RESTORING INTEGRITY AND SECURITY TO THE VISA PROCESS

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION INTEGRITY, SECURITY, AND ENFORCEMENT

COMMITTEE ON THE JUDICIARY

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C O N T E N T S

WEDNESDAY, JUNE 25, 2025

OPENING STATEMENTS

WITNESSES

LETTERS, STATEMENTS, ETC. SUBMITTED FOR THE HEARING

RESTORING INTEGRITY AND SECURITY TO THE VISA PROCESS

Wednesday, June 25, 2025

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON IMMIGRATION INTEGRITY, SECURITY, AND ENFORCEMENT

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committee met, pursuant to notice, at 2 p.m., in Room 2141, Rayburn House Office Building, the Hon. Tom McClintock [Chair of the Subcommittee] presiding.

Members present: Representatives McClintock, Biggs, Tiffany, Roy, Van Drew, Moore, Hunt, Fry, Grothman, Knott, Onder, Schmidt, Gill, Jayapal, Raskin, Nadler, Scanlon, Ross, Garcia, Crockett, and Cohen.

Mr. MCCLINTOCK. The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time. I want to welcome everyone to today's hearing on the visa process.

We will begin with opening statements. We will begin with mine.

In many ways the 2024 election was a referendum on the Democrats' open border policies. For four years they opened America's borders and deliberately trafficked at least six million illegal aliens directly into our community. While the Border Patrol was overwhelmed by arranging lodging, transportation, food, healthcare, legal services for this massive population, and another two million got-aways entered our country as well.

The result was devastating for our Nation and produced one of the greatest political realignments in our Nation's history. Americans suffered as their classrooms filled with non-English speaking students, their hospitals were overwhelmed by illegals demanding care, their food pantries stripped bare, and homeless shelters filled to capacity.

The cost of these services is estimated at $160 billion a year, or about $1,250 from the taxes of an average American household annually.

More ominously, among this population were the most violent criminals, criminal gangs, and cartels on the planet, often shielded by Democrats' sanctuary laws, and Leftist DAs and judges.

The sad, senseless, and entirely preventable tragedies produced by these policies continue to unfold before us on a daily basis.

For four years Democrats in this Congress and in this Committee told us this was for our own good and, besides, there wasn't anything we could do about it anyway short of their demand for widespread amnesty. The American people knew better. They knew, as President Trump put it, that we didn't need new laws, we needed to get a new President.

We got one. Within 30 days illegal border crossings were cut 96 percent, and traffic across the deadly Darien Gap dropped 99 percent, saving thousands of lives.

Since taking office, roughly 150,000 illegal migrants, many with criminal convictions and charges, have been detained by the Trump Administration as required by law, and the largest illegal mass migration in history is now being redressed by the largest repatriation.

Reportedly, roughly a million illegal migrants have already decided voluntarily return to their own countries as a result.

We have a long way to go in restoring the integrity of our immigration laws. Violent mobs in our cities have repeatedly attacked law enforcement officers carrying out these laws, and Democratic officials have said that the violence will stop once enforcement stops. In other words, if we enforce the laws the American people demanded, Democrats will burn our cities to the ground. We are not going to allow such intimidation to prevail.

In the coming months we will report from the Judiciary Committee a new version of H.R. 2 which will assure that this deliberate and rampant illegality can never again threaten our Nation, our communities, or our people.

The purpose of today's hearing is to determine to what extent our legal immigration system has been exploited, abused, and defrauded, and to recommend measures to assure that legal immigration to the United States is legitimate, honest, fully vetted, and above-board, serving the interests of both the United States and those honest and law-abiding immigrants who seek to come here legally.

America has the most generous legal immigration system in the world. During Fiscal Year 2023, the U.S. Government issued more than 10.4 million nonimmigrant visas while nearly 1.2 million aliens became lawful permanent residents through the immigrant visa system.

We will devote a future hearing to the deliberate subversion of the visa process by the Biden Administration when the Inspector General publishes one of his forthcoming reports. Suffice it to say for now that during those four years the administration sacrificed the integrity and security in the screening process in issuing visas, exploiting the discretion in the legal requirement for in-person interviews with a consular officer.

Integrity in the visa process is a matter of national security for our country. Take, for instance, the case of Mohammed Soliman who perpetrated his depraved, antisemitic terrorist attack in Boulder, Colorado, earlier this month. Soliman had previously been denied a visa on at least one occasion, but was issued a visitor visa in 2022.

One month after his arrival in the United States Soliman filed an asylum application. Such action clearly showed that he never

intended to leave the U.S. once here, as required by his tourist visa. Subsequent statements by his family members have validated that assertion.

The cases like this demonstrate why it is imperative that the State Department and Department of Homeland Security employees who adjudicate visas have as much information as possible about the applicants. Some of that information is supplied by the alien during the application process, while other information is available through the U.S. Government interagency screening and vetting process.

As we have heard in previous testimony about illegal alien border crossers, if an alien has no criminal or other security-related record it is like they are "being vetted against a blank sheet of paper," as one witness told us in Subcommittee last year.

The same is true of aliens seeking visas. There can be no substitute for looking virtually every applicant in the eye and questioning their motives, intent, and plans.

Once again President Trump has taken decisive action to approve screening and vetting of visa applicants. On Inauguration Day he directed relevant agencies to identify deficiencies in the visa process and the resources available to allow for maximum vetting of visa applicants. Pursuant to that Executive Order, the administration has identified 19 countries that were uncooperative or deficient in providing background information on applicants, and the President, accordingly, restricted issuance of visas to their nationals.

Nonimmigrant visa categories that are rife with fraud and abuse include the student visa program where fake schools are set up for the sole purpose of facilitating fraudulent claims of student status.

The U Visa is offered to those who are victims or witnesses to crimes, and offer a path to U.S. citizenship. It should be no surprise that criminal rings have been uncovered to stage phony crimes and take advantage of this process.

Fraud and lax vetting in the visa process do not exist solely in the nonimmigrant visa context. The immigrant visa process is also routinely abused and exploited.

Take, for example, the Diversity Visa Program known as the Visa Lottery. Not only do bad actors impersonate U.S. Government officials to try to get diversity applicants to pay them money, but fake documents and sham marriages have become commonplace.

The Special Immigrant Juvenile Program is also susceptible to fraud and misuse, allowing 20-year-old foreign nationals to falsely claim abuse by a parent and be allowed to remain in the U.S. nearly indefinitely.

The VAWA self-petition process conducted in secret without the knowledge of the U.S. citizen spouse has also been subject to fraud as well.

As this administration closes this dangerous chapter of outright illegal immigration under Biden, we must also protect our legal channels from fraud and abuse. That is the purpose of today's hearing. We look to our witnesses for their guidance and suggestions on doing so.

With that, I now yield to the Ranking Member for her opening statement.

Ms. JAYAPAL. Thank you, Mr. Chair.

In my 2½ years as Ranking Member of the Immigration Subcommittee I believe that this is the first hearing that the Majority has held that is not focused on undocumented immigrants. I am glad the Majority realizes that there is an entire legal immigration system to discuss, a system that has not been updated in 35 years.

We need a modernized system that meets our 21st Century needs, while also protecting American workers. Many of our colleagues on the other side of the aisle love to say that they support legal immigration and people coming in "the right way." Well, this is their chance. Unfortunately, just over 150 days into the second Trump Administration, the Trump Administration has been making it exceedingly clear that it opposes all immigration, including legal immigration.

Across the country we have seen students picked up by masked immigration agents in unmarked cars, taken to detention facilities with no warning, and given limited information as to why they are being deported. The administration has revoked thousands of student visas as a weapon to stifle political dissent, restrict due process, and enforce an exclusionary and nativist vision of America that runs counter to everything our institutions of higher learning stands for.

Just last week, video of masked ICE agents violently beating the father of three U.S. Marines has absolutely shocked the conscience of Americans across the political spectrum.

The administration's actions to close off legal pathways will actually hurt America's ability to innovate and attract the talent we need. Make no mistake, they are not about national security. We know this because just last month Secretary of State Rubio announced plans to "aggressively revoke student visas of Chinese students," all in the name of national security.

Yet, just two weeks later President Trump, in announcing a so-called trade deal with China, said Chinese students would still be able to attend universities in the United States, even noting "it has always been good with me."

After a pause, the United States has resumed interviews for F, J, and M Visas, but added new screening of the applicants' social media. These visas cover more than just students. They apply to physicians, university researchers, and au pairs, many of whom come to work for military families and others.

Then, earlier this month President Trump issued a proclamation restricting or limiting the entry of nationals from 19 countries. In total, the 19 countries subject to these discriminatory bans have a combined population of over 475 million people. According to State Department data, the proclamation has the potential to block at least 34,000 Green Cards from being issued, and over 125,000 non-immigrant visas from being issued every single year.

Recent reporting also tells us that the Trump Administration is considering adding an additional 36 countries to that list, 25 of which are from Africa. These countries may be subjected to partial or even full travel bans if they do not meet certain benchmarks over the next two months. Alarmingly, it appears that the Trump Administration is attempting to coerce some of these countries into

signing third country removal agreements to keep themselves off the ban list.

The Trump Administration has also stripped hundreds of thousands of individuals of their lawful parole or temporary protected status. Many of these people came lawfully from Nicaragua, Haiti, Cuba, and Venezuela, or fled these cruel regimes. Now, the Trump Administration is actually making them undocumented and trying to send them back to their home countries where they may be abused or tortured.

Now, it is not just African, Asian, or Latin American countries. Every day it seems we hear a new horror story of Customs and Border Protection stopping and detaining someone at an air or land port who is from Canada or Europe. Often, they then wrongly send those people to ICE detention for weeks. This includes a German national on a fiancé visa who spent over two weeks in an ICE detention center because he and his U.S. citizen spouse simply took a day trip to Mexico.

At the Canadian border a backpacker from Wales spent nearly three weeks at a detention center over confusion related to her visa before being allowed to fly home at her own expense.

The Canadian woman on a work visa detained at the Tijuana border who spent 12 days in detention before finally being able to return home.

Here is the kicker: A prime motivation of these detentions appears to be to overfill detention beds at private detention facilities that are run by for-profit corporations that bankroll Republican campaigns. These for-profit facilities are rife with abuse because they are actually incentivized to cut corners so that they can reap enormous profits, all paid for by the American taxpayer.

The path forward for America is a legal immigration system that is modernized, fair, and adequate to meet the needs of our families and our economy. Attacking legal immigration, The student visas, workers with valid visas, even sweeping up U.S. citizens, that is not just morally wrong, it makes absolutely no sense.

Making America less welcoming as a Nation is already having a real impact. The United States will lose out $12.5 billion in tourism alone this year. The students, top scientists, and researchers don't want to come to a country that suppresses their free speech rights or discriminates against them for what their home repressive governments do. That should not be what America is.

I look forward to hearing from all our witnesses today. I yield back.

Mr. MCCLINTOCK. The gentlelady yields back.

I now recognize the Ranking Member of the Full Committee, Mr. Raskin, for an opening statement.

Mr. RASKIN. Mr. Chair, thank you very kindly. Thank you to all the witnesses for being with us today.

There is more to immigration and border enforcement, as the Ranking Member of the Subcommittee just said. It is a good thing that our friends are waking up to that.

President Trump and Stephen Miller's ambition to deport 12 million people from the country has been a terrible failure on its own terms. Even in its failure it has turned our society upside-down. It has terrorized both citizens and noncitizens, destabilized and di-

vided our communities, wrecked small businesses who have lost their workers, and trashed our Constitution for everybody.

It has gotten so bad that Donald Trump even seems to have recognized that his policies don't fit reality.

Two weeks ago he gave the game away by acknowledging that hundreds of thousands of undocumented aliens working on the farms and in the fields are "good, long-time workers," and that he had been lobbied both by his Agriculture Secretary and by large agricultural interests to stop the ICE raids on farms, as they are spreading panic and keeping a majority of the workforce from showing up at work.

He decided he would stop enforcing the mass dragnet ICE raids there, and invoked the same logic for the restaurant sector, also heavily dependent on undocumented people. Of course, it would apply equally, then, to the construction sector, landscaping and gardening, nursing, you name it.

The vast majority of immigrants, even those here illegally, are not rapists and criminals, but hard-working people essential to our economy, just looking to make a better life for themselves. Think of the Dreamers.

So, it is good for us to have the first immigration hearing in memory not on enforcement tactics at the border or in our communities but, instead, about visas. Alas, the President's record on visas is riddled with the same bursts of extremism, dogmatism, and fanaticism that have made his enforcement measures so unpopular. The administration has tortured our laws and trampled our Constitution to kick out permanent resident Green Card holders, students, and target universities who voice opinions that he disapproves.

As part of its effort to undertake a hostile takeover of America's colleges and universities, the administration interrupted interviews for student and exchange visitor visas.

The result: About 15 percent of foreign doctors to begin their work at American teaching hospitals around the country were unable to get their visas in time to start the medical year next month, all at a time when we have a serious doctor shortage in the country that threatens access to care.

The monstrous Reconciliation Bill threatens to slash Medicaid funding on which rural hospitals rely.

The administration has also recently implemented its xenophobic travel ban to unilaterally ban entrance into the country for all nationals of 19 different countries, with minor exceptions. Categorically denying visas to nationals of these countries does not make us safer, or freer, or more prosperous, it cements us in the eyes of the world as a vindictive, isolationist, and increasingly undependable and authoritarian country.

The travel ban will likely have significant economic consequences by restricting travel and migration from the targeted Nations. In 2022, at least 298,000 noncitizens from countries affected by the new travel ban arrived in the U.S. Most of them came to the U.S. temporarily, spending money as tourists or as students, fueling our economy.

The following year households with nationals from the targeted countries collectively earned $3.2 billion in income, paid $750 mil-

lion in Federal, State, and local taxes, and held $2.5 billion in spending power.

Donald Trump also paused the Refugee Program, claiming the entry of these thoroughly vetted and re-vetted individuals would be detrimental to the United States. Then, he allowed White Afrikaners to apply via a Google form and to undergo an expedited process to come to the U.S. as refugees. It should shock no one to learn that after they arrived reporters were able to dig up numerous antisemitic posts from the refugees. One of them had never been subjected, apparently, to the new antisemitism screen being used for other visa candidates.

The title of this hearing is "Restoring Integrity and Security to the Visa Process." How does any of this restore integrity or security? These random pauses, arbitrary bans, ad hoc detentions, do nothing to improve security or integrity in our process.

President Trump has turned our visa system into a terrain of caprice and selective punishment he can wield against his chosen political enemies and use to demonize and scapegoat immigrants, including visa recipients. His war on immigrants is designed to distract us from the fact that they are trying to cut 14 million Americans off Medicaid, destroying small businesses with chaotic and unlawful tariff policies, gutting Federal agencies, programs charged with protecting Americans against scams and frauds, and using the pardon power to transfer more than a billion dollars from the victims of crime to the perpetrators of crime.

Sometimes the President has had his lucid moments on immigration. During his first term while saying he wanted to build a big beautiful wall, he said the wall would have a big, very beautiful door signifying his support for legal immigration.

In brief, lucid moments like these I try to find hope that we can work together across the aisle to focus on a secure border, the removal of the immigrants convicted of serious crimes and public safety threats, a pathway to citizenship for the law-abiding, tax-paying undocumented immigrants who Trump recently called very good, long-time workers, and to modernize the immigration system that will make it easier to come here lawfully while protecting American workers.

We have come very close to doing this in the past. We can do it again.

Tom Paine, who arrived in the country in 1774, fell in love with America when he got here. He said this land will become an asylum to humanity. Not an insane asylum, mind you, but a place of refuge for people seeking freedom from religious, political, economic persecution, and discrimination from all over the world.

Let's live up to the original vision of the Founders. This is a Nation made up of immigrants and the descendants of people who were enslaved, and of the original Native Americans. This is a land of immigration, a land of immigrants, and land of laws. We can make it all fit together.

I hope we can work together on a bipartisan basis to make that happen.

I yield back, Mr. Chair.

Mr. MCCLINTOCK. The gentleman yields back.

Without objection, all other opening statements will be included in the record.

I will now introduce today's witnesses.

We have with us today Ms. Jessica Vaughan, who is the Director of Policy Studies for the Center for Immigration Studies. Prior to that, Ms. Vaughan was a State Department Foreign Service Officer serving in Belgium, Trinidad, and Tobago.

Ms. Vaughan has a Master's Degree from Georgetown University and a Bachelor's Degree from Washington College in Maryland

Simon Hankinson is a Senior Research Fellow at The Heritage Foundation's Border Security and Immigration Center. From 1999–2022, he was a State Department Foreign Service Officer serving in several capacities in countries including Kenya, France, Fiji, and Ghana.

Prior to entering into the State Department, Mr. Hankinson worked as a lawyer in London and a teacher in Miami. He holds a Master's Degree in Modern History from St. Andrews, Scotland; a degree from the College of Law in London; and a Master's Degree in International Security Affairs from the National Defense University in Washington, DC.

Mr. Alex Nowrasteh is the Vice President for Economic and Social Policy Studies at the CATO Institute. He has written on the economic impacts of immigration and the economy.

Mr. Nowrasteh received a B.A. in Economics from George Mason University and an M.S. in Economic History from the London School of Economics.

Finally, Mr. Cody Brown is the Managing Attorney of Codia Law, a firm that represents U.S. citizens who are victims of immigration fraud. He has worked on the Senate Homeland Security and Governmental Affairs Committee, and as legislative counsel for a member of the House Homeland Security Committee, among other jobs.

Mr. Brown earned an LL.M. from Georgetown University Law Center, a J.D. from Hamline University School of Law, and a B.S. from Northwestern College.

We want to welcome all our witnesses and thank them for appearing today. We will begin by swearing you in.

Would you please rise and raise your right hand.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

[Affirmative responses.]

Mr. MCCLINTOCK. Let the record reflect the witnesses have answered in the affirmative.

Thank you. Please be seated.

Please note that your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testimony in five minutes.

We will begin with Ms. Vaughan.

STATEMENT OF JESSICA M. VAUGHAN

Ms. VAUGHAN. Thank you. Americans are all too familiar with the details of the mass migration disaster we experienced during the four years of the Biden Administration when about nine million illegal border crossers and parolees were allowed to enter the coun-

try. Our foreign-born population has spiked to the highest point in history, with just over 53 million people, and the highest percentage of our population ever, almost 16 percent.

Not all these newly arrived illegal aliens were caught and released at the border. Many arrived on visas obtained under more lenient rules put in place by the Biden Administration. Under these policies, new, temporary visa issuances went up by 25 percent, to 11 million in 2024. New issuances of the short-term B–1 and B–2 visitor's visas, which is the largest and most overstay-prone category, went up 40 percent to nine million in 2024 alone.

Our visa process is improved but still far from secure. Thanks to the more lenient policies which include interview waivers, stretching eligibility criteria, and generally prioritizing swift approval over diligence in vetting, the visa programs have become much more vulnerable to frivolous and outright fraudulent applications.

Not only does this often disadvantage qualified applicants who have to wait longer to receive visas, fraud and abuse undermine public support and, worst of all, allow bad actors who are public safety or national security threats, to gain access to our country.

These risks are not minor or unreliable. Frankly, I think it is insensitive and irresponsible to trivialize these incidents that have occurred as a result of these vetting failures. It is insensitive to the victims and irresponsible for policymakers to do so.

One new example of a visa vetting mistake is Behzad Nejad, an Iranian man who was given a student visa in 2016 to attend the University of Texas. His status was terminated soon after he was arrested for domestic violence, but it took another year for him to be ordered removed. ICE finally picked him up just this week, in possession of a firearm on top of it.

Then, there's Abdullah Hassan who came on a visa in 2022, settled in Falls Church, attended George Mason, and was arrested last December for promoting violence against Jews online and planning a mass casualty attack on Jews in New York.

Yes, it helps to have more interior enforcement, but the visa issuance process and the programs themselves need to be reformed to sift out more unqualified applicants before they get here.

In 2023 alone, there were more than 18,000 entries of Iranian citizens on NIVs, including more than 10,000 on B1/B2 visas, more than 5,000 entries on student visas, and more than 1,000 on exchange visas. This is just way too big a haystack for ICE to have to sift through when there is a potential threat as we have now.

The problem is partly one of leadership to change the culture of travel facilitation at the State Department, but Congress needs to step in, too, by enacting statutory requirements for visa interviews, which are critical to evaluating applicants, and establishing consequences for overstaying, both for the person and the sponsor, and by providing resources for fraud protection.

It is not just a processing problem. We have to make sure that applicants are actually eligible for the visas they seek. Some of the visa categories, especially on the permanent visa side, are so conceptually flawed and have such inadequate statutory criteria, that even when adjudicators are empowered to try to prevent fraud they are almost powerless to do so.

Among the less problematic and ripe for Congressional action are two categories where State and local government entities are the gatekeepers to establishing eligibility: The U Visa and the Special Immigrant Juvenile category. The latter, in particular, needs urgent attention from Congress, especially in light of the hundreds of thousands of minors who have come in the last four years.

We know we have a problem when applications spike as they have in the SIJ category, with more than 50,000 a year now, and when the specialty law firms are advertising all over social media offering young illegal aliens, who have no other path to stay here, the option to claim that they were abused, neglected, or abandoned by one parent, even long ago, claims that are nearly impossible to verify even if anyone tried.

Criminal histories can be excused or may be unavailable to adjudicators if they were committed as juvenile, making this the amnesty program of choice for MS–13 gang members, among others.

As with the U Visa or some other programs, under Biden rules the applicants get the work permit and protection from deportation long before the file is ever reviewed.

Thanks again for the opportunity to discuss these issues.

[The prepared statement of Ms. Vaughan follows:]

U.S. House Committee on the Judiciary

"Restoring Integrity and Security to the Visa Process"

June 25, 2025

Statement of Jessica M. Vaughan

Center for Immigration Studies

Thank you, Chairman McClintock and Ranking Member Jayapal, for the opportunity to discuss how Congress can help restore integrity and security to the visa process. Americans value legal immigration and welcome legitimate temporary visitors, but when applicants are able to obtain entry or benefits through fraud or abuse the privilege of entry by overstaying, then public support for immigration suffers. It has been disheartening to witness the degradation of our legal immigration system under the Biden administration policies. Besides the catch and release policies and improper mass parole programs, the Biden administration administered the temporary and permanent visa programs with excessive leniency, inadequate vetting, and insufficient attention to fraud vulnerabilities.

Even as the number of applications and issuances increased significantly overall and in the largest visa program (for short-term visitors), the refusal rates have declined under Biden. The combination of a greater volume of applications along with more lenient policies has created even more difficulties for vetting and greater opportunity for visa fraud. One of the most disturbing recent examples is the case of Mohamed Sabry Soliman, an Egyptian citizen who had resettled in Kuwait and then traveled to the United States with his family on visitor visas in August, 2022, with plans to stay, according to his family members[1]. Soliman has been arrested on charges of firebombing a group of pro-Israel protesters on June 1 in Boulder, Colorado, leaving 15 injured. My organization has identified and catalogued nearly 50 more cases of aliens who were admitted since 2008 as visitors or immigrants who were subsequently charged with or committed noteworthy acts of espionage, human rights violations, or terrorism.[2] More cases are coming to light on a regular basis as the Trump administration has escalated immigration enforcement and shared details of these individuals with the public.

While President Trump has taken important steps to begin to restore proper vetting and appropriate standards for admissions, still, many parts of our immigration law that need to be updated and bolstered by Congress. This statement is intended to offer a list of recommendations for Congressional action to restore integrity and security to the visa programs that go beyond the critical improvements already contained in the Secure the Border Act of 2023 (H.R. 2).

Biden Administration Actions Weakened Visa Programs

The Biden administration implemented hundreds of executive actions that created or worsened integrity and security vulnerabilities in our temporary and permanent visa programs. These include:

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[1] Michael Loria and Michael Collins, "Habiba Soliman wanted to be a doctor. Then, her father firebombed Jewish marchers in Boulder," USA Today, June 9, 2025, Habiba Soliman wanted to be a doctor. Then, her father firebombed Jewish marchers in Boulder.

[2] See Database of National Security Vetting Failures, Center for Immigration Studies, Database: National Security Vetting Failures.

- Mass grants of temporary deportation protections and work permits that incentivized people, such as the Soliman family, to gain entry.
- Dismantling interior immigration enforcement to remove consequences for overstaying or violating visa terms.
- Waiving interviews and fees for many categories of visa applicants.
- Adopting policies and practices that limited vetting of applicants.
- Prohibiting immigration adjudicators from issuing Notices to Appear to failed applicants, thus eliminating consequences for fraudulent or frivolous applications.
- Diluting "public charge" requirements designed to prevent approval of applicants who had been dependent on public assistance.
- Creating workarounds to enable applicants to evade or postpone denials, bypass numerical limitations, and obtain de facto lawful status and work permits prior to the actual review and adjudication of applications.

As a result, there has been a significant increase in visa applications in the last five years. The number of applications received by the State Department reached 14.2 million in 2024, up from 11.7 million in 2019. The number of visa issuances also has grown significantly, from 8.7 million in 2019 to 11 million in 2024 (more than 25 percent). The number of issuances in the largest category, for short-term visitors (B-1 and B-2), which produces the most visa overstays, has grown from 6.4 million in 2019 to 9.1 million in 2024 (more than 40 percent). See the appendix for tables illustrating the yearly growth in issuances.[3]

Measures to Restore Integrity and Security to Visa Programs

No machine or computer program exists, or ever will exist, that can read the mind of a visa applicant to reveal their motivations, intentions, or threat potential. The only option to minimize the vulnerabilities that are inherent in almost any visa system is to have the most routinely robust vetting possible, coupled with zero tolerance for fraud and active interior enforcement against those who violate the rules. Experience has proven that when immigration is controlled and the laws are routinely enforced, then the bad actors who are a threat to our nation and who try to hide within a huge flow of other visitors and immigrants will be snared, in addition to other illegal or unqualified migrants, who may not present a security threat, but whose presence disadvantages Americans and undermines the fairness of the visa programs.

