

The U.S. Citizenship Act of 2021

The U.S. Committee for Refugees and Immigrants (USCRI) presents the following bill analysis of the U.S. Citizenship Act ([USCA](#)) of 2021. The Administration sent the USCA to Congress on January 20, 2021. On February 18, 2021, Representative Linda T. Sánchez (D-CA-38) and Senator Bob Menendez (D-NJ) introduced the USCA. Representatives Zoe Lofgren (D-CA-19), Lucille Roybal-Allard (D-CA-40), Nydia Velázquez (D-NY-07), Judy Chu (D-CA-27), Yvette Clarke (D-NY-09), Karen Bass (D-CA-37), and Raul Ruiz (D-CA-36), and Senators Alex Padilla (D-CA), Ben Ray Luján (D-NM), Cory Booker (D-NJ), Mazie Hirono (D-HI), and Amy Klobuchar (D-MN) joined as chief cosponsors.

Analysis Contents

Provisions affecting undocumented immigrants	2
Provisions affecting asylum, withholding of removal, and CAT seekers	3
Provisions affecting unaccompanied noncitizen children	4
Provisions affecting trafficking victims	6
Provisions affecting refugees	6
Other relevant provisions	7
Resources	8

WHO WE ARE

The U.S. Committee for Refugees and Immigrants (USCRI) is a nongovernmental, not-for-profit international organization that responds to the needs and advocates for the rights of refugees and immigrants worldwide.

Provisions affecting undocumented immigrants

Adjustment of status for Dreamers, TPS, DED, and others by amending relevant legislation

- Deferred Action for Childhood Arrivals (DACA) recipients, also known as “Dreamers,” Temporary Protected Status (TPS) holders, Deferred Enforced Departure (DED) holders, and others, including farmworkers, would be immediately eligible for Lawful Permanent Resident (LPR) status
- Other undocumented individuals would be able to apply for a new form of lawful status called “Lawful Provisional Immigrant” (LPI), which could lead to receiving LPR status and eventual citizenship under certain requirements:
 - Pass criminal and national security background checks;
 - The USCA would maintain current criminal bars to eligibility and would also impose new bars (*see also*, information affecting waivers below). To receive status under the USCA, an individual must not:
 - Have a conviction described in the Immigration and Nationality Act (INA) § 212(a)(2), which includes, among others:
 - Any crime involving moral turpitude (encompasses even minor criminal conduct, e.g., shoplifting);
 - Any controlled substance conviction;
 - Any two or more convictions where the person received an aggregate sentence of five (5) years of imprisonment;
 - Any controlled substance “trafficking” conviction, a category that encompasses crimes involving sale and distribution of controlled substances;
 - Have any felony conviction (except state law status-related felonies);
 - Have three (3) or more misdemeanors (except simple possession of marijuana, any marijuana offense that would not now be prosecutable under the state’s law, non-violent civil disobedience, and minor traffic offenses);
 - Be deemed a security threat
 - Pay taxes;
 - Be physically present in the United States on or before January 1, 2021 for not less than five (5) years;
 - Note: The Secretary of the Department of Homeland Security (DHS) may waive the presence requirement for those deported on or after January 20, 2017 who were physically present for at least three years prior to removal for family unity and other humanitarian purposes
 - Has not been physically absent from the United States for more than 180 days in any calendar year included in the five (5) year minimum (some exceptions)
- Those who receive LPI status would be eligible to apply for LPR status after five (5) years
- After receiving LPR status, individuals would be eligible to apply for citizenship after three (3) additional years with a demonstration of knowledge of U.S. civics

Waivers to criminal admissibility for legalization program

- The USCA would permit a humanitarian waiver of the crime involving moral turpitude ground, the

controlled substance-related grounds, and certain other non-criminal grounds

- It would also permit a waiver of the felony ground and the multiple convictions ground provided that:
 - The felony is not an aggravated felony under INA 101(a)(43)(A) (murder, rape, or sexual abuse of a minor); and,
 - The person has no convictions during the 10-year period preceding the application
- The USCA would permit a waiver of one (1) misdemeanor if the person has no convictions for the five (5) years preceding the application; or two misdemeanors if the person has no convictions for the ten (10) years preceding the application

Provisions affecting asylum, withholding of removal, and CAT seekers

While the following provisions would affect all immigrants in general, they are particularly important for asylum, withholding of removal, and relief under the Convention Against Torture (CAT) seekers.

