MODERNIZING & STREAMLINING OUR LEGAL IMMIGRATION SYSTEM FOR THE 21ST CENTURY

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THE WHITE HOUSE
WASHINGTON

Contributing Federal Offices, Departments, and Agencies

The Department of Homeland Security

The Department of State

The White House Domestic Policy Council

The White House National Economic Council

The Office of Management and Budget

The White House Office of Science and Technology Policy

The White House National Security Council

The Department of Labor

The Department of Justice

The Department of Agriculture

The Department of Commerce

The Department of Education

Table of Contents

I. Executive Summary 4

II. Introduction 7

A. Background and Methodology 7

B. Benefits of Legal Immigration 8

C. Understanding Our Legal Immigration System 11

C. Intersecting Principles to Promote Integrity and Protect the Nation 16

III. Progress on President Obama's November Executive Actions 18

IV. Modernizing Our System for Efficiency and Accessibility 20

A. Information Technology and Processing 20

B. Transparency and Data Publication 25

V. Streamlining Our Legal Immigration System 27

A. Legal Immigration Options 27

B. Employment-Based Immigrant Visa Issuance 29

C. Immigrant Investor Visa 30

D. International Arrivals Process for Visitors and Immigrants 32

E. "Known Employer" Pilot Program 33

F. Exchange Visitor Program 34

G. Additional Improvements 36

VI. Strengthening Our Humanitarian System 38

A. Parole for Certain Family Members of Filipino Veterans 38

B. Self-Petitioners under the Violence Against Women Act of 1994 (As Amended) 39

C. Work Authorization for Battered Spouses 40

D. Victims of Crimes 41

E. Victims of Human Trafficking 41

F. Children Who Age-Out 43

G. Vulnerable Populations at Consular Posts 43

VII. Conclusion 44

Appendix A: November Executive Actions 45

Appendix B: Visa Modernization Actions 46

I. Executive Summary

On November 20, 2014, President Obama acted within his authority to take executive action to fix our broken immigration system. He announced critical measures that enhance border security; create accountability for certain undocumented individuals; and modernize our legal immigration systems for high-skilled workers, entrepreneurs, students, and families. These steps are enhancing the integrity of our immigration system and national security while contributing to our economy. According to the Council of Economic Advisors, the President's executive actions, if fully implemented, would be expected to boost our nation's gross domestic product (GDP) by between $100 billion and $250 billion, expand the size of the American labor force, and raise average annual wages for U.S.-born workers by 0.4 percent, or $220 in today's dollars, over the next 10 years. The President's actions would also cut the Federal deficit by $30 billion in 2024.

As a part of these actions, President Obama issued a Presidential Memorandum on "Modernizing and Streamlining the U.S. Immigrant Visa System for the 21st Century." In this Memorandum, the President directed the Secretary of State and the Secretary of Homeland Security to lead an interagency effort to develop recommendations, in consultation with stakeholders and experts, to:

(1) reduce government costs, improve services for applicants, reduce burdens on employers, and combat waste, fraud, and abuse in the system;
(2) ensure that policies, practices, and systems use all of the visa numbers that Congress provides for and intends to be used, consistent with demand; and
(3) modernize the information technology infrastructure underlying the visa processing system with the goal to reduce redundant systems, improve the experience of applicants, and enable better oversight.

The Departments of State (State) and Homeland Security (DHS), working in consultation with the White House and other federal agencies, conducted a thorough review of options to modernize and streamline our legal immigration system within existing authorities. This process included internal assessments of potential agency actions, engagement with external stakeholders, and a public call for comments and suggestions through a Request for Information (RFI) published in the Federal Register on December 30, 2014, that generated approximately 1,650 responses from both individuals and organizations.

Several clear themes emerged from this interagency process and stakeholder feedback. Internal and external stakeholders alike emphasized the need to fully utilize technology to improve and streamline the current system for processing visa applications and requests for other immigration benefits. External stakeholder comments also emphasized frustration with burdensome application requirements, long processing times, and a need for greater transparency and accountability in the application and adjudication processes. Some concerns, such as extended waiting times for immigrant visas, reflect statutory constraints that must be addressed through legislative reform of our immigration system. However, many other concerns can be addressed

through administrative reforms and greater collaboration within agencies. To that end, this report makes numerous recommendations, including:

Modernizing Our System for Efficiency and Accessibility: Currently, the immigration application and adjudication process is mostly paper-based, requiring documents to change hands and locations among various federal actors at least six times for some petitions. These recommendations will make our system more accessible to applicants, bring our technology into the 21st century, and enhance data transparency:

- Create a cross-agency digital services team to support the implementation of the modernized immigrant visa project, which is aimed at improving the visa applicant experience and increasing efficiencies in the adjudication process through digitization;
- Redesign systems with an eye towards a human perspective and accessibility for users;
- Convene a communications task force to create clearer, plain-language instructions;
- Adopt best practices for software development and modernize technology stacks to improve content management; and
- Create an interagency task force to enhance data collection and publication in order to increase transparency.

Streamlining Our Legal Immigration System: Our legal immigration system provides numerous options for individuals to obtain status, temporary or permanent, in the United States, as governed by existing law. Many of these programs are backlogged as a result of statutory caps, which can only be addressed through legislation. However, the following recommendations serve to improve existing programs, making our system more efficient and effective for the applicant as well as our agencies and their teams:

- Improve the issuance of employment-based immigrant visa numbers;
- Increase efficiency for international arrivals through enhanced technology and an greater focus on high-risk travelers;
- Implement the "Known Employer Program," which will allow certain employers who meet strict criteria to pre-establish certain requirements as petitioners, by creating a prototype, publishing a report upon completion of the pilot, and developing an implementation plan for a permanent program;
- Improve integrity and increase the minimum investment for immigrant investor visas; and
- Enhance opportunities and provide greater clarity for certain nonimmigrants, including the circumstances under which U.S. employers may directly sponsor students on F-1 visas for lawful permanent residence.

Strengthening Our Humanitarian System: There are numerous avenues for humanitarian relief provided to vulnerable individuals in our immigration system. However, many of our existing policies and regulations do not reflect the most recent laws. These recommendations will improve our system for individuals seeking humanitarian relief:

- Allow certain family members of Filipino veterans, who are currently in the family immigration backlogs, to seek parole so they can care for these aging veterans;
- Simplify systems for domestic violence survivors who seek immigration relief through the VAWA self-petitioner process;

- Implement statutory provisions for victims of crime and trafficking; and
- Provide guidance and consistency for vulnerable populations seeking immigration relief.

These recommendations are concrete steps forward that will improve our legal immigration system. However, they do not offer the permanent, more robust solutions which are vitally needed to address our broken immigration system. President Obama is acting within his legal authority to fix what he can, but only Congress can finish the job by passing comprehensive, commonsense immigration reform that fully brings our legal immigration system into the 21st century. The President remains committed to working with Congress to pursue legislative reform.

II. Introduction

A. Background and Methodology

America needs a 21st century immigration system that supports a growing economy and lives up to our heritage as a nation of laws and a nation of immigrants. The Administration continues to believe that Congress must pass comprehensive, commonsense immigration reform in order to overhaul our immigration laws and fully fix our broken immigration system, and President Obama will continue to urge Congress to enact bipartisan legislation—like the Senate bill that passed with a wide bipartisan majority in 2013.

In the meantime, however, President Obama has taken action within his authority to fix what he can within the broken immigration system. These commonsense measures, announced on November 20, 2014, help secure the border, set smart enforcement priorities, and streamline processes so that high-skilled immigrants, entrepreneurs, students, and families can contribute as fully as possible to our economy.

As a part of this announcement, the President issued a directive for his Administration to continue to seek out new ways to modernize and streamline our legal immigration system. This Presidential Memorandum, signed on November 21, 2014, directed the Secretary of State and the Secretary of Homeland Security to lead an effort across the Federal Government to develop recommendations focused on three broad areas:

> (i) in consultation with private and nonfederal public actors, including business people, labor leaders, universities, and other stakeholders, streamline and improve the legal immigration system—including immigrant and nonimmigrant visa processing—with a focus on reforms that reduce Government costs, improve services for applicants, reduce burdens on employers, and combat waste, fraud, and abuse in the system;
>
> (ii) in consultation with stakeholders with relevant expertise in immigration law, ensure that administrative policies, practices, and systems use all of the immigrant visa numbers that Congress provides for and intends to be issued, consistent with demand; and
>
> (iii) in consultation with technology experts inside and outside the Government, modernize the information technology infrastructure underlying the visa processing system, with a goal of reducing redundant systems, improving the experience of applicants, and enabling better public and Congressional oversight of the system.

Working with other Federal agencies and the White House, the Department of State (State) and the Department of Homeland Security (DHS) conducted a thorough review of options to modernize and streamline our immigration system within existing authorities. This process included internal assessments of potential agency actions, engagement with external stakeholders, and a public call for comments and suggestions through a Request for Information (RFI) published in the Federal Register on December 30, 2014.

The goal of this RFI was to ensure that the Administration received input from a wide range of stakeholders: employers, visa applicants, labor groups, policy advocates, and the public at large. Respondents were encouraged to provide general comments, as well as input on eighteen specific questions, and to estimate the impact of any recommendations to the extent possible. This RFI generated approximately 1,650 substantive responses from both individuals and organizations. Comments included a wide range of recommended options to improve our legal immigration system. Among others, these recommendations highlighted potential solutions to address the long-wait times, employment restrictions, and the separation of families due to the long application process from visa petition to green card; burdensome visa renewal processes; lack of transparency and predictability of numerous immigration paths; systemic and practical barriers for immigrant and nonimmigrant visa applicants; challenges for domestic violence survivors and victims of human trafficking and other crimes to obtain visas for which they may qualify; and outdated technology and accessibility for online users. Comments were reviewed by Administration officials as part of the process of developing the recommendations contained in this report. These comments were carefully considered as part of the process of developing this report, including comments on the numerous legal and policy issues that ultimately were not included in the final recommendations. In some cases, statutory and other legal concerns precluded administrative change; in others, a careful balancing of policy options resulted in a different recommended approach from that proposed by commenters.

B. Benefits of Legal Immigration

For more than 200 years, the United States has welcomed immigrants from around the world into our nation, enhancing our diversity, culture, and economy. These waves of immigrants have kept our country young, dynamic, and entrepreneurial. By emphasizing the reunification of families and specific employment needs as well as honoring our commitment to welcoming those fleeing persecution, the layers of our immigration system complement each other, underscore our best values, and contribute to economic growth locally and nationally. Immigrants' families, employers and communities help newcomers adjust, set down roots, and strengthen local communities. Our nation prospers when all the layers of our legal immigration system work together so that individuals can work and create businesses, reunite with their families, and build sustainable lives that enhance communities at a local level and grow our economy.

Immigrants also strengthen both the labor force and the U.S. consumer base—making important contributions to economic growth. In 2013, there were over 40 million foreign-born people in the United States, representing 13 percent of the population.[1] Immigrants play an integral role in the American economy: despite making up only 13 percent of the U.S. population, immigrants

[1] These data are the most recent available. U.S. Census Bureau, American Community Survey, 2013.

started 28 percent of new U.S. businesses in 2011.[2] In 2005, over half of new tech startups in Silicon Valley had at least one immigrant founder.[3]

As the United States faces the prospect of slowing population growth, immigrants are likely to play an even more important role in the American economy. The Census Bureau predicts that, by 2030, the overall working age (18-64) population will drop to approximately 57 percent of the total population.[4] At the same time, the vast majority (78 percent) of immigrants will be working age.[5] Foreign-born workers and their children are expected to account for a significant percentage of the net growth in the labor force.[6] As the Baby Boom generation reaches retirement age, immigrants will play a critical role in ensuring that our nation's labor force needs are met.

Immigrants work in diverse industries and occupations, and are disproportionately represented in agriculture, construction, food services, and information technology. They are agricultural laborers, domestic workers, and cabdrivers, as well as health care workers, computer software engineers, doctors, and scientists.[7] This diversity has strong effects on economic growth, as immigrant and U.S. workers often specialize in different tasks and occupations. A study by Giovanni Peri of the University of California, Davis found that this occupational specialization by immigrants and nonimmigrants increases the productivity of all workers—immigrant and U.S. workers alike.[8] These gains in productivity have implications for earnings, since task specialization by immigrants can have positive effects on the wages of both immigrant and U.S. workers.[9]

Many high skilled workers in the science, technology, engineering, and math (STEM) fields are also immigrants, and research shows that highly-skilled immigrants make outsized contributions to research and innovation. One study reported that 26 percent of all U.S.-based Nobel laureates over the past 50 years were foreign-born.[10]

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[2] Partnership for a New American Economy. 2011. "Open for Business: How Immigrants are Driving Small Business Creation in the United States." http://www.renewoureconomy.org/sites/all/themes/pnae/openforbusiness.pdf.