Particular attention should be given to creating a culture of fidelity to the law and national interest in adjudicating applications. The law requires each applicant to convincingly show the adjudicator that they qualify for the visa or benefit; yet some adjudicators seem to work in the reverse, defaulting to unquestioning acceptance of applicant claims, or "what's the harm in approving" applications for all "hardworking, law-abiding, good people" who face hardships in their home country, or who seek a better life for themselves in the United States, or who tell a story that "could" be true, even if it is implausible and unsupported, and underestimate the incentives applicants have to embellish or lie about their intentions. There can be a temptation to waver from their obligation to apply the law and can succumb to a desire to "help" individual applicants who make emotional pleas.

In general, to achieve this, the following elements are necessary for all visa programs:

1. Messaging from agency leadership that adjudicating officers are part of the homeland security enterprise, and that the quality of decisions is prioritized over quantity or speed in completing cases.

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[3] Source for the figures is the State Department's Visa Statistics page: Nonimmigrant Visa Statistics.

When career officers are trained and hear from leadership as well as mid-level managers that prevention of fraud generally, and prevention of the entry of aliens who are a national security or public safety threat is the number one priority, then they will do their job accordingly.

2. Modern tools and ongoing training for officers, including access to commercial or contracted database operators for the purpose of vetting applicants.

3. Fees for all visa applications and benefits that are set at a level sufficient to support robust vetting and anti-fraud activities. In addition, the existence of fees for visas and benefits can serve as a deterrent to frivolous applications.

4. Requirements for in-person interviews for all first-time applicants and certain renewal applicants (with very few, narrow exceptions) and mandatory site visits for employment-based, educational, and certain other visa categories. Much as a doctor needs to see and speak with a patient to provide the best diagnosis and care, similarly, visa adjudicators need to see and speak with visa applicants in order to assess their credibility and qualifications, and to ask questions about their intentions. Direct contact with applicants and entering aliens has been proven to thwart the entry of terrorists and to thwart terror attacks on numerous occasions, and there simply is no effective substitute for in-person interviews.

5. Periodic audits of visa and benefit programs to evaluate effectiveness in detecting fraud and ineligibilities, and to help detect trends and patterns in cases.

6. Conduct post-mortem reports on cases of vetting mistakes, like the Soliman case, to determine how the case slipped through the cracks, to counsel the official/s who may have made mistakes, and to improve the process to avoid future mistakes.

7. Accountability for officers who fail to maintain established standards of quality adjudications.

8. Consequences for institutions that sponsor aliens for visa programs that result in unacceptable numbers of overstays or fraud cases.

9. Expansion of visa security units at embassies and consulates abroad.

10. Amend immigration law to create grounds of inadmissibility, ineligibility and removal of aliens who are associated with certain designated gangs, cartels, and other criminal organizations that threaten public safety. Currently, agencies must rely on similar provisions that apply to terror groups, and on the designation of these terroristic criminal organizations as terror groups, to bar or expeditiously remove certain criminal aliens who are a severe threat to public safety. Gang members, cartel operatives, and those who work for transnational criminal organizations (TCO), and their family members, should be inadmissible and barred from receiving all immigration benefits. Congress should authorize and appropriate funds for a national database of gang members and associates. All non-citizen gang members and TCO operatives should be subject to law enforcement watchlisting and alerts.

Remedies for Compliance with Non-Immigrant Visa Terms

1. **Entry-Exit Tracking** - Direct DHS to complete implementation of a comprehensive biometric entry-exit system for land, air, and sea ports of entry that enables all traveler identities to be authenticated, all traveler movements across our border to be tracked, and entries of visa and identity abusers to be prevented. After the swift implementation of US-VISIT in 2004, progress on completing this system, first mandated in 1996, has been very slow. The land ports of entry, some with high crossing volumes and travelers arriving by foot and by car, are still a significant vulnerability.

2. **Shorter Duration of Stay -** Congress should request a report on the average and median duration of stay for all visa categories and countries of citizenship. Based on these findings, Congress should stipulate default durations of stay for all visa categories, to align the default duration of stay to the length of time actually needed or used by most legitimate travelers, with limited discretion for CBP for make exceptions. For example, a regular B-1/B-2 visa entry should have a default duration of stay of 30 days, not 180 days, unless the traveler requests longer and undergoes additional vetting as part of the visa interview process or in a secondary inspection at the port of entry. In addition, Congress should require Customs and Border Protection (CBP) to report to the State Department all cases of individual visa-holding travelers who were denied entry, for use in evaluating visa issuance policies.

5. **Tighten Visa Issuance and Hold Overstayers and Sponsors Accountable -** In 2023, more than 565,000 aliens overstayed their visa or visa waiver entry.[4] Reducing this number requires a multi-layered approach that includes improved visa issuance procedures, more enforcement to deter overstaying, and consequences for the sponsors in certain visa programs that result in a disproportionate number of overstays. Congress should mandate general visa issuance protocols that, in addition to requiring interviews, set thresholds for unacceptable overstay rates. Disproportionate overstay rates should result in the imposition of enhanced vetting procedures and reduced issuances in countries and/or categories with high rates of non-compliance. In addition, Congress should direct the State Department and DHS to create a task force or working group with the responsibility of identifying employers, universities, NGOs, and other sponsors of temporary visitors who have unacceptable or disproportionate rates of sponsored aliens who overstay, and establish penalties for these sponsors, to include fines and/or debarment from participation in these visa programs.

6. **Third Country Applicants** – Congress should seek information from the State Department on policies for handling third-country applicants; i.e. applications from people who are citizens of a country different from the location of the embassy or consulate in which they are applying, such as the Soliman family, who were citizens of Egypt but who had re-settled in Kuwait. In general, officers should view these applications with more caution, as applicants may not be able to show sufficient ties to this country to compel their return. Stricter policies on accepting third-country applications led to the denial of one, but unfortunately not all temporary visas issued to members of the Hamburg cell of al-Qaeda, which carried out the 9/11 attack.

7. **Recalcitrant Countries -** Congress should create a more effective process for dealing with countries that refuse to accept their citizens back after being ordered removed. Upon notification from ICE that a country is recalcitrant (as defined by Congress) the State Department should be required to impose an escalating series of visa sanctions for recalcitrant countries, and also be required to withhold certain forms of foreign assistance and other support.

Combatting Fraud and Misuse of Temporary Visa Programs

Most non-immigrant visa category rules need updating to prevent further abuse. Among the most important changes needed:

1. **Border Crossing Card Compliance -** In particular, Congress should direct DHS to work with the Department of State to boost security and compliance of Mexican travelers using Border Crossing Card, with a focus on addressing the problem of imposters and deterring use of the card for illegal employment in the United States. Congress should limit issuance of the BCCs to residents of parts of Mexico that are

[4] Department of Homeland Security, "Entry/Exit Overstay Report for 2023," https://www.dhs.gov/sites/default/files/2024-10/24_1011_CBP-Entry-Exit-Overstay-Report-FY23-Data.pdf.

close to the U.S. border (residents of the interior should be required to qualify for a regular visa), and restore limits on entry to within 25 miles of the border for a 72-hour period.

2. **Treaty traders and investors** – Congress should update the rules for treaty traders and investors (E visas), to include specification of a minimum sum of investment and economic activity and also the minimum number of jobs that must be created for U.S. workers in the visa applicant/holder's business. In addition, the eligibility of the visa holders should be evaluated every five years, with no required deference to prior approvals, to include interviews, site visits, and examination of tax records and financial statements.

3. Student visas – The F and M visa categories have highest overstay rates of any of the broad categories of temporary admission. Thirty-two countries have student/exchange visitor overstay rates of higher than 20 percent. Four countries (Brazil, China, Colombia and India) each had more than 2,000 of their citizens overstay student/exchange visas in 2023, with India having the highest number (7,000). Not only do visa issuance policies need to be adjusted and interior enforcement boosted, in addition Congress should amend the law in several important ways. First, the concept of dual intent should not apply to student visa applicants; instead, each applicant should be required to demonstrate an intent and likelihood to return to their home country after their studies.

Second, the **Optional Practical Training (OPT)** and Curricular Practical Training (CPT) programs, which were never authorized by Congress, and which have spawned an industry of diploma mills, fake schools, bogus training programs, and illegal employment, should be eliminated, or much, much more closely regulated. Currently OPT and CPT are the largest guest worker programs we have, with an estimated 540,000 former students employed here, without accountability, oversight, or labor condition safeguards. In addition, Congress must impose stricter standards for credentialing schools before they are allowed to issue I-20 forms to visa applicants. Schools with high rates of overstays should lose their eligibility to issue I-20s.

4. **Temporary work visas** – The temporary work visa programs inevitably lead to distortions in the labor market and displacement of U.S. workers, and the immigration agencies should be required to devote more effort to enforcing the rules and combatting fraud. Not only do they contribute to more illegal immigration with high overstay rates, they can create security risks.

The United States does not have a shortage of labor, either in skilled or low-wage occupations. In fact, there are millions of Americans of working age who have dropped out of the labor market. Even in the STEM sector, there are more than two million U.S. STEM degree-holders who are unemployed or not working in STEM, which is about one-sixth of the total. Besides directing more agency action, Congress should overhaul these visa programs to increase opportunities for American workers.

First, no staffing companies should be permitted to sponsor foreign visa workers. These companies operate on a business model designed to replace U.S. workers with workers from abroad who will work for lower wages, and have been associated with illegal hiring practices, such as charging workers illegal recruitment fees and exploiting workers – in both skilled and low-wage occupations.

All employers should be held accountable for high overstay rates for sponsored workers.

Visas for workers specialty occupations **(H-1B)** should be limited to a period of two years with a possible extension to four years, and there should be no automatic extension based on a green card petition. The total number should be limited to 75,000 or less, including the non-profit and research sector, which is currently unlimited. If the category is oversubscribed, then the visas should be awarded to the highest-

paying employers, as a proxy for the highest skilled workers. Federal government agencies should be permitted to seek approval for visa workers only in very limited circumstances.

As for temporary agriculture workers **(H-2A)**, Congress should clarify the definition of agricultural work, to exclude food processing. Workers should be required to spend 180 days of each year in their home country to qualify to return, and no visas should be available to dependent family members. This will help ensure that the visa are temporary.

The **H-2B** visa program for seasonal or temporary unskilled labor should be eliminated, or significantly scaled back to allow a duration of stay of less than one year, with renewal available only after a 180-day return to the home country.

5. **Exchange Visitors** – The majority of the so-called cultural exchange (J) visas are in reality work programs that provide little meaningful cultural diplomacy value. Most are not true exchanges that offer equal opportunities for Americans to have work or study experiences abroad. The exchange visa categories have a higher overstay rate than the F- and H visa programs, and they displace and undercut U.S. workers. Specifically, the Au Pair, Summer Work Travel, Intern, Teacher, Physician, and Trainee programs, which are all work visa programs but lack any semblance of wage protections, labor market tests, or other guardrails that exist for other work visa programs, should be eliminated.

In addition, the 212(e) provision requiring certain exchange visitors return home for two years before becoming eligible for other immigration benefits, should be restored to all of the J visa categories, so as to ensure that the programs are truly short-term exchanges and not a stepping stone to immigration or overstay.

Exchange program sponsors should face consequences for program abuses, including violations committed by their sub-contractors and third party sponsors, such as fines and debarment from the ability to bring in foreign nationals. Sponsors should not be allowed to let third parties host exchange visitors under their umbrella of eligibility.

The State Department should be given additional resources to increase oversight of these programs – especially the high school exchange programs that involve minors.

6**. Visas for Crime Victims** – While well-intentioned, the visas for victims of serious crimes (U and T visas) are not achieving the intended purpose of helping to prosecute crimes against illegal aliens, including for severe forms of human trafficking. They have instead become an easy opportunity for inadmissible aliens to game the system to obtain deportation protection, a work permit, and potentially a green card for themselves and their families. According to an investigation by the DHS Office of the Inspector General,[5] a majority of law enforcement officers surveyed about the U visa stated that the program does not contribute to helping solve crimes, is widely considered to be a drain on their resources, and invites crime reporting scams. Similarly, according to an academic study, more than two-thirds of law enforcement agencies surveyed rarely or never consent to sign certifications for T visas.

These two visa programs are massively oversubscribed and bogged down with frivolous and fraudulent applications. This has occurred because of loosely-written regulations and also significant policy changes under the Biden administration. For example, Congress originally established what were considered to be adequate annual numerical limits for both programs (10,000 for the U visas and 5,000 for the T visas).

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[5] DHS Office of the Inspector General, "USCIS' U Visa Program is Not Managed Effectively and is Susceptible to Fraud," January 6, 2022, https://www.oig.dhs.gov/sites/default/files/assets/2022-01/OIG-22-10-Jan22-Redacted.pdf.

Yet now there is a waiting list of more than 300,000 pending U visas cases that could take 30 years to work through. The number applications for T visas (for victims of severe forms of human trafficking) more than quadrupled between 2021 and 2024.[6]

There are several reasons for the huge spike in U and T visa applications. First, the Biden administration adopted very lenient rules for establishing eligibility and, more importantly, has allowed applicants to receive work permits, protection from deportation, and benefits for family members upon mere filing of an application, before any meaningful review of admissibility, eligibility, or credibility. In addition, under Biden policies, USCIS adjudicators were not permitted to file Notices to Appear in the case of failed benefits applicants, meaning that even those who file frivolous applications faced no consequences upon denial, and thus had nothing to lose and everything to gain for simply filing an application. As a result, fraud is rampant and frivolous applications have clogged the program. Government reports and independent research have documented fraud, such as fictitious claims of victimization, staged crimes, altered law enforcement certifications, and more.[7]

Considering that the U and T visas do not contribute in a meaningful way to the solving or prosecution of crimes, Congress should eliminate these visa programs and replace them with a more carefully regulated deferred action program, which has different rules and is set up to be subject to the needs of the law enforcement agencies investigating crimes. Requests for enrollment in a deferred action program must be initiated by a law enforcement agency on behalf of aliens who are victims of certain very serious crimes enumerated or defined in the law, and who are directly assisting or have directly assisted in the prosecution of the crimes. The crime must have occurred within the last six months in the jurisdiction of the requesting agency. No immigration benefits should be awarded to the alien until appropriate vetting has occurred and the request has been adjudicated, and the benefits will expire within six months of the conclusion of the prosecution or disposition of the case.

7. **TN visas** – Currently, no federal agency is responsible for keeping track of the total number of aliens admitted from Canada and Mexico as TN workers. The State Department reports on the number of TN visas issued to citizens of Mexico, but TN workers from Canada are processed and admitted at the ports of entry, and, to my knowledge, CBP does not report or track the number of workers admitted or the places of employment. No agency monitors compliance with the terms of the visa, to my knowledge. Congress should direct CBP to record and publish the number of TN admissions at ports of entry, and direct USCIS to report on the occupations, employers, salaries, locations, and other information necessary to evaluate the impact of the program on the labor market and on communities where TN workers are located.

8**. Birth Tourism -** Congress should direct all hospitals that receive Medicaid or other federal funding to collect data on births to non-citizens, along with information on mother's immigration status and form of payment for maternity care. This data can be used to inform investigations into birth tourism and potential violations of immigration law. In addition, Congress should create penalties for visa or other violations that occur in cases of birth tourism or international commercial surrogacy, and direct federal agencies to devote resources to investigating and prosecuting such cases.

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[6] See USCIS Immigration and Citizenship Data page: Immigration and Citizenship Data | USCIS.

[7] Jessica M. Vaughan, "Visas For Victims: A Look At the U Visa Program," Center for Immigration Studies, March 30, 2020, https://cis.org/Report/Visas-Victims-Look-U-Visa-Program and "U Visas for Illegal-Alien Crime Victims: Yet Another Amnesty Ploy," Center for Immigration Studies Podcast *Parsing Immigration Policy*, Episode 92, February 16, 2023, https://cis.org/Parsing-Immigration-Policy/U-Visas-IllegalAlien-Crime-Victims-Yet-Another-Amnesty-Ploy.

Combatting Fraud in Green Card Programs

Obtaining legal immigration benefits through fraud or misrepresentation is another form of illegal immigration that is as worthy of congressional attention as illegal border crossing and overstaying visas. Americans value legal immigration, but our current system suffers from many of the same problems as the non-immigrant programs: an overwhelming workload, inadequate vetting, emphasis on speed of approvals rather than correct adjudications, too much tolerance of fraud, lax oversight and loopholes that allow large numbers of unqualified applicants to receive benefits and a path to citizenship. Examples abound: a marriage fraud ring run by a local official in Connecticut that facilitated hundreds of sham green card marriages, technology staffing companies exposed for filing fake petitions for foreign workers and for flagrant discrimination against U.S. workers in hiring, bogus office park "schools" that exist to facilitate unauthorized employment, staged convenience store robberies to obtain U visas, the proliferation of social media advertisements from immigration attorneys promising green cards through asylum or special immigrant juvenile applications, perpetrators of war crimes who entered as "vetted" refugees living quietly in small towns, "pop-up" marriages to visa lottery winners, and apartment complexes full of expectant and post-partum mothers awaiting a U.S. passport for their newborns before returning to their home country. The legacy of these and other failures, including the continuing high rates of dependency of recent immigrants on social welfare programs, have undermined public support for continuing to have liberal immigration programs.

To correct this problem, Congress should direct and fund DHS, in conjunction with USCIS, the State Department, the Labor Department, and ICE, to conduct rigorous fraud assessments for each and every temporary and permanent visa program and for certain other long-term benefit programs, including OPT and Deferred Action for Childhood Arrivals. All immigration-involved agencies should be required to report periodically to Congress on fraud trends and anti-fraud actions, and articulate any additional tools needed to fight fraud.

In general, Congress should require that no immigrant visas, non-immigrant visas, adjustment of status, or parole applications may be issued, nor marriage-based petitions approved, without an in-person interview of the applicant/s. Employment petitions should not be approved without a site visit. USCIS officers should be required to issue a Notice to Appear (Form I-862), which is the standard immigration violation charging document and first step in removal proceedings, in all cases of failed benefits applicants who are in the country illegally.

Congress should amend the INA to provide for the suspension of acceptance of immigrant visa petitions when the category of admission is oversubscribed and the priority dates for adjudication are more than five years earlier than the start of the fiscal year (meaning there is no chance of receiving a visa for more than five years). The will help avoid applicant frustration with long waiting times that can lead to the temptation to immigrate illegally.

A disproportionate share (more than half) of immigrant households are not fundamentally self-sufficient and accessing welfare programs.[8] This may indicate that the vetting of applicants is inadequate, or it may mean that some applicants are misrepresenting their financial situation, which is a form of immigration fraud, and burdensome to taxpayers. Applicants for family-based immigrant visas and green cards typically submit an affidavit of support to establish that they meet the self-sufficiency requirements, but

[8] Steven Camarota and Karen Zeigler, "Welfare Use by Immigrants and the U.S.-Born," Center for Immigration Studies, December 19, 2023, https://cis.org/Report/Welfare-Use-Immigrants-and-USBorn.

these are rarely verified, and even more rarely enforced. Congress should demand a report from USCIS assessing the authenticity of these affidavits and amend the INA to provide authorities with a means to enforce them and/or impose consequences such as liens on petitioners who fail to provide support to certain immigrants who become dependent on public support.

Certain green card programs are reasonable in concept but require more stringent rules and oversight to eliminate fraud and abuse. For example, the EB-1A program, which allows aliens of "extraordinary ability" to self-petition for a green card without being sponsored by an employer or family member, based on evidence of achievements, reportedly is now tainted by fraudulent applications based on faked awards, scholarly articles, and other indicia of achievement.[9] Others, such as the visa lottery, OPT, and EB-5, should be eliminated entirely because they serve no legitimate national interest purpose in their current form and invite fraud.

The following programs need urgent attention from Congress:

1. Special Immigrant Juvenile (SIJ) program – This is a classic example of an immigration benefit that was sold to Congress and the public as a humanitarian-based program for "abused, neglected or abandoned" illegal alien minors, but which has evolved into a lawyer- and NGO-assisted pathway for inadmissible young (often adult) illegal aliens to launder their status, and under current rules, receive a work permit and protection from deportation while their application sits in the long backlog of pending unadjudicated cases.

To qualify, the alien must file a petition before turning 21, and obtain an order of protection from a state juvenile or family court, based on a claim of abuse, neglect, or abandonment by one parent. Contrary to standards for Americans seeking such protections, in the case of petitions from non-citizen youths, many state courts routinely approve these petitions on the basis of unverified statements and affidavits, even if the alien petitioner has no record of needing or receiving services from the state child welfare agency, and their representative expresses no intent to apply for such services for the youth. Many of the applicants are living with one capable parent, or are living on their own as adults. Some applicants originally entered on student visas but wish to remain in the United States.

The number of SIJ green card adjustments fall under the umbrella of the Special Immigrant category, which is capped at 10,000 per year. Currently there are about 165,000 approved Special Immigrant petitions on the waiting list. Advocates have estimated that about 120,000 SIJ applications are contained in the backlog of cases awaiting adjudication. The total number of SIJ petitions filed with USCIS was only 1,600 in 2010, jumped to 11,528 in 2015, and reached a record 53,146 in 2023.

In addition to the changes proposed in H.R. 2, which would deny SIJ status to those who have or can be reunited with a responsible custodial parent here or abroad, Congress should make the following changes:

a) Limit eligibility for SIJ status to those who file by age 18, which is the federal age of majority;

b) Approve SIJ petitions only for those applicants who are under active custody or receiving services from a state child welfare agency, and encourage states to instruct their courts to deny orders of

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[9] *Financial Express*, "USCIS cracks down on EB-1A green card fraud; dozens of Indian applicants affected," June 13, 2025, USCIS cracks down on EB-1A green card fraud; dozens of Indian applicants affected - Investing Abroad News | The Financial Express.

protection in cases of petitions filed for the main purpose of applying for this immigration benefit rather than to receive protective services.

c) Clarify that USCIS need not consent to all SIJ petitions when a state court has granted protection, or defer to state court findings, and may act based on its own findings of facts and eligibility.

2. Fraud in Marriage-based Categories – The marriage-based categories remain one of the most vulnerable to fraud in various forms, some of which can be difficult to prevent and detect, such as in the case of U.S. citizens who are duped by the alien. Prior fraud assessments conducted by USCIS found high rates of marriage fraud, and some experts have estimated that as many as 25 percent of the cases are fraudulent.[10] While it can be difficult to detect and prove, there are some steps the federal government can take to combat this form of fraud. Congress should amend the INA to require that both sponsor and applicant be at least 18 years old, and be independently self-sufficient (no affidavits of support from parents or others). In addition, Congress should demand that USCIS conduct a fraud assessment of marriage-based categories. Congress also should direct DHS agencies to establish a training program for local officials that issue marriage certificates and to conduct an outreach program emphasizing the consequences of marriage fraud. Further, DHS should establish a tip line for fraud or scam referrals, require USCIS to maintain a dedicated marriage fraud investigative program within the FDNS, and require officers issue NTAs in cases of denied petitions and applications on behalf of illegal aliens. Finally, USCIS should establish a program to assist U.S. citizens and lawful permanent residents who believe they are victims of marriage fraud, including when the alien is self-petitioning under the Violence Against Women Act (VAWA).[11] At a minimum, in cases of abuse allegations connected to a VAWA petition, for the sake of fairness and to help address fraud concerns, the American citizen should have an opportunity to contest any allegations of domestic abuse, ideally in an adversarial proceeding before an immigration or administrative judge.

3. The Visa Lottery – This program, in which applicants for green cards are chosen by lottery and then asked to provide documentation of eligibility in order to claim the green card, has proven to be a magnet for fraud. The eligibility criteria are minimal and documents to demonstrate eligibility are easily fabricated. Applicants often acquire pop-up spouses and other family members after qualifying. Winning "tickets" have been sold, or controlled by organized crime groups. Several federal agencies have issued warnings to prospective applicants about the fraud. This committee has exposed the many conceptual and operational problems in prior hearings. Congress should end it.

Finally, it almost goes without saying that downsizing our immigration system by reducing green card categories and tightening eligibility requirements will shrink the workload and the pool of applicants that need to be vetted, resulting in far less opportunity for fraud and abuse.

Again, thank you for the opportunity to make recommendations for restoring immigration enforcement.

