

## **Overview of U.S. Citizenship Act of 2021**

On Thursday, February 18, 2021, Representative Linda Sánchez and Senator Bob Menendez introduced the [text of the U.S. Citizenship Act of 2021 \(USCA\)](#) which lays out broad reforms to our broken immigration system and a pathway to status for millions of immigrants. Many of these reforms, if passed, would have a significant impact on immigrant survivors of gender-based violence and their families. Below are a few highlights of the bill prepared by [Alliance for Immigrant Survivors](#) policy working group.<sup>1</sup>

### **I. New Paths to Status**

- A. “Legal Prospective Immigrant Status” (LPI):** To qualify for this new relief, individuals must show they were physically present in the U.S. before January 1, 2021. Those with LPI status may work and travel abroad.<sup>2</sup> After 5 years with LPI status, LPI holders may apply to become a legal permanent resident if they meet certain conditions, including not carrying tax liability.
- B. The Dream Act** creates a **path to legal permanent residency for DREAMers** and streamlined process for applicants already in DACA status.
- C. The American Promise Act** provides legal permanent residency for those who held Temporary Protected Status (TPS) or Deferred Enforced Departure (DED) or were otherwise eligible for TPS or DED on January 1, 2017. Applicants must show they have been continuously present in the US since January 1, 2017.<sup>3</sup>
- D. The Agricultural Workers Adjustment Act** establishes a streamlined pathway for legal permanent residency for agricultural workers who have performed agricultural labor or services for at least 2300 hours or 400 work days in 5-year period before application, including temporary or seasonal work

Each of these new protections allow for spouses and children to be derivative beneficiaries. To apply for adjustment of status under these new paths, applicants must pay a fee (though there are provisions for fee waivers in certain circumstances) be present in the United States (with limited exceptions), submit biometrics and background checks. and are subject to certain inadmissibility grounds as well additional criminal bars (with waivers and exceptions available).

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<sup>1</sup> We are grateful for the insights and expertise of the Center for Gender and Refugee Studies, Nebraska Coalition to End Sexual and Domestic Violence, Jenesse Center, Americans for Immigrant Justice, Los Angeles Center for Law and Justice, Immigration Center for Women and Children, MetroWest Legal Services, Immigrants' Rights and Human Trafficking Program at Boston University School of Law, Alianza Nacional de Campesinas, Ayuda, Northwest Immigrant Rights Project, Her Justice, Tahirih Justice Center, ASISTA, and the Asian Pacific Institute on Gender-Based Violence.

<sup>2</sup> Generally, no more than 180 days abroad in one calendar year, with exceptions in limited circumstances.

<sup>3</sup> Though spouses and children are not subject to the same requirement.

## Impact on survivors:

- **Ensuring Path to Status:** These new paths to status will help reduce vulnerability to abuse and exploitation. In addition, in all of these new protections, the bill provides that if the relationship between principal and derivatives terminates by death, divorce, annulment, or if spouses and children have been battered or subject to extreme cruelty (regardless of whether the legal relationship terminates), the spouse or child may apply independently for status or lawful permanent resident status if otherwise eligible.
- **Access to LPI provisions:** The bill also limits individuals currently in legal status, such as those with nonimmigrant visas (like U and T visas) from applying for LPI benefits; however, there are exceptions (like if they are derivatives of LPI applicants, among others).<sup>4</sup>
- **Access to Benefits:** Our partners at [Protect Immigrant Families](#) have outlined concerns that the bill denies immigrants holding LPI status access to subsidies under the ACA, and most would remain subject to the five year waiting period after getting their green cards. Read their statement [here](#).

## II. Enhancements to Survivor-Based Protections

**A. Increase of U visa Cap & Access to Work Authorization:** The bill raises the U visa cap from 10,000 visas available annually for principal applicants to 30,000. To help survivors regain safety and stability after victimization and to address growing backlogs, the bill provides work authorization for pending U and T visas to be issued no later than 180 days after filing.

- **Impact on Survivors:** While this increase represents a promising start, Congress should consider additional increases to address the growing backlog and delays in the U visa program. In addition, providing work authorization for pending VAWA self-petitions or Special Immigrant Juvenile Status (SIJS) applications is not included; and AIS and our partners are working to address this omission.

