regulatory policy changes. We would be happy to discuss our research on DHS's authority to implement systemic changes that would help parolees and their families become more financially independent while decreasing the EAD adjudication costs for USCIS.

Sincerely,

  
Melanie Chaput (Aug 15, 2023 11:20 EDT)

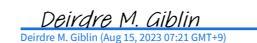
Melanie Chaput, Esq.  
Contract Attorney, MLRI Immigrants Protection Project

  
Heather Yountz (Aug 14, 2023 13:39 EDT)

Heather Yountz, Esq.  
Senior Immigration Staff Attorney

  
Iris Gomez (Aug 14, 2023 16:56 EDT)

Iris Gomez, Esq.  
Director, MLRI Immigrants Protection Project

  
Deirdre M. Giblin (Aug 15, 2023 07:21 GMT+9)

Deirdre Giblin, Esq.  
MLRI Staff Attorney

cc:

Brenda F. Abdelall - DHS Assistant Secretary of Partnership and Engagement, OPE@hq.dhs.gov  
Avideh Moussavian, USCIS Chief of the Office of Policy and Strategy, 5900 Capital Gateway  
Drive Camp Springs, MD 20746

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<sup>8</sup> On May 4, 2022, DHS issued a temporary rule change to extend the EADs of eligible renewal applicants for 540 days if the applicants filed to renew in the same category of EAD and the case was still pending. 87 FR 26614, available at: <https://www.federalregister.gov/documents/2022/05/04/2022-09539/temporary-increase-of-the-automatic-extension-period-of-employment-authorization-and-documentation>. This temporary rule change did not go through any prior notice and comment period before implementation, and it expires on October 15, 2025.

<sup>9</sup> See USCIS Newsroom, Parolees Can Now File Form I-765 Online (July 28, 2022), available at: <https://www.uscis.gov/newsroom/alerts/parolees-can-now-file-form-i-765-online>

Shoba Sivaprasad Wadhia, DHS, Office of Civil Rights and Civil Liberties,  
shoba.sivaprasadWadhia@hq.dhs.gov, CRCLCompliance@hq.dhs.gov