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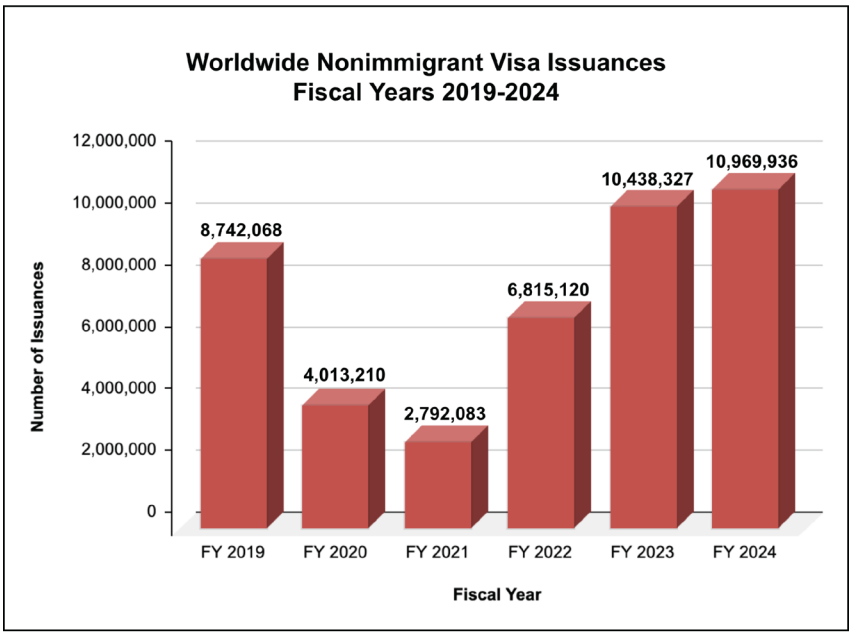
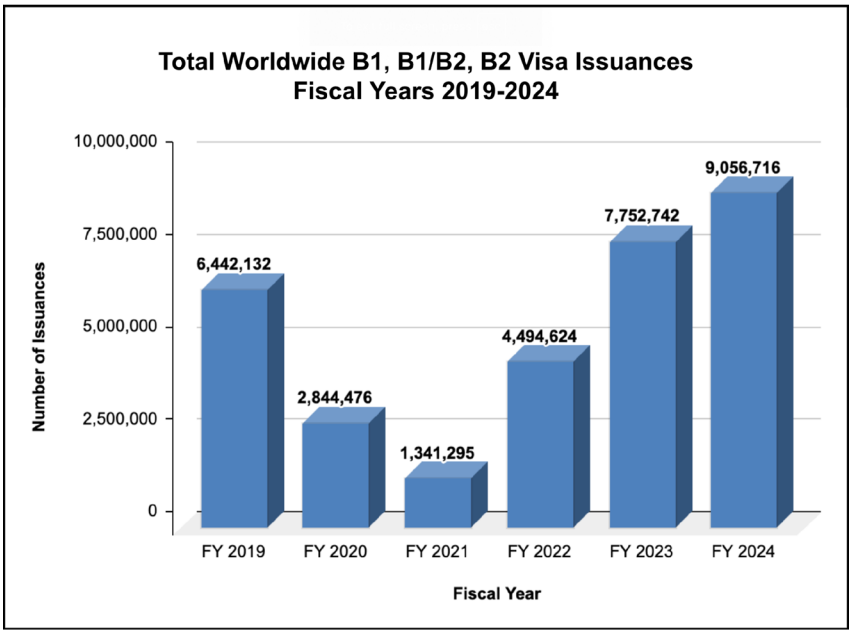
[10] See Jessica Vaughan and Bryan Griffith, "An Interview with FDNS Architect Don Crocetti," Center for Immigration Studies, May 20, 2013, An Interview with FDNS Architect Don Crocetti.

[11] See David North, "The Victims of Marriage-Related Immigration Fraud Tell Their Stories," Center for Immigration Studies, August 31, 2020, The Victims of Marriage-Related Immigration Fraud Tell Their Stories.

Worldwide Nonimmigrant Visa Issuances
Fiscal Years 2019-2024



Total Worldwide B1, B1/B2, B2 Visa Issuances Fiscal Years 2019-2024



Mr. GILL. [Presiding.] Thank you, Ms. Vaughan. Mr. Hankinson, you may begin.

STATEMENT OF SIMON R. HANKINSON

Mr. HANKINSON. Chair Gill, Ranking Member Jayapal, and the Members of the Subcommittee, thank you for inviting me to testify today.

Well, first, what is a visa? Let's imagine America is a castle surrounded by a wall. Anyone wanting to visit the castle first has to go to the main gate in the wall. That is the U.S. Embassy.

The guards will want to know who the visitor is, where he is from, what he does, and why he wants to enter the castle. They ask a lot of questions and do their best to verify the visitor's claims, but they are limited in what they can find out.

If they are satisfied as to his identity and truthfulness, they give the visitor permission to go inside and knock on the castle door. That permission is the visa. It gives the holder the likelihood, but not the right to be let into the castle.

When the visitor knocks on the castle door the person at the door is the Customs and Border Protection Inspector. He sees that the visitor has gotten past the guards, but he will still ask questions to make sure he is satisfied before letting the visitor inside.

Visas have three main vulnerabilities: Fraud, vetting, and overstays.

Fraud. A fact of life in visa work. It varies by place and person. Applicants, particularly in poor and corrupt countries, lie to get visas. I had been lied to thousands of times. Consular offices are unable to see or to verify accurate records for most applicants, so they have to use their professional judgment.

Vetting. Checking for criminal records or other ineligibilities. Consular officers again are limited to what the applicant presents and whatever exists in U.S. Government databases, which don't include criminal records for most countries. Some visa applicants lie about their intent for traveling to the U.S. and they overstay.

Overstay. Rates by category of person and country of origin should be tied to refusal rates. For example, recent reports from consular posts have shown high overstay rates from students of English as a second language. In response, USCIS should strip schools whose students overstay at high rates of the right to admit foreign students. The State Department should limit issuing student visas in those countries of origin.

A visa is a privilege and not a right. Just as the passing stranger has no right to get into the castle, no one has a right to enter any other country but his own. We are under no obligation to admit foreigners who come to the United States to incite antisemitism, terrorism, or to attack U.S. foreign policy. The law gives the President and the Secretary of State wide discretion to keep undesirable foreigners out. Their use of this Constitutional prerogative must not be obviated by judicial overreach.

At the same time, the original scope of some visa categories has warped into something unintended by Congress. I will give just a few examples.

The purpose of the student visas are for foreign nationals to study in the United States and then return home to build their

own countries. Now, we can retain the very best, but it was never intended that every student visa automatically led to permanent residency. The optional practical training program which facilitates this is not statutory and should be terminated.

The H1–B Visa was created 30 years ago to fill a short-term need for skilled labor, with a limit of 65,000 a year. Today, many H1–B workers are paid below the median wage for their occupations. The H1–Bs disproportionately benefit large tech firms and foreign outsourcing companies at the expense of smaller employers and American workers.

The H1–B has, thus, evolved from a temporary work visa into a de facto immigrant visa that disproportionately benefits one country, India. Today, the unemployment rate for recent college graduates is nearly six percent, which is twice the rate for all graduates. Up the 70 percent of science, technology, engineering, and math graduates don't even work in STEM fields. Yet, even as they lay off thousands of workers, major U.S. companies continue to petition for thousands of H1–B workers, claiming they can't find qualified Americans.

We need to return the H1–B program to its original scope and put our own children and workers first.

There are almost 300,000 Chinese students in this country. Some of them spy against the U.S. Government, companies, and university research programs. We do have visa screening to prevent this, but Chinese applicants can come on a tourist or other visa and then change status to student without triggering that vetting. We should not allow this.

Visa holders seeking to change their status to student researcher or worker should go home first and apply at a U.S. Embassy, so they are properly scrutinized.

The biggest vulnerability of temporary visas is that holders can claim asylum once in the U.S. With lengthy process, appeals, and a massive backlog it is too easy to use a fraudulent claim to remain indefinitely. Congress should restore integrity to our asylum laws and make it harder to claim on frivolous grounds. They should speed up the process and we should all make sure that decisions are carried out.

There are many other possible ways to increase efficiency and integrity of visas.

For example, we could prioritize education and skills over family reunification; we could reduce the standardized authorized stay to 90 days instead of 180; we could end the vague duration of status for foreign students and journalists; consular officers could be encouraged to apply the public charge rule to prevent migration of probable indigents; or we could let only accredited institutions with a good compliance record admit foreign students and cap the percentage of those students.

Now, with our Southern border no longer wide open, and interior enforcement once again underway, we have the time to consider all these ideas and more.

Thank you. I am happy to take questions.

[The prepared statement of Mr. Hankinson follows:]

The Heritage Foundation

CONGRESSIONAL TESTIMONY

Hearing on "Restoring Integrity and Security to the Visa Process"

Testimony Before
Committee on the Judiciary

Subcommittee on Immigration Integrity, Security, and Enforcement

United States House of Representatives

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Chairman McClintock, Ranking Member Jayapal, and Members of the Committee, my name is Simon Hankinson. I am a Senior Research Fellow at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

Introduction

From 1999 – 2022 I was a Foreign Service officer with the Department of State, serving at U.S. diplomatic missions in seven countries on four continents. For much of that time, I adjudicated visa cases as a consular officer or supervised others who did. I and my staff conducted interviews, investigated fraud, worked with host country law enforcement, and cooperated with other U.S. agencies to enforce immigration laws of the United States. The mission was clear: facilitate lawful visits, commerce, and immigration while excluding those aliens who were inadmissible under our laws for a variety of reasons. In the quarter century since I did my first visa interview, the way we interview and screen applicants and process their visas has changed considerably. However, the three major vulnerabilities have not changed: these are fraud, overstays, and applicant vetting.

Illegal Immigration via Border and Visas

According to law, aliens arriving by land or air should not be admitted into the United States by Customs and Border Protection without a valid visa issued by a U.S. consular officer overseas. If an alien is caught entering illegally, he should be detained until any immigration process he instigates (usually an asylum claim) has been completed and he is either given the right to remain or returned to his country of origin or other safe third country. But during the Biden administration, the U.S. had

close to a *de facto* open border. Biden replaced the traditional border control model of deterrence, detention, and deportation of illegal crossers with efforts to "significantly expand lawful pathways for protection, and facilitate the safe, orderly, and humane processing of migrants."[1] Biden's Department of Homeland Security (DHS) allowed aliens in the millions to enter and then released them ostensibly to apply for asylum protection thereafter. DHS reported over 150,000 people nearly every month attempting to enter the U.S. illegally from January 2021 until January 2025.[2] December 2023 set the monthly record for the highest number of illegal aliens encountered at the border in U.S. history, with 370,883 encounters of inadmissible aliens.[3] In addition, the Biden Administration redirected tens of thousands of illegal aliens whom the Border Patrol would have "encountered"—that is, administratively arrested—crossing between ports of entry by inventing and expanding programs to allow over 1.5 million inadmissible aliens to enter the United States using mass, class-wide immigration parole.[4]

The Biden Administration claimed that mass release of illegal aliens at the border and invented "lawful pathways" using parole were necessary "unless Congress comes together in a bipartisan way to address our broken immigration and asylum system."[5] However, the almost immediate reduction of illegal aliens entering the U.S. by more than 90% under the second Trump Administration belies this claim. As of June 2025, the United States border with Mexico is more under control than at any time since the 1960s. The U.S. Border Patrol caught only 8,725 aliens attempting to enter the U.S. illegally at the southern border in May 2025, a reduction of 93% from May 2024, when 117,905 were caught at the southern border.[6] In May 2024, almost 250,000 total illegal aliens encountered when adding in those paroled and released.[7]

President Trump ended all of Biden's categorical parole programs, and the border is much more secure. However, every year hundreds of thousands of aliens still enter legally on visas, or under the Visa Waiver Program, and later become illegally present by overstaying their visas or violating our laws. This is a phenomenon unrelated to border security and requiring different methods to control.

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[1] Department of Homeland Security, "Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration," April 27, 2024, https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration.
[2] U.S. Department of Homeland Security, U.S. Customs and Border Protection, "Nationwide Encounters," https://www.cbp.gov/newsroom/stats/nationwide-encounters, (accessed May 10, 2024).
[3] Ibid.
[4] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Processes for Cubans, Haitians, Nicaraguans, and Venezuelans," last reviewed/updated September 20, 2023, https://www.uscis.gov/CHNV (accessed October 16, 2023).
[5] Press release, "Border Encounters Remain Low as Biden-Harris Administration's Comprehensive Plan to Manage the Border After Title 42 in Effect," U.S. Department of Homeland Security, June 6, 2023, https://www.dhs.gov/news/2023/06/06/border-encounters-remain-low-biden-harris-administrations-comprehensive-plan-manage#:~:text=Until%20and%20unless%20Congress%20comes,in%20migration%20at%20our%20border (accessed October 16, 2023).
[6] Jennie Taer, "Border agents didn't release a single illegal migrant into the US last month — down from 62K under Biden," New York Post, June 17, 2025, https://nypost.com/2025/06/17/us-news/border-agents-didnt-release-a-single-illegal-migrant-into-the-us-last-month-border-patrol/ (last accessed June 20, 2025).
[7] U.S. Department of Homeland Security, U.S. Customs and Border Protection, "Nationwide Encounters," https://www.cbp.gov/newsroom/stats/nationwide-encounters, (accessed May 10, 2024).

Visa Security: Areas of Concern

The three main areas of concern when it comes to visas are fraud, overstays, and vetting.

I. Visa Fraud

Like crime, visa fraud is endemic and will never go away. But with enough time and the right tools, it can be reduced to acceptable levels. Fraud is not exclusive to undeveloped countries, though it is far more common in poor, corrupt, or badly governed states. Every consular officer has fraud stories, and all of us have been fooled more than once. Even the most experienced and tough officer makes mistakes. In my consular assignments, I was lied to many times a day, about every aspect of applicants' cases including their age, name, identity, occupation, marital status, purpose of travel, wealth, income, relatives in the U.S., and intent to return home.

Visas are the purview of the Department of State's Bureau of Consular Affairs (CA). Foreign Service Officers (FSOs) in U.S. embassies and consulates overseas are responsible for interviewing foreign applicants for non-immigrant (temporary) and immigrant (permanent) visas and issuing visas to those aliens who are qualified under the Immigration and Nationality Act (INA). The INA contains many ineligibilities, or reasons why a given applicant is barred from receiving a U.S. visa.[8]

Pressure to Issue Visas – Speed Over Security

Embassy workloads are large, and backlogs for interviews can stretch into months or even years.[9] The Covid-19 worldwide pandemic shut down routine visa processing entirely for many months, resulting in backlogs of several years. There is often pressure, whether overt or subtle, from embassy managers, Washington, and lobbying interests to achieve speed over security.[10] Visa interviews are usually completed in a matter of a few minutes. The Foreign Affairs Manual, which guides Foreign Service officers in nearly every aspect of their professional lives, states that "the determination of an NIV applicant's classification and eligibility for a visa is your statutory responsibility and may not be delegated to any other officer…or to a member of the clerical staff."[11] Nonetheless, such informal "pre-screening" by local staff to save time has been implemented against the rules from time to time at some posts. Officers who rightly resist pressure to cut processing time, issue marginal cases, or refuse to carry out unsafe or even unlawful local practices do so at risk to their careers. Foreign Service officers put high value on their annual performance reviews, called EERs. A low, or even slightly less effusive EER can seriously harm an officer's chances for promotion. Although officers can appeal, or "grieve" a poor EER, the process can drag on for years.

Refusing Visas

[8] Some, but not all, of these ineligibilities can be waived by U.S. Citizenship and Immigration Services (USCIS) on application.
[9] U.S. Department of State, "Worldwide Visa Operations: Update," https://travel.state.gov/content/travel/en/News/visas-news/worldwide-visa-operations-update.html (last accessed June 20, 2025).
[10] American Immigration Lawyers Association, "Reopening America's Doors to Immigration Requires Addressing the Visa Backlog," April 12, 2022, https://www.aila.org/blog/reopening-americas-doors-to-immigration-requires-addressing-the-visa-backlog/
[11] U.S. Department of State, Foreign Affairs Manual, 9 FAM 403.10-2

Immigrant visas (IVs) can be refused for a variety of reasons. Most often, they are refused under INA s.221(g) because the applicant is not "documentarily qualified," meaning not all the required application documents are present and verified. The majority of IV applicants overcome, or successfully apply for waivers for, all but the most serious ineligibilities. For non-immigrant visas (NIVs), most denials are made using INA section 214(b), which says that "every alien [subject to some exceptions] …shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer … that he is entitled to nonimmigrant status." The decision to issue or deny under 214(b) is a non-reviewable decision made by a consular officer. At some posts, this discretionary power gives officers the ability to reject, in relatively little time, large numbers of applicants per day who are obvious intending immigrants, or whose purpose of travel or *bona fides* are not credible. Some visa classes such as H1Bs and L1s, and all immigrant visas, are not subject to 214(b). These can be refused for various other reasons, including fraud, but this is time-consuming.

Fraud in Afghan Special Immigrant Visas

Volumes could be filled with examples of visa fraud, from one-off cases, to organized rings. One example from recent history reveals some of the risks of visa fraud. In June 2025, Secretary of State Rubio informed Congress that the State Department will close the office of the Coordinator for Afghan Relocation Efforts (CARE). From the U.S. withdrawal from Afghanistan in 2021 until the end of the Biden presidency, CARE spent around $5 billion ostensibly to "assist Afghans who cooperated with the US mission in that country."[12] CARE brought to America more than 200,000 Afghans under the Special Immigrant Visa program, which is normally used for embassy local staff who had served with distinction for entire careers, and the U.S. Refugee Admissions Program.

According to several whistleblowers and others familiar with Afghan case work, CARE permitted the entry of thousands of Afghans with no legitimate experience working for the United States, nor any credible fear of the Taliban regime that would qualify them for asylum or refugee status. Case workers and whistleblowers have identified systematic fraud in the program, including forged recommendation letters from U.S. officials and military officers and fraud or forgery in identity and personal documents. In addition, they allege, CARE employed contractors, many of them from Afghanistan, with insufficient vetting and oversight. Some contractors reportedly facilitated the approval of cases for family and other reasons rather than connection to the U.S. effort in Afghanistan. U.S. State Department consular officers reportedly "overcame" significant "hits," or records in the U.S. consular database indicating criminal, terrorist, or Taliban ties, in various cases, allowing these cases to proceed despite not confirming whether or not the "hits" were indicative of national security threats.

Many Afghans who have been granted refugee or asylee status under CARE have since returned to Afghanistan to visit, which belies their claims of fearing the Taliban. Because the U.S. has no credible background checks, we have surely admitted through CARE countless individuals with criminal histories, and a few with Taliban connections. Here are a few examples of disturbing conduct by Afghan refugee/asylees in the past year:

[12] Phillip Linderman, "Afghan refugee office is a corrupt failure — Trump is right to shut it down," New York Post, June 10, 2025, https://nypost.com/2025/06/10/opinion/afghan-refugee-office-a-corrupt-failure-best-to-shutter-it/?utm_campaign=iphone_nyp&utm_source=mail_app (last accessed June 23, 2025).

In November 2024, two Afghans plotted to kill Americans at polling stations in Oklahoma City on Election Day. In June 2025, one of them, Nasir Ahmad Tawhedi, pleaded guilty in federal court to conspiring and attempting to provide material support and resources to ISIS.[13]

In April 2025, Afghan Jamal Wali was pulled over by Fairfax, Virginia, police officers for speeding. After an unhinged, anti-American, and ungrateful rant, Wali was shot by police after he drew a gun on them.[14]

In May 2025, Afghan Dilbar Gul Dilbar was arrested and charged with visa fraud, after his application for an SIV was found to have a counterfeit Chief of Mission approval form the U.S. ambassador in Kabul, a fraudulent letter of employment, and a fraudulent Letter of Recommendation. Despite fraud at the basis of his entire case, Dilbar's application was approved on March 20, 2024, he was allowed into the U.S. on April 4, and he was issued a Legal Permanent Resident card ("green card") the following July. Anyone who has served five minutes as a consular officer will be highly skeptical that Dilbar's case is unique.[15]

It is probable, as some American activists claim, that there remain some Afghans in Afghanistan who have legitimate claims to asylum after both providing loyal service to the United States and due to current fear of the Taliban. But in their stead, we have likely imported thousands of others with no such valid claims. In light of the extensive fraud in the CARE program, all SIV and USRAP programs specific to Afghans should be reviewed by the State Department's and Department of Homeland Security's Inspector General for fraud concerns. In the meantime, applications by Afghans for asylum or refugee status; permanent residency, and U.S. citizenship should be suspended pending this review.

Fraud Prevention Units

Where fraud is apparent in a case that would otherwise be issuable, officers can refer the case to the post's Fraud Prevention Unit (FPU) for further investigation. These units are small, with one part-time officer assigned in a small post and only a few even in very large posts. FPUs do not have time to look into every case, nor to look in depth at more than a few cases per day. In embassies with workloads of hundreds or even thousands of applications per day, FPUs are unable to look at more than a small sample. Consular officers rotate in and out of FPU duties, and it is never a career-long specialty for FSOs.

FPUs are supported and trained by CA's Office of Fraud Prevention Programs in Washington, which has professional staff permanently dedicated to fraud prevention and coordinates with Diplomatic

[13] U.S. Department of Justice, Press Release, "Afghan National Pleads Guilty to Plotting Election Day Terror Attack in the United States," June 13, 2025, https://www.justice.gov/opa/pr/afghan-national-pleads-guilty-plotting-election-day-terror-attack-united-states (last accessed June 23, 2025).
[14] Shane Galvin, "Driver exclaims 'I should have served with f–king Taliban' moments before fatal traffic-stop shootout with police: bodycam footage," New York Post, May 25, 2025, https://nypost.com/2025/05/25/us-news/virginia-police-shooting-driver-jamal-wali-declared-he-should-have-served-with-the-taliban-before-fatal-traffic-stop-shootout/ (last accessed June 23, 2025).
[15] U.S. Department of Justice, Press Release, "Afghan citizen charged with visa fraud," May 1, 2025, https://www.justice.gov/usao-wdny/pr/afghan-citizen-charged-visa-fraud (last accessed June 23, 2025).

Security agents assigned as Assistant Regional Security Officer/Investigations (ARSO/I) within consular sections.

Fraud Prevention Technology

The advent of Artificial Intelligence technology promises to yield benefits for fraud prevention. AI can look through volumes of data and find patterns that would evade human inspection. AI will be able to verify and fact-check at a much greater speed than officers. In addition, some of the routine work of an FPU could be outsourced to remote workers inside the U.S. at a greatly lower cost than assigning a full-time FSO abroad. Advancing technology should permit consular managers, given enough resources, to carry out the additional screening of social media accounts reportedly ordered by Secretary of State Rubio, and any additional future requirements.[16] Still, efficiency and speed of processing – which benefit visa applicants and their U.S. sponsors – must always be balanced by national security concerns, which must come first.

There will always be risk in issuing visas. With advances in fraud prevention, there are advances in fraud techniques. The cat-and-mouse game between malafide visa applicants and alien smugglers on the one hand, and the State and Homeland Security Departments on the other, can never be won entirely.

II. Visa Overstays

Data on the entry and exit of foreign nationals is not complete, comprehensive, or always accurate. We still do not have a system that records the exit (or not) of every alien who arrives in the U.S. Overstay percentages reported by DHS are very likely to be low estimates. According to DHS reports, between fiscal years 2020 and 2023, over 1.5 million aliens overstayed their visas.[17] According to the DHS Fiscal Year 2023 report, the latest data available:

> …there were 39,005,712 in-scope nonimmigrant admissions to the United States through air or sea POEs [ports of entry] with expected departures occurring in FY 2023, which represents the majority of air and sea annual nonimmigrant admissions. Of this number, CBP calculated a total overstay rate of 1.45 percent, or 565,155 overstay events. In other words, 98.55 percent of the in-scope nonimmigrant visitors departed the United States on-time and in accordance with the terms of their admission.[18]

Countries with very low overstay rates are often in the Visa Waiver Program (VWP), where their citizens can enter the U.S. without a visa for periods of 90 days or less using an online form. For

[16] Kat Lonsdorf, "U.S. will review social media for foreign student visa applications," NPR, June 19, 2025, https://www.npr.org/2025/06/19/g-s1-73572/us-resumes-visas-foreign-students-access-social-media (last accessed June 20, 2025).
[17] Adam Sabes, "Colorado terror attack exposes 'national security threat' posed by immigrant visa overstays: former FBI agent," Fox News, June 16, 2025, https://www.foxnews.com/us/colorado-terror-attack-exposes-national-security-threat-posed-immigrant-visa-overstays-former-fbi-agent (last accessed June 20, 2025).
[18] U.S. Department of Homeland Security, "Entry/Exit Overstay Report," Fiscal Year 2023 Report to Congress, August 5, 2024, https://www.dhs.gov/sites/default/files/2024-10/24_1011_CBP-Entry-Exit-Overstay-Report-FY23-Data.pdf

VWP countries, the FY 2023, Suspected In-Country Overstay rate was 0.62 percent of the 16,146,989 expected departures.[19]

For countries whose citizens require a visa to visit the United States, visa overstay rates vary dramatically by country. For non-VWP countries, the FY 2023, Suspected In-Country Overstay rate was 3.2 percent of the 9,810,543 expected departures.[20]

Within that overall figure, overstay rates varied slightly between classes of visa; students overstayed visas at a rate of 3.67%, while other classes of visa overstayed at a rate of 2.99%.[21] Overstay rates varied enormously between country of origin: while only 1% of Panamanian visa holder overstayed, for many countries the percentage of overstayers exceeds 10%. African countries are particularly bad in this regard, with many countries over 10%, Congo and Eritrea at over 20% overstay rate, and Chad at nearly 50%. Laos had a 30% overstay rate and Yemen nearly 20%. Given that consular officers are supposed to refuse visa applicants who do not demonstrate a clear intent to return to their home countries, such levels of overstay indicate either very poor decision-making by line officers, weak management controls, or a deliberate policy to issue visas regardless of risk. Visa refusal rates in every country should logically be linked to the rate at which nationals of that country overstay their visas, with refusals rising as overstays increase. Countries where the overstay rate is unacceptable should issue few visas at all, limited to diplomats and a limited number of low-risk travelers, students, and businesspeople. However, that does not happen, mainly due to political considerations.