[3] Wadhwa, Vivek, AnnaLee Saxenian, Ben A. Rissing, and Gary Gereffi. 2007. "America's New Immigrant Entrepreneurs: Part I." Duke Science, Technology & Innovation Paper 23.

[4] Ortman, Jennifer M., Victoria A. Velkoff, and Howard Hogan. "An Aging Nation: The Older Population in the United States." The U.S. Census Bureau. Washington, DC. May 2014. http://www.census.gov/prod/2014pubs/p25-1140.pdf.

[5] Calculated from 2013 American Community Survey data.

[6] B. Lindsay Lowell, Julia Gelatt, and Jeanne Batalova, "Immigrants and Labor Force Trends: The Future, Past and Present," *Migration Policy Institute: Insight* 17. 2006.

[7] Singer, Audrey. 2012. "Immigrant Workers in the U.S. Labor Force." Washington, DC: Brookings Institution.

[8] Peri, Giovanni. 2012. "The Effect of Immigration on Productivity: Evidence from U.S. States." Review of Economics and Statistics 94, no. 1: 348–58.

[9] Peri, Giovanni, and Chad Sparber. 2009. "Task Specialization, Immigration and Wages." American Economic Journal: Applied Economics 1, no. 3: 135–69.

[10] Wasmer, Etienne, Peter Fredriksson, Ana Lamo, Julián Messina, and Giovanni Peri. 2007. "The Macroeconomics of Education in Europe." In *Education and Training in Europe*, edited by G. Brunello, P. Garibaldi, and E. Wasmer, 1–20. New York: Oxford University Press.

A 2010 study by Jennifer Hunt and Marjolaine Gauthier-Loiselle found that immigrants file patents at two times the rate of U.S.-born workers. While this largely reflects immigrants' relatively heavy representation in science, engineering, and other technical occupations, immigrants in those fields patent at an above-average rate even when compared to other U.S.-born scientists and engineers. At the same time, high-skilled immigration has significant spillover effects: Hunt and Gauthier-Loiselle found that the rate of patenting by U.S.-born innovators doubles in response to a one percentage-point increase in the percentage of immigrant college graduates.[11] Encouraging high-skilled immigration can increase the rate of technological innovation in the United States, increasing the productivity of American workers and growing the economy.

Research also documents that immigrants are not only exceptional workers and innovators but are also highly entrepreneurial, starting businesses that create job opportunities for millions of Americans. One report noted that 25 percent of companies backed by venture capital between 1991 and 2006 were started by immigrants.[12] Another study reported that immigrants started a quarter of engineering and technology companies founded between 1995 and 2005.[13] In May 2012, the Small Business Administration's (SBA) Office of Advocacy released a research study which found that immigrants have high business formation rates and create successful businesses that hire immigrant and U.S citizen employees, and export goods and services.[14]

Even outside the high-tech sector, immigrants are more than twice as likely to form new businesses in a given month compared to U.S-born individuals, according to the 2012 SBA report, and immigrants are significantly more likely to run a company with more than 10 workers.[15] A study by the Partnership for a New American Economy reported that more than 40 percent of Fortune 500 companies were founded by immigrants or their children. The study also noted that these companies are responsible for many jobs here and abroad—employing more than 10 million people worldwide—and that they generate annual revenues of $4.2 trillion.[16]

The United States continues to be a magnet for skilled immigrants, whose innovation and entrepreneurship grow our economy and create jobs for all Americans. Although the decision to immigrate is a complex one, two factors likely play a role in making the United States an attractive destination for these individuals. First, the United States has flexible labor markets that are able to integrate immigrants relatively quickly. Second, the skill premium—the return, in the form of higher income, education and job training—is relatively high in the United States compared to

[11] Gauthier-Loiselle, Marjolaine, and Jennifer Hunt. 2010. "How Much Does Immigration Boost Innovation?" American Economic Journal: Macroeconomics 2, no. 2: 31–56.
[12] Anderson, Stuart, and Michaela Platzer. 2006. "American Made: The Impact of Immigrant Entrepreneurs and Professionals on U.S. Competitiveness." Arlington, VA: National Venture Capital Association
[13] Wadhwa et al. (2007).
[14] Fairlie, Robert W. "Immigrant Entrepreneurs and Small Business Owners, and their Access to Financial Capital." Santa Cruz, CA. May 2012. https://www.sba.gov/sites/default/files.
[15] Ibid.
[16] Partnership for a New American Economy. 2011. "The 'New American' Fortune 500." http://www.renewoureconomy.org/wp-content/uploads/2013/07/new-american-fortune-500-june-2011.pdf.

other countries, and individuals with exceptional ability and willingness to work hard can thrive here. These factors have enabled our nation and its economy to benefit from large inflows of workers across the skill spectrum.[17] The combination of economic and cultural benefits to our nation's history and growth makes the efficiency of the legal immigration system a fundamental part of our success.

Modernizing our visa system to meet the needs of the 21st century is critical to ensuring that we continue to reap the cultural and economic benefits of an immigration system that encourages innovators and entrepreneurs to build lives in the United States and contribute their vitality and creativity to our economy.

C. Understanding Our Immigration System

For purposes of this report, it is important to understand the roles of three instrumental Departments in implementing our immigration laws, administering our immigration system, and promoting integrity through effective and efficient policies. Numerous agencies intersect with our immigration system. However, most people begin their immigration journey by engaging with DHS, State, or the Department of Labor (DOL).

The Department of Homeland Security

DHS has a broad mission and is charged with many responsibilities, from securing our borders to responding to natural disasters to enforcing and administering our immigration laws. DHS is made up of numerous components, and the main agencies with responsibility over our immigration system are U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). DHS consistently works to strengthen the nation's immigration system by adjudicating petitions or applications for immigration benefits, strengthening anti-fraud measures, protecting national security, and expanding best practices and supporting capabilities.

As a part of these responsibilities, USCIS serves as the conduit for legal immigration in the country and works to promote flexible and sound immigration policies and programs, strengthen the security and integrity of our immigration system, and improve customer-oriented services. USCIS processes requests for immigration status through our legal immigration system, including petitions by U.S. citizens for family members seeking lawful permanent resident (LPR) status, as well as employment-based petitions for individuals to work temporarily or permanently in the United States. USCIS also administers the naturalization process and humanitarian immigration programs.

[17] Council of Economic Advisers. 2013. *Economic Report of the President 2013*.

Through our family-based immigration system, individuals are able to petition for their closest relatives to immigrate to the United States.[18] The employment-based system provides options for temporary workers to enter the United States for a limited amount of time, such as workers in specialty occupations or seasonal workers, as well as permanent workers such as skilled workers and professionals. Additionally, our immigration system provides options for certain foreign students to study and engage in practical training in the United States and offers various cultural and academic exchange programs to certain foreign nationals. Humanitarian immigration programs provide opportunities for refugees, asylees, domestic violence survivors, and victims of human trafficking or other crimes, among others.

USCIS works to ensure that immigration petitions are processed in a timely fashion and with integrity. In 2013, USCIS processed almost 1 million immigrant visa petitions that ultimately allowed individuals living in the United States and abroad to obtain LPR status.[19] These individuals became eligible for LPR status through a range of options, including those with close family relationships to a U.S. citizen or LPR and those who have job skills needed in the United States. Unfortunately, many of these pathways to LPR status are backlogged due to the statutory limits on visa numbers for their categories or countries of origin. As a result, some individuals have to wait for years or even decades for their immigrant visa numbers to become available before they may become LPRs. CBP also processed 173 million nonimmigrant admissions to the United States in 2013, including foreign government officials, temporary visitors, students, temporary workers, and athletes and entertainers.[20] The top countries for nonimmigrant admissions are Mexico, the United Kingdom, Canada, Japan, and Germany.[21]

Additionally, both CBP and ICE are responsible for enforcing our immigration laws and securing our borders. CBP is DHS's largest law enforcement agency and is responsible for apprehending individuals trying to illegally enter the United States and for enforcing immigration laws and regulations that govern entry into and exit from the United States. Approximately 60,000 CBP employees are charged with securing 7,000 miles of land borders and 95,000 miles of coastline while facilitating lawful international trade and travel.[22] ICE is the principal investigative arm of DHS and the second largest investigative agency in the federal government. ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration. ICE has two principal

[18] U.S. citizens and LPRs can petition for relatives who qualify as immediate relatives or those that qualify under the family preference categories under the law. Immediate relatives include spouses, unmarried children under the age of 21, and parents of U.S. citizens. Under the family preference categories, U.S. citizens may petition for their unmarried sons and daughters over 21, married sons and daughters of any age (and their spouses and minor children), and if the U.S. citizen is over 21, brothers and sisters (and their spouses and minor children). LPRs may similarly petition for their spouses, minor children, and unmarried sons and daughter who are at least 21 years old.

[19] Monger, Randall and James Yankay. May 2013. *Annual Flow Report: U.S. Lawful Permanent Residents: 2013*. http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2013.pdf.

[20] Foreman, Katie and Randall Monger. July 2013. *Annual Flow Report: Nonimmigrant Admissions to the United States: 2013*. http://www.dhs.gov/sites/default/files/publications/ois_ni_fr_2013.pdf.

[21] Ibid.

[22] U.S. Customs and Border Protection. February 2015. *SNAPSHOT: A Summary of CBP Facts and Figures*. http://www.cbp.gov/sites/default/files/documents/cbp-snapshot-022615.pdf.

operating components, Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO), are comprised of nearly 19,000 employees in offices located in all 50 states, 3 U.S. territories, and 46 foreign countries.

The Department of State

State is the lead U.S. foreign affairs agency charged with developing and implementing policies to advance U.S. objectives and interests in shaping a freer, more secure, and more prosperous world. As a part of its responsibility to protect the homeland, U.S. interests, and citizens abroad, State's Bureau of Consular Affairs (CA) issues U.S. passports and provides an array of important services to U.S. citizens who travel or live overseas in addition to providing visa services to foreign nationals seeking to travel temporarily or immigrate permanently to the United States. Consular sections abroad are often an individual's first encounter with the U.S. government. CA also formulates and implements policies related to immigration and consular services, and interprets visa laws and regulations, in coordination with DHS. State strives to provide consular services in the manner that most efficiently and effectively protects U.S. citizens, ensures U.S. security, facilitates the entry of legitimate travelers, and fosters economic growth.

State's Bureau of Diplomatic Security (DS) partners with CA to protect the integrity of the passport and visa systems through aggressive investigation both domestically and abroad. Overseas, DS agents are assigned to the Regional Security Office and carry out investigations and security duties in coordination with U.S. and foreign law enforcement entities. Domestically, DS agents investigate immigrant visa fraud and associated travel document fraud in coordination with U.S. Attorney's Offices across the United States and participate on the FBI's Joint Terrorism Task Force, DHS's Document and Benefit Fraud Task Force, and other state, federal and local task forces.

State's Bureau of Population, Refugees and Migration (PRM) has primary responsibility for formulating U.S. policy on population-related issues, providing protection and assistance to refugees, stateless persons, conflict victims, and vulnerable migrants, promoting orderly and efficient international migration, and managing the U.S. refugee assistance and admissions programs.

CA has implemented numerous strategies to enhance services over the last few years, including upgrading to more modern systems and technologies and developing new programs to improve the efficiency and convenience of the visa process. For example, State and DHS implemented the Interview Waiver Program (IWP), which allows consular officers to waive in-person interviews for certain nonimmigrant visa applications. Visa interviews can be waived for certain first-time applicants and for visa renewals after the applications have been thoroughly reviewed and applicants have undergone extensive biographic and biometric-based background and security database checks. IWP has proven highly successful, facilitating legitimate travel while enhancing national security by allowing greater resources to be allocated to high risk travelers. This program is operational in over 100 visa-processing posts around the world and has directly resulted in faster processing for more than 1,000,000 low-risk visa applicants in 2014. In November 2014,

State also successfully implemented a bilateral arrangement with China that increased the validity of tourist and business visas issued to both Chinese and U.S. nationals from one year to 10 years, and student and exchange visitors from one year to five years, allowing an increasing number of Chinese travelers to engage in more frequent and convenient job-creating travel to the United States for business, tourism, family visits, and study, as well as making U.S. business, tourist, and student travel to China more convenient.