Redefinition of conviction for immigration purposes

- Under current U.S. immigration law, "conviction" includes outcomes that would not count as convictions under general principles of criminal law, such as diversionary programs and expungements
- Under the USCA, the definition of conviction would exclude such rehabilitative forms of judicial relief

Restoration of Judicial Recommendations Against Removal Issuances

- In 1990, Congress eliminated the ability of an immigration judge to issue a Judicial Recommendation Against Removal (JRAD)
- Prior to 1990, an immigration judge had the ability to issue a JRAD, which, if validly issued, barred the now-defunct Immigration and Naturalization Service (INS) (now U.S. Citizenship and Immigration Services [USCIS]) from considering an individual's conviction of a crime of moral turpitude either as a ground for deportation under 8 U.S.C. § 1251(a)(4) or as a ground for excluding the individual from admissibility to the United States under 8 U.S.C. § 1182(a)(2)(A)(i)(I).¹
- The USCA would restore the ability for judges to issue JRADs

Humanitarian waiver

- The USCA would restore discretion to DHS and immigration judges to waive one or more grounds of inadmissibility (excluding security-related grounds)
- The USCA would also allow DHS and immigration judges to have discretion to waive one or more grounds of deportability (excluding security-related grounds and the aggravated felony of murder, rape, and/or sexual abuse of a minor ground)
- This waiver would significantly narrow the grounds of mandatory deportation and mandatory detention

Petty offense exception

- The USCA would add a second petty offense exception to the crime involving moral turpitude ground of inadmissibility

Restore immigration judges' discretion to grant relief and/or bond

- The USCA would restore immigration judges' discretion and permit them to grant relief and/or bond in

¹ See, *Jew Ten v. INS*, 307 F.2d 832, 834-35 (9th Cir. 1962), cert. denied, 371 U.S. 968, 83 S.Ct. 551, 9 L.Ed.2d 538 (1963); *Matter of K---*, 9 I. & N. Dec. 121, 125 (BIA 1960) (extending beneficial effect of JRAD to 8 U.S.C. § 1182(a)(9), the equivalent of § 1182(a)(2)(A)(i)(I) of the current statute).

compelling cases where relief or bond were previously barred by mandatory deportation and mandatory detention provisions

Removal of 1-year filing deadline

- The USCA would strike INA § 208(a)(2)(B), which currently states that an application for asylum must be filed within one (1) year after the date of the applicant's arrival in the United States

Change in circumstances and motions to reopen

- The USCA would amend INA § 208(a)(2)(C) such that applicants who previously applied for asylum and lost could have a new application considered if "changed circumstances...materially affect the noncitizen's eligibility for asylum"
- The USCA would also provide a new ground for filing motions to reopen, allowing reconsideration of asylum claims for two (2) years following the Act's enactment where the prospective asylee:
 - Was denied for failure to meet the prior one-year filing deadline;
 - Was granted withholding;
 - Has not achieved LPR status through some other means;
 - Is not subject to the safe third country exception under INA § 208(a)(2)(A) nor an asylum bar under INA § 208(b)(2); and,
 - Was not subject to a discretionary denial

Employment Authorization Documents

- The USCA would allow asylum seekers to receive employment authorization documents (EADs) not later than 180 days after they file their asylum application
- Withholding and CAT recipients would receive EADs valid for two (2) years after being granted relief in renewable two-year periods

Provisions affecting unaccompanied noncitizen children

While the following provisions would affect many groups of immigrants in general, they are particularly important for unaccompanied noncitizen children (UNCs).