Asylum Claims by Overstayers

Some aliens who overstay their visas claim asylum to delay or prevent their being deported. Though some claims are found to have merit, the majority fail, as the claimants seek to remain for economic or family reasons and have no basis for a valid asylum claim. DHS lifecycle enforcement reports show that though "most people processed for expedited removal…will likely establish credible fear and remain in the United States for the foreseeable future…many of them will not ultimately be granted asylum."[22] But there is no annual cap on asylum claims, no fee for the process, and applicants are able to get work authorization six months after they apply. All this encourages many aliens to submit fraudulent asylum claims because it allows them to remain in the U.S. and work for many years. A March 2025 Heritage Special Report, that I co-authored, concluded that "the U.S. refugee and asylum processes no longer serve the national interest and must be redesigned to preserve a credible refugee system while removing the possibility of gaming it to immigrate for other purposes."[23]

Crime by Visa Overstayers

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[19] Ibid
[20] Ibid
[21] Ibid
[22] U.S. Department of Homeland Security, Notice of Proposed Rulemaking, "Circumvention of Legal Pathways," *Federal Register*, Vol. 88, No. 36 (February 23, 2023), p. 11704, https://www.federalregister.gov/documents/2023/02/23/2023-03718/circumvention-of-lawful-pathways (accessed March 18, 2025).
[23] Simon Hankinson and Lora Ries, Special Report, "The U.S. Must Redesign Asylum Law for 21st-Century Reality and Put America First," The Heritage Foundation, March 31, 2025, https://www.heritage.org/border-security/report/the-us-must-redesign-asylum-law-21st-century-reality-and-put-america-first

Some aliens who overstay their visas commit crimes while in the United States. Others have links to foreign military or espionage agencies, terrorist connections, or criminal records in their home countries. Here are just a few cases from the past few years:

- JUN 2025 - Egyptian national Mohamed Sabry Soliman was arrested in Boulder, CO for reportedly firebombing people who were demonstrating for the release of hostages in Gaza Soliman arrived in the United States in August 2022 on a B1/B2 (visitor) visa. He overstayed his period of admission, claimed asylum, and pending his claim received work authorization which ended in March 2025.[24]

- DEC 2024 – A Florida man shot two home intruders, killing Jorge Nestevan Flores-Toldeo from Mexico. The second intruder, Michel Soto-Mella from Chile, was arrested near the house and charged with armed burglary. Soto-Mella reportedly entered the US on a visa or under the VWP and overstayed.[25]

- OCT 2024 - ICE/ERO Houston deported Honduran Fredy Rufino Aguilar-Hernandez, who was wanted for murder in Honduras. He reportedly entered the U.S. at Atlanta airport in 2018 and overstayed his visa.[26]

- SEP 2024 – ICE/ERO arrested Brazilian Gean Do Amaral Belafronte, who was charged with sexual assault and battery. He apparently entered on a visa in 2018 and overstayed.[27]

- JUL 2024 - Victor Manuel Gomez-Acosta, a Mexican, was charged with homicide and DUI in Abbotsford, Wisconsin. He stabbed his wife and daughters to death. Gomez-Acosta entered the U.S. legally in September 2016 at Laredo, Texas and overstayed his admission period.[28]

[24] Adam Sabes, "Colorado terror attack exposes 'national security threat' posed by immigrant visa overstays: former FBI agent," Fox News, June 16, 2025, https://www.foxnews.com/us/colorado-terror-attack-exposes-national-security-threat-posed-immigrant-visa-overstays-former-fbi-agent

[25] Shane Galvin, "Florida homeowner shoots and kills one intruder, injures another: sheriff's office," New York Post, December 28, 2024, https://nypost.com/2024/12/28/us-news/florida-homeowner-shoots-two-intruders-kills-one-sheriffs-office/?utm_campaign=iphone_nyp&utm_source=com.microsoft.Office.Outlook.compose-shareextension (last accessed June 20, 2025).

[26] "ERO Houston removes Honduran fugitive wanted for murder," October 25, 2024, https://www.ice.gov/news/releases/ero-houston-removes-honduran-fugitive-wanted-murder?utm_medium=email&utm_source=govdelivery

[27] US Immigration and Customs Enforcement, Press Release, "ERO Boston arrests Brazilian national charged with sex crimes against Massachusetts resident," September 17, 2024, https://www.ice.gov/news/releases/ero-boston-arrests-brazilian-national-charged-sex-crimes-against-massachusetts

[28] Adam Shaw, "Mexican man charged with killing two children in Wisconsin is in US illegally," Fox News, July 13, 2024, https://www.foxnews.com/politics/mexican-man-charged-killing-two-children-wisconsin-us-illegally (last accessed June 20, 2025).

- OCT 2023 - Billy Erney Buitrago-Bustos, a Colombian, was arrested by Great Barrington, MA police for allegedly raping a child by force. He was reportedly admitted on May 4, 2016 at New York's JFK airport on a visa and overstayed.[29]

- JUL 2023 – Jun "Harry" Liang was arrested and charged with several federal offenses related to arranging bear hunting and prostitution for Chinese clients. Liang reportedly overstayed a visa which expired in 2016.[30]

III. "Vetting" in Consular Visa Operations

Twenty-five years ago on the visa line in New Delhi, I would interview at least 150 visa applicants a day using paper forms and enter my decision into a computerized non-immigrant visa (NIV) system. With reference to the Immigration and Nationality Act (INA), my job was to decide whether each applicant qualified for a visa. After 9/11, the State Department used to tell adjudicating officers that "every visa decision is a national security decision." If an applicant did not qualify under the law, we did not issue a visa. The most common reason for denial was under INA s.214(b), which in brief requires every alien to prove to the consular officer that he is going to the U.S. for the purpose stated, and that he has a home outside the U.S. to which he intended to return. There are also many reasons a person can be ineligible from getting a visa under the INA, mostly under s.212, including criminal offences, public health concerns, and previous immigration violations. This personal consular interview is the first line of "vetting" for foreign visa applicants.

The second line of vetting is through automatic checks of U.S. databases containing holdings from across government agencies. Names, dates of birth, and other facts are run through the Consular Lookout and Support System (CLASS) maintained by the State Department's Bureau of Consular Affairs. This system pulls data from federal agencies that in turn have data from state and local law enforcement, such that if a foreigner has a criminal or other adverse history in the United States, they are likely to be flagged for further review before a visa is issued. Visa applicants must also provide photographs and all 10 fingerprints (if available). These are confirmed by embassy or consular staff and the interviewing consular officer and then run through facial recognition and fingerprint databases to see if there are any matches. All adverse results must be addressed by the interviewing or adjudicating consular officers before they make a decision.

It is quite common to find applicants with false names and dates of birth, even with legitimately issued foreign passports, because their claimed identities can be compared to bio-data databases. Fingerprints don't change, and facial recognition is always improving. Applicants for immigrant visas are required to supply a criminal records clearance from their national police agency. For some countries these are credible documents, but in poor or corrupt countries they are unreliable at best. Applicants for nonimmigrant visas do not have to supply police clearances, they are simply required to attest on a signed form that they have no criminal record and no other ineligibility. Embassies and consulates have local and American staff trained in anti-fraud measures. Consular staff know local

[29] US Immigration and Customs Enforcement, Press Release, "ERO Boston arrests Colombian national charged with rape of Massachusetts minor," November 20, 2024, https://www.ice.gov/news/releases/ero-boston-arrests-colombian-national-charged-rape-massachusetts-minor

[30] Inside Edition, "Alleged Illegal Chinese Immigrant Hosted $60K Bear Hunts With Option to Add Prostitutes: Authorities," July 17, 2023, https://www.insideedition.com/illegal-immigrant-chinese-bear-hunt-prostitutes

languages, accents, customs, news, and other country-specific factors that can help prevent applicants from lying successfully in their visa applications. Larger embassies host various federal agencies, including elements of DHS and other federal law enforcement, who have local contacts with their counterparts through whom they can investigate cases of concern. However, catching a visa applicant with a criminal record is mostly a matter of luck, and it is certain that each year, thousands of visas are issued to aliens who would be found ineligible if their true case histories were known.

Vetting of cases in countries that are hostile to the United States, or of their nationals applying for visas in their home or other countries, can be subverted by both operational and political considerations. Ambassadors and Washington managers often exert pressure on consular managers at overseas posts to decrease interview backlogs, which means shorter interviews and less scrutiny for each case. Political considerations also influence the level of interest in visa fraud and cooperation between the State Department and other U.S. agencies. For example, under the Biden administration, the Department of Justice (DoJ) canceled a program to combat fraud from Chinese applicants connected to the Communist Party, military, and intelligence agencies. The DoJ's China initiative was cancelled in 2022, apparently on the grounds that it was racially biased,[31] and Biden's DoJ began dropping fraud charges[32] against alleged Chinese military personnel accused of falsifying visa applications.[33] The Biden Justice Department's National Security Division did not apparently prosecute any new China-related visa fraud cases between February 2021 and the November 2024 election, even though multiple visa fraud cases begun by the first Trump administration had resulted in convictions.[34]

Conclusion

Given the attraction of a visa to the U.S. for nationals of some countries, fraud can never be eliminated, but it can be reduced using existing controls and further mitigated using advancing technology. Visa vetting should be enhanced using AI and all available tools. All countries where the U.S. issues visas should be required, over time, to provide a mechanism for the U.S. to automatically verify that their nationals do not have criminal records before they are issued visas. This is already mandatory for the VWP countries [35] and should be extended gradually to all other countries. Visa issuance rates should be tied to specific country overstay and fraud rates. Overstay

[31] U.S. Department of Justice, Remarks by Assistant Attorney General Matthew Olsen on Countering Nation-State Threats, Wednesday, February 23, 2022, https://www.justice.gov/opa/speech/assistant-attorney-general-matthew-olsen-delivers-remarks-countering-nation-state-threats

[32] Jane Lee, "U.S. dials back probe of Chinese scientists on visa fraud charges," Reuters, July 23, 2021, https://www.reuters.com/world/us/us-seeks-dismiss-charges-visa-fraud-cases-chinese-researchers-2021-07-23/

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rates of more than 5% should be cause for reducing processing speed and increasing scrutiny of each case, as well as raising the standard needed to overcome INA s.214(b). Countries that are unable to properly record, document, and verify the true identities of their nationals, and provide us with accurate, real-time, on-demand criminal records checks, should be given extremely limited access to U.S. visas.

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Mr. GILL. Thank you, Mr. Hankinson. Mr. Nowrasteh, you may begin.

STATEMENT OF ALEX NOWRASTEH

Mr. NOWRASTEH. Chair McClintock, Ranking Member Jayapal, and the distinguished Members of the Subcommittee, thank you for the opportunity to testify.

Over the decades, the CATO Institute has produced original research on immigration, including the threat of foreign-born terrorism, immigrant criminality, and the vast economic contributions of immigrants and their descendants. Thus, it is a pleasure to be invited to speak on the topic of today's hearing, Restoring Integrity and Security to the Visa Process.

However, I must start with a criticism of the title of the hearing. The title "Restoring Integrity and Security to the Visa Process" implies that integrity and security were somehow lost or missing from the visa process. Nothing could be further from the truth.

The visa security system was rightly overhauled after the 9/11 attacks, and has only gotten more thorough, more complex, and expanded to cover more categories of immigrants and nonimmigrants since then.

The ultimate proof is not in the legal procedures or the number of Government employees who do the checks, the proof is in the security results. Since the post-9/11 overhaul 19 people have been murdered and attacked on U.S. soil committed by foreign-born terrorist who entered on nonimmigrant visas. Now, every murder, of course, is a tragedy. Perspective also matters when deciding how to save the greatest number of lives.

For instance, it is likely that more people have been killed in the U.S. by shark attacks since 9/11 than by foreign-born terrorists who entered on nonimmigrant visas. Zero people were murdered by foreign-born terrorists on U.S. soil during the Biden Administration, the first administration with zero such murders for as far back as we have data. That is evidence of a visa system with the integrity and security that Americans deserve.

ICE recently arrested 15 Iranian nationals as of last night. The justification was a supposed terrorist threat from phantom Iranian sleeper cells we have heard so much about over the decades. ICE knew about these Iranian nationals, many of whom are criminals, before the administration decided to bomb Iran. If the threat were serious, why wait until now? ICE was likely too busy harassing noncriminals at Home Depot.

The crime rates of immigrants, no matter what data sources you use, all show that immigrants and travelers have a low incarceration or crime rate, far lower than native-born Americans. Even foreign nationals from countries that don't cooperate and share crime data with the U.S. have lower crime rates than native-born Americans.

There are always going to be bad actors—criminals, terrorists, spies, or others who will try to enter the United States. The visa security system isn't perfect. It is not. We cannot expect it to be. It works pretty darn well.

We know it works well because the proof is in the pudding. There is no integrity or security that we must restore to the visa process because it was never lost in the first place.

However, increasing the security burden and banning immigration from countries on flimsy security pretext is costly. Obviously, visa security and integrity are important. However, visa security theater is not a free lunch. That bill is paid by the United States in lost economic growth, lost opportunity, lower wages, and less government revenues.

Immigrants are about twice as likely to start a business as native-born Americans. From small corner shops to billion-dollar corporations, immigrants are more likely to be entrepreneurs or founders than native-born Americans.

Immigrant workers raise the wages of American workers by filling critical niches in the labor market. Immigrants are over-represented in economic sectors and occupations, from agriculture and construction to childcare, engineering, and the sciences. Immigrants pay about $1.38 in taxes to the Federal Government for every dollar in benefits they receive. The benefits to the United States go on.

I want you to imagine what our country would look like today without immigrants in the past.

The U.S. population is approximately 340 million. If immigration were shut down in the year 1800, there would only be about 100 million Americans here. Nobody in their right mind would think that those mere 100 million Americans in this alternative scenario would be richer or freer than the 340 million people living here today.

So, why do you imagine that our descendants will be richer if we close the border today. The visa system has integrity. The visa system is secure. Don't be afraid of small threats, exaggerated hazards, or frightening rhetoric. Don't pile on more regulations, immigration restrictions that will reduce our security, add country bans that fix a nonexistent problem. Don't impose that burden on Americans today or our descendants tomorrow.

Thank you.

[The prepared statement of Mr. Nowrasteh follows:]

Testimony

of

Alex Nowrasteh

Vice President for Economic and Social Policy Studies

Cato Institute

before the

Subcommittee on Immigration Integrity, Security, and Enforcement

House Committee on the Judiciary

United States House of Representatives

June 25, 2025

RE: "Restoring Integrity and Security to the Visa Process"

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Chairman McClintock, Ranking Member Jayapal, and distinguished members of the subcommittee, thank you for the opportunity to testify. My name is Alex Nowrasteh, and I am the Vice President for Economic and Social Policy Studies at the Cato Institute, a nonpartisan public policy research organization in Washington, D.C. It is an honor to be invited to speak with you today on the topic: "Restoring Integrity and Security to the Visa Process."

Over many decades, the Cato Institute has produced original research on the costs and benefits of immigration to Americans, groundbreaking research on the hazard of foreign-born criminality and terrorism in the United States, and analyses of the visa security system. I'm happy to report that the benefits of immigrants to Americans vastly exceed the costs, the hazard posed by immigrant criminals and terrorists who enter on nonimmigrant visas is small, and the current visa process is secure.

This testimony will focus on the actual security effects of migration, specifically nonimmigrant visa holders, as evidence of the effectiveness of current security and vetting procedures. The actual effects are a more valuable criterion than endlessly discussing the nuances of different vetting procedures inside government agencies or data sharing with foreign governments. The security proof is in the pudding, not in the quality of the paper or typeface of the pudding's recipe.

Terrorism and Crime Committed by Nonimmigrant Visa Holders

Nonimmigrants who enter the United States on a visa have low rates of criminality and pose a minuscule terrorism hazard. This is evidence of at least one proposition, probably two. First, the visa security and vetting system works very well at excluding those who would seek to harm Americans. Second, there just aren't that many criminals or terrorists who want to come to the United States to do us harm. This testimony will mostly focus on the

The best evidence that the visa process is secure and vetting is effective is the small number of people killed or injured in terrorist attacks committed by those on nonimmigrant visas and the low legal immigrant crime rates.

There were 237 foreign-born terrorists who committed attacks on U.S. soil, intended to commit attacks on U.S. soil, threatened attacks here, or tried to fund domestic terrorism.[1] They are responsible for 3,046 murders and 17,083 injuries in attacks on U.S. soil from 1975 through the end of 2024. The annual chance of being murdered in a terrorist attack committed by a foreign-born terrorist during that time is about 1 in 4,559,768, and the annual chance of being injured is about 1 in 813,033. By comparison, the annual chance of being murdered in a criminal non-terrorist homicide in the United States was about 1 in 13,880 during the same period. During that time, 97.8 percent (2,979) of all those murdered in terrorist attacks were murdered on 9/11, and 86.9 percent (14,842) percent of all people injured in foreign-born terrorist attacks were injured on 9/11. Foreign-born terrorists who entered on a nonimmigrant visa are an even smaller share, accounting for 3,006 murder victims in attacks during those years and 99.1 percent during the 9/11 attacks.

The historical nonimmigrant terrorist data aren't very useful for understanding the current vulnerabilities in the visa system because security procedures were overhauled after the 9/11 attacks.[2] Including deaths from the 9/11 attacks in an analysis of visa security procedures in 2025 would be like trying to understand the modern risk of surgery by using data from before the invention of antibiotics. Thus, the most important number to focus on is 19, which is the total number of people killed by nonimmigrant terrorists on US soil since 9/11, when the visa security system was overhauled. The chance of being killed by a terrorist who entered on a nonimmigrant visa is about 1 in 381,003,240 per year. The annual chance of being killed in a shark attack is about 56 percent greater than by a nonimmigrant terrorist after 9/11, the chance of being killed by a lightning strike is about 27 times greater, the chance of being murdered in a normal homicide is about 27,450 times greater, and the chance of dying in a motor vehicle crash is about 60,105 times greater (Table 1).

The chance of being murdered in an attack committed by nonimmigrant terrorists is so small that the Centers for Disease Control and Prevention (CDC) would label them as "unreliable." Motor vehicle accidents, homicide, and pregnancy-related deaths are all substantially more hazardous than foreign-born terrorists. Yet, people still choose to drive in motor vehicles, live in American cities, have children, and eat food because the benefits of those activities outweigh the costs.

Likewise, the benefits of nonimmigrants coming to the US on properly vetted visas still outweigh the costs.

Legal immigrants have a nationwide incarceration rate of 319 per 100,000 in 2023, which includes nonimmigrants admitted on visas (Figure 1). By comparison, illegal immigrants have an incarceration rate of 613 per 100,000, and native-born Americans have an incarceration rate of 1,221.[3] Data from Texas also show that the legal immigrant homicide conviction rate was 62 percent below native-born Americans in 2022, and their overall criminal conviction rate was 58 percent below the native-born American rate.[4]

Table 2 shows the 2023 incarceration rates for all countries reported or rumored to limit their sharing of crime and national security data with the US government. The fear is that a lack of data sharing allows many criminals to enter the United States. However, immigrants, migrants, and travelers from all those countries have incarceration rates below those of native-born Americans. Perhaps those rates would be lower with full data share, but there is not a good argument to close down immigration or travel with those countries based on current crime data.

Table 1 Deaths by Different Types of Danger

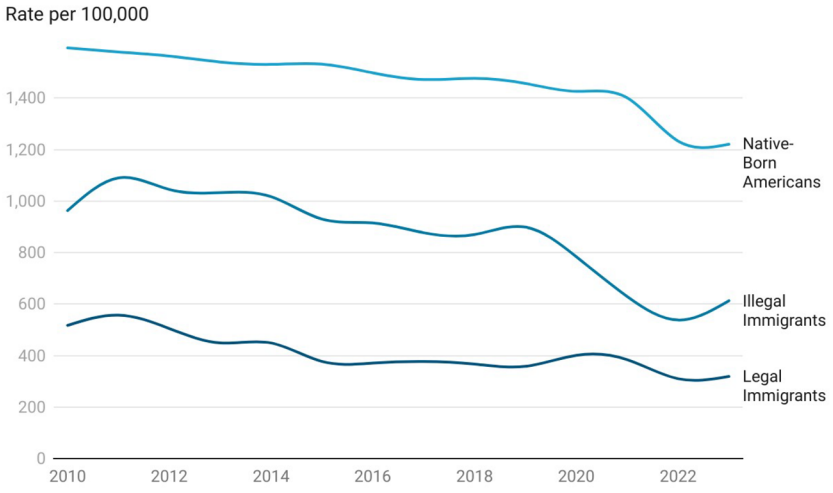
Cause of Death	Victims	Odds of Being Killed	Coverage	Sources
Motor Vehcile Accident	2,191,208	1 in 6,339 per year	1975-2024	National Safety Council, CDC Wonder, NHTSA
Homicide	1,000,659	1 in 13,880 per year	1975-2024	CDC Wonder
Pregnancy, Childbirth, Puerperium	31,720	1 in 437,864 per year	1975-2025	CDC Wonder
Foreign-Born Terrorism, All	3,046	1 in 4,559,768 per year	1975-2023	Cato
Terrorism, Non-Immigrant Visa	3,006	1 in 4,620,136 per year	1975-2024	Cato
Salmonella	2,949	1 in 4,709,750 per year	1975-2024	CDC Wonder
Mass Shootings, All	1,646	1 in 8,439,608 per year	1975-2024	Cato
Lightning Strikes	~1,000	1 in 13,891,594 per year	1975-2024	NOAA
Shark Attacks	57	1 in 243,712,183 per year	1970-2023	Various
Terrorism, Non-Immigrant Visa	19	1 in 381,003,240 per year	2002-2024	Cato

Table 2 US Incarceration Rates for Countries That May Not Share Data

Country	Incarceration Rate (per 100k)
Afghanistan	0
Burma (Myanmar)	134
Burundi	0
Chad	0
China	46
Cuba	482
Dem. Rep. of the Congo	0
Republic of the Congo	710
Equatorial Guinea	0
Eritrea	175
Haiti	633
Iran	69
Laos	397
Libya	0
Russia	252
Somalia	1,170
Sudan	0
South Sudan	101
Sierra Leone	0
Togo	184
Turkmenistan	0
Venezuela	241
Yemen	0
North Korea	0
Syria	0
Kyrgyzstan	0
Nigeria	260
Tanzania	447
US Natives	1,221
All illegal immigrants	613
All legal immigrants	319

Source: Cato Institute • Created with Datawrapper

Figure 1 Estimated Incarceration Rates by Immigration Status



Ages 18-54

Source: Authors' Analysis of American Community Survey Data • Created with Datawrapper

Trump's Immigration Bans Will Have No Detectable Effect on Terrorism or Crime

Egyptian-born Mohamed Sabry Soliman entered the United States on a tourist visa in August 2022 and filed for asylum in September.[5] On June 1, 2025, Soliman injured 15 people in a terrorist attack in Boulder, Colorado. President Trump used this heinous crime to announce travel and immigration restrictions on 19 countries, none of which were Egypt, and that had collectively sent terrorists to the US that have murdered six people in terrorist attacks on US soil since 1975, one since 9/11.[6] President Trump's June 4th proclamation doesn't even mention terrorism as a concern for most of the restricted countries.[7]

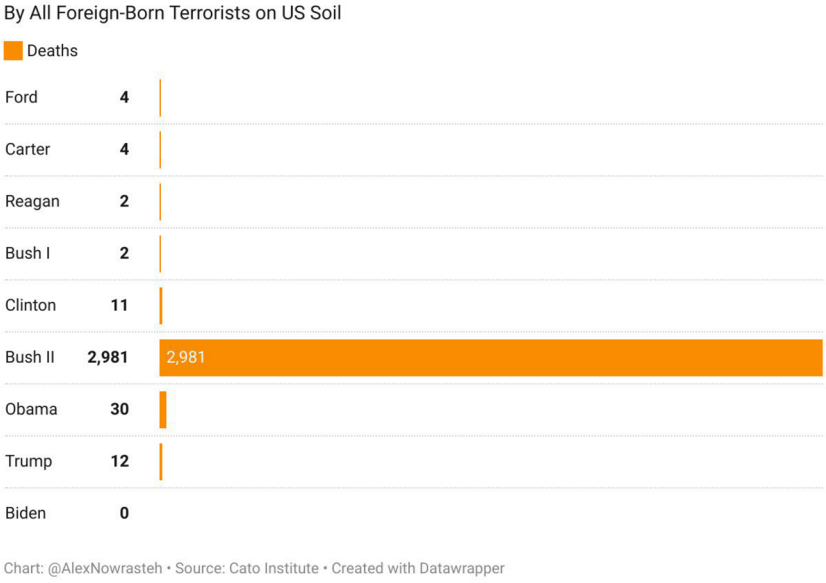
The administration recently proposed restrictions on additional countries to take effect this week unless they make visa security improvements.[8] Since the visa security and screening system was

overhauled 9/11, migrants and travelers from these countries murdered seven people in terrorist attacks on US soil for a 1 in 905 million per year chance.