As a result of State's ongoing efforts, by the end of FY 2014, visa interviews were available to 97 percent of all nonimmigrant visa applicants within three weeks of filing their applications. In total, State issued more than 9.9 million nonimmigrant visas in FY 2014, a 55 percent increase from FY 2010.[23]

State's responsibility for managing the processing of U.S. immigrant visas from the initial online application to adjudication includes the publication of the monthly Visa Bulletin, which summarizes the availability of immigrant visa numbers for statutorily limited immigrant visa categories. As some visa numbers are limited by law, State strives to issue the appropriate number of these visas each year, consistent with legal guidelines. Over the last five years, State has averaged a 98 percent use of visa numbers authorized by statute, leaving some visa numbers unused due to systemic inefficiencies.

The Department of Labor

The Department of Labor (DOL) is responsible for worker protections, wage and hour standards, unemployment benefits, re-employment services, and economic statistics. DOL focuses on enhancing the welfare of wage earners, job seekers, and retirees; improving working conditions; advancing opportunities for profitable employment; and assuring work-related benefits and rights. Though DOL is responsible for numerous programs and protections, its role in immigration is focused on immigrant workers entering the United States through our employment-based immigration system. In recent years, employment-based immigration has represented approximately 16 percent of our nation's total permanent immigration population.[24]

Immigrant workers must often receive the approval of several government agencies in order to work in the United States, and many of these applications or petitions must come from their sponsoring U.S. employer. For certain worker programs, including both permanent and temporary worker programs, the employer must first apply to DOL to receive approval, or "certification," prior to filing a petition with USCIS for the potential immigrant worker. If USCIS grants the petition, many applicants must then apply to State for an immigrant visa which, if issued, allows the worker to travel to the United States. Alternatively, if the intending immigrant

[23] U.S. Department of State. November 2014. *Agency Financial Report for Fiscal Year 2014*. http://www.state.gov/documents/organization/234331.pdf

[24] U.S. Department of Labor, Office of Labor Certification. *Annual Report October 1, 2012 – September 30, 2013*. http://www.foreignlaborcert.doleta.gov/pdf/OFLC-2013_Annual_Report.pdf.

worker is in the United States, he or she might, depending on the petition, apply with USCIS to adjust their status in the United States, contingent on visa availability.

DOL has delegated its labor certification authority to the Employment and Training Administration's Office of Foreign Labor Certification (OFLC), which has two fundamental responsibilities for virtually all of the nonimmigrant and immigrant visa programs it administers. First, for immigrant visa classifications requiring a labor certification, OFLC must determine if there are any available, able, willing, and qualified U.S. workers in the area of intended employment of the foreign worker; this is primarily accomplished through a test of the labor market. Second, OFLC must ensure that the admission of an immigrant worker in the requested position will not have an adverse effect on the wages and working conditions of similarly employed U.S. workers. DOL determinations are generally needed for employers petitioning for foreign employees to be classified as permanent workers via a labor certification (PERM), temporary workers engaged in specialty occupations (H-1B), temporary skilled workers from Chile and Singapore (H-1B1), temporary specialty workers from Australia (E-3), temporary agricultural workers (H-2A), temporary non-agricultural workers (H-2B), and crewmen working on foreign vessels (D).

OFLC's National Office is responsible for policy and program oversight of the non-enforcement responsibilities delegated to the Secretary under the INA. OFLC is responsible for processing labor certifications and attestation applications, and generates program data essential both for internal assessment of program effectiveness and for providing DOL's external stakeholders with useful information about the immigrant or nonimmigrant programs it administers. There is increasing employer demand for the immigration programs administered by OFLC. As the employer demand in the PERM Program and the volume of PERM applicants increase, some backlogs have developed in certain steps of this program, which OFLC is addressing. In FY 2013, OFLC received over 506,760 requests from employers for labor certifications for permanent and temporary workers; a total of almost 500,000 were processed.[25]

DOL's Wage and Hour Division (WHD) is responsible for administering various laws and policies that extend protections to different types of nonimmigrant workers. WHD's mission is to protect and enhance the welfare of the nation's workforce by promoting and achieving compliance with labor standards. These responsibilities include administering the Fair Labor Standards Act for all workers, regardless of immigration status, as well as specific worker protections in the immigration programs. WHD now has more than 600 multi-lingual staff and has hired community outreach specialists to establish a greater presence in communities with vulnerable workers, including immigrant workers.

The Occupational Safety and Health Administration (OSHA) similarly implemented a national outreach strategy to create partnerships and alliances with neighborhood, faith-based and other nonprofit organizations to provide immigrants and other vulnerable workers critical information

[25] U.S. Department of Labor, Office of Labor Certification. *Annual Report October 1, 2012 – September 30, 2013* http://www.foreignlaborcert.doleta.gov/pdf/OFLC-2013_Annual_Report.pdf.

about job hazards and their rights in numerous languages. OSHA's Susan Harwood Grant program has also provided millions of dollars in funding to community- and faith-based organizations that provide training and education to immigrant and other vulnerable workers on their rights and how to protect themselves from job hazards.

D. Intersecting Principles to Promote Integrity and Protect the Nation

Inherent in all aspects of our immigration system is an ongoing commitment to integrity through every agency of government. From DOL to State to DHS, ensuring the homeland is secure is a primary function of our immigration system.

State's consular sections in Embassies and Consulates abroad are often the first U.S. government office encountered by a foreign national. They are charged with ensuring the integrity of our immigration system and ensuring that our system is used in the ways it was intended. Every visa decision is made with a focus on promoting these principles. Consular officers are extensively and continuously trained on interviewing techniques, fraud detection, and the use of a myriad of automated systems. Every visa adjudication is comprised of extensive biometric and biographic-based background and security checks supported by a clearance process that includes data from intelligence and law enforcement communities, ensuring that officers have the best data available at all times.

CA leads consular fraud detection efforts. Its Office of Fraud Prevention Programs (CA/FPP) prioritizes national security by helping to ensure U.S. passports and visas to the United States are only issued to qualified individuals. CA/FPP's Consular Integrity Division, which is a joint initiative with the DS, focuses on ensuring the integrity of consular operations by identifying vulnerabilities in consular systems and guarding against employee misconduct. Additionally, DS has more than 100 special agents embedded with consular sections in 97 posts and 66 countries around the world, who work with consular officers and foreign law enforcement partners to aggressively investigate document fraud and related crimes. DS also has special agents in Washington and its 22 offices throughout the United States, who investigate thousands of passport and visa fraud cases each year. These felonies are often committed in connection with other more serious crimes by individuals looking to change their identities and conceal their activities and movements. DS has investigated other cases of passport and visa fraud that have been connected to drug trafficking, international organized crime, money laundering, pedophilia, and murder. Through these joint efforts, State strengthens U.S. border security, facilitates legitimate travel, and protects and enriches the lives of U.S. citizens.

DHS also prioritizes the safety of the country in its implementation of our immigration laws. Document and benefit fraud pose a serious threat to national security and public safety, particularly when they create vulnerabilities that may enable dangerous individuals to enter and stay in the United States. There are numerous immigration-related crimes, from fraud to migrant smuggling to human trafficking. Additionally, critical infrastructure protection, worksite enforcement, visa compliance enforcement, and national security investigations remain priorities for DHS.

To combat fraud, ICE's Document and Benefit Fraud Task Forces collaborate with federal, state, and local law enforcement counterparts to target criminal organizations and the beneficiaries behind their schemes. The U.S. Secret Service also has responsibilities regarding these crimes, particularly those that involve financial institution fraud, computer and telecommunications fraud, false identification documents, access device fraud, advance fee fraud, electronic funds transfer, and money laundering.

USCIS employs a robust system of programs, policies, and security checks, led by the Fraud Detection and National Security Directorate (FDNS), to determine whether individuals or organizations filing for immigration benefits pose a threat to national security, public safety, or the integrity of the nation's legal immigration system. FDNS officers are located in every Field Office, Service Center, and Asylum Office across the United States, as well as in three overseas locations.

Through all layers of government, promoting the integrity of our immigration system is a crucial aspect of its mission. Our agencies continue to enhance the integrity of our system and focus resources on any threats to the safety of our Nation. Every recommendation to streamline our legal immigration system is consistent with these goals.

III. Progress on President Obama's November Executive Actions

President Obama's executive actions on November 20, 2014 included measures to improve our legal immigration system to ensure the issuance of all available visas, better enable U.S. businesses to hire and retain high skilled immigrant workers and entrepreneurs, and improve consistency and clarity in certain parts of our system.

Since this announcement, four of these actions have already moved forward:

- **Providing work authorization for certain H-4 spouses**. On February 24, 2015, USCIS published a final regulation extending eligibility for work authorization to certain H-4 spouses of H-1B workers who are on the pathway to LPR status. This regulation went into effect on May 26, 2015.

- **Clarifying options for intra-company transfers to the United States.** On March 24, 2015, USCIS published a consolidated and authoritative policy memorandum on the L-1B intra-company transferee classification for workers with specialized knowledge. This memorandum is open for public feedback until May 8, 2015. USCIS will issue a final memorandum that will go into effect on August 31, 2015.

- **Protecting victims of crime and human trafficking as well as workers.** DOL has expanded and strengthened its support for victims of qualifying crimes (U nonimmigrant status) and human trafficking (T nonimmigrant status) who are willing to cooperate with law enforcement investigations or prosecutions. DOL is now certifying for victims seeking U nonimmigrant status for the additional qualifying crimes of extortion, forced labor, and fraud in foreign labor contracting, and is exercising its authority to certify for T nonimmigrant applications as well.

- **Reducing family separation for those waiting to obtain LPR status.** On July 15, 2015, DHS issued a Notice of Proposed Rule Making to expand access to the provisional waiver program to all statutorily eligible classes of relatives for whom an immigrant visa is immediately available, including immediate relatives, family-sponsored, employment-based, and special immigrants, thereby allowing these individuals an opportunity to avoid years of separation from their U.S. citizen and LPR families. Currently, the provisional waiver program is only available to certain relatives of U.S. citizens. This draft regulation is open for comments for 60 days and the final regulation will be published in Spring 2016. DHS is also working to clarify the definition of extreme hardship, which must be proven by applicants seeking provisional waivers and plans to release guidance on this issue in the near future.

The Administration continues to move forward with the President's November 20th actions regarding the following improvements:

- **Expand opportunities for foreign investors, researchers, and entrepreneurs.** In order to improve options that create more jobs in the United States and boost our economy, DHS will propose, consistent with its existing parole authority, a parole program for entrepreneurs who would provide a "significant public benefit," for example, because they have been awarded substantial U.S. investor financing or otherwise hold the promise of innovation and job creation through the development of new technologies. DHS will also clarify guidance regarding the standard by which a national interest waiver can be granted with the aim of promoting its greater use for the benefit of the U.S. economy.

- **Strengthen and improve the Optional Practical Training (OPT) Program for foreign students and graduates from U.S. universities.** DHS is evaluating the OPT program to determine how to enhance the program in a manner that strengthens the program and improves training for students who will enhance American innovation and competitiveness, while protecting U.S. workers.

IV. Modernizing Our System for Efficiency and Accessibility

A. Information Technology and Processing

The Presidential Memorandum charged agencies with providing recommendations to improve the overall visa applicant experience, modernize the technical infrastructure, and make the process more reliable and efficient.

The immigrant visa application and adjudication process is mostly paper-based, requiring the mailing of forms between processing centers within the continental United States and to Embassies and Consulates abroad. Immigrant visa recipients are then required to hand-carry documents in a sealed immigrant visa packet to the port of entry, where CBP reviews the documents and forwards them to other government agencies, such as USCIS.

From the time a petitioner submits a petition to the time immigrant receives a permanent resident card, the U.S. government physically transfers paper files no fewer than six times over thousands of miles, a time-consuming and costly process. To modernize this antiquated process, State and USCIS have embarked on several initiatives to reform their systems.

