

# **STANDPOINT IMMIGRATION NEWSLETTER**

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## **Update for Immigrant Victim/Survivors**

The information provided in this newsletter will provide domestic and sexual violence advocates with general information on working with immigrant survivors. It is recommended that anyone applying for an immigration benefit, or getting legal advice related to immigration status, work with an experienced immigration attorney.

## **In this issue**

- PRESIDENT BIDEN'S IMMIGRATION ACTIONS
- UPDATES FROM PREVIOUS NEWSLETTERS
- COURT AND AGENCY OPERATIONS AND COVID-19
- STIMULUS CHECKS AND IMMIGRATION UPDATE
- FRAUD PROTECTION

*Please note: immigration law is constantly changing. The information provided is current as of the day it is posted, but it is recommended that advocates continue to follow up on the statuses of these topics and reach out to an experienced immigration attorney with questions.*

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# *President Biden's Immigration Actions*

*What are some of the immigration actions the Biden Administration has taken?*

## **End of the Muslim Ban**

President Biden ended the bans on entry to the United States, more commonly known as the “Muslim bans.” These bans barred people from certain predominantly Muslim countries from coming to the United States. COVID-19 related bans, however, remain in place. You can find the latest information on travel restrictions on the State Department’s website.

## **Executive Order and Memo on Immigration Enforcement Priorities**

Under the Trump administration, enforcement priorities were expanded significantly. For example, if ICE went to arrest one person, they would also arrest every other undocumented immigrant present. Enforcement focused on anyone unlawfully in the United States, not just on certain categories of people, like national security risks.

President Biden has issued an executive order that greatly narrows enforcement priorities. This means survivors awaiting visas (e.g. U-Visa or T-Visa) may see relief from enforcement while they are waiting for their applications to process, which can take many years. A Department of Homeland Security (DHS) memo requires immigration enforcement to focus specifically on:

- people suspected of terrorism or espionage, or who are a threat to national security,
- people apprehended at the border or ports of entry attempting to unlawfully enter on or after November 1, 2020, or who were not physically present in the US before November 1, 2020, and
- people serving prison sentences on convictions of an “aggravated felony”

It is important to note that, despite the new priorities, anyone in the U.S. unlawfully can still be detained, apprehended, or deported.

## **Strengthening DACA**

Another major memo issued by the Biden administration preserves and strengthens the Deferred Action for Childhood Arrivals (DACA) program. New applications to DACA are being accepted and granted in two-year increments. Permanent status is not currently offered to DACA applicants, although this is being considered under the U.S. Citizenship Act of 2021 (see below).

*What does the Biden immigration bill contain?*

The Biden administration has introduced the U.S. Citizenship Act of 2021. **This is only a bill at this time, which means it is NOT LAW, and it must be approved by both the House of Representatives and the Senate.** Some provisions that may affect immigrant survivors include:

- Providing legal status and a pathway to citizenship to anyone in the United States before January 1, 2021, about 11 million people who did not previously have a pathway
- Providing more visas for victims of crime
  - Increase the U-Visa (for crime victims) cap to 30,000 annually (it is currently 10,000 annually)
- Providing protection from immigration removal for those seeking survivor-based protections
- Reducing the time family members must wait outside the United States for green cards, and permitting eligible family members to wait for their green cards in the United States
- Reducing the backlog in the immigration courts

## *Updates from previous newsletters*

### **USCIS Fee Rule Update**

USCIS proposed a rule that would raise fees on many applications and make it more difficult to obtain a fee waiver. This table has helpful information including current fees, proposed fees (also “final fee”), waiver changes, and lists of which forms are required for certain applications. It has been challenged in court and is currently under a preliminary injunction, meaning that the fee increases have been temporarily paused.

**Currently USCIS will continue to accept the fees that were in place prior to October 2, 2020 and fee waiver requests will not change at this time.** However, this rule has not been finalized, and if it survives challenges in court, the higher fees and new rules for fee waivers will take effect.

It is important to note that these changes to fee waivers will not affect many survivor-based immigration applications, such as VAWA (Form I-360), T-Visas (Form I-914), and U-Visas (Form I-918). These three survivor-based applications are free, and the new USCIS policies will not change this. However, many survivors need to file applications that carry hefty fees alongside of the free, survivor-based applications.

### *Notes*

*[1] A Notice to Appear is a charging document that starts removal or deportation proceedings.*

*[2] Under immigration statute, the denial of asylum and the removal of marital conditions on a green card will always result in the initiation of removal proceedings. Policy cannot change this.*

*[3] The 2011 memo can be found here. The list of circumstances in which USCIS will issue an NTA begins on page 2.*

### **NTA Policy Update**

In June 2018, a policy memo was published which allowed Notices to Appear (NTAs)[1] to be issued when certain survivor-based immigration applications were denied (e.g. U-Visas, T -Visas, and VAWA self-petitions). Previously when these cases were denied, it would not result in the initiation of removal proceedings.