According to US Census and American Community Survey Data, travelers and immigrants from the banned and restricted countries (as of June 23, 2025) have a nationwide incarceration rate of 370 per 100,000 in 2023 for the 18–54 aged population, 70 percent below that of native-born Americans.[9]

The hazard posed by foreign-born terrorists was low during the Biden administration by historical standards, at least judging by the number of deaths in attacks. The Biden administration was the first administration since at least President Ford where zero people were murdered in an attack committed by foreign-born terrorists on US soil. This is a widely unreported fact, considering the fear of terrorism that was promulgated during the Biden administration.

Figure 2 People Murdered in Terrorist Attacks on US Soil



The Terrorist Threat Posed by Iran

President Trump entered another Middle East war on June 21, 2025, when the US Air Force bombed Iran. The Islamic Republic of Iran is a weak and feckless state on the other side of the world, but it has a deep history of funding and supporting terrorist attacks. Iran probably does pose a relatively elevated terrorist threat to the United States currently, but it's relatively small. Even so, this assessment is unscientific and vague, and the threat is so small that it shouldn't change current US policy. The US government doesn't even take the threat of domestic terrorism that seriously, as they rank the cybersecurity threat from abroad above the violent terrorism risk on US soil.[10]

Twelve terrorists from Iran have attempted or committed attacks on US soil since 1975. They have murdered zero people and injured nine. Mohammed Reza Taheri-azar and Manssor Arbabsiar

were the only two Iranian-born terrorists who committed attacks in 2006 and 2011, respectively.[11] Taheri-azar was clearly insane and undirected by the Iranian government. Arbabsiar was hired by the government of Iran to assassinate the Saudi ambassador.[12] The Arbabsiar plot was mostly a fiction facilitated by the US government to catch people like Arbabsiar, and it was never a serious threat. Another unserious plot planned by Iranian officials overseas was led by Farhad Shakeri, an Afghan, who was deported from the United States in 2008 after a prison sentence for robbery. His plan was to hire former inmates from prison to assassinate President-elect Trump and some anti-Iranian activists at the behest of the Iranian government and in revenge for the US killing of Islamic Revolutionary Guard Corp commander Qasem Soleimani under President Trump's order in 2019.[13] The Iranian government's revenge plot for killing a national military hero involved an Afghan criminal deported from the United States in 2008, coordinating from Iran with some of his prison buddies.[14] It sounds like the plot of a black comedy with results almost as absurd.

Iranian proxies from Hezbollah could pose a threat but there have only been two arrests of Hezbollah operatives on US soil who were plausibly involved in plotting domestic attacks. Ali Kourani and Alexei Saab were arrested in 2017 and 2019, respectively, and they were reportedly members of Hezbollah Unit 910.[15] Israel recently reduced Hezbollah's power in Lebanon to a small fraction of its former exaggerated strength. There aren't likely any terror plots planned by Hezbollah in the United States and, if there were, they likely would have carried out attacks at the height of the Israel-Hezbollah war. American military personnel in the Middle East face a far greater threat from Iranian retaliation than Americans in the homeland do.

Visa Security and Vetting Procedures

The U.S. Department of State (DOS) and the Department of Homeland Security (DHS) share the responsibility of vetting nonimmigrant visa applicants through a thorough and multi-layered process. U.S. Embassies and Consulates, operated by the DOS, handle visa applications and initial screening. DHS provides security checks and makes final admission decisions at ports of entry. Below is a simplified explanation of the security and screening process for nonimmigrant visa applicants.

Standard Vetting Procedure for Nonimmigrant Visas

The first step combines the visa application and initial data collection. All nonimmigrant visa applicants begin by submitting the Online Nonimmigrant Visa Application (Form DS-160), which collects comprehensive biographical information, travel plans, and background details.[16] Since 2019, the DS-160 also requires applicants to provide social media identifiers used in the past five years that are now being used to screen for speech that would be first amendment protected if uttered on US soil.[17] Applicants must also upload a recent photograph meeting DOS requirements and answer security-related questions about criminal history, immigration violations, and other related inquiries. Once the DS-160 is submitted, the data is stored in the Consular Consolidated Database (CCD) and made accessible to consular officers and screening systems. At this stage, applicants pay the non-refundable visa application fee and obtain an appointment for an in-person interview at a U.S. Embassy or Consulate.[18]

The second step is the consular interview and collection of biometric identity information. With some exceptions, nonimmigrant visa applicants between ages 14 and 79 are required to appear for a visa interview with a consular officer.[19] During the interview, the consular officer reviews the application, asks about the purpose of travel and ties to the home country, and evaluates the applicant's eligibility under U.S. immigration law. During the interview, consular officers typically collect digital biometric data that include all ten fingerprints scanned electronically and a digital photo.[20] This information is all stored in the CCD system where DHS officials verify that the biometrics are consistent with the person's identity and then further check the data against U.S. security databases such as DHS IDENT (more on this below). Consular officers also verify that required supporting documents are in order.[21]

The third step includes security screening and inter-agency checks. While the consular interview is taking place and continuing afterward as needed, multiple security checks are run on every applicant. The consular officer uses the State Department's Consular Lookout and Support System (CLASS) to perform name-checks across numerous watchlists and databases.[22] CLASS is an interagency database that contains records from many U.S. government sources, including prior visa refusals, immigration violations, criminal histories, terrorism watchlists, intelligence reports, and even certain civil records. CLASS incorporates data from the FBI's Terrorist Screening Center (TSC) watchlist, the National Counterterrorism Center (NCTC), INTERPOL notices, the

Drug Enforcement Administration (DEA), Department of Health and Human Services (HHS), and extracts of the FBI's National Crime Information Center (NCIC) on wanted persons and fugitives.[23] This process automatically screens a visa applicant's name and aliases against multiple law enforcement and intelligence databases and records for any derogatory information or matches to known or suspected threats.

In addition to the name and alias checks, the applicant's fingerprints are also screened against biometric databases. As mentioned above, the State Department forwards the 10-print scans to the DHS Automated Biometric Identification System (IDENT) and to the FBI's Next Generation Identification (NGI) system for criminal history checks. The fingerprint check through FBI NGI will reveal any past criminal arrests or convictions tied to the applicant's fingerprints, as well as any national security records through various watchlists. The DHS IDENT check will reveal any prior immigration encounters under any identity. IDENT also includes immigration violation records and lookout information shared by various agencies, and it ensures that biometric data from the visa application is available to DHS officers at U.S. ports of entry for identity verification. In practice, the State Department transmits applicants' biometric and biographic data to DHS' Office of Biometric Identity Management, which compares and shares the data with partner agencies.

The fourth step is enhanced interagency vetting, which is only used if needed. Except in rare cases, the automated watchlist and biometric checks clear within a short time, and the consular officer can make a decision. However, if the initial screenings reveal possible concerns, the migrant visa application undergoes Administrative Processing, also known as Security Advisory Opinion processing. In these unusual cases, the consular officer temporarily refuses the visa under section 221(g) of the Immigration and Nationality Act and seeks additional information before a final decision.[24]. The case may be sent for review by specialized units in Washington, D.C. and other agencies. For example, if an applicant's name is similar to a person of interest, or the applicant's background involves sensitive scientific fields, the post may initiate a Security Advisory Opinion (SAO) request to consult agencies like the FBI, CIA, or Departments of Defense before proceeding.[25]

DHS is directly involved in screening visa applications even before visas are issued, especially in overseas posts with a predetermined higher risk of terrorism. Under the Visa Security Program (VSP), which is authorized by Section 428 of the Homeland Security Act, Homeland Security Investigations agents are stationed at 45 consular posts in 29 countries to screen and vet visa applicants for terrorism and criminal risks.[26]

In the last several years, DHS has deployed advanced automation for this process. For example, CBP's National Targeting Center (NTC) receives electronic visa application data in real-time and uses the Automated Targeting System - Passenger (ATS-P) to automatically screen every visa applicant's data against U.S. terrorism and law enforcement databases.[27] According to DHS, ATS-P checks 36 different data points from the DS-160 (such as names, dates of birth, passport numbers, and other identifiers) against the FBI's Terrorist Screening Database and CBP's own enforcement system (TECS).[28] If no derogatory information is found, the system will electronically advise the consular post that DHS won't issue the visa.

If a potential match or concern is flagged, CBP officers and ICE agents at the NTC perform manual vetting, researching the applicant in over 40 specialized databases to confirm whether the hit is valid.[29] This could include deeper checks into intelligence reports, travel history, immigration records, social media posts, and other open-source information. For cases that remain suspicious, the on-site ICE Visa Security Unit agents will conduct further investigation and coordinate with the consular officer, often issuing a recommendation to refuse the visa if the applicant poses a security threat. In this way, DHS and DOS share data and expertise at the visa adjudication stage. The State Department retains final authority to issue or refuse the visa, but DHS contributes critical information and can effectively block visas being issued to known or suspected threats through the VSP screening process. The National Vetting Center (NVC) was established in 2018 to provide a centralized interagency platform to support vetting. NVC began with CBP's Electronic System for Travel Authorization (ESTA) and supported vetting for Enduring Welcome, Uniting for Ukraine, and the. Venezuela Migration Enforcement Process.[30] Since 2022, the NVC's process has been formally supporting the nonimmigrant visa vetting process by integrating intelligence agency inputs into visa vetting while still leaving final determinations to DOS.[31]

The fifth step is visa adjudication and issuance. If the migrant applicant passes all security checks and meets the visa's requirements, the consular officer will approve the visa application. At that point, DOS stamps the migrant's passport with a machine-readable visa, which includes the applicant's photo and encoded data. If the visa cannot be approved, the consular officer will formally refuse the visa.

The sixth step is the migrant's arrival at a DHS port-of-entry for inspection. When the migrant visa holder arrives at a U.S. port of entry, Customs and Border Protection (CBP) officers conduct a final vetting and make the determination whether to admit the visa holder.[32] Advanced Passenger Information transmitted by airlines allows CBP officers to run initial checks even before arrival. CBP also often takes a live photo for facial comparison, reviews information, and asks the migrant questions. CBP officers also check that the migrant is carrying other required documents. The consular vetting and border check process is largely redundant. The standard process involves multiple layers of checks from two agencies and multiple subagencies.

Visa-Specific Differences in Security and Vetting Procedures

The core vetting steps above apply to applicants on all nonimmigrant visas, but certain visa classes have additional specific checks. This section will detail those specific additional checks for B visas and F-1 and M-1 visas.

- B-1/B-2 Visitor Visas: B-1 visas for business and B-2 visas for tourism are among the most common and are generally processed following the standard procedure. The main vetting focus for a visitor visa is ensuring the applicant's true intent is temporary and in line with the visa and that they have strong ties abroad to incentivize their return.[33] In addition to the standard security checks, consular officers scrutinize the applicant's personal circumstances and travel history for red flags. Fraud prevention is a priority in B-1/B-2 cases due to the volume of applications. Aside from the Electronic Visa Update System for visitors from China, the vetting of B visas is largely uniform. All are checked against the same watchlists and undergo the same fingerprint screening with occasional interview waivers for certain low-risk renewal applicants.

- F-1 and M-1 Student Visas: Students must also meet specific educational and regulatory requirements in addition to clearing all the security checks above. One specific requirement is the Student and Exchange Visitor Program (SEVP), a DHS program that manages schools authorized to host international students. Only a student accepted by a US school that is SEVP-approved can apply for an F-1 or M-1 visa. The school issues a Form I-20 to certify the student's eligibility and enters his information into the Student and Exchange Visitor Information System (SEVIS), a DHS database.[34] Consular officers then assess whether the school is legitimate, the student's ability to pay tuition, the student's ability to support themselves in the US, whether their field of study has sensitive national security implications and other aspects of the application they are ill-equipped to objectively assess. Additions to the Foreign Affairs Manual in March and April 2025 are secret and unavailable to the public.[35] The administration has recently added several additional requirements for student visas to report disciplinary actions and other events.[36] In June 2025, DHS announced expanded vetting for F, M, and J visa applicants that includes closer review of their social media accounts.[37]

Conclusion

The title of this hearing assumes that integrity and security are missing from the nonimmigrant visa process. That is false and has never been further from the truth. Nonimmigrant visas are not particularly dangerous, especially after the security and vetting reforms following the 9/11 attacks. At best, the vetting procedures currently in effect reduce the threat of terrorism and crime. At worst, they are completely unnecessary because the threat from foreign-born terrorism and crime is minimal. Regardless, there is no security process to restore because none has been lost.

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[15] See Alex Nowrasteh, "Terrorism and Immigration: 50 Years of Foreign-Born Terrorism on US Soil, 1975–2024," Cato Institute Policy Analysis no. 991, March 10, 2025, appendix.
[16] "Visitor Visa," U.S. Department of State, June 23, 2025.
[17] "Collection of Social Media Identifiers from U.S. Visa Applicants," U.S. Department of State, June 4, 2019; "DHS to Begin Screening Aliens' Social Media Activity for Antisemitism," U.S. Citizenship and Immigration Services, April 9, 2025; Miranda Jeyaretnam, "What to Know About New Social Media Screening Rules for Student Visas," Time, June 19, 2025.
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[22] Michele Thoren Bond, "Written Statement before the U.S. House Committee on Homeland Security, Hearing on "Crisis of Confidence: Preventing Terrorist Infiltration through U.S. Refugee and Visa Programs," February 3, 2016.
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[28] U.S. Department of Homeland Security, Office of Inspector General, "ICE and CBP Should Improve Visa Security Program Screening and Vetting Operations," OIG-22-70 (Washington, DC, September 16, 2022).
[29] U.S. Department of Homeland Security, Office of Inspector General, "ICE and CBP Should Improve Visa Security Program Screening and Vetting Operations," OIG-22-70 (Washington, DC, September 16, 2022).
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[33] "Visitor Visa," U.S. Department of State, June 23, 2025.
[34] "Student Visa," U.S. Department of State, June 23, 2025.
[35] "Foreign Affairs Manual: (U) Students and Exchange Visitors," U.S. Department of State, April 29, 2025.
[36] "SEVIS Release 6.82.2 to Revise SEVIS 'Disciplinary Action' Page," NAFSA, June 9, 2025; "Executive and Regulatory Actions Under the Second Trump Administration," NAFSA, June 19, 2025
[37] "Collection of Social Media Identifiers from U.S. Visa Applicants," U.S. Department of State, June 4, 2019; "DHS to Begin Screening Aliens' Social Media Activity for Antisemitism," U.S. Citizenship and Immigration Services, April 9, 2025.

Mr. GILL. Thank you, Mr. Nowrasteh. Mr. Brown, you may begin.

STATEMENT OF CODY M. BROWN

Mr. BROWN. Mr. Chair and the Members of the Committee, my name is Cody Brown. I am the Managing Attorney at Codias Law, the Nation's premier immigration law firm, exclusively for U.S. citizens who have been victimized by immigration fraud, which I note is a felony under Federal law.

For years the border captured the Nation's attention while masking a far more insidious scandal—the collapse of the lawful immigration system itself where the law goes unenforced, and antifraud safeguards are deliberately dismantled.

Why spend billions on border security if foreign threats can march through the front door?

Immigration fraud is not a victimless crime. I know this because I walk with our clients through some of the darkest chapters of their lives. Half women, half men, they come from all walks of life. They span every demographic and political persuasion from Trump supporters to super volunteers for Bernie Sanders.

Our clients are falsely imprisoned, they are defamed, they are extorted, they are betrayed, and they are sued for their life savings under the i–864. Some lose custody of their children. For some female clients their final childbearing years are stolen. All so a foreign national can get an immigration benefit.

What many of my clients do not know until today is that I, too, have walked in their shoes. On September 19, 2016, during a highly contentious Presidential election cycle, I launched one of the earliest social platforms to combat big tech censorship. The launch was based in Austin, Texas, covered by *Fox News, National Review*, and *Breitbart*.

Days later, an illegal alien whom I did not know, I had never met, accused me of stalking her. While walking to the grocery store with my wife I was arrested by a fugitive task force at gunpoint, thrown into jail, subjected to a $75,000 bond, without knowing who had accused me, and even what the charge was.

I learned the basic facts from the Austin American Statesman based on an arrest affidavit leaked while I was still in jail. I didn't even learn the accuser's identity until I was served with a protective order.

Her statements were riddled with contradictions. There was no corroborating evidence whatsoever. The alleged incidents occurred in areas with numerous surveillance cameras, yet I appeared in none.

She claimed we had conversations. I don't speak Spanish, and she needed an interpreter in court.

When asked to identify me in court, she could not.

Seven months after my arrest the police finally disclosed my forensic phone data which proved I was not where, anywhere she claimed.

That is when we learned about the U Visa. The same month that I was arrested the U.S. House and Senate Judiciary Committees opened a probe into the U Visa program. They concluded it is being exploited by those wishing to defraud the system and avoid depor-

tation. Yet, in my case the judge prohibited my attorney from even asking about the accuser's immigration status.

At no time during my prosecution was the U Visa ever disclosed. When we raised the issue, the prosecutor abruptly dismissed the charge.

A private investigator obtained a confession from the illegal alien that she was seeking a U Visa. When confronted with this evidence, the prosecutor in Travis County expunged the case.

What I soon realized was there was another trial, one that I was never told about. It took place inside the walls of USCIS. Congress has created several U Visa programs that empowered Federal bureaucrats to act as judge and jury over whether a U.S. citizen committed a crime. These are secret trials.

The U.S. citizen is never notified. There is no hearing, there is no cross-examination. There is no opportunity to provide counter-evidence to defend yourself. By a mere preponderance of the evidence a bureaucrat can convict a U.S. citizen of a crime so a foreign national can get an immigration benefit. There are now 400,000 of these U Visas pending over at USCIS.

These secret trials are not limited to just U Visas. They occur every day in marriage-based cases, VAWA self-petitions, i–751 waivers, both of which allow a foreign spouse to accuse their citizen spouse of a crime to fast track their Green Card. In fact, by volume, marriage-based fraud dominates the system, including one-sided marriage fraud, VAWA self-petition fraud, and i–751 fraud.

Nearly a quarter of all new immigrants are spouses of U.S. citizens, approximately 300,000 per year.

I am almost done.

The incentives for immigration marriage fraud are irresistible: Exemption from visa caps, adjustment of status, expedited citizenship, and accelerated chain migration.

Throughout the 20th Century Congress repeatedly amended the immigration law.

Mr. GILL. Your time has expired.

Mr. BROWN. If there is one thing I want Congress to hear, we want an appeals process with the Board of Immigration Appeals to enable fraud victims to appeal these false allegations in front of the board.

Thank you, Chair.

[The prepared statement of Mr. Brown follows:]

Codias Law

TESTIMONY OF

CODY M. BROWN

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

WWW.CODIASLAW.COM

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

BEFORE THE U.S. HOUSE COMMITTEE ON THE JUDICIARY
Subcommittee on Immigration Integrity, Security, and Enforcement

"Restoring Integrity and Security to the Visa Process"
Wednesday, June 25, 2025, at 2:00 p.m.

Table of Contents

I. Introduction

Who We Are

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

Who We Represent

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

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

What We Do

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

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

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

How We Do It

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

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

In Honor of Our Clients

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

II. Scope of Testimony

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

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

A. General Areas of Concern

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

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

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

1. Marriage-Based Immigration Fraud

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

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

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

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

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

2. Exploitation of the I-864 Affidavit of Support

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

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

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

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

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

3. Abuse of the U Visa Program

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

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

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

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

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

B. Focus of Testimony

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

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

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

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

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

III. The Problem: National Marriage Fraud Crisis

A. Legislative History of INA § 204(c)

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

1. Congress Has Combatted Marriage Fraud for a Century

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

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

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

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

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

Recognizing these vulnerabilities, Congress enacted three foundational antifraud provisions:

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

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

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

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

2. Marriage Fraud Was Excluded From Fraud Waivers

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

These waivers took two forms:

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

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

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

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

3. Original Marriage Fraud Bar Was Codified in 1961

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

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

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

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

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

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

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

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

4. Marriage Fraud Bar Was Preserved in 1965

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

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

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

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

5. Marriage Fraud Withstood Expansion of Fraud Waivers

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

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

Justice Clark dissented forcefully:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Senate Hearing Exposed Widespread Marriage Fraud

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

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

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

a. <u>INS Identified Marriage Fraud as a Huge Problem</u>

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

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

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

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

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

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

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

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

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

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

b. State Department Confirmed the Global Epidemic

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

c. Fraud Victims Explained the Lack of Remedies

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

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

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

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

8. Congress Wrote the IMFA of 1986

a. House and Senate Introduced Early Bills

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

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

b. GAO Completed an International Survey

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

c. House Judiciary Expanded the IMFA

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

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

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

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

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

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

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

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

ii. Monitoring Through Conditional Residency

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

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

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

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

iii. Lower Standard of Proof in Removal Proceedings

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

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

iv. Criminalization of Marriage Fraud

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

v. Other Safeguards

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

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

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

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

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

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

d. Senate Judiciary Passes an Even Tougher Bill

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

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

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

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

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

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

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

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

9. Congress Unanimously Agreed to Pass the IMFA

a. House Floor Debate of H.R. 3737

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

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

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

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

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

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

b. Senate Floor Debate of H.R. 3737

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

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

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

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

c. Presidential Signing

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

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

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

10. The Rise of I-864 Financial Exploitation

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

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

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

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

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

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

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

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

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

1. Erroneous Heightened Standard of Proof

a. The Current Standard and Its Origins

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

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

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

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

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

i. DOJ Created a New Standard Without Authority

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Preponderance is the Default Standard

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

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

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

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

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

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

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

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

ii. A Heightened Standard is Wholly Inapplicable

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Plain Meaning Is Reinforced by the Statutory Structure

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

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

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

i. Congress Lowered the Standard for Marriage Fraud

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

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

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

- **§ 216(b)(2)**: "In determining whether an alien is deportable… based on a fraudulent marriage, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the marriage was entered into for the purpose of evading the immigration laws."
- **§ 216(c)(3)(D)**: In removal proceedings following the termination of conditional residency, "the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence," that the petitioning couple's representations about the marriage were false.

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

ii. Congress Intentionally Declined a Heightened Standard

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

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

- **INA § 240(c)(3)(A)** – Deportability must be established by "clear and convincing evidence";
- **INA § 318** – Denaturalization requires "clear, unequivocal, and convincing evidence";

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

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

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

iii. A Heightened Standard Undermines the IMFA Purpose

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

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

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

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

2. Erroneous Definition of Marriage Fraud

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

a. <u>The Current Definition and Its Origins</u>

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

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

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

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

i. The Statutory Text of INA § 204(c)

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

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

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

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

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

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

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

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

(a) The "Primary Purpose" Test is Baseless

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Most Circuits Reject the Board's Tests

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Rules of Construction

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

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

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

ii. Introductory Clause

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

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

(a) "Petition"

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

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

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

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

(b) "Shall"

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

(c) "Be Approved"

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

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

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

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

iii. Clause (1)

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

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

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

(a) "Alien"

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

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

(b) "Previously"

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

(c) "Been Accorded"

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

(d) "Has Sought to Be Accorded"

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

(e) "An Immediate Relative..."

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

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

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

(f) "By Reason Of"

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

(g) "Marriage"

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

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

(h) "Determined By the Attorney General..."

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

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

(i) "Entered Into For..."

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

iv. Clause (2)

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

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

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

(a) "The Attorney General Has Determined"

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

(b) "Alien"

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

(c) "Has Attempted"

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

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

(d) "Or Conspired To"

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

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

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

(e) "To Enter Into A Marriage"

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

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

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

(f) "For the Purpose Of…"

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

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

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

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

(a) "The Purpose"

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

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

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

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

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

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

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

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

(b) "Evading"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) "The immigration laws"

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

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

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

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

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

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

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

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

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

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

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

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

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

1. DOJ: Failure to Prosecute Marriage Fraud

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

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

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

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

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

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

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

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

2. ICE: Failure to Investigate Marriage Fraud

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

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

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

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

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

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

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

3. USCIS: A Safe Haven for Marriage Fraud

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

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

a. Collapse of Screening Safeguards

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

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

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

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

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

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

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

b. Extraordinarily High Fraud Waiver Approval Rates

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

c. No Transparency in Fraud Enforcement

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

d. No Procedures to Protect Victims

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

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

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

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

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

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

1. Marriage-Based Immigration Dominates the System

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

2. USCIS Discloses No Fraud Statistics

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

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

3. USCIS Reports Zero Percent Fraud

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

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

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

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

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

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

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

4. USCIS Simultaneously Waives Known Fraud

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

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

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

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

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

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

5. Chain Migration Is a Fraud Multiplier

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

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

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

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

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

E. Victim Impact: Real Stories and Lasting Harm

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

1. Real-Life Examples

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

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

a. VAWA Self-Petition Fraud

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

b. Marriage Fraud (Immigrant Visa)

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

c. Marriage Fraud (Immigrant Visa with Military Infiltration)

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

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

d. Marriage Fraud (Adjustment of Status)

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

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

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

e. <u>I-751 Waiver Fraud</u>

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

f. <u>I-751 Document Fraud</u>

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

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

g. N-400 fraud

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

2. Devastating Impact on Fraud Victims

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

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

a. Mental Harm

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

b. Financial Harm

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

c. Physical Harm

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

d. Legal Harm

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

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

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

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

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

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

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

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

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

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

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

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

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

A. BIA Appeals Process

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

1. Why Board Intervention is Critical

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

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

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

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

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

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

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

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

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

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

2. The Board Already Has Jurisdiction

a. Plain Meaning of the Regulation Includes Approvals

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

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

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

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

- **Approvals**: "If the requestor properly filed the benefit request and the officer determines that the requestor meets all eligibility requirements, then the officer may approve the request. Upon approval, the officer updates all relevant electronic systems to reflect the approval."
- **Denials**: "If, after evaluating all evidence submitted (including in response to a Request for Evidence (RFE) or Notice of Intent to Deny (NOID), if applicable), the officer determines the requestor is ineligible for the benefit sought, the officer denies the benefit request."