Several years ago, USCIS began modernizing its business and internal systems by developing the USCIS Electronic Immigration System (USCIS ELIS). The first iteration of USCIS ELIS used a traditional waterfall methodology that has proven problematic for many large technology projects. Using the waterfall methodology, the release of software would not occur for years after work began and was too reliant on a single vendor's proprietary technologies. Ultimately, this project was not as effective as anticipated and did not increase efficiency as intended.

Over the past two years, USCIS has rebuilt USCIS ELIS using a modern technology stack, industry leading-security and privacy practices, an agile development approach, and real-time connections into other systems across DHS and other government agencies to ensure that every individual filing a request for an immigration benefit will be properly screened for fraud and misrepresentation, national security and public safety risks, and criminal activity. The rebuilt USCIS ELIS will also include system enhancements that allow for better front-end fraud detection before an immigration benefit is granted.

In 2008, State launched a limited pilot for nonimmigrant visa applicants, the Consular Electronic Application Center (CEAC). In the years since this pilot, CEAC has been institutionalized and expanded worldwide, and includes online applications for both nonimmigrant and immigrant visas, as well as a feature that enables the visa applicant to check on the status of the application. The website also allows applicants to pay certain fees associated with an immigrant visa application.

Most recently, State and USCIS are preparing to launch the modernized immigrant visa (MIV) project, which is aimed at improving the visa applicant experience and increasing efficiencies in the adjudication process by digitizing as much of it as possible. The MIV project will offer a suite

of applications, mainly belonging to USCIS and State, which will more efficiently process and manage electronic immigrant records. MIV is scheduled for its initial pilot launch through 2015 at a select group of overseas consular posts: Montreal, Buenos Aires, Rio de Janeiro, Frankfurt, Hong Kong, and Sydney. A more expansive rollout is planned in 2016.

In conjunction with this project, the United States Digital Service (USDS) has been working with key stakeholders in relevant agencies to conduct technical assessments in advance of the summer MIV launch to understand, in a deeper, more qualitative way how people experience the immigration process. As a result of these efforts and RFI comments, the following far-reaching policy, process, and program recommendations were generated and are intended to enhance the applicant experience, improve efficiency, and make our immigration system more accessible to those who access it. These recommendations were developed based upon the following key principles.

First, *understand what people need*. USDS began an assessment by exploring and pinpointing the needs of the people who use immigrant visa services, and the ways the service fits into their lives. Additionally, USDS looked at government collaborators as "users" of their own processes, and asked for insights about what could be improved. The needs of these users will inform technical and design decisions.

Second, *address the whole experience, from start to finish*. Applicants are often overwhelmed by the multiple agencies that play a role in their immigration process. Integrating the activities of all the relevant agencies serves to minimize confusion for the user while streamlining the adjudication process to eliminate redundancy and increase efficiency.

Third, *make the process clear, simple, and intuitive, so that users succeed the first time, unaided*. It is necessary to make our process as clear and simple as possible so that individuals understand the process, are fully prepared when they make their request, and can apply for the immigration benefit for which they qualify.

Finally, *be consistent by using the same language and design patterns when building digital services whenever possible*. By creating consistency within design patterns, users become familiar with the services offered and can make reasonable assumptions and guesses regarding their next steps in the process. This is a principle that our peers in the United Kingdom Government Digital Service have emphasized and that is particularly relevant for the global nature of the responsibilities of State and DHS. Setting consistent goals as a government will empower agencies and consular posts to customize their process to meet local circumstances.

***Recommendation 1*: Create a cross-agency digital service team to support the implementation of the overall MIV pilot.** DHS and State will create, with the support of USDS, a cross-agency digital services team to continue to support the implementation of the MIV pilot following these recommendations and improve communication between the agencies.

***Recommendation 2*: Simplify the applicant experience through increased information sharing across agencies and increased accessibility through electronic filing of forms and payments.** Currently, applicants experience the process from the perspective of agencies, with each agency, or even parts of an agency, presenting its own website interface and service experience. This can be confusing and disorienting to applicants and leads to some immigrants missing out on vital services that are offered on different agency websites. The following specific actions will significantly improve the applicant experience in the MIV process:

- Offer the option to collect the USCIS Immigrant Fee, which is used by USCIS to produce the Permanent Resident Card, earlier in the process, when the applicant is paying their visa application fee. Currently, immigrants must log in to a separate USCIS system to pay this fee, and nearly 20 percent do not. Fees should be payable via credit and debit cards in addition to Automated Clearinghouse transfers, an electronic network which allows financial transfers to come directly to and from bank accounts, such as with direct deposit. Paying multiple fees should be as simple as buying multiple items in an online shopping cart. Separating the fees for different processes should happen entirely on the back-end.
- Digitize Form I-864, the Affidavit of Support, to facilitate more expeditious processing of immigrant visas through electronic filing so that petitioners (sponsors) and any household members or other joint sponsors can fill it out online. The Form I-864 is currently only captured as a scanned image, requiring unnecessary manual data entry work.
- Allow electronic filing and electronic processing of the Form I-130, Petition for Alien Relative (family-sponsored immigrant petitions), through USCIS ELIS. This will enable electronic transmission of visa petition data from USCIS to State, and remove the need for paper transfers.
- Improve visa interview appointment scheduling by increasing collaboration between the National Visa Center and overseas processing posts to better serve the public.

***Recommendation 3*: Redesign systems based on people, not form numbers.** Moving a paper process online does more than eliminate paper and create efficiencies—it offers the opportunity to rethink and redesign the experience for the digital age. State and USCIS have begun moving key applications online through systems like CEAC and USCIS ELIS. USCIS has also conducted extensive research into the immigration application process and has launched a new online tool called myUSCIS, which includes the ability to identify the immigration options for which applicants may be eligible and a search-driven plain language knowledge base with direct answers to common immigration questions. Agencies will take the following actions in an effort to examine the immigrant visa process holistically and develop a shared understanding and vision of what the immigrant journey should look and feel like from a human perspective:

- Create a roadmap, and single vision, for what the applicant's immigration process looks like from beginning to end as a guide for designing and building new tools.
- Build intuitive electronic tools that complement electronic filing by guiding and assisting the applicant through the process of filling out a form and applying for immigration benefits. These tools will use plain language, be translated into multiple languages, and include a checklist of evidence to provide when applying for various immigration benefits.

- Streamline the amount of data an applicant must re-enter repeatedly. For example, a digital process that equates to filling out two paper forms should not require an applicant to enter their name and biographical information twice, solely because the same information is required on both forms. Applications can allow information to be collected once and then reused across other forms, eliminating the need to provide the same information multiple times.
- Provide the applicant with a single dashboard that allows them to view their case status in the overall process. Currently, applicants have to check with DHS and State individually to view their current status. Ideally, this information would be aggregated, requiring that only one dashboard be checked for an overview of one's application, and all related components.

***Recommendation 4*: Convene a short-term communications task force charged with making process instructions clearer, reader-friendly, holistic, and actionable.** Currently, applicants face unnecessary ambiguity and confusion around how each step in the application process fits into the process as a whole, and a lack of awareness of how to succeed. This task force will:

- Review all instructions received by applicants, from beginning to end, from all government sources. With the help of agency process experts, legal counsel, usability experts, and applicants themselves, the task force will produce one instructional resource—in plain English and translated into multiple languages—that clearly explains how to complete an application process successfully.
- Translate the immigrant visa portions of travel.state.gov, which is the main State website for information on visa processing and receives 69 million website visitors annually, into Spanish and develop video tutorials on the mechanics of filling out common forms. Given that Spanish-speaking countries represent 31 percent of those applying for immigrant visas, these changes will greatly improve accessibility of information for customers. State will also explore translating these materials into additional highly-used languages.
- Coordinate joint outreach activities between State and DHS with a focus on targeting U.S.-based petitioners about early stage activities that influence visa case processing downstream. Additionally, task force members will increase communication between their call centers to ensure coordination and clarity of messaging, and to address any current information gaps.

***Recommendation 5*: Strengthen public communications strategies about the visa process overseas and in the United States.** Currently, consular officers do not have a consistent way of receiving feedback from key participants, such as applicants, petitioners, lawyers, and community groups about the process. This limits an exchange of information that might help clarify rules, reduce misinformation, and produce valuable insights about consular post processes. In order to better engage the public, State will:

- Build on examples of successful engagement on consular issues by proactively reaching out to share visa process information with key sectors of the public via messages and media that resonate with them with the goal of providing information and engaging in a

two-way dialogue with those involved in the immigration process so their feedback and input are incorporated into further enhancements to the process.

- Increase public outreach and engagement efforts by consular posts. Staff will engage applicants through a wide variety of avenues, including existing post websites and digital media properties, local organizations and websites, and other channels tailored to local conditions, in order to engage visa applicants and ensure a diversity of feedback.

***Recommendation 6*: Adopt modern best practices for software development, such as deploying in a flexible hosting environment and using monitoring systems.** Currently, many applications are hosted in government-operated data centers, which means that the government must maintain the physical infrastructure that houses data, rather than relying on a cloud provider. This practice is an inefficient use of government resources, requiring hardware to be managed and maintained directly, increasing capital and labor costs, and increasing resources and efforts allocated to disaster recovery and continuity of operations capabilities. Some work has already been done to update these practices, such as USCIS hosting USCIS ELIS and myUSCIS in the commercial cloud and utilizing modern monitoring and analytics tools. To continue this work, DHS has committed to and State will explore the following actions:

- Deploy government services on flexible infrastructures, where capacity can be increased in real-time to meet spikes in traffic and user demand and begin migrating application hosting out of government-operated data centers to the commercial cloud to reduce costs and increase reliability and availability. Any such shift will ensure the protection of personally identifiable information (PII) as well as other security considerations.
- Create best practices for agencies to monitor how well their services are working, including measuring application performance tools, to measure system performance and customers interactions with services in real-time.

***Recommendation 7*: Modernize and simplify technology stacks.** Agencies should choose technology stacks, or the various components and services underlying an application, that enable development teams to work efficiently and build scalable, cost-effective products. State and USCIS will upgrade and modernize the current technology stack and its various components and services across all MIV pilot applications in an effort to reduce complexity in this system. As a part of these efforts, DHS and State will:

- Implement system changes to the Consular Consolidated Database (CCD), a State system that contains both software applications and a repository for data collected worldwide regarding requests for consular services, including visa applications. The CCD is sometimes the cause of outages that delay work and processing. State will continue working to upgrade the system, streamline integration complexity, and address existing performance inefficiencies.
- Launch the new Immigrant Visa Content Service (IVCS), a content management system for case file data, which will fill in the last gap in the immigrant visa process and enable case data, once digitized, to remain digitized throughout the rest of processing. IVCS architecture will be simplified to remove unnecessary dependencies on other systems and reduce the project coordination overhead, thereby reducing risk to the IVCS launch.

***Recommendation 8*: Enhance State and DHS interagency collaboration on data collection.** State and DHS Data Quality Advisory Boards will work together to ensure that real-time system performance and other relevant data drives service design and technical decision-making, and that mechanisms are created to receive and act on user feedback on public-facing systems, including forms housed in CEAC and myUSCIS. Such data will be consistently monitored and a feedback mechanism will be put in place for users to report errors.

B. Transparency and Data Publication

Statistical data on immigration has been published annually by the government since the 1890s, though the federal agencies that report such data have changed over the years. Currently, immigration data are published by DHS in its *Yearbook of Immigration Statistics*, which includes information regarding nonimmigrant admissions, LPRs, refugees and asylees, and naturalizations as well as enforcement actions. In reporting these data, DHS is committed to protecting the confidentiality of individuals and removes all direct or indirect identifying data, while maintaining data integrity. Similarly, State publishes an annual *Report of the Visa Office*, which provides statistical information on immigrant and nonimmigrant visa issuances by consular offices and information on the use of visa numbers in categories subject to caps.

USCIS also publishes summary data on the number of applications or petitions received, approved, denied, and pending in family-based, employment-based, humanitarian, and naturalization processes. USCIS receives and adjudicates approximately 6 million applications and petitions annually from individuals and employers. Most of USCIS' data quality initiatives have been led by the Office of Performance and Quality (OPQ), the Office of Transformation Coordination (OTC), and the Office of Policy and Strategy (OP&S). As USCIS continues to develop new systems, it also intends to enhance data quality through such systems. Additionally, OP&S works to support research and evaluation and identifies data gaps. In order to ensure applicants' privacy, OP&S has established privacy-compliant guidelines for reporting tabulations to the public that further limit the possibility that individuals may be identified.