Increase the Family Case Management Program and other alternatives to detention

- The USCA would increase the use of the Family Case Management Program and other community-based programs that function as alternatives to detention
- The USCA would not end the following: mandatory detention, the use of private prisons, family detention

Provide appointed counsel to vulnerable immigrants

- The USCA would provide appointed counsel, at the discretion of the Attorney General, to represent certain groups of "vulnerable" immigrants in their removal proceedings, including:
 - All children;
 - All people with a disability;
 - All victims of abuse, torture, and violence;
 - All pregnant or lactating women;
 - All parents of U.S. citizen children

Encourage family-based immigration by repealing 3-year, 10-year, and permanent bars

- Under current U.S. immigration law, anyone who has spent time in the United States without status and who leaves the country cannot return without waiting three (3) years if they spent six (6) months to a year without status and ten (10) years if they spent a year or more without status. People who spent over a year in the United States without status and who left (either of their own volition or because they were deported) then returned without permission face a permanent bar to return if they ever leave
 - These bars effectively bar families from reunifying because anyone who entered without a visa needs to go through consular processing outside of the United States and re-enter with a visa. But, once they leave, they will trigger the bars and be unable to return
- The USCA would repeal all three bars
- The USCA would still impose bars to the return of people who have been ordered removed
 - The bars would vary in length depending on the circumstances, from five (5) years to permanent (in the case of someone who has an aggravated felony conviction and was deported)
 - The USCA would provide waivers for these bars under certain circumstances

Mandate the development of additional guidelines for the treatment of children in the custody of CBP

- The USCA would stipulate that the Secretary of DHS, in consultation with federal, state, and local government, pediatricians, and child welfare experts develop additional guidelines for the treatment of children in the custody of U.S. Customs and Border Protection (CBP) using the guiding principle of “the best interest of the child,” and include:
 - Appropriate training for all DHS personnel and cooperating entity personnel who have contact with children relating to the care and custody of children;
 - Ensuring the availability of qualified child welfare professionals and licensed medical professionals, as appropriate;
 - A reliable system for identifying and reporting allegations of child abuse or neglect;
 - Prohibiting the removal of a child from a parent or legal guardian for the purpose of deterring individuals from migrating to the United States or promoting compliance with the United States immigration laws;
 - Reasonable arrangements for unannounced visits and inspections by the Office of Inspector General of DHS, nongovernmental organizations, and state and local child welfare agencies; and,
 - The preservation of all records associated with children in the custody of DHS

Awards funding to schools to provide services and opportunities for UNCs

- The USCA would mandate that the Secretary of Education award grants on a competitive basis to eligible local educational agencies to enhance opportunities for, and provide services to, immigrant children, including UNCs
- To be eligible under the USCA, an educational agency or consortium of local educational agencies would have to:
 - Have 50 or more UNCs enrolled in the public schools served by the local educational agency or the consortium; and,
 - Meet the requirements under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), including taking measures to:
 - Ensure that a UNC in the area served by the local educational agency is enrolled in school not later than seven (7) days after the date on which a request for enrollment is made; and,
 - Remove barriers to enrollment and full participation in educational programs and services

offered by the local educational agency for UNC's (including barriers related to documentation, age, and language), which shall include reviewing and revising policies that may have a negative effect on UNC's

Provisions affecting trafficking victims

Presumption of release and barring removal for U and T visa and VAWA applicants

- The USCA would stipulate a rebuttable presumption of release from detention and prohibit the removal of applicants for Victims of Criminal Activity Non-Immigrant Status (U visa), Victims of Human Trafficking Non-Immigrant Status (T visa), and relief under the Violence Against Women Act (VAWA) while an application is pending

Employment Authorization Documents

- The USCA would allow T visa applicants to receive EADs not later than 180 days after they file their application
- U visa applicants would be granted EADs on the earlier of the following dates: the date on which the applicant's petition for status is approved or not later than 180 days after they file their application

Increased U visa cap

- The USCA would increase the U visa cap from 10,000 to 30,000 annually

Enhanced investigation and prosecution of human smuggling networks and trafficking organizations

- The USCA would mandate that the relevant agencies expand collaborative efforts on the investigation and prosecution of human smuggling networks and trafficking organizations that specifically target migrants, asylum seekers, and UNC's operating at the southwestern border of the United States
 - Specifically, anti-trafficking coordination teams would be expanded