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

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

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

b. Regulatory Context Reinforces the Plain Meaning

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. <u>The Board Reviews Those Questions De Novo</u>

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

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

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

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

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

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

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

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

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

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

5. Equitable Tolling Applies to Fraud-Based Appeals

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

a. Equitable Tolling Is Deeply Rooted in American Law

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

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

Id. at 31 (citations omitted).

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

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

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

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

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

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

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

b. Equitable Tolling Is Presumed In Federal Law

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

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

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

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

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

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

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

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

- **Jurisdictional deadlines** strip a court or agency of equitable discretion and mark the bounds of a "court's adjudicatory authority." *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004).
- **Non-jurisdictional deadlines**, such as claim processing rules, are not intended to strip a court or agency of jurisdiction, but instead are designed "to promote the orderly progress of litigation by requiring parties to take certain procedural steps at specified times." *Henderson v. Shinseki*, 562 U.S. 428, 429 (2011). Filing deadlines have been described as "quintessential claim-processing rules". *Id.*

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

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

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

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

c. Equitable Tolling Requires Diligence and Extraordinary Circumstance

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

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

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

d. Equitable Tolling Applies to Agencies

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

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

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

e. The Board Has Already Adopted Equitable Tolling

i. Original Misapplication—Matter of Liadov

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

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

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

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

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

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

ii. Course Correction—Matter of Morales

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

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

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

iii. Equitable Tolling for Fraud Extends to DHS Decisions

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

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

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

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

6. Standing Sue Sponte Certification for Fraud-Based Appeals

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

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

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

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

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

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

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

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

- Carefully reviewed the evidence of fraud presented on appeal;

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

- Petitioner has acted with diligence in pursuing their rights.

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

B. USCIS Revocation Division

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

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

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

2. Federal Law Already Authorizes Revocation

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

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

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

3. Specialized Infrastructure Is Needed to Enforce the Law

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

4. Fraud-Trained Adjudicators Should Have Superseding Authority

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

5. BIA Findings Must Trigger Mandatory Revocation Review

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

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

6. Revocation Is Not a Substitute for BIA Appeals

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

C. Immigration Fraud Court

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

1. Fraudsters Remain in the United States For Years

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

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

2. A Fraud Court Would Provide Prioritized Hearings

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

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

3. Immediate Detainment and Removal Upon Conviction

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

4. Specially Trained Judges

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

5. The Chief Immigration Judge Already Has Authority

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

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

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

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

6. Benefits of a Dedicated Fraud Docket

A standing Immigration Fraud Court would deliver multiple systemic benefits:

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

- **Efficiency**: Fraud cases share recurring fact patterns. Assigning them to trained judges on a specialized docket enables faster and more accurate adjudications, reducing backlog and improving institutional capacity.
- **Coordination**: The Fraud Court would enhance interagency coordination. EOIR fraud findings could be transmitted to USCIS for revocation under 8 U.S.C. § 1155, and to ICE for follow-on enforcement. This closes the loop between adjudication and administrative remedy, enhancing national security and public safety.

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

V. Conclusion

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

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

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

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

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

Appendices

Appendix A. Form EOIR-29 Revisions

1. Model Form EOIR-29

WHERE TO FILE THIS APPEAL:

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

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

Appeal Type

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

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

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

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

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

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

Name:

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

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

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

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

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

_____
_____
_____
_____
_____

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

☐ Yes ☐ No

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

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

☐ Yes ☐ No

Fraud Appeals (if applicable)

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

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

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

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

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

Signature Block

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

_____ _____

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

_____

Print or Type Name

_____

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

2. Model Instructions for Form EOIR-29

GENERAL INSTRUCTIONS

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

1. General Information

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

2. Appeal Type

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

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

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

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

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

3. Filing Deadline

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

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

4. Where to File

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

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

5. Review by the Board

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

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

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

6. Fees

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

- Payment by bank drafts, cashier's checks, certified checks, personal checks, and money orders must be drawn on U.S. financial institutions and payable in U.S. funds.
- If you live in the United States or its territories, make the check or money order payable to U.S. Department of Homeland Security (not "USDHS" or "DHS").
- If you live outside the United States or its territories, and are filing your application or petition where you live, contact the nearest U.S. Embassy or consulate for instructions on the method of payment.
- When a check is drawn on the account of a person other than the appellant, the name of the appellant must be entered on the face of the check. Personal checks are accepted subject to collectability. If you pay by check, USCIS will convert it into an electronic funds transfer (EFT). This means USCIS will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours and your bank will show it on your regular account statement. You will not receive your original check back. USCIS will destroy your original check, but will keep a copy of it. If USCIS cannot process the EFT for technical reasons, you authorize USCIS to process the copy in place of your original check.
- If you are filing your form at a USCIS Lockbox facility, you have the option to pay for your form filing fees using a credit card. Please see Form G-1450, Authorization for Credit Card Transactions, athttps://www.uscis.gov/g- 1450 for more information.
- If you are filing your form at a USCIS Field Office, cash, a cashier's check or money order cannot be used to pay for the filing fee. The only payment options accepted at a field office are payment through pay.gov via a credit card, debit card or with a personal check.
- Payment that is uncollectable does not satisfy a fee requirement and may result in the rejection of the appeal.

7. Counsel

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

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

8. Briefs & Fraud Evidence

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

9. Oral Argument

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

10. Summary Dismissal of Appeal

The Board may summarily dismiss an appeal if:

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

- The appeal is filed for an improper purpose, such as to cause unnecessary delay, or lacks an arguable basis in fact or law, unless the Board determines that it is supported by a good faith argument for extension, modification, or reversal of existing law;
- The appellant indicates on Form EOIR-29 that he/she will file a separate brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his/her failure to do so, within the time set for filing;
- The appeal does not fall within the Board's jurisdiction;
- The appeal is untimely or barred by an affirmative waiver of the right to appeal that is clear on the record; or
- The appeal fails to meet essential statutory or regulatory requirements or is expressly excluded by statute or regulation.

11. Privacy Act and Paperwork Reduction Action Notice

The information requested on this form is authorized by 8 C.F.R § 1003.3(a)(2) in order to appeal a decision of a DHS officer. The information you provide is mandatory and required to file an appeal. Failure to provide the requested information may result in rejection of your appeal. EOIR may share this information with others in accordance with approved routine uses described in EOIR's system of records notices, EOIR- 001, Records and Management Information System, 69 Fed. Reg. 26,179 (May 11,2004), and EOIR-003, Practitioner Complaint-Disciplinary Files, 64 Fed. Reg. 49237 (September 1999), or their successors.

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

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

Appendix B. BIA Practice Manual Revisions

1. BIA Practice Manual § 6.4 – Expedite Requests

(a) Standards

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

(b) Types of Expedited Requests

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

(1) Presumptive Expedited Review

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

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

Such cases present compounding harms across multiple domains:

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

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

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

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

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

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

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

- The certification is materially deficient;

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

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

- Other extraordinary case management considerations require regular docketing.

(2) Expedited Review by Motion

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

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

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

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

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

(c) Board Response

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

2. BIA Practice Manual § 9.3 – Visa Petition Decisions

(a) Jurisdiction

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

(b) Standing

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

(c) Types of Appeals

Appeals from adverse decisions of visa petitions include:

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

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

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

(d) Filing the Appeal

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

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

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

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

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

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

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

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

(3) When to file –

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

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

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

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

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

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

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

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

(5) Representation –

(i) Discretionary Representation –

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

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

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

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

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

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

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

(7) Evidence –

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

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

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

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

(ii) Fraud Appeals –

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

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

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

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

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

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

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

(d) Processing

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

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

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

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

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

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

(3) Status inquiries –

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

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

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

Appendix C. BIA Standing Sua Sponte Certification Order

Operational Policy and Procedure Memorandum

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

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

I. PURPOSE

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

II. BACKGROUND

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

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

III. LEGAL AUTHORITY

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

IV. STANDING CERTIFICATION AND EXPEDITED REVIEW ORDER

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

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

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

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

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

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

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

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

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

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

V. EFFECTIVE DATE AND IMPLEMENTATION

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

VI. COORDINATION

This operational order shall be read in conjunction with:

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

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

[Signed]
Chairman
Board of Immigration Appeals

Mr. GILL. Thank you. Thank you, Mr. Brown, we appreciate it.

Now, we are going to move on to five minutes of questioning. I will begin by recognizing myself.

For decades the United States have had an existential problem with illegal immigration. This isn't something that is new. It wasn't something that was created under the Biden Administration. We have had it for a long time.

The Republicans in Congress and in the rest of the country outside of Washington, DC, demanded border security, that Washington would actually do what we said we would do on the campaign trail and secure the border and stop the flow of illegal immigration.

What would happen in Washington is that the Republicans would ask for border security. We would ask for a law. We would ask for things that we can fund that would stem this tide of illegal immigration.

In response from the other side of the aisle we would hear demands for amnesty, a pathway to citizenship for people who have no business being here to begin with, who came here illegally. The result was that nothing was done to secure the border.

One of the things that I am most excited about, about the Big Beautiful Bill that we are working on, and we are going to get passed next week, is that finally we can fund border security and mass deportations that the American people demand without having to negotiate on amnesty. In other words, the American people get what they would like, the Republicans get all our priorities, we get a border wall, we get river barriers, we get 10,000 new ICE agents, and we don't have to deal with demands for mass amnesty. That is a huge win not only for conservatives but for all Americans.

I am excited about getting that done. I believe that mass migration is the single biggest existential threat to our country today. We are going to begin by fixing that.

Thank you to the witnesses for being here.

Ms. Vaughan, I would like to start with you. I really appreciate your time here.

Some claim that in to finally secure the border for good we need to make a deal on amnesty, or to expand our already extraordinarily generous legal immigration system or work visa programs.

Does this viewpoint put the interests of the American people first?

Ms. VAUGHAN. Absolutely not.

The biggest problem—well, first, we have tried this in the past and it has never worked because always amnesty now, enforcement if we get around to it. This doesn't work.

What we do know, also from experience, is that every time amnesty is raised it destroys all incentives people have to voluntarily comply with immigration laws and go home on their own if they don't have a path to legal status. It creates incentives for people to stay here illegally, and incentives for people to start cross—trying to cross the border illegally as well.

We should not be discussing, contemplating amnesty of any kind until our—there is integrity and enforcement of the immigration laws that we have.

That is, that is just not something that should be on the table now.

Mr. GILL. Have the American people ever been promised border security in exchange for amnesty in the past?

Ms. VAUGHAN. Oh, repeatedly, most notably in 1986 when the amnesty happened, immediately was given to more people than we were told would be qualifying for it. The enforcement promises were never applied and never materialized. It has been promised in a number of other types of legislation in 2013 and 2007.

It is always the same thing: Amnesty now, we will promise to give you enforcement later.

Mr. GILL. Whenever amnesty is brought up in the national conversation have you found that it leads to increased illegal immigration?

Ms. VAUGHAN. That is definitely what happened in 2012 before the so-called Gang of 8 bill, and during that discussion. It has happened in the past as well.

In fact, well, look what happened before the Biden Administration took office. They had promised amnesty during the campaign. The illegal crossings and encounters at the border went up even before Biden took office in January. They were up substantially in December, a month before that.

Mr. GILL. Then, I would like to ask you about our Green Card system. Approximately how many immigrants are approved for permanent residency each year?

Ms. VAUGHAN. It is about one million per year.

Mr. GILL. About one million. How many of those are via chain migration?

Ms. VAUGHAN. About 60 percent.

Mr. GILL. Sixty percent. Awesome. Thank you, Ms. Vaughan. I appreciate it.

Now. I would like to recognize the Ranking Member Ms. Jayapal for five minutes.

Ms. JAYAPAL. Thank you, Mr. Chair.

Maintaining a healthy, robust, secure visa system so people from all over the world can come to America is not, should not be a partisan issue. Immigration has always been and continues to be one of the essential factors to America's success as a Nation.

Immigrants set up our founding government system, served in our armed forces, power our economy in just about every sector, and have brought innovation and entrepreneurial spirit, with nearly half the Fortune 500 companies founded by immigrants or their children.

We have, as our witness said, "strong systems to ensure integrity with the terms of visa holders." There are already consequences for those who violate the terms of their visas. For example, committing marriage fraud to obtain an immigration benefit is already a Federal crime.

Our visa system has been the pathway for ambition and opportunity for so much of the rest of the world. It is so disheartening to see the Trump Administration do everything it can to destroy the legal immigration system.

I know this system very well. I might have come to one of the embassies that you were at. I came to the United States on a stu-

dent visa and made my way through an alphabet soup of visas. It took me 17 years to become a U.S. citizen. I eventually ended up here as the first naturalized citizen to serve as Ranking Member of this Subcommittee in Congress on immigration.

That is a testament to the amazing thing that can only happen in the United States of America.

Mr. Nowrasteh, let me ask you, your testimony does a great job of showing the intense level of vetting students and other visa applicants receive when applying to come to this country. Tell the American citizen that is out there watching what the benefit is to them of having foreign students come to the United States and why it actually helps the United States if they decide to seek employment here after finishing their course of study?

Mr. NOWRASTEH. So, the benefits are extraordinary.

Oftentimes foreign students are the first step in a long process, just like your process, of eventually getting an OPT, an H1–B Visa, then an employment-based Green Card, and then citizenship. That is the way that the immigration system has been set up in the United States.

So, if we want to have these benefits of high school immigrants and entrepreneurs, people like Elon Musk who started here in the United States on these same ways, and millions of other people, then we need to maintain a large, open student visa system because it is the first link in that chain.

Ms. JAYAPAL. Thank you.

The Trump Administration has targeted student visa holders in all these different ways. There has been incredible chaos in the student visa system. There has been canceling of visas without warning, sending masked ICE officers to kidnap and disappear students, pausing visa interviews for student and exchange visas right when those applicants would normally be starting to apply for their visas.

One student lost his status because of an issue with a fishing license.

Another lost hers because she was a victim of domestic violence, and the police picked up both her and her abuser.

About 15 percent of the foreign physicians who were supposed to come here to work at training hospitals when we have a real dearth of medical professionals who were unable to get their visas in time.

How does all that chaos hurt our country and our ability to retain and attract top talent that we need here in America?

Mr. NOWRASTEH. The Trump Administration's sowing of chaos in the legal immigration system undermines much of what makes this country successful, great, and free.

An economic uncertainty is a killer. This is one of the things that I learned in my education, that I saw around the world, and that you see in our practice. Nothing like uncertainty in employment, in legal residency, and in being able to be here sows devastation. It makes people's lives unsettled both for the immigrants and their American families, employers, friends, the schools where they are, their neighbors. It unsettles everything. It is devastating to this country. It is devastating to them, and it is devastating to future Americans.

Ms. JAYAPAL. Let me turn to the absurd travel ban, arbitrary travel ban that President Trump announced. He alleges this travel ban is necessary to protect us from terrorist attacks and other national security threats.

Is that true? Just yes or no.

Mr. NOWRASTEH. No.

Ms. JAYAPAL. So, let me go through some examples.

Given the recent events in Boulder, Colorado, why is Egypt not on the banned list? Egypt was also one of the countries, along with Saudi Arabia, the UAE, and Lebanon who were involved in 9/11.

Your testimony, as you noted, 98 percent of the people killed in the United States by foreign terrorists were casualties of 9/11. Why are none of those countries on the banned list? Explain this to me, make some sense of it.

Mr. NOWRASTEH. I am sorry, but I can't explain something where there is absolutely no sense. It doesn't make any sense. It is totally arbitrary. It seems like a justification for reducing legal immigration that is divorced from any legitimate security, or national security, or anticrime perspective.

It is just an arbitrary ban. I guarantee we are going to have more of them come down the line that are based on nothing more than the desire to reduce legal immigration.

Ms. JAYAPAL. Thank you. Mr. Chair, I have a unanimous consent request to enter.

Mr. GILL. Without objection.

Ms. JAYAPAL. This is a press release from the Department of Homeland Security. It highlights that some of the Iranian nationals that recently were arrested and entered the country were ordered removed under the Trump Administration.

Mr. GILL. Great.

Ms. JAYAPAL. I yield back.

Mr. GILL. Without objection. Now, the gentleman from Arizona, the great Mr. Biggs.

Mr. BIGGS. Thank you, Mr. Chair.

In May, not one illegal alien was released into the United States. So, Mr. Nowrasteh, do you consider that to be a successful month?

Mr. NOWRASTEH. Yes.

Mr. BIGGS. Good. Good. I am always looking for accommodation and comity. We have some comity right there.

Mr. NOWRASTEH. I think we have more than that.

Mr. BIGGS. So, I don't know. We will find out.

The most recent Congressional Border Security Caucus we had the ICE Director, Acting ICE Director Mr. Todd Lyons come in. Mr. Lyons was describing visa overstays.

So, I would ask the panel, are you all familiar with the term "visa overstays"? Mr. Brown? You need to answer out loud.

Mr. BROWN. Yes. Very familiar.

Mr. BIGGS. OK. Mr. Nowrasteh?

Mr. NOWRASTEH. Yes.

Mr. BIGGS. Mr. Hankinson?

Mr. HANKINSON. Yes.

Mr. BIGGS. Ms. Vaughan?

Ms. VAUGHAN. Yes.

Mr. BIGGS. Let's talk about one visa overstay. I am thinking of the Egyptian fellow who went on a rampage, an antisemitic rampage, and attacked people in Boulder, Colorado.

Did you know that he was a visa overstay, Ms. Vaughan, Ms. Vaughan?

Ms. VAUGHAN. Yes.

Mr. BIGGS. What type of visa did he have before he overstayed?

Ms. VAUGHAN. I don't think I have seen it confirmed. I believe it was a visitor visa, B1/B2.

Mr. BIGGS. That is what has been reported anyways; that it was a visitor visa.

How many, Mr. Hankinson, how many visa overstays are there in the country right now, roughly? Microphone.

Mr. HANKINSON. Maybe a half million a year total overstays. Not all those are permanent. The figures are difficult to parse.

Mr. BIGGS. OK. So, when we look at visa overstays, I want to go back here now to, to Ms. Vaughan for a sec.

Khalid Sheikh Mohammed, the architect of the 9/11 attack, said that marriage fraud is a "fantastic mechanism for terrorist operatives to acquire valid documents."

To you, Mr. Brown, do you agree with that?

Mr. BROWN. Absolutely.

Mr. BIGGS. You have given in your opening statement you talk about how marriage fraud enterprises work. How would you describe DHS's process for detecting marriage fraud, Mr. Brown?

Do they do that? Can they do that?

Mr. BROWN. Their process is virtually nonexistent. When I referred to the deliberate dismantling of antifraud safeguards, this is a great example.

For example, under the last administration one of the key frauds safeguards that Congress enacted in the Immigration Marriage Fraud Amendments Act of 1986 is they started waiving all immunities.

When our clients reported fraud, do you know what they got back? Silence. Nothing.

I want to make this point. We have obtained internal data from USCIS. From 2016–2019, a little subset, do you know what their fraud denial rate was for the marriage-based cases? Zero percent rounded to the nearest whole number.

This is not accidental. Something is deeply, deeply wrong with our immigration system. There are a lot of innocent Americans who are suffering.

Mr. BIGGS. Thank you for that. Mr. Hankinson, what is the process like for vetting student visa applicants?

Mr. HANKINSON. Well, it is as good as we can make it. The interviews take just a couple of minutes. Most of the information that they provide can't be immediately verified.

We probably get it right most of the time.

Mr. BIGGS. We have an ICE, the Acting ICE Director told us the other day that in re-looking at some of these student visas they had a student from China who was entering his 13th year of a baccalaureate degree program for a Bachelor's Degree. That seems, I don't know, I put kids through college and, thank goodness, none of them ever took 13 years to get through college.

Ms. Vaughan, if a student commits a crime or otherwise does something that would disqualify them for continuing on the student visa, how does that get reported to ICE or the school?

Ms. VAUGHAN. Well, if they are arrested for a State or local crime, ICE will get that information through the Secure Communities Program. ICE is not necessarily going to prioritize it because, as a student visa holder, they are entitled to more due process than, for example, someone who is in the country illegally and commits the same crime.

Mr. BIGGS. What the Director told us is that it is not often that they are notified. The school is rarely notified as well.

Ms. VAUGHAN. Yes, the school wouldn't necessarily be notified.

Mr. BIGGS. As my time expires I would point out to my Committee Members that there has been some suggestions by Mr. Brown, Mr. Hankinson, and Ms. Vaughan on some ways to fix the visa system. I think it is worth reviewing.

Then, I have got a couple of unanimous consents.

This one is called "What We Know About the Visa Obtained by Egyptian Man Who Injured a Dozen People in Colorado."

Another one by Mr. Hankinson actually, a commentary on the border security.

Then, a letter that we sent to Secretary Mayorkas just a few months ago asking for information about marriage fraud with regard to visa status.

Mr. GILL. Without objection.

Mr. BIGGS. Thank you.

Mr. GILL. Without objection. Thank you, Mr. Biggs.

Now, Mr. Raskin is recognized for five minutes.

Mr. RASKIN. Great. Thank you very much, Mr. Chair.

The distinguished gentleman from Arizona began by talking about visa overstays. So, Mr. Nowrasteh, I wanted to ask you about that.

There has been a lot of discussion recently about a famous case of a visa overstay, that of Elon Musk, who had a student visa was granted to enter the country, and then didn't go to school, and said he never really wanted to go to school but stayed. He was able to get to work.

I wonder, in your response to the gentleman from Arizona you said, or someone said that there was something like a half million people in this context. What are we doing about those visa overstays?

Going back to your original comment, would we be better off if people like Elon Musk were kicked out of the country at that point, people who overstay a student visa or a work visa?

Because my experience from traveling abroad is that oftentimes what we get in America is the most ambitious people, the people who want to work the hardest, create the businesses, win Pulitzer Prizes and Nobel Prizes, and so on. He would seem to fall into that example. I guess he is in a category of his own.

Somebody who was very ambitious wanting to come here, but would we be better off making sure that everybody was kicked out of the country the day after their visa expired?

Mr. NOWRASTEH. We absolutely would not be better off. We would be substantially worse off if that were the case, especially in that example of Mr. Musk.

The reason why he did what he did, with the student visas and the tricky H–1B situation and everything, was because there was no other way for him to come to this country lawfully.

It is absurd that in this country, which has been built by immigrants, all of us are descendants of immigrants here in this country today, we have a proud history of being open, that there is no other way for him to come here lawfully to open businesses, to try his metal, to create new firms that are multibillion dollar, trillion dollars of value that he has created in the world, and other people like him.

The government should focus on the security threats. They should focus on criminals. They could go after these folks, like ICE went after these Iranians in the last couple of days, many of whom had criminal convictions. They should not be wasting their time on people with expired fishing licenses who are student visas.

Now, the government does do a good amount now, especially under this administration trying to track down some of these overstays. It is not a high priority because they need to go after criminals, national security threats, and people like that.

Every dollar they spend, and every minute they waste going after noncriminals and non-people who aren't national security threats, is a waste.

Mr. RASKIN. OK. I think you are intimating views that are congruent with my own, which are, we should make it much, much more difficult for people to get into America illegally, and much easier for people to get into the country legally and lawfully.

That we have bipartisan convergence around the first issue that we want to make it difficult to get in the country illegally. We seem to disagree about the importance or the value of allowing people to get into the country lawfully.

I think that our temporary Chair here said, and please correct me if I am wrong, "mass migration is the single biggest existential threat to our country today."

What do you think about that as setting aside climate change, terrorism, social, and racial division, is mass migration the biggest threat to our country?

If we had massive lawful migration, would that be a bad thing for America?

Mr. NOWRASTEH. The overuse of the word existential is a prime example of threat inflation, of trying to terrify people for no good reason. The idea that the existence of the United States is threatened by immigration is absurd. It is just the opposite.

The future of the United States is guaranteed and enhanced by immigration to this country. It is what will guarantee growth.

If there was no immigration, for instance, starting right now, the population of this country will start to shrink in the mid-2040s. There will be fewer Americans, there will be a smaller America unless we expand or at least, at least continue the legal immigration that we have now.

Mr. RASKIN. OK. Why do you think immigration has become such a vexed political problem?

I know historically we have gone through periods of anti-immigration fervor and xenophobia. If we have got the grounds for bipartisan compromise, as we have seen repeatedly, why do some people keep on wanting to use this as a political club?

Mr. NOWRASTEH. It is obviously a vote getter. It obviously infuriates a lot of people. To be totally fair to these folks who I disagree with, I do think people see chaos and they really don't like it. Right?

The chaos is caused by our restrictive immigration system overwhelmingly. If we want to get control in the long-term, we need to do what you suggest, which is expand legal immigration opportunities to the United States.

Enforcement matters, but legal immigration matters a ton too.

Mr. KNOTT. [Presiding.] Time has expired. Thank you. We now recognize Mr. Tiffany.

Mr. TIFFANY. Mr. Nowrasteh, do you believe the immigration system improved under the Biden Administration?