[2] These changes had a chilling effect on survivor-based immigration relief applications due to the increased risk of deportation. In a new memo, the Department of Homeland Security (DHS) rescinded the 2018 NTA policy. **Now, a policy memo from 2011 is back in place.** This policy still requires USCIS to issue NTAs in certain circumstances, including national security cases, termination of certain immigration benefits (e.g. termination of conditional permanent resident status and termination of asylum), and findings of fraud.[3] However, the 2011 policy reels back the expansion of NTA issuance by the 2018 policy, particularly the issuance of NTAs to survivors

# *Updates from previous newsletters*

*continued*

*Please note that there is nothing in the law that would prevent future leadership within the DHS to reverse its policy and resume removal proceedings when applications are denied. There is always a certain risk in filing for immigration relief, and we recommend anyone applying obtain the advice of an experienced immigration attorney.*

## **Public Charge Rule Update**

Immigration officials have long used the “Public Charge” test to determine whether a person applying for a green card or visa is likely to rely on government assistance. The Trump administration expanded public charge to people relying on non-cash benefits, including housing benefits, medical benefits, and food stamps. Previously, public charge only applied to people relying on cash benefits, including Social Security Income or General Assistance.

In a February 2, 2021 executive order, President Biden ordered a review and recommendations on the public charge rule within 60 days. **Since then, the Biden administration dropped its defense in court of the Trump public charge rule. The old public charge rule, from before the Trump administration, is effective immediately. This means that it is once again safe for immigrants to use non-cash benefits, including medical, nutrition, and housing programs.** This also means immigrants will not need to fill out Form I-944, Declaration of Self Sufficiency, which was required under the Trump administration’s rule.

Keep in mind, however, that the public charge test is still around – it’s just not as stringent and will only apply to cash benefits.

As a reminder, public charge test only applies to:

- those applying for green cards (lawful permanent residence), and
- those seeking admission to the United States.

Importantly, the public charge test does NOT apply to the following kinds of applications:

- Citizenship
- Green card renewal
- U-Visa (for victims of crime)
- T-Visa (for victims of human trafficking)
- Asylum
- Refugee
- VAWA self-petitioner for “qualified” abused spouses, parents, or children
- Special Immigrant Juvenile Status (SIJS)
- DACA Renewal
- Any green card application based on the applicant’s U-Visa, T-Visa, SIJS, VAWA self-petition, or asylum

## *Updates from previous newsletters*

*continued*

\*If your client has children who receive public benefits, and your client wants to apply for a green card or visa, their **children's receipt of public benefits does not affect their application.**

Advocates should encourage survivors to apply for benefits for which they are eligible. Please contact Standpoint if you are working with an immigrant survivor and want to know if the public charge assessment applies to them prior to seeking public benefits.

### **N/A (“Blank Spaces”) Policy Update**

Under the Trump administration, USCIS began rejecting applications for immigration relief if at least one response field in the application was left blank (especially on U-Visa and asylum applications - key relief for survivors). This led to rejections of applications for miniscule blank spaces, for example, leaving the “middle name” space blank, even if the applicant did not have a middle name. In 2020, the Northwest Immigrant Rights Project challenged the policy in court in *Vangala v. USCIS*[4]. USCIS has since gotten rid of the N/A policy. Now, USCIS employees are instructed to only reject applications if they are missing key information, such as first and last name, address, birth date, and signature. It is still best to fill out applications as completely as possible.

### *Notes*

*[4] You can find an FAQ document from the Northwest Immigrant Rights Project [here](#). It helpfully outlines the litigation and answers some questions about it and the blank space policy.*

# ***Court and agency operations and COVID-19***

## **Fort Snelling Immigration Court**

Currently, Fort Snelling Immigration Court (which takes cases from Minnesota, North Dakota, and South Dakota) is open for filings and detained hearings [5] only. Non-detained hearings are postponed through and including April 16, 2021 at the earliest. It is very possible non-detained hearings could be postponed longer because of COVID-19.

Clients can call the Executive Office for Immigration Review (EOIR), which includes the immigration courts and the Board of Immigration Appeals (BIA), with their alien registration number at 1-800-898-7180 or use the online portal to check on their next hearing. However, since EOIR is rescheduling so many cases right now, **the information in the portal or the hotline may not be accurate**. Clients will receive a notice of their next hearing at least 10 days beforehand. Thus, it is critical that clients keep EOIR up-to-date with their current address; the form is located here for cases before an immigration court, like Fort Snelling, and here for cases pending before the Board of Immigration Appeals (BIA). You can find up-to-date information on the operational status of immigration courts here.

### *Notes*

*[5] Cases where the person is in immigration detention.*

## **USCIS Offices**

USCIS offices are used primarily for immigration interviews, InfoPass appointments (defined below), and for providing biometrics (fingerprints and photos). USCIS offices are currently open with COVID-19 precautions. You can find those precautions here. Clients should review the precautions before going to a USCIS office. Also note that appointments at the USCIS offices may be more delayed than usual.