**B. Preventing Removal & Limits to Detention:** The bill instructs DHS officials not to remove survivors with pending T visa, U visa, or VAWA-based relief until a final decision has been reached in their cases including any appeal period. It also creates a rebuttable presumption that survivors with pending T visa, U visa, or VAWA-based relief should be released from detention. DHS can overcome this presumption based on clear and convincing evidence that alternatives to detention will not be viable or that the person is a threat to another person or the community. However, pending criminal charges can't be the sole reason for detention.

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<sup>4</sup> These include: H2A agricultural worker, and a noncitizen who has engaged in 'essential critical infrastructure labor or services' during the national emergency, among few others.

- **Impact on Survivors:** The bipartisan protections created in VAWA and the TVPA are undermined when survivors are denied access to immigration benefits. These provisions ensure that survivors will not be deported before their applications for immigration relief are decided.

**C. POWER Act:** These provisions will provide U Visa eligibility for victims of labor and employment violations. The bill will also eliminate fees for all related forms for U visas, contain added confidentiality provisions for victims of labor and employment violations, and authorizes a stay of removal and work authorization for workers who file workplace claims.

- **Impact on Survivors:** This would expand paths to status for survivors of violence who face abuse and exploitation in their workplace, eliminate fees for U visa-related applications, and provide enhanced confidentiality protections to prevent USCIS from making adverse determinations on applicant's cases based solely on information provided by the employer.

**D. Access to Counsel in Immigration Court:** The bill provides a right to appointed counsel in Immigration Court to noncitizens who are unable to pay and who are a children or "vulnerable" individuals including Respondents with disabilities and victims of abuse, torture or violence, pregnant and lactating individuals, and parents of U.S. Citizen minors. If the immigration judge fails to appoint counsel for these individuals, then they will not be subject to any Motion to Reopen limitations, and those Motions to Reopen would stay an order of removal. The bill also mandates training for immigration judges on age, gender, and trauma sensitivity.

- **Impact on Survivors:** This provision helps to ensure that survivors of domestic violence, sexual assault and human trafficking have access to counsel, which can be a game-changing factor in having a successful outcome of their cases. Because many survivors of domestic violence, sexual assault and human trafficking are frequently isolated and misinformed by their abusers, they may be unaware of their legal rights and available protections, making access to counsel particularly critical.

### III. Criminal-Immigration Reforms

**A. Conviction for Immigration Purposes:** The bill makes important changes to conviction-related determinations so that the definition will no longer include an adjudication or judgment of guilt that has been dismissed, expunged, deferred, annulled, invalidated, withheld, or vacated or when the individual completed a diversion program. It also indicates that judges can recommend that individuals not be removed based on a conviction, even if it would be a grounds of removal.

**B. Changes to Petty Offense Exceptions for Crimes Involving Moral Turpitude:** The USCA amends the "petty offense" exception to allow for two, not one, crimes if the maximum penalty under the statute doesn't extend beyond one year and the individual was not sentenced in either offense to more than 180 days.

**C. Humanitarian, Family Unity and Public Interest Waiver:** The bill creates a new waiver that allows for a waiver of one or more grounds of inadmissibility (excluding security related grounds)

and deportability (excluding security-related and other serious crimes). The waiver allows consideration of the severity of underlying circumstances, the duration of residence in the United States, evidence of rehabilitation, and adverse impact on family members.

- **Impact on Survivors:** A survivor's criminal history is often related to the abuse or exploitation they have suffered. Some sex trafficking survivors, for example, have, by the very definition of the crime, been forced to commit unlawful commercial sex acts. Other survivors, including survivors of domestic violence, are falsely accused of crimes including assault or domestic violence, as a form of abusers exercising their power and control. In addition, communities of color and immigrant communities often experience racist policing that leads to inflated charges and convictions. These welcome reforms benefit survivors as they expand opportunities for immigration relief. For more information, please read [this advisory from our partners at NIPNLG](#).