Mr. NOWRASTEH. Under some ways, yes. In some ways, no. It is a very large complex system, as you know. It is second in complexity only to the income tax.

Mr. TIFFANY. Your colleague, David Bier, was here about six months ago, and he said "yes, the immigration system improved under the Biden Administration."

What is the change here regarding Cato's position?

Mr. NOWRASTEH. The Cato Institute doesn't have positions. The scholars at the Cato Institute do. If you want to narrow in on the legal immigration system, then I agree with my colleague David, that the legal immigration system did improve during the Biden Administration.

There are large other sections of immigration that have to do with enforcement, other categories—

Mr. TIFFANY. They are going around telling people around the country here today that hey, I am going to split hairs.

I am going to tell people that this one subset of immigration, hey, things are just fine in the United States of America, it is all good, when they understand this as a broader part of the immigration system as a whole, which has been a complete failure.

Mr. NOWRASTEH. Well sir, I don't work on talking points like that. I am interested in facts, and the legal immigration system is not just fine. I have spent my career talking about how we need to expand legal immigration.

I don't go around saying it is just fine. I said that things have improved. No, I don't go around talking about—

Mr. TIFFANY. Sir, don't filibuster. I have got questions to ask, and I only have five minutes.

So, you are saying here, vetting is effective, and the visa process is secure. You stand by that, right?

Mr. NOWRASTEH. Absolutely.

Mr. TIFFANY. How did 350,00 children come into America that we have no idea where they are at, at the end of the Biden Administration? How are there 600,00 criminal aliens in this country that committed, oftentimes, violent crimes? Everything from attempted murder, to carjacking, to—

Mr. NOWRASTEH. The vast majority of those did not go through the legal immigration system. That is entirely the point that we are trying to make here today, is that they did not go through legal immigration.

If they did, then most of those people would have been kept out.

Mr. TIFFANY. It is because of this administration, which you said—

Mr. NOWRASTEH. This administration did a good job.

Mr. TIFFANY. Did a good job in some ways. The previous administration, they just let people come in without being able to get a visa.

So, does your data that you purport to put out there that proves this, does it include the death of Steven Nasholm, a truck driver in Rusk County, Wisconsin, up where I live, who left behind three daughters, does that include him in the data?

He is dead as a result of an illegal alien running him off the road.

Mr. NOWRASTEH. The evidence that we have is dependent on—

Mr. TIFFANY. Does it include the two children in Abbotsford, Wisconsin—

Mr. NOWRASTEH. It includes all people who are convicted of crimes in this country, sir.

Mr. TIFFANY. Who are dead—

Mr. NOWRASTEH. All people who are arrested, and all people who are incarcerated for crimes in the United States during multiple years, including the great State of Texas, which has wonderful data, the best crime data out there, confirms my research.

Every death and every murder, the tragedy and those individual criminals should be punished to the fullest extent of the law. That is not a reason to punish other people who are not criminals—

Mr. TIFFANY. Mr. Nowrasteh, are they in the data?

Mr. NOWRASTEH. For that.

Mr. TIFFANY. Are they in the data?

Mr. NOWRASTEH. Of course.

Mr. TIFFANY. Are the 100,000 children that died of fentanyl—or young people, the No. 1 killer of young people in America ages what, 21–45, fentanyl.

Do you include the fentanyl deaths?

Mr. NOWRASTEH. Do you mean the people who voluntarily took fentanyl and overdosed under that tragic situation? No, those are not homicides, sir.

Mr. TIFFANY. Do you mean the communist Chinese who sent the precursors over here, and then the cartels who—

Mr. NOWRASTEH. Are we talking about the drug war now? We are talking about the drug war?

Mr. TIFFANY. Through them sent in—and, by the way, they sent it in being carried by people who are coming in with the immigration system.

Mr. NOWRASTEH. Why don't you count the automobile imported that also caused accidents.

Mr. TIFFANY. Do you have that in your data? Have you done, in your data, have you reviewed the impact on wages for those who are in the lowest—

Mr. NOWRASTEH. Sure.

Mr. TIFFANY. Economic strata with these millions of people coming into America, taking their jobs? I will end there.

Mr. NOWRASTEH. Of course. I have vast economic literature on that this contradicts your data.

Mr. TIFFANY. Ms. Vaughan, share with us, has there been an impact on Americans' earnings as a result of illegal immigration?

Ms. VAUGHAN. There is no question that illegal immigration causes unfair competition, costing people job opportunities, depressing their wages, and causing those millions of Americans who have dropped out of the labor market to have trouble getting back into it. No question.

Mr. TIFFANY. It is clear they are making less money.

Ms. VAUGHAN. Yes.

Mr. TIFFANY. That should be included in any dataset when we are considering what we should do with immigration. Is that correct?

Ms. VAUGHAN. That is the inevitable result. That is supply and demand. When you increase the supply of labor, distort the labor markets, you are going to get lower wages.

Mr. NOWRASTEH. Supply and demand. You are only talking about supply. These immigrants are coming—

Mr. KNOTT. Mr. Nowrasteh, you are out of order. You are out of order.

Mr. TIFFANY. No, no. I will direct the questions to you, sir. Mr. Hankinson,—

Mr. NOWRASTEH. I am not asking a question.

Mr. TIFFANY. Was there a cost to the fentanyl deaths here in America?

Mr. HANKINSON. The open border made it a lot easier to bring in a lot of drugs. A lot of drugs killed, as you said, about 66,000 people, just fentanyl alone, in one year.

Mr. TIFFANY. How much do you value a life?

Mr. HANKINSON. You can't put a price on a human life.

Mr. TIFFANY. I yield back.

Mr. KNOTT. The Chair recognizes Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chair. Mr. Chair, Republicans love to claim that while they oppose illegal immigration, they are for legal immigration.

The Trump Administration is doing everything it can to slow down or entirely stop legal immigration to the United States. Would you agree with that, Mr. Nowrasteh?

Mr. NOWRASTEH. Yes. Yes.

Mr. NADLER. Under this administration, we have seen attacks on Green Card holders for exercising their free speech rights. We have seen a complete shutdown of the refugee program, and the relentless assault on student visas.

Would you agree with that?

Mr. NOWRASTEH. Absolutely, sir.

Mr. NADLER. Thank you. The Department of State is revoking the visas of students in the United States without any transparency, while ICE is terminating the legal status of students, and in some cases, not even informing them or their respective institutions. Would you agree with that?

Mr. NOWRASTEH. That is absolutely true. It is a total travesty. It is a poor way to run an immigration system. It is bad for the United States that this is happening like that.

Mr. NADLER. According to recent reports, more than 1,800 students and recent graduates across 280 colleges and universities have had their visas revoked. Is that true?

Mr. NOWRASTEH. As far as I know, in the most recent data I have seen, yes. This is changing, of course, all the time, because the administration is so aggressively antilegal immigration. It is hard to keep up with the new numbers.

Mr. NADLER. Thank you. Mr. Nowrasteh, isn't it true that ever since World War II, the United States has followed a policy of attracting people from other countries to come and study in the United States, and that this policy has led to tremendous scientific, military, and computer advancements that have helped make America the strongest, most technologically developed country in the world?

Mr. NOWRASTEH. That is absolutely true. In fact, economist Charles Jones, who is one of the preeminent experts in economic growth, has found that the increase in technicians and scientists and engineers, largely a lot of it fueled by immigration in the post-World War II period, can explain about half the productivity growth up through the 1990s.

A tremendous increase and which resulted in a tremendous increase in wages, in new inventions, and economic growth that has made all our lives better.

Mr. NADLER. You would agree, I assume, that we risk turning the greatest minds in the world away from the United States if we treat international students like criminals?

Mr. NOWRASTEH. That is absolutely one of the biggest risks. The things that worry me the most, is what genius entrepreneurs, like Elon Musk, or what great scientists, like the woman whose name escapes me right now, but who helped discover the mRNA vaccine, are we turning away? What is the loss?

Mr. NADLER. Jennifer Doudna.

Mr. NOWRASTEH. I am sorry?

Mr. NADLER. Jennifer Doudna.

Mr. NOWRASTEH. She is, yes, an incredible, brilliant genius whose work has helped save millions and millions of lives around the world. If she weren't allowed in here, I just doubt that she would have been able to make those discoveries and contributions in a country like Hungary.

Mr. NADLER. Thank you. Now, Mr. Nowrasteh, the replacement rate to keep the population steady, is 2.1 births per woman.

The rate in the United States is 1.6 per woman. Now, obviously, this will result eventually in fewer Americans. I think you mentioned that.

What is the effect of having fewer and fewer Americans, more and more people of advancing age to be supported by fewer people in prime earning years?

Mr. NOWRASTEH. The economic effects are devastating. They are much slower economic growth and slower wage growth. We can see an advanced example of this in East Asia, especially in the country

of Japan, which has had lower fertility, a low replacement for decades now.

It is no doubt that American fertility is below replacement, as you said. It will likely fall further. The only thing that is propelling growth in a good way, and has for a long period of time, is immigration to the United States.

Supporting less immigration through the United States is the same as supporting a smaller America, with fewer Americans, a less dynamic economy, and one where we have less of a footprint in the world. That is tragedy.

Mr. NADLER. One where more people of working age have to support, I am sorry, fewer people of working age have to support more people of advanced age, threatening our social security system.

Mr. NOWRASTEH. That is right. It definitely exacerbates the insolvency issues with Social Security and Medicare. It will bring on those problems faster and in a more severe way.

One of the best ways to maintain, and even the Social Security Administration acknowledges this when they model out their Social Security predictions, expanding legal immigration does help extend the life of these programs.

Mr. NADLER. What do we risk losing if the United States becomes perceived as a less welcoming destination for international students?

Mr. NOWRASTEH. The United States will lose one of the great selling points and attractions for this country. The attraction of opportunity has enticed so many of our ancestors to come here over the centuries.

A part of what it means to be an American and, in this country, is the openness to immigration. That has been part of our history forever.

We are all the products of that. This wonderful vast country is a product of it. There are a hundred times more Americans today than when this country was founded. We are better off because of it. I want to see a future with more Americans.

Mr. NADLER. Thank you. My time has expired. I yield back.

Mr. KNOTT. Thank you, sir. The Chair recognizes Mr. Roy.

Mr. ROY. I thank the Chair. I thank the Chair for calling this hearing.

Mr. Nowrasteh, I assume that when you say you would like a future with more Americans, that includes Jocelyn Nungaray?

Do you know Jocelyn Nungaray? Have you talked to her mother, Alexa?

Mr. NOWRASTEH. I know her. She was murdered by an illegal immigrant in Houston.

Mr. ROY. People who were released into this country with a notice to appear in court, did not appear, and then violently killed a young woman, and is now dead. Her mother lost her.

She is one of dozens, hundreds, thousands of examples of Americans who are dead because of policies that were advocated for by the Biden Administration and people parading around as libertarians.

Ms. Vaughan.

Mr. NOWRASTEH. Parading around as libertarians? What does that mean?

Mr. ROY. Ms. Vaughan, is there—it means exactly what it means.

Mr. KNOTT. You are out of order, Mr. Nowrasteh.

Mr. ROY. It is my time, not yours.

Mr. NOWRASTEH. I take that as a personal outright attack.

Mr. ROY. It is my time, not yours.

Mr. NOWRASTEH. I take objection to that.

Mr. ROY. I don't have any time to listen to libertarian claptrap—

Mr. NOWRASTEH. I know you don't have any time to listen.

Mr. ROY. That is killing Americans. Because that is what you are doing. You are hiding behind a brand—

Mr. NOWRASTEH. Killing Americans?

Mr. ROY. That is resulting in the death of Americans.

Mr. NOWRASTEH. That is a heck of a thing to say to somebody, sir. That is totally false.

Mr. ROY. Mr. Nowrasteh, you are out of order.

Mr. NOWRASTEH. I take exception to that.

Mr. ROY. Well, it is true. It is true and everybody in American knows it.

Mr. NOWRASTEH. I am not killing anybody, sir. That is—

Mr. ROY. Ms. Vaughan—

Mr. NOWRASTEH. Completely exceptional, even for you.

Mr. ROY. Ms. Vaughan—then you go talk to Alexa Nungaray and talk about her daughter no longer being with us.

Mr. NOWRASTEH. Beneath you—

Mr. KNOTT. Out of order.

Mr. NOWRASTEH. To even say that to somebody, sir.

Mr. ROY. Ms. Vaughan, on June 25, 2024, DHS Office of Inspector General released a report entitled "CVP has Limited Information to Assess, Interview, Waive Non-Immigrant Visa Holders."

Are you familiar with that report?

Ms. VAUGHAN. Yes.

Mr. ROY. In that report, is it not true, it says here that the report found the Biden Administration expanded a COVID era policy of waiving visa applicant interviews and fingerprint collecting, to reduce visa backlogs and staffing shortages, which worsened at the peak of the pandemic.

Is that correct?

Ms. VAUGHAN. Yes.

Mr. ROY. Biden took this COVID era policy to admit over seven million foreign nationals from across the globe into the United States. Does that sound correct?

Ms. VAUGHAN. Well, yes. The numbers in later years are more like nine million a year.

Mr. ROY. Certainly, significant numbers of people, millions, without having DHS interview them?

Ms. VAUGHAN. Yes.

Mr. ROY. The DHS failed to fingerprint an unknown number of visa applicants during the 2020–2023 period, correct?

Ms. VAUGHAN. Yes. Actually part of that responsibility is on the State Department as well.

Mr. ROY. Do you find this discovery particularly troubling?

Ms. VAUGHAN. Absolutely. It underscores how much the Biden Administration, and others before it, emphasized swiftness in proc-

essing. Just moving these applications through, getting to the yes, rubber stamping approvals, over making the correct decision.

It emphasizes that vetting is not just a matter of looking people up in a data base that may or may not have relevant information to the decision. Interviews are a way for them to establish the credibility of the applicant and whether they actually qualify for the visa.

Mr. ROY. I want to ask you about the Visa Waiver Program as well. It ostensibly does not require an alien to possess a visa to enter the country, correct?

Ms. VAUGHAN. Correct.

Mr. ROY. It is a gaping vulnerability in our legal immigration system, right?

Ms. VAUGHAN. Inherently, yes.

Mr. ROY. With respect to that, are you familiar with the South American theft groups, particularly Chile, who commit burglary tourism through the Visa Waiver Program?

Ms. VAUGHAN. I have heard a lot about them from law enforcement agencies.

Mr. ROY. For a time, Chile AVWP program refused to provide U.S. authorities the required background information on its nationals seeking entry to the United States, despite entering into a security shared agreement in 2013.

Are you familiar with that?

Ms. VAUGHAN. Yes.

Mr. ROY. So, I sent a letter to DHS Secretary Noem and Secretary, State Department Secretary Rubio, to alert them to Chile's abuse. I would like to insert that into the record without objection.

Mr. KNOTT. Without objection.

Mr. ROY. The DHS informed my office that Chile is now apparently complying with the agreed on security agreements. However, because so many Chilean criminals have established theft rings across the Nation thanks to the VWP, these theft groups have recruited Chile nationals with no criminal record to enter the U.S. through the VWP to commit burglary tourism.

Are you familiar with that extension?

Ms. VAUGHAN. Yes. Yes.

Mr. ROY. It is a real problem. This is the kind of thing that multiplies when we have a lack of seriousness on these issues, correct?

Ms. VAUGHAN. Correct. It exists with Irish contractors in the Boston area as well. They totally exploit these people.

Mr. ROY. Last question here. With respect to the U Visa Program, that presents an opportunity for alleged illegal alien crime victims to obtain work authorization and protection from deportation, correct?

Ms. VAUGHAN. Yes.

Mr. ROY. On January 6, 2022, the DHS OIG again, released a report entitled "USCIS U Visa Program is not managed effectively, and it is susceptible to fraud," correct?

Ms. VAUGHAN. Yes.

Mr. ROY. I could go through a whole litany of things, but I don't have the time to do that. I would like to just acknowledge that problem, that OIG has recognized another problem, and I will just

finish with this since I represent the Southwest corner of Austin, don't blame me for the downtown Austin stuff.

Mr. Brown, I would like you to be able to have a minute to expand just a little bit further on how that abuse of the U Visa Program affected your life because of what we allowed to occur, and what that did to you and your family.

Mr. BROWN. My wife still has trouble talking about it. It felt like we were under siege. It was confusing, we had no idea what was going on.

If I didn't have the background that I have, a little bit of law, a little bit of homeland security, I am not sure most people would even know what happened.

That is my biggest concern is that people who are victimized like this, they don't know. If they don't know that a U Visa Program exists, how will they ever know to ask for that discovery?

Mr. KNOTT. Time has expired.

Mr. BROWN. We have some prosecutors who we know refuse to disclose or even certify U Visas until after a case is concluded.

Mr. KNOTT. The gentleman's time has expired.

Mr. BROWN. There is something called the Brady Doctrine.

Mr. ROY. Yes, the gentleman is correct. I appreciate the gentleman's testimony. Sorry that this occurred to you.

I yield back.

Mr. KNOTT. The Chair recognizes Representative Scanlon.

Ms. SCANLON. Thank you, Mr. Chair. I thought this was supposed to be one hearing where we weren't focused on illegal crossings at the border, but instead were going to look at reforms to our legal immigration and our visa programs.

Apparently some of our folks didn't get the memo. Look, since the first day of this administration, it has been clear that it is chaotic.

Often a lawless immigration agenda is based on a false choice, one that mistakenly asserts that to keep Americans safe, we have to slam our doors to the world, ignore the laws and values that this Nation has been built on and our very history, reject the people and traditions that have actually made our country great, and turn our backs on a critical source of labor to support and expand our economy and especially our healthcare systems.

This administration has claimed to only be going after the worst of the worst. Day after day, instead of hardened criminals, we see them going after hardworking people with no criminal records, who are being ripped from their workplaces, schools, the courts where they are pursuing their legal immigration remedies, et cetera.

We see people with legal status having had the rug pulled out from under them, including our Afghan allies. These are folks who had our troops' backs during that conflict and came here legally on temporary protected status, and now they are facing deportation.

Refugee resettlement has all but been shut down. People who have already completed the complicated and arduous vetting and security process have been left high and dry, often placing them and their families in dangerous conditions overseas.

This administration is now targeting international students, people here to learn from and contribute to our universities, our economy, innovation, and to our healthcare systems.

It is penalizing Green Card holders for expressing opinions that this administration doesn't agree with, despite the plain language of the First Amendment.

Ultimately, despite all the rhetoric we are hearing, these actions hurt our economy, hamper our ability to compete with other countries on the global stage, and really damage our reputation worldwide.

We are already seeing the figure was a $12 billion decrease in tourism, as people are afraid to come here. They don't like what they are seeing.

For centuries, America has been a shining city on a hill. A place where the world's best and brightest seek to come and contribute and be successful in a culture of innovation and achievement. That is being tarnished. It is just moving away from that tradition in the wrong direction.

Mr. Nowrasteh, my district is home to a bunch of colleges and universities, many of which have 10–15 percent foreign students. Revoking their visas without transparency, terminating their legal status, seems like it is a big problem.

I hear from these universities that one of the reasons they like having international students, aside from the different perspectives they bring, the different knowledge they dollars without student loans.

Can you talk a little bit about what is happening with respect to the decrease in international students?

Mr. NOWRASTEH. Yes. They do bring in a lot of dollars. The American educational services are a large export of the United States.

This administration talks frequently about wanting to close the trade deficit, which is frankly an economically meaningless term. If they were really interested in that, they would actually liberalize student visas, because it actually increases exports.

It is a very valuable one. The biggest benefit, of course, is what these people do if they do end up staying here. The firms that they found, the skills that they learn, the extra goods and services that they supply that make all our lives better off.

Ms. SCANLON. This Committee had a hearing on February 15, 2022, on the essential role of immigrant physicians to American healthcare. Have you looked at that at all?

We have a lot of folks come here to get their medical degrees. Many would like to stay. We have tens of thousands of doctor vacancies in this country right now. We have had foreign physicians filling those gaps.

Can you speak about that issue at all?

Mr. NOWRASTEH. I can speak a little bit about that. Foreign immigrants are overrepresented in most medical suboccupations. They contribute mightily to this.

The United States has about 4–5 percent of the world's population. It would be extraordinarily accidental if those people who are born here happen to be the best of the best.

We really punch above our weight when it comes to that. There are a lot of talented foreigners out there who could be great American physicians and medical professionals. It is pretty absurd that we make it difficult for so many of them to come in.

Mr. KNOTT. Time has expired.

Ms. SCANLON. Thank you.

Mr. KNOTT. Thank you. The Chair recognizes Representative Van Drew.

Mr. VAN DREW. Thank you, Mr. Chair. I want to condense this down. Let's be clear, nobody here on this side, I am not against legal immigration.

We are against breaking the law. We want to make this complicated. Not you all, I am not blaming you, but in general, it is not complicated. We don't want the law to be broken.

The abuse that is going on, or did go on, is causing the American people to lose faith in our immigration system. That is the worst of it, and I am going to emphasize this over and over again.

Unfortunately, folks on the Left, folks on the other side, it is even happening today, they will talk about doctors, and teachers, and scientists coming over, and how we are going to stop that. They are going to not want to come over.

They are not the ones we are concerned with. Scientists and doctors are coming over legally. They are going through the system. They are actually getting hurt because of what has happened over the last number of years with the illegals coming in, because Americans are getting somewhat confused, unfortunately.

Let's not blur this. Nobody is against legal immigration of good people coming to America. That is the way America was built.

As many times as the other folks on the other side will say, immigration, I am going to keep qualifying, we are talking about illegal activity and illegal immigration. Worst of all, we keep doing this over and over again.

Under Joe Biden, the problem wasn't just illegal entry at the border and is what we are here to talk about today. It was our legal visa processing system.

For years that administration opened the floodgates. They allowed criminals in. They allowed individuals that were indicted in their own country or indicted here.

They allowed individuals that were convicted in their own country or convicted here. We had people on the terror watch list, and I am not the only one saying that.

We had the FBI Director, the previous FBI Director here under the Biden Administration, no friend of mine, don't particularly care for him, but he said America was more dangerous than ever before in its entire history. That has got nothing to do with Trump. He wasn't President yet.

Let's cut it out. It is telling the truth time. It is time to be honest. Programs that were designed to bring in skilled workers, students, and seasonal labor have been twisted into a gateway for the wrong people to come into our country.

The bad actors were allowed to skip the line, and all while good people that were mentioned and are mixed in, were pushed to the back of the line. The people that we do want to come to America.

That Boulder terrorist, anybody look at his social media content? He was involved in pro-Muslim Brotherhood propaganda.

It was supposed to be a red flag. It usually is a red flag, I guess, but it wasn't red flagged. It appears no one actually screened this guy.

Meanwhile, I am going to say it again, because I really want to pound this in, law-abiding good immigrants who do it properly, they are waiting for years, and I would actually agree sometimes too long. They are good people. They love America. Some of them love America more than the people who are born here in America, because the system is overwhelmed by fraud and abuse.

The more we let bad actors come into the system, the more it becomes harder for the good actors to succeed and make their way to America. We have got programs that are good.

People come here for a while, and they stay. Some of them become citizens. Some come and go back every year, and they work hard. Those are good people.

We are screwing them. We are giving them the short end of the stick. That is why it is so hypocritical to mix in the bad folks with the good folks the way we are when we converse and debate about it.

A secure legal immigration system is not anti-immigrant. It is pro-American, and it is pro-immigrant. We need to restore that integrity. Let's stop letting bad people abuse the system.

I got some questions for you real fast. Like when you vote, you got to vote for this one or that one, I simply want a yes or a no answer. I don't want a whole long thing Mr. Nowrasteh. I want a yes or a no.

Are Americans safer when we stop thoroughly vetting visa applicants? Ms. Vaughan, you start.

Ms. VAUGHAN. No.

Mr. HANKINSON. No.

Mr. NOWRASTEH. No.

Mr. BROWN. No.

Mr. VAN DREW. Good. Should foreign nationals with radical or anti-American social media be denied visas?

Ms. VAUGHAN. Yes.

Mr. HANKINSON. Yes.

Mr. NOWRASTEH. Broadly. It depends. I am a free speech absolutist.

Mr. VAN DREW. Yes or no?

Mr. NOWRASTEH. I am a free speech absolutist. I believe in—

Mr. VAN DREW. It is yes or no.

Mr. NOWRASTEH. —the First Amendment of the United States.

Mr. VAN DREW. When you vote you don't get to—

Mr. NOWRASTEH. So, I guess no. As a First Amendment believer or no.

Mr. VAN DREW. —when you vote, don't talk over me. This is my time, not yours.

Mr. NOWRASTEH. I know.

Mr. VAN DREW. When you vote, you have to make a decision. Is it fair to legal immigrants who wait years, to let visa overstays apply for work permits after they broke the law? Yes or no?

Ms. VAUGHAN. No.

Mr. HANKINSON. No.

Mr. NOWRASTEH. Yes.

Mr. BROWN. No.

Mr. VAN DREW. Should someone who was, last one, should someone who was—

Ms. CROCKETT. Time.

Mr. VAN DREW. I am out of time? OK. I yield back, Mr. Chair.

Ms. JAYAPAL. Mr. Chair, I have two quick unanimous consent requests.

Mr. KNOTT. Yes, ma'am.

Ms. JAYAPAL. The first one is an article from *NBC News* entitled, "Hundreds of International Doctors Due to Start Medical Residencies are in Visa Limbo."