## **What is happening with InfoPass?**

InfoPass is an online system that allows people to schedule appointments with an immigration officer at USCIS. The InfoPass system has changed. Appointments will only be given in limited circumstances. Examples of issues that would necessitate an in-person appointment include proof of immigration status to work or travel and emergency travel documents. Overall, getting an appointment with USCIS is very difficult right now.

If a client needs an appointment, they will need to call USCIS at 1-800-375-5283. Calling USCIS is difficult; you may need to wait a long time to speak to someone or have to request a call back. USCIS will first try to resolve things over the phone and will only schedule an appointment if necessary.

## *Stimulus checks and immigration update*

In 2020, Congress passed two different stimulus check packages. The first package gave \$1,200 to single individuals, \$2,400 to married couples, and a \$500 credit per qualifying child, with income restrictions. The second package, passed in December 2020, allowed for \$600 to adults plus another \$600 per child, with income restrictions. President Biden signed a third relief package into law on March 11, 2021. **It will be some time before any aid is actually distributed under this third bill.**

Payments are based on the 2018 and 2019 tax years. Therefore, according to FAQs put out by the IRS, a person is ineligible to receive the stimulus payment if they didn't have their Social Security Number (SSN) issued to them "before the due date of your 2019 tax return." Therefore, those who recently obtained their SSN may not be eligible for either stimulus check.

Many immigrant survivors, who are without status and therefore do not have SSNs, use Individual Taxpayer Identification Numbers (ITINs) to pay their taxes. In order to receive a stimulus check, however, the survivor must have a valid SSN. People with only ITINs are ineligible to receive the stimulus. Mixed status families may be eligible to receive the stimulus check.

See chart below for further guidance on whether an individual is eligible to receive a stimulus check:





# ***Fraud Protection***

## **Why should you be concerned about fraud?**

It is critical that immigrant survivors are able to recognize fraud so that they do not fall prey to false, and often costly, immigration advice. This can lead to hefty financial consequences, denial of immigration benefits or relief, and even deportation.

Advocates should be especially watchful for fraud right now, as the opportunity for fraud will rise as more opportunities for immigration status or benefits emerge under the Biden administration. Misinformation also feeds fraud. The Biden administration has made lots of moves related to immigration, but much is merely reviewing the current system, and the many layers of changes across many agencies make the changes confusing. Therefore, it is critical that clients and advocates seek advice from legitimate and qualified sources.

Lastly, notario fraud, or other types of fraud preying on immigrants, is a white collar crime. Both the Hennepin County Attorney's Office (HCAO) and the Federal Trade Commission (FTC) encourage people to report notario fraud to them. You can report to the FTC here (or call 1-877-382-4357). You can email HCAO at [citizeninfo@hennepin.us](mailto:citizeninfo@hennepin.us) or call 1-612-348-5550.

## **How do I identify fraud?**

The FTC provides excellent advice for avoiding fraud. You can find more information here and here. Here are some key things the FTC, the EOIR, and others suggest to avoid fraud and scams:

- Never go to a notario, notario público, or notary public for legal advice. They are not lawyers and cannot give you legal advice, representation, or talk to the government for you.
  - Do not trust anyone who tells you they have a connection at a government agency or entity and can use that connection to help you receive immigration benefits.
  - Make and keep a copy of a written contract with anyone who agrees to represent you or give you legal advice in immigration matters.
- Never pay for blank government forms - they are free, and you can get them through the USCIS website (though there will probably be filing fees when you submit them).
- Only get immigration information from U.S. government websites, licensed immigration attorneys, and representatives accredited by the Board of Immigration Appeals (BIA) (NOT a notario, notario público, or notary public).
  - U.S. government websites will end with (.gov).
  - If you are unsure if an attorney is licensed, you can check out the state lawyer licensing agency. In Minnesota, this is the Minnesota Supreme Court's Lawyer Registration Office. You can look up Minnesota attorneys and their license on this website.
- Never let anyone, even an attorney, keep your original documents, like a birth certificate or passports. Scammers may make you pay them to get the documents back.
- Agencies often have strict rules and policies about forms and their accurateness or completeness so do not sign incomplete or blank forms, a form with false information in it, or a form or document that you do not understand.

## ***Fraud Protection***

*'How do I identify fraud? continued*

- Keep copies of all forms or documents you submit and any letter or other communication from the government about your application.
  - You should also keep any receipts from USCIS in a safe place. You should also ask for receipts from any application or petition you submit to USCIS. Receipts are proof you submitted an application and are needed to check the status of your application.
- If you feel comfortable doing so, report any fraud you encounter to a government agency, like HCAO or FTC.

If you have any questions about this newsletter or would like to discuss in more detail any of the topics discussed, please do not hesitate to contact Standpoint. We are happy to have a conversation about ways in which advocates can assist immigrants in light of all the changes happening. You can contact Rachel Kohler, Standpoint's immigration attorney, at 612-767-8926 or at [rachel@standpointmn.org](mailto:rachel@standpointmn.org).