DOL also collects and publishes data and statistics, including those related to enforcement. This information includes data related to compliance evaluations and complaint investigations, violations of OSHA standards, and wage and hour violations, to name a few. The Department of Justice's Executive Office for Immigration Review also publishes an annual *Statistics Yearbook*, which reports on cases received and completed in the immigration courts, the Board of Immigration Appeals, and the Office of the Chief Administrative Hearing Officer.

Still, policymakers and the public would benefit from having more robust statistical information about our immigration system. This includes information that would help in the tracking of certain visas and in the administration of certain programs. To address the public interest in increased accuracy, accessibility, and transparency, DHS, State, and DOL must re-conceptualize how data are collected, stored, and disseminated. Our shared mission with respect to the visa system is not simply to process visas, but to organize the data such that policymakers and the public can fully understand immigration flows and levels.

The following recommendations serve to enhance data collection and improve data quality in order to provide the best possible information to applicants and the public regarding our immigration system.

Recommendation 1: **Create an interagency working group to evaluate and improve data collection and publication.** Consistent with the President's commitment to open government, DHS and DOL will establish a working group to:

- Conduct a comprehensive assessment of current immigration statistics in consultation with stakeholders;
- Evaluate the capacity of agencies to reform and update the collection and publication of immigration statistics, in compliance with Executive Order 13642: Making Open and Machine Readable the New Default for Government Information;
- Consult with other U.S. statistical agencies, such as the U.S. Census Bureau, and other federal agencies, such as the U.S. Department of Agriculture, to advance methods to collect, share, and cross-reference information in order to provide comprehensive and accurate statistics;
- Develop recommendations to enhance data collection and publication in a manner that is accessible to policymakers and the public; and
- Execute a one-year plan to implement recommendations.

Recommendation 2: **Increase DHS capacity and resources dedicated to the collection, analysis, and dissemination of immigration statistics.** In order to enhance data collection capabilities, DHS will expand its current team by hiring additional experts devoted to this function.

Recommendation 3: **Clarify statistical policy guidance.** DHS will issue clarifying guidance so USCIS adjudicators have clarity on how to collect statistical data that provide transparency to data users and information to enhance our immigration system.

Recommendation 4: **Set up governance boards to create data collection standards.** USCIS will set up a governance board to establish data standards. The governance board will enforce system data standards that promote system integration and transparency. USCIS will also work with the Data Management Working Group at DHS to ensure that USCIS standards and governance procedures align with other DHS components and departmental policies and standards.

Recommendation 5: **Document procedures used to collect data and identify areas for improvement.** OP&S will document the procedures used to collect data on family-sponsored and employment-based immigrants, assess the accuracy of key variables in the data, and identify areas for possible improvement.

Recommendation 6: **Enhance publication of enforcement data by DOL.** WHD makes available enforcement data in a variety of ways to the public, but that data are not always easily accessible. DOL will enhance accessibility to nonimmigrant enforcement statistics by making them more transparent and accessible to the public.

V. Streamlining Our Legal Immigration System

A. Legal Immigration Options

Our nation's legal immigration system provides numerous options for individuals to obtain status, temporary or permanent, in the United States, as governed by the Immigration and Nationality Act (INA) and related immigration laws. Immigrants who enter the United States through our legal immigration system usually come in through the family-based system, employment-based system, diversity visa program, or humanitarian programs. Many of these programs have significant backlogs, primarily because they are subject to statutory caps. While the statutory caps can only be addressed through legislation, several of these programs can be streamlined in order to make our immigration system more efficient and effective, and reduce barriers faced by applicants trying to navigate it.

The family-based immigrant visa system is premised on the importance of reducing the separation of American citizens and LPRs from their closest family members and allowing immigrants the support they need in order to build sustainable lives in the United States. U.S. citizens may petition for their spouses, sons and daughters, parents, and siblings, and LPRs may petition for their spouses and unmarried sons and daughters. A number of these family-sponsored categories have annual limitations (or caps) that impact wait times for obtaining an immigrant visa. Spouses, unmarried children under the age of 21, and parents of adult U.S. citizens are considered "immediate relatives" and therefore are not subject to annual numerical caps under the INA. Those who seek to sponsor family members in other categories, however, must petition through the family-preference system, which is subject to category- and country-specific caps. As a result, many individuals remain separated from their families for years on end as they wait for an immigrant visa to become available. Current visa availability information is published by State in a monthly Visa Bulletin, which indicates when visas are available for eligible applicants who have been waiting based on the "priority date," a date usually set by the filing of the immigration petition or labor certification application, when applicable. By indicating when visas are available, this bulletin also suggests current wait times based on these statutory caps. For example, the July 2015 Visa Bulletin indicated that the longest wait times were for certain family members from the Philippines, who could wait over 20 years for visas to become available.

Through the employment-based immigrant visa system, employers generally petition for employees to obtain an immigrant visa. The beneficiaries of these petitions include researchers, information technology specialists, religious workers, investors, scientists, athletes, and nurses, among others. Employment-based immigrant visa beneficiaries include those with extraordinary abilities in particular fields, outstanding professors or researchers, and multinational executives or managers (EB-1); those with advanced degrees or exceptional ability in the arts, sciences, or business (EB-2); professionals, skilled workers, or other workers (EB-3); special immigrants such as religious workers and employees of the U.S. government abroad (EB-4); and business investors who are evaluated on their investment and job creation potential (EB-5). Like parts of the family-sponsored immigration system, these employment categories are also limited by statutory worldwide and country-based numerical caps.

Foreign-born workers are also able to live and work in the United States through temporary nonimmigrant visa programs. Temporary nonimmigrant worker programs include a range of options including treaty investors or traders (E), those in specialty occupations (H-1B), agricultural workers (H-2A), non-agricultural seasonal workers (H-2B), intra-company transferees (L-1), and individuals with extraordinary abilities (O), to name a few. Many of these programs are also subject to annual statutory caps, which are sometimes met almost immediately at the beginning of each filing season.

As previously mentioned, requests from employers for workers in certain immigrant and nonimmigrant visa categories must also undergo evaluation by DOL before an employer can move forward in the process. For certain employment-based immigrant visa petitions, employers must obtain a labor certification and ensure that both U.S. and immigrant workers are protected. For certain nonimmigrant temporary worker programs, employers must meet certain wage and other requirements.

Temporary visitors may also enter the United States on a business or tourist visa (B-1/B-2) or in some cases, through the Visa Waiver Program (VWP), which allows eligible individuals from approximately 38 countries to travel to the United States for a maximum of 90 days without a visa. Additionally, foreign students (F and M visas) and exchange visitors (J visas) enter the United States so that they can pursue educational, vocational, and cultural exchanges. Most recently, DHS announced that it will be amending its regulations under the Student and Exchange Visitor Program (SEVP) to improve the management of international student programs and increase opportunities for study by spouses and children of international students.

In addition, the Diversity Visa program is an annual lottery created under the INA that provides immigrant visa opportunities to individuals from countries with low rates of immigration to the United States. Individuals who register for a visa through the diversity lottery must meet a variety of eligibility requirements related to their education, work experience, or training experience. Visas are distributed among six geographic regions and are subject to statutory worldwide caps and country-based caps. Historically, this program has most benefitted individuals from Africa or Eastern Europe.

Finally, our immigration system includes a number of humanitarian programs with the purpose of providing protection to individuals who are fleeing persecution or disasters, need emergency medical care, and have other urgent circumstances. This part of our system is most often known for the U.S. refugee admissions program. Other humanitarian policies include relief for battered spouses, children, and parents; victims of human trafficking and other crimes; young people who may be eligible for special immigrant juveniles (SIJ) status; and individuals in other special situations, such those fleeing from environmental disasters or armed conflict. These programs are unique and some are subject to certain limitations such as annual caps.

Through the RFI process, comments were received ranging across the entirety of our legal immigration system. While some recommendations reflect programs and innovations already

underway throughout the government, many meritorious recommendations require more exploration, and others required statutory changes. The following recommendations will serve to streamline and improve our legal immigration system consistent with our legal authority.

B. Employment-Based Immigrant Visa Issuance

Many temporary nonimmigrant workers with approved employment-based immigrant visa petitions wait years for visa numbers to become available so that they may acquire LPR status—in large part due to statutory caps that have not changed since 1990 and that no longer reflect the needs of U.S. businesses and the U.S. economy. While waiting for these immigrant visas, many nonimmigrant workers may be effectively prevented from changing jobs or receiving promotions, thus hindering natural career progression and the ability to make other long-term life plans. This stagnancy for years on end not only negatively impacts the beneficiary's economic stability, but also impacts the economic growth of local communities and our nation. While changing statutory caps requires legislation, other improvements can be made under current law to facilitate worker mobility and ensure that the maximum number of visas is issued each year.

The recommendations below will help ensure that all immigrant visas authorized by Congress are issued when there is sufficient demand; better account for visa availability for persons seeking to adjust status to lawful permanent residence while remaining in the United States; and provide additional job flexibility and portability for nonimmigrant workers affected by immigrant visa backlogs. Implementation of these recommendations will also benefit some family-sponsored immigrants who are waiting for visas. To these ends, the following recommendations will be implemented:

Recommendation 1: **Update the monthly Visa Bulletin.** Later this year, State, in consultation with DHS, will revise the monthly Visa Bulletin to better estimate immigrant visa availability for prospective applicants, providing needed predictability to nonimmigrant workers seeking permanent residency. The revisions will help ensure that the maximum number of available visas is issued every year, while also minimizing the potential for visa retrogression.[26] These changes will further allow more individuals seeking LPR status to work, change jobs, and accept promotions. By increasing efficiency in visa issuance, individuals and their families who are already on the path to becoming LPRs will have increased security that they can stay in the United States, set down roots, and more confidently seek out opportunities to build lives in our country.

Recommendation 2: **Refine monthly allocation of visas.** State will increase monthly visa allocation totals during the first three quarters of the fiscal year to the degree permitted by law in order to ensure that fewer numbers are left for the final quarter, thereby ensuring that visa numbers issued are as closely aligned with statutory mandates as possible.

[26] Visa retrogression refers to the act of moving priority dates backward (rather than advancing them) in the State Department Visa Bulletin to foreclose the ability of certain individuals to file immigrant visa applications or applications for adjustment of status. Visa retrogression may occur when State determines that heavy demand in a visa category causes the estimate of the availability date to move backwards.

Recommendation 3: **Improve numerically controlled immigrant visa appointments.** State's National Visa Center will alter how numerically controlled immigrant visa appointments are scheduled for the last month of the fiscal year (September) to provide sufficient time to evaluate whether there may be potentially unused numbers. This change will allow for the scheduling of additional cases when necessary in order to maximize the numbers of visas used, consistent with the annual limits.

Recommendation 4: **Clarify and expand protections for employment-based immigrants and nonimmigrants.** DHS intends to publish a regulation clarifying and expanding on the protections afforded employment-based immigrants and nonimmigrants under the American Competitiveness in the Twenty-First Century Act of 2000 ("AC-21"), which was meant to increase job flexibility for individuals who were coming to the United States to perform specialty occupation services (H-1B) and those on the pathway to permanent residency. This regulation will:

- Increase the ability of workers waiting for a green card to change jobs or receive promotions by clarifying when individuals may change jobs or employers because such employment is "same or similar" to the job that was the original basis for permanent residency;
- Further increase job flexibility by enabling individuals whose employment-sponsored immigrant visa petitions have been approved for more than one year to retain eligibility for LPR status despite the petitioning employer closing its business or seeking to withdraw the approved petition;
- Provide increased guidance on job flexibility provisions for H-1B workers seeking other H-1B employment, including changing jobs or employers;
- Extend grace periods for certain nonimmigrant workers whose period of authorized stay has expired, including because their jobs have been terminated, to better allow them to obtain other employment without losing their nonimmigrant status;
- Clarify when H-1B nonimmigrants may begin working without required licensure;
- Provide increased guidance on the maximum period of admission for H-1B nonimmigrants, including for those who are on the path to LPR status, and enable H-1B nonimmigrants to recapture time spent outside of the United States;
- Clarify which H-1B nonimmigrants are exempt from the statutory cap to ensure that those nonimmigrants who are contributing to U.S. research and the education of Americans may remain in the United States; and
- Protect H-1B nonimmigrants who suffered retaliatory actions because they reported labor violations committed by their employer.