#### IV. Asylum and Border Reforms

- A. Elimination of the One Year Filing Deadline:** The bill repeals the one-year asylum filing deadline for asylum applications and permits reopening for many individuals denied protection due to untimely filing.
- **Impact on survivors:** Survivors seeking asylum in the United States face many hurdles to being able to file their applications for protection within one year of arrival. Beyond healing from the impacts of the traumatic experiences that precipitated their flight, among other things, they are often caring for children or other family members and isolated from legal representatives or other support services. This reform is monumental; asylum requires a less demanding burden than other forms of protection and is more protective, permitting survivors to petition for their children and nonabusive partners.
- B. Work Authorization for Asylum Seekers:** The bill would require work authorization be provided to asylum seekers on a shortened time frame.
- **Impact on survivors:** At present, asylum seekers must wait at least six months before they are eligible for work authorization. Without the ability to work or qualify for many public benefits, they are left to fend for themselves, which can be particularly difficult for survivors who have children to provide for and/or have been economically dependent on others.
- C. Best interest of the child:** The bill requires development of guidelines rooted in the best interest of the child for the treatment of children in CBP custody.
- **Impact on survivors:** Reports of mistreatment of children in immigration custody are widespread. The codification of the best interest of the child in U.S. immigration law is a welcome advancement. For more information about application of the best interest principle in practice,

see the Young Center's [report](#).

- D. Increased capacity to process asylum seekers:** The bill sets forth a series of provisions aimed at improving border processing, including for individuals seeking asylum at the U.S.-Mexico border. It also calls for new and required training for CBP officers, and other measures to ensure the proper medical care and treatment for arriving immigrants, especially children.
- **Impact on survivors:** The Trump administration all but eliminated the ability to seek asylum at the southern border, forcing asylum seekers to wait in dangerous conditions where they were subject to rape and other violence and extortion. Where survivors come to the border seeking protection, the bill would help ensure their claims are processed quickly, so they may be less exposed to violence and more quickly connected with resources and community support.
- E. Alternative Pathways to Protection:** The bill creates several programs for individuals in the Northern Central American countries to seek resettlement in the United States from abroad, without having to make the dangerous journey over land. The programs cover children seeking to reunify with parents lawfully in the United States, individuals with approved visa petitions aiming to reunify with family, and others seeking refugee status.
- **Impact on survivors:** While seeking asylum at the U.S. border remains a fundamental right and a crucial part of the international protection regime, the new pathways for individuals to apply for protection from abroad are welcome. The migration route to the United States through Central America and Mexico presents many dangers, especially to women and children. In addition, survivors already in the United States may have the ability to reunify with children or family members still in their home country.

## V. Other Important Reforms/Provisions

- A. Codifying Humanizing Language:** The USCA completely eliminates the dehumanizing term “alien” from the Immigration and Nationality Act and instead uses the term “noncitizen” to describe individuals who are not citizens or nationals of the United States.
- B. Making Family-Based Visa Process More Accessible:** The USCA recaptures previously unused visas, and reclassifies family-sponsored spouses and minor children of lawful permanent residents as “immediate relatives,” allowing access to permanent residence without the lengthy wait imposed by the numerically restricted family-based visa system. The USCA also recognizes the family relationships of permanent partners in the immigration system.
- C. Non-discrimination provisions:** The bill expands non-discrimination protections beyond immigrant visas to include non-immigrant visas, other kinds of entry to the U.S., and immigration benefits. It also prohibits discrimination in those contexts on the basis of religion. Furthermore, the USCA significantly limits presidential authority to ban whole classes of non-citizens from entering the U.S., providing Congressional and judicial oversight and accountability to prevent future

discriminatory bans, like the Muslim and African Travel Ban.

- D. Addressing Gender-Based Violence in Assessments of Root Causes of Migration:** The bill calls for the creation of a 4-year plan entitled “United States Strategy for Engagement in Central America” to advance reforms in Central America and to address factors contributing to flight of families, unaccompanied minors, and other individuals, including elements to improve access to justice, protect vulnerable and at-risk populations, and to prevent and respond to endemic levels of sexual, gender-based, and domestic violence in the region.
- E. Grant programs:** The bill contains provisions for several new grant programs including funding to nonprofits for providing information to the public about LPI status, assistance with applications with the new paths to status created under the bill and applying for citizenship.
- F. Move Away from Punitive Detention:** The bill expands family case management as an alternative to detention of families, many of whom are seeking asylum following harrowing circumstances.

## V. The Path Ahead

AIS and our partners will work with Members of Congress to ensure that paths to safety and security for immigrant survivors are strengthened. In addition, we will provide additional updates about other legislation and advocacy efforts that will affect immigrant survivor protections. For more information visit [Alliance for Immigrant Survivors](#).