Provisions affecting refugees

Improved refugee processing in the Western Hemisphere

- The USCA would mandate that the Secretary of State, in coordination with international partners, improve and strengthen the domestic capacity of countries in the Western Hemisphere to process and accept refugees for resettlement and adjudicate asylum claims by:
 - Providing support and technical assistance to expand and improve the capacity to identify, process, and adjudicate refugee claims, adjudicate applications for asylum, or otherwise accept refugees referred for resettlement by the United Nations High Commissioner for Refugees (UNHCR) or host nations, including by increasing the number of refugee and asylum officers who are trained in the relevant legal standards for adjudicating claims for protection;
 - Establishing and expanding safe and secure locations to facilitate the safe and orderly movement of individuals and families seeking international protection;
 - Improving national refugee and asylum registration systems to ensure that any person seeking refugee status, asylum, or other humanitarian protections receives the following:
 - Due process and meaningful access to existing humanitarian protections;

- Adequate information about his or her rights, including the right to seek protection;
 - Proper screening for security, including biographic and biometric capture; and,
 - Appropriate documents to prevent fraud and ensure freedom of movement and access to basic social services
- Developing the capacity to conduct best interest determinations for unaccompanied children with international protection needs to ensure that such children are properly registered and that their claims are appropriately considered

Central American refugees

- The USCA would mandate that the Secretary of State carry out diplomatic engagement to secure commitments from governments to resettle refugees from Central America
- The USCA would also mandate that the Secretary of State take all necessary steps to ensure effective cooperation among governments resettling refugees from Central America

Support the establishment and expansion of shelter networks in El Salvador, Guatemala, and Honduras

- The USCA would stipulate that the Secretary of State, in coordination with international partners, support and coordinate with the governments of El Salvador, Guatemala, and Honduras to establish and expand shelter networks to meet the immediate protection and particular humanitarian needs of refugee families, women, unaccompanied children, and other vulnerable populations

Other relevant provisions

Family members of LPRs

- The USCA would make spouses, children, and parents of LPRs “immediate relatives,” meaning they would be immediately eligible for visas and would not count toward a cap

Changed terminology

- The USCA would exchange the word “alien” for “noncitizen” in U.S. immigration law

Visa wait times

- The USCA would make anyone who has waited ten (10) years or more immediately eligible for a visa

Country caps

- The USCA would increase the per-country caps from 7 percent to 20 percent to decrease backlogs

Restriction of presidential power

- The USCA would limit presidential power to issue travel bans
 - There would be a requirement of a showing that the ban is the least restrictive means to achieve compelling government interests
 - Religion-based bans would be barred

Diversity Visa Program

- The USCA would increase the Diversity Visa Program Lottery cap from 55,000 to 80,000 annually

Immigration judges

- The USCA would instruct the Department of Justice (DOJ) to hire additional immigration judges and members of the Board of Immigration Appeals (BIA)
 - Those hired would be required to have experience in immigration law and received training on providing fair hearings
- The USCA would instruct DOJ to hire an equal number of immigration judges and BIA members from the private, nonprofit, and academic sectors
 - Currently, the vast majority of immigration judges are former Immigration and Customs Enforcement (ICE) attorneys

Economic Development Immigrant Visa Pilot Program

- The USCA would create a pilot program that would stimulate regional economic development and admit up to 10,000 additional immigrants annually whose employment is deemed essential to economic development in their communities

Immigrant visa caps

- The USCA would reduce immigrant visa backlogs, recapture unused immigrant visa numbers from past years, and eliminate per-country employment-based (EB) immigrant visa (IV) caps
 - Reduction in backlogs would be achieved in part by exempting Ph.D. graduates working in the science, technology, engineering, and mathematics (STEM) fields from the green card cap
 - The USCA would also increase the annual limit for employment-based immigrant visas from 140,000 to 170,000

Special Immigrant Visas

- The USCA would create a new class of Special Immigrant Visas (SIVs) for spouses and children of U.S. government employees of 15 or more years or those killed in the line of duty
- The USCA would create a new class of SIVs for Syrians who worked for the U.S. government for one (1) or more years beginning on January 1, 2014 (capped at 5,000 visas)

Resources

[Press Release of the Office of Representative Linda T. Sánchez \(D-CA-38\)](#)

[White House Fact Sheet on the USCA](#)

Note: This analysis is educational in nature only and is not a substitute for legal assistance and should not be used as such. If you or someone you are assisting needs legal assistance, please contact an attorney.

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