C. Immigrant Investor Visa

The EB-5 Immigrant Investor Program (EB-5 Program) was created by Congress in 1990. The program is designed to serve our nation's interest by promoting the immigration of people who

invest their capital in new, restructured, or expanded businesses and projects and by doing so help create or preserve needed jobs for U.S. workers.

Through the EB-5 Program, immigrants who invest certain amounts of capital in job-creating businesses and projects in the United States receive conditional LPR status for two years. After two years, EB-5 recipients can have the conditions on their LPR status removed if they demonstrate that they have satisfied all the conditions of the program and continue to meet other eligibility criteria. Each year, 10,000 EB-5 immigrant visas are available for individuals (and their immediate family members) who invest in commercial enterprises that create at least 10 U.S. jobs within two years. EB-5 investors may petition independently or as part of a USCIS-approved "Regional Center" investment project.

Over the past four years, USCIS has made significant enhancements to the administration of the EB-5 program, including the creation of new specialized intake teams with expertise in economic analysis and program requirements, as well as issuance of updated policy guidance to provide greater clarity for potential EB-5 visa applicants.

Significant opportunities remain to further improve the integrity and impact of the program, including measures to: (a) enhance protections against fraud, abuse, and criminal misuse of the program by both petitioners and Regional Centers; (b) ensure that the program is achieving its greatest potential impact in terms of U.S. job creation, economic growth, and investment; and (c) reduce unnecessary burdens and uncertainties on the part of petitioners, Regional Centers, and other participants in the program.

Secretary Johnson also directed the creation of a new protocol to ensure that the program remains "free from the reality or perception of improper outside influence," which has been adopted. The Secretary also renewed the Department's call for Congress to enact a number of statutory enhancements to the program's integrity, including added legal discretion to deny or revoke cases when necessary, particularly where there are criminal activity or national security concerns; authority to prohibit people with criminal violations and fraud- or securities-related civil violations from participating in EB-5 Regional Centers; and authority to require Regional Centers to certify compliance with our securities laws. In addition to the recommendations below, DHS will continue to explore other options for further strengthening the EB-5 program's integrity and functioning.

Recommendation 1: **Update standards for the EB-5 Program.** By enhancing program integrity and updating eligibility requirements, this program can better serve our nation. DHS intends to pursue rulemaking to achieve those goals, including by requiring conflict-of-interest disclosures by Regional Center principals, enhancing background checks and public disclosure requirements, and increasing the minimum qualifying level of investment. DHS will also take steps to improve the adjudication and approval of Regional Center applications.

Recommendation 2: **Clarify options for potential EB-5 investors to obtain visitor visas.** State will amend its guidance in the Foreign Affairs Manual to clarify that potential EB-5 investors can

obtain visitor visas to examine or monitor potential qualifying investments if they otherwise qualify for the visitor visa.

D. International Arrivals Process for Visitors and Immigrants

First impressions matter, and when foreign visitors, workers, and immigrants arrive at our borders, it is important that they have a positive experience. The safety and security of this country will always come first, but we can and must also ensure that the international experience continues to be welcoming, friendly, and efficient. In response to a Presidential Memorandum issued May 22, 2014, the Departments of Commerce and Homeland Security, together with private sector stakeholders, established a national goal:

> *The United States will provide a best-in-class international arrivals experience, as compared to our global competitors, to an ever-increasing number of international visitors while maintaining the highest standards of national security. Together, the public and private sectors endeavor to ensure that legitimate travelers feel secure and welcome and view their arrival experience as the very best as compared to our global competitors.*

In support of this goal, DHS and Commerce established an interagency task force which engages with a broad array of industry stakeholders to seek executable recommendations on how best to measure and improve the traveler's experience during the arrivals process. In addition, DHS coordinated with local airport authorities and travel industry representatives to develop action plans to facilitate the entry process for visitors and immigrants at the 17 U.S. gateway airports. A broad array of ongoing efforts include increasing use of technology to simplify and accelerate the entry process, modernizing the entry process and eliminating paper forms, and expanding use of efficiency-creating policies. Additionally, CBP runs the Global Entry program and the Electronic System for Travel Authorization (ESTA). The Global Entry program currently allows pre-approved, low-risk U.S. citizens, LPRs, and certain nonimmigrants expedited clearance when they arrive in the United States, using automated self-service kiosks and bypassing CBP questioning. ESTA is an automated system that determines the eligibility of visitors from VWP countries to travel prior to boarding a carrier to the United States.

In order to further these efforts, DHS and State will implement the following recommendations:

Recommendation 1: **Expand the use of Automated Passport Control (APC) kiosks and Mobile Passport Control Applications.** By expanding these options, passengers will be able to scan their passports and enter their customs declaration information at kiosks or on their phones, thereby reducing time spent waiting in line and interacting with CBP officials by 45 percent. CBP is working with partners to expand use of APC technology to LPRs, VWP travelers, and certain temporary visitors. Through a public-private partnership, travel industry partners are investing $20 million in 340 APC kiosks in 13 major U.S. international gateway airports—over 235 of which have been installed since August 2014.

Recommendation 2: **Consider allocating greater resources for screening of high risk-travelers and streamlining certain nonimmigrant visa application protocols for low-risk travelers.** This focused approach enhances national security while facilitating legitimate travel by leveraging existing screening protocols for certain low-risk travelers through the IWP. The IWP may be expanded to include:

- Individuals who meet select DHS security requirements, have passed rigorous vetting, and have previously obtained an nonimmigrant visa or have a valid ESTA authorization with fingerprints on file, and are applying for select categories of visas, including business visas (B-1 visas), certain temporary nonimmigrant visas (H-1B visas), media visas (I visas), and exchange visitor visas (non-Summer Work Travel J visas);
- Individuals who are returning student visa holders and their dependents (F-1/F-2) continuing in the same academic or vocational program, approved through the SEVP;
- Individuals who are enrolled in the Global Entry or NEXUS programs; and
- Individuals who apply for business or tourist visas (B-1/B-2) and who already possess valid nonimmigrant visas in another category.

Recommendation 3: **Expand Global Entry options for travelers.** Currently, the Global Entry program provides expedited clearance for certain pre-approved, low-risk air travelers upon arrival to the United States such as U.S. citizens, LPRs, and citizens of Germany, the Netherlands, Panama, South Korea, and Mexico, as well as Canadian citizens and residents who are members of the NEXUS program. DHS will continue to seek partnerships with other foreign governments to allow more VWP travelers and visa holders to access the program.

Recommendation 4: **Expand pre-clearance with pre-boarding inspection.** Currently, CBP conducts immigration, customs, and agricultural inspections prior to an individual boarding a U.S.-bound flight at 15 airports in six different countries, thereby eliminating the need for these individuals to undergo inspections upon arrival to the United States. DHS will enter into negotiations with foreign governments to expand air pre-clearance to new locations.

Recommendation 5: **Eliminate the need for air passengers to complete a paper Customs Declaration form.** CBP and the U.S. Department of Agriculture are currently piloting a program to ensure appropriate customs and agriculture inspection without requiring air passengers to wait in line after collecting their luggage. By the end of 2016, CBP will fully eliminate the need for the blue paper Customs Declaration form in order to eliminate lines at egress points after baggage collection. This change will smooth the arrival process for arriving visitors and immigrants and make international to domestic transfers more convenient and predictable.

E. "Known Employer" Pilot Program

On January 8, 2015, DHS announced its plans to initiate a "Known Employer" pilot program. The pilot is an effort to streamline the adjudication of certain types of immigration benefits petitions filed by U.S. employers meeting strict criteria of good corporate citizenship and compliance with our nation's immigration laws. The program, which will be jointly administered by USCIS, CBP,

and ICE, is designed to make adjudications more efficient and less costly while reducing paperwork and delays for both DHS and for U.S. employers who seek to transfer foreign workers to the United States or employ certain foreign professionals in the United States.

Currently, the adjudication by USCIS of an employer's petition for certain foreign workers generally includes an analysis of the bona fides of the employer's business, the nature of the job offered, the job requirements, and the beneficiary's qualifications. While reviewing the evidence submitted in support of such an employment-based petition, the adjudicator makes determinations relating to each of these elements. Each stage of the adjudication process requires both time and resources. Under the Known Employer pilot, USCIS will provide petitioners the option to file a petition with USCIS to pre-establish certain requirements related to the employer, thereby reducing the time required to review the beneficiary's petition once the employer identifies a specific prospective employee.

Recommendation 1: **Improve visa adjudication times by streamlining the collection of information.** State will access and utilize the pilot in order to streamline adjudications of certain types of employment-based visa categories and improve adjudication times.

Recommendation 2: **Create a prototype for testing and employer awareness.** DHS will create an online prototype of a library which employers would use as a part of the program in order to test its capabilities and receive feedback.

Recommendation 3: **Publish a report on the program's effectiveness and integrity.** At the conclusion of this one-year pilot, DHS will publish a report describing the effectiveness of the pilot in meeting the twin goals of reducing paperwork and time in the adjudication process and maintaining the integrity of adjudications to ensure only qualified employers' petitions are approved.

Recommendation 4: **Prepare an implementation plan and timeline for a permanent Known Employer Program.** Once the pilot is complete, DHS will refine the program, incorporating lessons learned during the pilot period, and prepare an implementation plan and timeline for a permanent program.

F. Exchange Visitor Program

Over the past several years, State has pursued a comprehensive approach, including regulatory action, to improve transparency and accountability and create an environment that ensures all J-1 Exchange Visitor Program participants in private sector programs will enjoy a rich cultural experience and full confidence in their rights and safety. Requiring transparency of fees charged to exchange visitors by sponsors and third-party organizations, whistleblower protections, background checks for program sponsors, a 24-hour helpline for exchange visitors, on-site monitoring, reviews of each program category to ensure it meets mission goals, and increased outreach to a broad range of stakeholders have enhanced all categories of J-1 programming.

State has also expanded its efforts to inform, educate, and consult with a broad range of stakeholders representing the public and private sector.

In 2014, State launched a new initiative called "Route J-1." This initiative is targeted at increasing interaction with exchange visitors through meetings at their placement sites across the country, participation in their cultural enrichment activities, and postings on a public blog. The Route J-1 ethos has spread throughout the sponsor community, with sponsors regularly organizing events and then promoting them publicly. This initiative has helped further promote and document the value of the exchange program; the exchange experience as an important part of participants' lives; the benefit of exchange programs to American communities and the economy; and the quality of programming.

State has also taken significant steps to improve the quality of the J-1 visa Summer Work Travel (SWT) program. In 2014, the SWT program allowed more than 90,000 international exchange participants, including foreign college and university students, to visit the United States and experience American culture and values. State continues to refine the SWT program by taking policy and regulatory action, and through robust monitoring and outreach activities. The monitoring program and calls to the 24-hour helpline for exchange visitors also pointed to a decline in the severity of complaints and issues involving SWT participants in 2014. State has also broadened monitoring and outreach efforts to include the establishment of community networks that provide an additional layer of support for SWT participants during their stay in the United States. Fourteen community support structures in areas with concentrations of SWT participants help orient them to their communities, teach them about personal safety, provide information about housing, and provide opportunities to engage in cultural activities within the community. New State regulations established detailed criteria to assess the sufficiency and appropriateness of those cultural activities.

In order to continue to enhance the Exchange Visitor Program, and in particular SWT, State will implement the following recommendations:

Recommendation 1: **Create additional protections for the Exchange Visitor Program.** State intends to publish a regulation to enhance protections for J-1 visa private sector exchange visitors at their host placements and in their housing, strengthen cultural activity offerings, and increase overall support to SWT participants at each stage of the program process.

Recommendation 2: **Continue to improve the SWT Program consistent with the GAO February 2015 recommendations.** In a 2015 report, the Government Accountability Office (GAO) recommended that State pursue a number of changes to improve the SWT program. These recommendations include the establishment of: (1) a mechanism to ensure that sponsors provide complete and consistent lists of fees that participants must pay; (2) a mechanism to ensure that information about these participant fees is made publicly available; and (3) detailed criteria that will allow State to assess the sufficiency and appropriateness of opportunities for cultural activities outside the workplace that sponsors provide to SWT participants. State has already taken substantial steps to enhance these requirements through recent amendments to its

regulations. State will continue to explore improvements consistent with these recommendations.