The second one is because we have had so much conversation on overstays, it is the Homeland Security Fiscal Year 2023 Entry/Exit Overstay Report that specifically says that the overstay rate is 1.02 percent.

Mr. KNOTT. Without objection, admitted. The Chair recognizes Representative Ross.

Ms. ROSS. Thank you, Mr. Chair and the Ranking Member for holding this hearing. I am going to try to overlap in a positive way with Mr. Van Drew and talk about what we need to enhance legal immigration.

I am absolutely convinced that we can fix our immigration system to deal with illegal immigration, the overstay situation, obviously, we are working on the border. We can walk and chew gum at the same time.

Both the Chair and I represent one of the fastest growing areas in this country in North Carolina. Every day, and we just came back from being in our districts, I hear from the agriculture sector, the largest sector, economic sector in North Carolina, the hospitality industry, the construction industry, we have talked about the medical industry, the research industry, that they need more workers and they need to have people who can get their visas.

They need better H–1B processing. They need better H–2B visa processing. They want to hire people who are legal. We have a backlog.

We have not increased many of these visa quotas in more than 30 years. People want to come into this area. We are growing.

We have amazing institutions of higher education, educating lots of people from the United States. I am very big on increasing the pipeline from the United States. As we have discussed, in North Carolina, there simply are not enough people for our growing economy.

Increasing pathways to legal immigration is either the first or the second highest priority for the North Carolina Farm Bureau, the North Carolina Chamber of Commerce, the North Carolina Homebuilders, our education institutions.

Mr. Nowrasteh, can you tell us how we could fix some of the problems that we are hearing with our visa system, and expand opportunities for more of these people to get legal visas?

These employers in my district and in my State, who are generating all the economic prosperity, want to do it the right way.

Mr. NOWRASTEH. The major problem with the legal immigration system in the U.S. is that it is far too restrictive, it is far too complicated, it is far too burdensome. It is the second most complicated portion of American law after the income tax.

Now, I am just a humble supporter of the free market, but people should be able to go back and forth based on where they are de-

manded, where their opportunities are, and where people want to buy and sell from them and to them.

We need to expand these opportunities for low-skilled workers in areas like agriculture, but also create a visa for construction workers. We need to create a visa for manufacturing, for all different types and for every sector of the American economy.

For mid-skill workers, for people who are higher-skilled, make it easier for them to come in, some of them temporarily and some of them permanently. At a minimum, the thing that we can do is create a visa for entrepreneurs, which this country entirely lacks.

That is the no-brainer here. That is the biggest no-brainer around.

Ms. ROSS. Mr. Nowrasteh, we have only touched on this, I have, ever since I got here, been one of the primary sponsors of a bipartisan bicameral bill to deal with what we call the documented dreamers, the children of H–1B visa holders who come over here before they weren't born here.

Sometimes their siblings are U.S. citizens, but they are not. They literally age out of their visas when they are 21 years old. The backlog is so long that they will never be able to get a visa or become a U.S. citizen.

They are the children of highly educated people. Most of them are in college. We have paid for their education. Now, we are deporting them to countries that we compete with.

What do you say to those documented dreamers who I have been fighting so hard for?

Mr. NOWRASTEH. You should be allowed to stay in the United States. You should be allowed to become an American citizen. You should be allowed to use your talents, your skills, and your grit to do well here.

The one thing we know about children doing well, or how well they are going to do in life, is it is related to their parents. The H–1Bs who come to the United States do extraordinarily well.

They have above the 90th percentile in wages in the United States. Their kids are going to do about as well as they do if we let them, if the government lets them succeed.

All we need to do is get out of their way. All we need to do is take the government out of this equation to legalize these folks and allow them to do what they want to do, which is to succeed and become Americans.

Ms. ROSS. Thank you. I yield back.

Mr. KNOTT. Thank you, Ms. Ross. The Chair now recognizes myself for five minutes.

Ms. Vaughan, one of my greatest frustrations is the conflating of illegal versus legal. No one up here is against legal. We all want to strengthen it.

It is very hard to be prolegal immigration and pro-illegal immigration. This notion that we are the recipients of only the best and the brightest, only those who refuse to commit crimes, only those who give more than they take from this country, that is not necessarily the case in any way, shape, or form as it relates to illegal immigrants.

I am a former Federal prosecutor. I saw a lot of the people that were coming across the border, many of whom we had no idea who

they were. We had no idea that they were here until they committed some grievous act.

Can you paint the other side of this coin, ma'am, and talk about the tolls that this country has received and been victimized by as it relates to illegal immigration?

Ms. VAUGHAN. Wow. Let me count the ways. I do want to address one quick—

Mr. KNOTT. Please.

Ms. VAUGHAN. Beforehand, and that is that, we have talked about good people coming here through some of the legal programs.

We also need to remember that our student visa programs, and our exchange visitor programs, and some of the work programs would be far more successful if the people who benefited from those programs went back to their home country and helped enrich and advance their home countries.

That is part of the original purpose of these types of programs. I don't think we should always talk in terms of trying to get people to stay here.

As far as the costs of illegal immigration, they are numerous. It causes labor market distortions that harm Americans. The fiscal costs are huge. The CBO just came out with a report detailing those costs.

The worst cost is the public safety and national security threats that occur when we allow people in.

Mr. KNOTT. Just off the top of your head, do you know how many Americans died in 1990 from drug overdoses?

Ms. VAUGHAN. I do not.

Mr. KNOTT. It was roughly 4,500. Do you know how many have died in the last 20 years from drug overdoses?

Ms. VAUGHAN. I do not.

Mr. KNOTT. Almost 1.2 million. I know there was an effort to delineate the role that illegal immigration plays in the drug culture, drug crimes, violent crime, and so forth, but can you separate America's problem, and addiction and death, from drugs and crime, from illegal immigration?

Ms. VAUGHAN. No. There is a direct nexus with transnational crime and an insecure border in this. That is very well established, and you cannot separate the two.

Mr. KNOTT. Mr. Hankinson, in regard to your experience and your expertise, did the Biden Administration, again, going back to this construct, legal versus illegal immigration, did they do anything to prevent illegal immigration from only accelerating in this country?

Mr. HANKINSON. No. That they did the opposite. They wanted to conflate all immigration into migrants, so that there was no distinction between legal and illegal.

Mr. KNOTT. Did that open up the pathway not only for illegal immigration to overwhelm the system, but also the pathways of legal immigration? Were those abused by bad actors?

Mr. HANKINSON. Well, when you put all the staff, for example, the border patrol is not patrolling the border, more people can come in. If USCIS is processing all the cases of parolees and asylees, they don't have time to process the legal cases.

Legal immigrants suffered more under the Biden Administration than they should have.

Mr. KNOTT. This idea that illegal immigrants do not commit crime, I want to ask you a very basic question. Is it easier to prosecute, convict and jail someone who was born in the United States?

Is it easier to convict someone that you don't even know is here?

Mr. HANKINSON. Well, it is easier to convict someone when you know who they are. Either way, it takes a lot of time.

Mr. KNOTT. That is right. That is right. In terms of the drug sales, the drug smuggling, and so forth, if we don't know that they are here in the first place, it is harder to investigate and convict. Is that correct?

Mr. HANKINSON. Yes.

Mr. KNOTT. Now, Mr. Brown, in regard to your own personal story, I want to ask you just a few questions outside of your own experience.

What other types of victims do you deal with as it relates to immigration fraud?

Mr. BROWN. The vast majority of our clients are traditional one-sided marriage fraud cases. Those are traditionally when someone, a foreign national, convinces and deceives a U.S. citizen into marriage for the purpose of getting a Green Card.

Over the last couple of decades, there has been new types of marriage fraud that has emerged. One is called VAWA self-petition fraud. That is when they file a Form I–360. That is when they falsely accused their spouse of some sort of domestic violence to become eligible to basically pursue the Green Card without any obstruction.

Another one is an I–751 waiver fraud. The Congress passed the 1986 Marriage Fraud Amendments Act and created this conditional permanent residency regime. This I–751 waiver is a way for them to get around the joint petition requirement by making a false accusation.

The final form of marriage-based fraud is I–864 fraud, which is a huge problem. The I–864 is basically a form of immigration alimony these days. We have had numerous clients where a foreign national marries them, comes into the U.S., doesn't even cohabitate with them, and sues them under the I–864.

There is no fraud exception in the Federal statute, which should be changed.

Mr. KNOTT. Right. OK. Sir, thank you for your testimony. To the victims who are here in the back, thank you for coming. We see you. I yield back.

Mr. Fry? Mr. Garcia. No, I am sorry, Mr. Garcia. Mr. Garcia, I wasn't trying to skip you. I had to leave, so I am getting Mr. Fry to come and sit in the chair.

Mr. GARCIA. Thank you, Mr. Chair. Before I make a few remarks, I want to just observe that the bulk of this hearing was about illegal or unauthorized immigration.

We are supposed to be talking about legal immigration and visas and the visa system. In addition to that, people went as far as to talk about an existential threat.

People talked about, inaccurately, the last amnesty that was granted, which is incorrect. It was 39 years ago that Congress en-

acted the Immigration Reform and Control Act, known as IRCA, signed into law by President Reagan, for those who may be mistaken, or were too young, or not born yet to be able to talk about it as if it were a fact.

Once again, we are here so that Republicans can pretend to be concerned about an immigration system that they have consistently undermined.

For more than 30 years, 39 to be exact, Republicans, with a few exceptions, temporary ones have rejected immigration reform and embraced largely a racist narrative that portrays immigrants as criminals and terrorists all for short-term political gain. I say that as a proud American who also is an immigrant to this country.

Now, under this administration, we have a lawless authoritarian regime that is terrorizing communities, kidnaping people off the streets, deporting U.S. citizens, including children with cancer. Locking up nearly 60,000 people and depriving them of even food and basic necessities.

Openly violating the law and preventing the Members of Congress from making oversight visits. I experienced that last week with three other Members in Illinois.

As my colleagues have pointed out, the administration is cracking down on legal immigration through over-broad and discriminatory actions targeting international students and imposing travel bans on 19 countries.

It is a cynical and cruel campaign that does nothing to improve the lives of working families. The people of this country see through it.

That is why the President's polling on immigration is underwater. Even though Republicans don't want to fix our immigration system, it is more important than ever to promote a thoughtful and nuanced approach to these issues. We can look to history to inform our path forward.

Mr. Nowrasteh, thank you for being here today. I want to ask you about the Bracero Program in the 1950s and 1960s. That was a program as you know. Do you think that it was more effective than the overly punitive system that we have in place today?

What lessons about the visa process can we learn from that program today?

Mr. NOWRASTEH. It was far more effective than the process we have today. It was not perfect by any means. There were definitely problems in any of these programs.

The problems though back then, were largely caused by too many rules and restrictions, and frankly, by the Mexican government side. Which sort of inserted a lot of corruption to steal wages from some of these workers.

What we saw was at the beginning of the expansion of the Bracero Program in 1952, there were around two million or so unauthorized immigrants in the U.S., almost all of them from Mexico. Within a few years of this program, the border flows, the illegal crossings, fell by over 95 percent.

The illegal immigrant population fell by 90 percent because they got these visas. This was ended, this program, in 1964. That is when the modern illegal immigration program, or illegal immigra-

tion problem began, was because Americans still demanded immigrant laborers, but Congress had made it illegal.

Mr. GARCIA. Thank you for that. I ask you that, because it is personal to me. My father came to this country under that program, eventually became a lawful permanent resident and petitioned for us. That is how we arrived in 1965, another historic year in immigration law.

If Republicans want to restore integrity, and you corrected the record, sir, and security to the visa process or enhance it, perhaps, then they should stop criminalizing immigrants at large and destroying those lawful pathways.

If America wants to stay the vital country that it has been and remain a beacon for the rest of the world, then we need to restore those pathways, which have been shut down.

Thank you. I yield back, Mr. Chair.

Ms. JAYAPAL. Mr. Chair, I have an unanimous consent request. I seek unanimous consent to enter into the record, this Congressional research report titled, "U.S. Citizenship and Immigration Services Operations and Issues for Congress." It shows that out of 10 million forms processed by USCIS in 2023, only 1.6 percent were referred to the Office of Fraud Detection and National Security for any indications of fraud or national security threats.

Mr. FRY. [Presiding.] Without objection. The Chair now recognizes the gentleman from Texas, Mr. Hunt.

Mr. HUNT. Thank you, Mr. Chair. Under the Biden Administration, the United States was flooded with tens of millions of illegal immigrants that used dozens of visa programs to finesse their way into our great Nation.

In response to this invasion, President Trump signed an Executive Order simply returning immigration law back to the standards of July 19, 2021, which restores and enhances all screening of foreign nationals, especially those who are considered to be a higher risk to this country.

To secure the homeland, which was about 77 million Americans voted for, we must do more than just finish the wall, fund CBP, and support ICE's lawful deportation operations. We must also reform visa programs which have been used to usurp Federal immigration law.

We were told post-911 that we were going to fight in Afghanistan and that we had to fight in Iraq. Why? Because if we didn't fight the enemy there, then we are going to have to fight them here in our own country.

Now, because of the failures of the Democrat party's policies, they are now in our homeland. How do we know? Because 382 citizens who are matches on the terror watch list, were encountered at the Southern border, and 99 of those were released into the United States from 2001–2023. Unacceptable.

The Democrat Party under Joe Biden and Kamala Harris, Alejandro Mayorkas, and numerous other dark money groups and NGOs, made it their mission to flood this country with tens of millions of unvetted immigrants and people who wish to do us harm.

Terrorists like Egyptian National Mohamed Sabry Soliman, who used a homemade flame thrower and Molotov cocktails in Boulder,

Colorado, to attack pro-Israel demonstrators who were advocating for the release of hostages.

This man, who was admitted into the U.S. in 2022 on a Tourist Visa, and was then given a work authorization in 2023, by yes, you guessed it, the Biden Administration, and had been posting pro-Muslim Brotherhood propaganda on his Facebook page for more than a decade. Disgusting.

Ms. Vaughan, thank you so much for being here today. I really appreciate your testimony. If you had a magic wand that could create any policy to prevent tragedies such as we saw in Boulder, Colorado, a few weeks ago, what would it be, ma'am?

Ms. VAUGHAN. Well, unfortunately, there is no machine that can read people's minds to know what their intent is when they are coming here.

One of the most important improvements that we could make would be to require mandatory interviews for nonimmigrant visa applicants and also people who are applying for Green Cards and immigrant visas.

Mr. HUNT. OK. Thank you.

MS. Vaughan. We should have eyes on and personal contact with everyone who is applying.

Mr. HUNT. Can you say that again please? We should have personal contact with every single visa holder of every single individual that wants to enter this country.

Am I right or wrong?

Ms. VAUGHAN. Right. At a minimum for their first application. Some renewals are not high-risk once you can examine their travel history.

Mr. HUNT. Of course.

Ms. VAUGHAN. Every new applicant, with very few exceptions, should have a personal interview.

Mr. HUNT. What the American public needs to understand and what we know, is that 77 million people voted for exactly what President Trump is executing right now.

The faux outrage from the Left continues to ignore the damage that has been done to our country and people that are literally maiming our fellow Americans, while we have done nothing and we stood by idly. We are now acting and behaving in a way that enforces the law.

This is not xenophobia. This is the way and the process that it takes to enter a sovereign Nation. We at the Federal Government must protect that.

I am somebody that has deployed all over the world. No other country operates this way. There is not a single country in the world that would allow 20 million people to enter their country illegally. Then, when we do something about it, we then cry xenophobia. It would never happen.

When I was stationed in Saudi Arabia, you had to have a diplomatic passport just to enter Saudi Arabian airspace. The idea that we should at least speak to every single person that wants to enter our country is a novel idea, because everybody else does it.

Thank you so much for your time. Thank you for being here. Mr. Chair, I yield back the remainder of my time.

Mr. FRY. The gentleman yields. The Chair now recognizes the gentlelady from Texas, Ms. Crockett.

Ms. CROCKETT. Thank you so much. It is interesting that we are being accused of wanting all kinds of criminals to be on the streets, or that we don't believe that people should show up to their meetings and appointments.

The last time I checked, there are a lot of people that are actually being grabbed as they are going in for their appointments. In fact, we know that one of the candidates that was recently running in the mayoral ended up being arrested, because he decided that he was actually going to escort people that are actually showing up to their meetings.

We know that the Pope, yes, the Pope himself, decided that the church may need to have people that are going to escort people as they are going into their meetings, because the reality is that, what they are claiming what they want to do, versus what they are actually doing, the actions don't match up.

WShile we are supposed to be talking about visas, somehow we continue to cherry-pick and talk about one criminal act and another criminal act.

It is so very interesting to me that yes, we will say people are xenophobic, because when you start to decide that just because somebody came from another country, they are automatically some kind of criminal, that does sound kind of xenophobic to me. Because you are using a paintbrush to paint an entire group of people where the vast majority of them are coming here because they are actually seeking a better life.

Let me get to what this hearing is supposed to be about. The idea that Trump and my Republican colleagues want to restore integrity and security in the visa process is actually a joke.

Let me be clear, integrity is not snatching lawful visa holders off the streets and throwing them into unmarked vans. Integrity is not revoking visas based on social media posts that hurt somebody's little feelings, because kids decide that they want to go after Trump or this administration. We have a thing called free speech in this country.

Since we are talking about integrity, I am confused as to why my Republican colleagues aren't talking about the lack of integrity when it comes to the President's family's visas.

Let me remind you all that Melania, the First Lady, a model, and when I say model, I am not talking about Tyra Banks, Cindy Crawford, or Naomi Campbell level, applied for and was given an EB–1 Visa. What that stands for is an Einstein Visa.

Now, you don't know, let me tell you how you receive an Einstein Visa. You are supposed to have some sort of significant achievement, like being awarded a Nobel Peace Prize or a Pulitzer, being an Olympic medalist, or having other sustained extraordinary abilities and success in sciences, arts, education, business, or athletics.

Last time I checked, the First Lady had none of those accolades under her belt. It doesn't take an Einstein to see that the math ain't math in here.

Nevertheless, what Republicans are doing with this reconciliation process, the travel bans and revoking visas, jeopardizes our na-

tional security. It threatens our communities, our higher education, and our economy.

Visas like the largely vetted J Visas for higher education, and M Visas for trade training, attract the next innovators, medical providers, researchers, and educators that we need to build on American success.

I am not going to mess up your name, so I am not doing that. I am with you. OK? In your experience, do individuals on J or M Visas typically improve or impair our economy?

Mr. NOWRASTEH. They generally improve the economy. I can give a brief example. My wife is a very successful woman. She makes a ton of money, which I am grateful for.

The reason why we are able to do that while having three children, is because of the au pair visa, somebody who is here on a J Visa.

Ms. CROCKETT. OK.

Mr. NOWRASTEH. Who is here and able to supply this for us.

I also want to defend Melania really quick. Not everybody could marry Donald Trump. That is quite an achievement.

She deserves credit for that. Nobody up here could have done it.

Ms. CROCKETT. You, sir, are right. I couldn't do it. Anyway, in fact, J Visa holders contribute $43.8 billion to the U.S. economy, and support more than 300,000 jobs.

Make no mistake, immigrants improve the health of U.S. citizens too. Despite the fact we already have a doctor shortage, Trump's reckless travel ban, and visa overhaul are exacerbating this crisis by impairing hundreds of hospitals with foreign trained doctors, set to do their residencies here in the United States, meaning fewer people will get the help they need and more people will die.

Now, let me remind you that Republicans are trying to gut Medicaid. Roughly 4.5 million people receive caregiver services through Medicaid. Most of these folks are in Red States.

Wouldn't you know that in 2023, Kaiser Family Foundation estimated that almost 30 percent of long-term care providers or home care caretakers were immigrants. It is like Republicans want Americans to suffer.

Now, Republicans say visas make us less secure. Let's talk about how U Visas, visas given to victims of crimes like rape, murder, human trafficking, torture, abduction, and kidnaping, to help law enforcement with their investigation or prosecutions of these crimes. These folks are risking their own security for broader safety of Americans and our communities.

Thank you so much. I will yield.

Mr. FRY. The gentlelady yields. The Chair now recognizes himself for five minutes. I think it is important to realize how we got here. Right?

I have served in Congress for 2½ years, and one of the first hearings that we ever had, the Ranking Member of this Committee, not this one, said that we were imagining, Republicans were imagining a border crisis, right?

A stark commentary from the Ranking Member, when all evidence seemed to suggest and show that there was indeed a border crisis where millions of people were pouring in illegally.

One of the concerns of that, not only from the illegal side that Mr. Knott talked about, but the legal side too, Ms. Vaughan, it seems to me that the evidence suggests that the Biden Administration kind of flooded the zone a little bit, and there weren't adequate checks on the people that were going through the visa process normally.

Would you agree with that?

Ms. VAUGHAN. I would agree with that. They implemented through Secretary Mayorkas, a get-to-yes culture. We were instructed to minimize vetting, and to approve, as a default, and discouraged from referring cases to fraud. They were not allowed to issue notices to appear for failed benefit applicants.

They sort of took away the consequence of filing a frivolous application by letting people who were here illegally apply for a visa and the few that were denied nothing happened to them.

That created a huge impetus to apply for some of these visa programs that people really wouldn't even claim to qualify for. They knew by just filing the application, they could get a work permit and protection for deportation.

That just destroys the integrity of the system, and it makes legal applicants have to wait longer for the benefits that they deserve.

Mr. FRY. Correct. Now, we are forced with figuring out whether people are categorized in the right place, right?

Whether they were even lawfully allowed to get the visa that they were supposed to receive.

Ms. VAUGHAN. That is right. There have been people whose lawful status has been held back by all these frivolous applications. People who have either received them already fraudulently, or who are on waiting lists and who have work permits, who shouldn't have them at all.

Mr. FRY. When it comes to vetting, obviously the Biden Administration rescinded Trump's prior Executive Order from his first term that kind of strengthened the visa process.

The new Executive Order under President Trump called for maximum vetting, and ordered reviews of countries with poor screening, and ergo travel suspensions, of course.

Mr. Hankinson, can a restriction on a country be lifted? How would that look?

I guess when they comply and have adequate background checks of their own citizens, that would be a reason why a country that is on that list could now be allowed into the country.

Mr. HANKINSON. If they would take all their citizens back when we asked them to, it was one factor. The overstay rate in some of these countries, for Chad, it was 50 percent.

Out of every two people issued a visa, one doesn't come back. Maybe it is time to rethink that one. If they got their house in order. If their central agencies were able to issue credible documents and verify criminal records, I would assume that they could be let back in.

Mr. FRY. Mr. Hankinson, would you agree that our foreign adversaries exploit our immigration system?

If you do agree with that, how so?

Mr. HANKINSON. Absolutely. Well, we know that the Chinese have spied on American companies, American universities, and the

American government. Obviously, it is not all of them. It is just a small percentage, but that is all you need.

We know that the Russians have done the same, the Cubans. It is a very easy country to get into, or at least it has been.

Mr. FRY. Mr. Brown, does the current Executive Order by President Trump, do you believe that this closes security gaps more effectively than the previous administration did?

Mr. BROWN. Maybe. That what the Trump Administration has, is some wonderful statutes that you all have already passed.

It gives them wide latitude to enforce some of these laws. You just brought up the fact, what do we do with all those people who came in under the Biden Administration through legal channels and weren't eligible?

In my opinion, the Trump Administration tomorrow, should stand up a permanent revocation division inside USCIS and look at these applications that went through.

The other thing they can do right now, is for a lot of the victims who have been personally harmed by these foreign nationals, there is an existing process in place with the Board of Immigration Appeals that allows them to appeal their I–130 petitions based on fraud.

That is something they can implement right now. There is no other statute that needs to be done.

Mr. FRY. Thank you for that. Ms. Vaughan, regarding President Trump's Executive, current Executive Order, do you believe that if we had had this in place during the Biden Administration that ICE would not have had to apprehend 11 Iranian nationals this past Sunday? One of them being a former Army sniper for the IRGC.

Ms. VAUGHAN. Well, it is hard to know. I do believe that there would have been, the ones who came over the border are more likely to have been stopped. The ones who came on visas are less likely to have been able to get those visas.

Since we don't have a machine that can read people's minds, the best defense against allowing people to enter who mean our country harm, is to have routine, across the board, immigration enforcement that will ensnare the threats, as well as the people who are committing fraud or simply don't qualify.

Mr. FRY. I agree with you. Including a look at the purview of their social media, which would have shown at least with the Boulder, Colorado, individual—

Ms. VAUGHAN. Yes, yes.

Mr. FRY. Sharing Muslim Brotherhood propaganda.

With that, I see my time has expired.

Mr. RASKIN. Mr. Chair?

Mr. FRY. The gentleman is recognized.

Mr. RASKIN. I have a UC request.

Mr. FRY. Go ahead.

Mr. RASKIN. Thank you. A UC requests that further to the colloquy between Mr. Nowrasteh and the Congresswoman from Texas. This is in the *Pew Research Center*, "A Majority of Americans say Immigrants Fill Jobs U.S. Citizens Do Not Want."

Mr. FRY. Without objection.

Mr. RASKIN. Thank you.

Mr. FRY. That concludes today's hearing. We thank the witnesses for appearing before the Subcommittee today.

Without objection, all Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record.

Without objection, the hearing is adjourned. Thank you.

[Whereupon, at 4:12 p.m., the Subcommittee was adjourned.]

All materials submitted for the record by the Members of the Subcommittee on Immigration Integrity, Security, and Enforcement can be found at the following links: *https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=118426*.

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