G. Additional Improvements

In addition to the above improvements, agencies will streamline and improve our legal immigration system by implementing the following recommendations:

Recommendation 1: **Modernize and streamline PERM adjudications.** DOL intends to publish a new regulation to better align the PERM program with the objectives of the immigration system and the needs of workers and employers, including updating recruitment methods, addressing the correction of minor errors in applications, and disclosing application outcome to immigrant workers. DOL also continues to implement a plan to streamline PERM adjudications processes, including audit review, in order to reduce the pending audit caseload and allow for faster adjudication of audit case processing.

Recommendation 2: **Enhance opportunities for certain employment-based immigrants and nonimmigrants.** In order to provide greater access, clarity, and efficiency for programs involving employment-based immigrants and nonimmigrants, DHS intends to:

- Publish a final rule that provides flexibility in terms of documentation that may be submitted to support an EB-1 outstanding professors or researchers petition; includes nonimmigrant high-skilled specialty occupation professionals from Chile and Singapore (H-1B1) and from Australia (E-3) in the list of classes of aliens authorized for employment incident to status with a specific employer; and allows H-1B1, E-3, and CW-1 (Commonwealth of the Northern Marianas) nonimmigrant workers with up to 240 days of continued work authorization beyond the expiration date noted on their Form I-94, arrival/departure record, while a timely extension request is pending.
- Clarify guidance for certain nonimmigrants with extraordinary abilities and internationally recognized entertainers and athletes, namely O and P petitions filed by agents and sponsors acting on behalf of a beneficiary.
- Simplify Request for Evidence (RFE) templates. In 2010, USCIS launched the Request for Evidence (RFE) Project, an initiative to review and revise Service Center RFE templates so that they are clear, concise, and consistent as well as responsive to the adjudication. To date, USCIS has published 11 revised RFE templates in the E, Q, P, L, and O categories. USCIS intends to publish final RFE templates for O-1 and E-13 as well as petitions, and publish for stakeholder comment RFE templates for O-1B, L-1B, E-12, F, M, and J petitions and applications and the Ability to Pay for Form I-140 template.

Recommendation 3: **Provide greater clarity and certainty to H-1B beneficiaries and their employers.** In order to enhance the H-1B program, DHS will:

- Assess whether there is a mechanism for H-1B workers to confirm submission of a petition filed on their behalf as well as the ability to request status updates on the filing through existing USCIS customer service channels.

- Amplify and engage in robust outreach to ensure that H-1B petitioners and beneficiaries understand how to demonstrate an employer-employee relationship in situations where the beneficiary owns or co-owns the petitioning company.

Recommendation 4: **Enhance information to encourage reasonable deference to prior adjudications of H-1B and L-1 petitions.** DHS will modify form instructions for H-1B and L-1 extensions in order to ensure that petitioners provide documentation of previous adjudications and adjudicators have as much documentation as possible when making determinations.

Recommendation 5: **Strengthen employer support for U.S.-born workers in STEM fields.** Many high-skilled workers are filling gaps for employers where there are not currently enough qualified U.S.-born workers in STEM fields. The National Science Foundation (NSF) and other relevant agencies will work with USCIS in an effort to help strengthen the ability of employers sponsoring high-skilled worker visas to simultaneously support education and training to grow the next generation of American workers in STEM careers.

Recommendation 6: **Clarify which nonimmigrant classifications permit for dual intent.** Petitioners require further guidance regarding when nonimmigrants may take steps toward becoming an LPR without jeopardizing their current status.

- DHS will determine the appropriate mechanisms to clarify which nonimmigrants are permitted under the law to maintain nonimmigrant status, while taking steps toward obtaining LPR status. With respect to F-1 students in particular, DHS will seek to clarify the circumstances under which U.S. employers may directly sponsor such students for LPR status.
- State will further clarify in the Foreign Affairs Manual that as long as an F-1 student visa applicant's intention at the time of visa application is to depart at the conclusion of his or her studies, the likelihood that a student may apply to change or adjust status in the future is not itself a basis for a denial of a visa, and emphasize existing guidance on this issue to the field.
- DHS and State will also conduct further outreach to higher education and student interest groups to provide information about these options.

Recommendation 7: **Provide greater clarity and certainty to streamline nonimmigrant visa employment petition returns to USCIS.** The Foreign Affairs Manual states that petition approval by USCIS is prima facie evidence of entitlement to a petition based nonimmigrant visa classification.[27] In 2014, approximately 2 percent of all NIV petition-based work visa applications were returned for reconsideration to USCIS from a consular post, indicating that posts are appropriately following guidance. State will periodically publish refusal rates for petition-based nonimmigrant visas and ensure that relevant guidance is publicly available to provide transparency and clarity for petitioners.

[27] See 9 FAM 41.34 N1.1, 9 FAM 41.34 N2.1, 9 FAM 41.53 N2.2 and N8.2, 9 FAM 41.54 N3.2, 9 FAM 41.56 N7.3, 9 FAM 41.55 N8.4, 9 FAM 41.57 N6.2, 9 FAM 41.58 N2.2.

VI. Strengthening Our Humanitarian System

A. Parole for Certain Family Members of Filipino Veterans

Since their first documented arrival in Morro Bay, California in October 1587, Filipino Americans have made remarkable contributions to every sector of American life, including in the private sector and through government and military service.

In 1941, more than 260,000 Filipino soldiers responded to President Roosevelt's call-to-arms and later fought under the American flag during World War II. Many made the ultimate sacrifice as soldiers in the U.S. Armed Forces in the Far East and as guerilla fighters during the Imperial Japanese occupation of the Philippines. Estimates indicate that as many as 26,000 of these brave individuals became proud U.S. citizens.[28] As U.S. citizens, these individuals can petition for their family members to come to the United States. Unfortunately, due to statutory visa caps, many individuals wait for years or even decades to be reunited with their family members. For Filipino American families, this wait can exceed 20 years. Estimates indicate that there are approximately 6,000 Filipino American World War II veterans[29] still alive in the United States today, many of whom require the care and assistance of their families and greatly desire to have their family members in the United States during their final days.

Parole is an avenue provided under the INA that allows individuals to come to the United States on a case-by-case basis for a temporary period of time based upon urgent humanitarian reasons or significant public benefit. There is precedent for establishing parole programs to reunite certain classes of family members, such as the Cuban Family Reunification Parole Program and most recently, the Haitian Family Reunification Parole Program. Based upon the circumstances of Filipino American veterans, we make the following recommendation:

Recommendation: **Allow certain family members of Filipino veterans to seek parole.** DHS will create a parole program to allow certain family members of Filipino-American veterans to request parole to come to the United States to provide support and care to their Filipino veteran family members who are U.S. citizens or LPRs. USCIS and State will work together to provide clear guidance to the public on the application process, and decisions will be made on a case-by-case basis.

[28] According to numerous media outlets and Congressional testimony, approximately 26,000 Filipino veterans became U.S. citizens. Though this number cannot be confirmed, at a minimum, USCIS estimates that at least 19,000 Filipino veterans naturalized.

[29] Estimates of the number of Filipino American WWII veterans are difficult to confirm, particularly as this population is rapidly aging. The number of Filipino veterans in the United States could range substantially from roughly 2,000 to 6,000 individuals. However, 6,000 individuals is the most frequently reported number.

B. Self-Petitioners under the Violence Against Women Act of 1994 (VAWA) (As Amended)

VAWA allows certain spouses and children of U.S. citizens and LPRs or parents of U.S. citizens who are survivors of domestic violence perpetrated by an LPR or U.S. citizen to seek LPR status without the abuser's knowledge, thus, allowing survivors to seek both safety and independence from an abuser. While these individuals are able to obtain LPR status through our family-based system, for many, that process requires the participation and support of their abusive LPR or U.S. citizen spouse, or parent. Many must also endure long waits through our family-based system, and during the wait time, individuals may feel trapped in their situation with their abuser due, in part, to their immigration status. An abusive LPR or U.S. citizen can use the immigration process as a tool for abuse, threatening to withhold or withdraw immigration sponsorship or even threatening deportation. The purpose of the VAWA program is to allow survivors of domestic violence the opportunity to independently seek legal immigration status by "self-petitioning." Allowing individuals to self-petition means that they are no longer dependent on their abusive family member for their immigration status and at least one barrier to leaving the relationship is alleviated. Survivors who are immediate relatives of U.S. citizens may file for adjustment to LPR status concurrently with their VAWA self-petition and may also file for and obtain work authorization based on the pending application for adjustment of status. VAWA self-petitioners who are relatives of LPRs can file for and obtain work authorization only after their self-petition has been approved. Then, they must wait for a visa number in the appropriate preference category to become available, after which the self-petitioner can apply to adjust to LPR status.

There are many points in this process during which the VAWA self-petitioner must endure long waits. Currently, there are backlogs in the adjudication process, which also means that some individuals must wait to apply for work authorization. Individuals may also have to wait for a visa number to become available in order to file for adjustment to LPR status, which can take over a year. The inability to work can be extremely challenging for domestic violence survivors who may have left their spouses and need to find a way to support themselves. Often times, they must also support their children.

In order to simplify processes and shorten wait times that impact domestic violence survivors, we make the following recommendations:

Recommendation 1: **Allow concurrent filing for work authorization.** DHS will publish final guidance that allows VAWA self-petitioners to simultaneously file for work authorization in order to reduce the time during which a battered immigrant cannot work. Work authorization eligibility will be adjudicated only after the individual's self-petition has been approved.

Recommendation 2: **Clarify for consular posts that the public charge ground of visa ineligibility does not apply in VAWA cases.** In order to eliminate any confusion at consular posts regarding this issue, State will publish guidance clarifying that VAWA self-petitioners and their derivatives are not subject to the public charge ground of inadmissibility and are not required to provide affidavits of support.

Recommendation 3: **Clarify requirements and processes for Cuban VAWA self-petitioners.** The Violence Against Women Act of 2000 (VAWA 2000) amended the Cuban Adjustment Act (CAA) to provide eligibility for adjustment of status for an abused spouse or child of a qualifying Cuban principal. VAWA 2000, as amended, removes the requirement that the abused spouse or child currently reside with the qualifying Cuban principal and creates death and divorce exceptions for abused spouses of qualifying Cuban principals. USCIS will publish guidance for adjudicators to clarify these exceptions and designate the Vermont Service Center VAWA Unit to adjudicate applications for adjustment of status under section 1 of the CAA for an abused spouse or child. This is a departure from the previous field office directorate jurisdiction over VAWA-based CAA applications.

Recommendation 4: **Clarify Access to Services Necessary to Protect Life or Safety.** Immigrants experiencing domestic violence or other abuse, including sexual assault, stalking, dating violence, or human trafficking, often face significant obstacles to seeking help and safety. Immigrants who have displayed the courage to break the cycle of violence suffer when services essential for obtaining safety and rebuilding their lives are withheld from them and their children. HUD and HHS will issue a joint letter to remind their recipients of federal financial assistance that, pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, immigration status is not a bar to providing certain services necessary to protect life or safety, such as emergency shelter and transitional housing.

C. Work Authorization for Battered Spouses

The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) extended eligibility for work authorization to VAWA self-petitioners based on the approval of their self-petition. This bipartisan legislation also provided that certain nonimmigrant battered spouses would be eligible for work authorization. Individuals who receive work authorization through these provisions include battered spouses of diplomats (A visa), Australian specialty workers (E-3 visa), foreign government or international organization representatives (G visa), or specialty workers (H visa).

Since VAWA 2005, final guidance regarding the implementation of these provisions has not been provided to adjudicators or to beneficiaries. We make the following recommendation:

Recommendation: **Publish final guidance to implement work authorization for certain battered spouses.** DHS will publish final guidance in order to implement these provisions of the INA and allow approved-VAWA self-petitioners and certain nonimmigrant battered spouses to receive work authorization.

D. Victims of Crime

U nonimmigrant status provides immigration benefits to victims of certain crimes who have suffered substantial mental or physical abuse as a result of having been a victim of the criminal activity. In order to qualify, individuals must have been helpful, be helpful, or be likely to be helpful to law enforcement in the investigation or prosecution of the qualifying criminal activity, in addition to meeting other requirements. The U nonimmigrant status was created in the Victims of Trafficking and Violence Protection Act (VTVPA) of 2000 to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, human trafficking, and other crimes, while also protecting vulnerable victims of crime. A wide range of law enforcement agencies, including federal, state, and local agencies, may certify that the victim has been, is being, or is likely to be helpful in the investigation or prosecution of the qualifying crime. In fact, as a part of the President's immigration accountability executive actions announced in November 2014, DOL expanded its existing U certification program by adding three additional criminal activities to its list of crimes for which DOL can certify: extortion, forced labor, and fraud in foreign labor contracting.

Recommendation 1: **Provide clarity for victims of crime seeking to obtain U nonimmigrant status.** DHS intends to publish regulations to implement new statutory provisions, including provisions of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). This rule will discuss the requirements of the U nonimmigrant status certification; protection for certain U nonimmigrant status petitioners who may age-out for eligibility purposes or while in valid U nonimmigrant status; and the exercise of discretion in adjudicating waiver applications for inadmissibility issues.

Recommendation 2: **Clarify the public charge exemption for U nonimmigrant petitioners.** The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) amended the INA by creating an exemption for U nonimmigrants from the public charge ground of inadmissibility (INA 212(a)(4)). While VAWA 2013 provides an exemption to this ground of inadmissibility, the other inadmissibility provisions remain unchanged. Therefore, U nonimmigrants still have to submit a waiver application for all other waivable grounds of inadmissibility. For U nonimmigrants, all grounds of inadmissibility are waivable except for INA 212(a)(3)(E) regarding Nazi persecution, acts of genocide, and extrajudicial killings. Given the statutory changes, USCIS will eliminate the public charge question on U nonimmigrant application forms.

E. Victims of Human Trafficking

Human trafficking, also known as trafficking in persons, is a form of modern-day slavery in which traffickers lure individuals with false promises of employment and a better life. Traffickers often take advantage of poor, unemployed individuals who lack access to social services. In order to help address this issue, T nonimmigrant status visa was created under the Trafficking Victims Protection Act of 2000 (TVPA). The creation of the T nonimmigrant status offers protections to victims of human trafficking and strengthens the ability of law enforcement agencies to

investigate and prosecute human trafficking. Over the last 15 years, the T nonimmigrant status statutory provisions have been amended by the following acts: the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), VAWA 2005, TVPRA 2008, and VAWA 2013.

Currently, in order to qualify for a T nonimmigrant status, individuals must, at a minimum, be victims of severe forms of human trafficking; be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or port of entry thereto, on account of the trafficking or have been allowed entry to take part in the investigation or judicial process associated with an act or a perpetrator of trafficking; comply with any reasonable request for assistance from a law enforcement agency in the investigation or prosecution of human trafficking (with exceptions for youth or trauma victims); and demonstrate that they would suffer extreme hardship involving unusual and severe harm if they were removed.

VAWA 2013 expanded immigration relief for victims of human trafficking. USCIS published a policy memorandum in October 2014 to provide guidance on the two major legislative changes of VAWA 2013 with respect to T nonimmigrants. This legislation expanded the derivative category by creating two categories of family members who may be eligible for derivative T nonimmigrant status if accompanying, or following-to-join, the principal. Certain qualifying family members may be eligible based on the age of the principal T applicant, and certain qualifying family members may be eligible based on a showing of a present danger of retaliation as a result of the principal's experience as a victim of human trafficking or cooperation with law enforcement.

VAWA 2013 also created a statutory fix for victims in the Commonwealth of the Northern Mariana Islands (CNMI) that applies equally to T and U nonimmigrants. This change was necessary because individuals are eligible to apply for T nonimmigrant status based on their physical presence in the CNMI on account of human trafficking. However, individuals in the CNMI had to travel to Guam or elsewhere in the United States to actually be admitted as a T nonimmigrant prior to the federalization of CNMI immigration law on November 28, 2009. Also, the adjustment of status provisions for both T and U nonimmigrants require three years of continuous physical presence in the United States since admission as a T or U nonimmigrant. VAWA 2013 added an exception allowing time in the CNMI, whether before or after November 28, 2009, to count as time admitted as a T or U nonimmigrant for establishing physical presence for purposes of adjustment of status to lawful permanent residence, as long as the time is subsequent to the grant of the application for T or U nonimmigrant status.

Recommendation: **Modify requirements and procedures for individuals seeking T nonimmigrant status.** DHS intends to publish a comprehensive T nonimmigrant status regulation to reflect the numerous changes to the law and update processes to reflect adjudicators' experiences, stakeholder feedback, and public comments following the previous regulation's publication.

F. Children Who Age Out

The Child Status Protection Act of 2002 (CSPA) provides principal beneficiaries and their qualifying derivatives a way to remain eligible for immigration benefits provided to children under the age of 21 who otherwise would have aged-out due to a delay in the adjudication of petitions or applications. Some beneficiaries must seek to acquire LPR status within one year of visa availability in order to benefit from the age-out protection. This age-out protection may also be extended to certain beneficiaries who fail to seek to acquire LPR status within one year of visa availability due to circumstances beyond the applicants' control. The CSPA can protect "child" status for numerous immigration benefits, including in immigrant petitions in family and employment-based categories and derivative status for diversity visas, refugees, and asylees.

In order to provide consistency and clarity on the basis under which individuals may qualify for the age-out protection, we recommend the following:

Recommendation: **Clarify when "extraordinary circumstances" might exist.** DHS will publish final guidance that indicates the basis under which extraordinary circumstances may exist and provide non-exhaustive examples.

G. Vulnerable Populations at Consular Posts

In order to improve access to our immigration system for vulnerable populations and consistency across posts, we recommend the following actions:

Recommendation 1: **Consistently process immigrant visa cases raising humanitarian concerns across agencies.** Currently, the U.S. government does not provide an optimized process that allows the most expeditious adjudication of applications for individuals with humanitarian concerns. State and DHS will institute a "whole of government" approach for immigrant visas whereby once one agency has determined that a case merits expedited processing, it will be treated as such with the other agency. This applies in cases where a number is available or in immediate relative immigrant visa cases.

Recommendation 2**: Improve and standardize interview practices for applicants with mental and physical disabilities.** Consular sections overseas already permit persons with physical and mental disabilities to bring a support person to the visa interview. Practices vary, however, and information is not consistently posted on consular websites. State will issue guidance instructing all consular posts to develop guidelines and procedures for admitting persons accompanying applicants with disabilities and require consular posts to prominently publish this information on their websites, to share it with local public inquiries staff, and to include it as a part of their aforementioned 21st century outreach strategies.

VII. Conclusion

America's immigration system is broken and must be fixed so that it meets the needs of families, employers, workers, vulnerable populations, and the nation's economy. President Obama is eager to work with Congress on a comprehensive solution to immigration reform, much like the legislation that passed the Senate with a strong bipartisan majority in June 2013.

President Obama's push for legislation to fix our broken immigration system garnered broad bipartisan support among the public and in the Senate and addressed the core problems our system faces. After waiting nearly 600 days for the House to pass a commonsense, comprehensive immigration bill, the President took action to improve our broken immigration system. As a part of these executive actions, the President issued a Presidential Memorandum directing agencies to engage stakeholders and experts and to determine what more can be done to modernize and streamline our legal immigration system.

Since then, the agencies reviewed approximately 1,650 recommendations, met with stakeholders and experts, and evaluated options to improve our existing legal immigration system. The recommendations in this report reflect actions that agencies will take to modernize our system for efficiency and applicant accessibility, streamline legal immigration avenues, and strengthen our humanitarian system. These agency actions will greatly improve our system to the benefit of immigrants, our economy, and our nation at large.

These are commonsense steps, but we must also continue to pursue more permanent solutions to fix the broken system. President Obama is committed to acting within his legal authority to fix our immigration system, but only Congress can finish the job with comprehensive, commonsense immigration reform.

Appendix A: November Executive Actions

Action	Agency	Status
Allow work authorization for certain H-4 spouses	DHS	Competed
Clarify options for intra-company transfers to the United States (draft guidance)	DHS	Completed
Protect worker victims of crime and human trafficking	DOL	Completed
Reduce family separation for those waiting to obtain LPR status (Notice of Proposed Rule Making)	DHS	Completed
Expand opportunities for foreign investors, researchers, and entrepreneurs	DHS	In progress
Strengthen and improve the Optional Practical Training (OPT) Program for foreign students and graduates from U.S. universities	DHS	In progress

Appendix B: Visa Modernization Actions

Action	Agency
Modernizing Our System for Efficiency and Accessibility	
Create a cross-agency digital service team to support the implementation of the overall MIV Pilot	DHS, State
Simplify the applicant experience through increased information sharing across agencies and increased accessibility through electronic filing of forms and payments	DHS, State
Redesign systems based on people	DHS, State
Convene a short-term communications task force charged with making process instructions clearer, reader-friendly, holistic, and actionable	DHS, State
Strengthen public communications strategies about the visa process overseas and in the United States	State
Adopt modern best practices for software development (e.g. flexible hosting environment and monitoring systems)	DHS, State
Modernize and simplify technology stacks	DHS, State
Enhance interagency collaboration on data collection	DHS, State
Create an interagency working group to evaluate and improve data collection and publication	DHS, DOL
Increase capacity and resources dedicated to the collection, analysis, and dissemination of immigration statistics	DHS
Clarify statistical policy guidance	DHS
Set up governance boards to create data collection standards	DHS
Document procedures used to collect data and identify areas for improvement	DHS
Enhance publication of enforcement data	DOL
Streamlining the Legal Immigration System	
Employment-based visa issuance • Update monthly visa bulletin • Refine monthly allocation of visas • Improve numerically controlled immigrant visa appointments • Clarify and expand protections for employment-based immigrants and nonimmigrants	DHS, State

Immigrant Investor Visa • Update standards for the EB-5 program • Clarify options for potential EB-5 investors to obtain visitors visas	DHS State
International Arrivals Process for Visitors and Immigrants • Expand the use of Automated Passport Control kiosks and Mobile Passport Control applications • Consider allocating greater resources for screening of high-risk travelers and streamlining certain nonimmigrant visa application protocols for low-risk travelers • Expand global entry options for travelers • Expand pre-clearance with pre-boarding inspection • Eliminate paper Customs Declaration form for air passengers	DHS
"Known Employer" Pilot Program • Improve visa adjudication times by streamlining the collection of information • Create a prototype for testing and employer awareness • Publish a report on the program's effectiveness and integrity • Prepare an implementation plan and timeline for a permanent Known Employer Program	DHS
Exchange Visitor Program • Create additional protections for J-1 visa private sector exchange visitors • Continue to improve the Summer Work Travel Program consistent with GAO February 2015 recommendations	State
Modernize and streamline PERM adjudications	DOL
Enhance opportunities for certain employment-based immigrants and nonimmigrants	DHS
Provide greater clarity and certainty to H-1B beneficiaries and employers	DHS
Enhance information to encourage reasonable deference to prior adjudications of H-1B and L-1 petitions	DHS
Strengthen employer support for U.S.-born workers in STEM fields	DHS
Clarify which nonimmigrant classifications permit for dual intent	DHS, State
Provide greater clarity and certainty to streamline nonimmigrant visa employment petition returns to USCIS	State
Strengthening Our Humanitarian System	
Allow certain family members of Filipino veterans to seek parole	DHS

VAWA self-petitioners • Allow concurrent filing for work authorization • Clarify for consular posts that the public charge ground of visa ineligibility does not apply to VAWA cases • Clarify requirements and processes for Cuban VAWA self-petitioners • Clarify access to services necessary to protect life or safety	 DHS State DHS HHS, HUD
Allow work authorization for certain nonimmigrant battered spouses	DHS
Victims of crimes • Provide clarity for victims of crime seeking to obtain U nonimmigrant status • Clarify the public charge exemption for petitioners	 DHS
Modify requirements and procedures for individuals seeking T nonimmigrant status	DHS
Clarify when “extraordinary circumstances” might exist for children who age-out	DHS
Vulnerable populations at consular posts • Consistently process immigrant visas raising humanitarian concerns across agencies • Improve and standardize interview practices for applicants with mental and physical disabilities	 DHS, State State