



## **U.S. Citizenship Act of 2021: A Brief Primer on the Criminal-Immigration and Enforcement Provisions<sup>1</sup>**

### **I. Introduction**

This primer covers the key criminal-immigration and enforcement provisions of the USCA.

The US Citizenship Act of 2021 (USCA, also referred to as the “Biden bill”) is an immigration bill introduced in the House on February 18, 2021<sup>2</sup> that would create a pathway to citizenship for undocumented people living in the United States who entered on or before January 1, 2021. TPS holders, farmworkers, and people who have DACA or who were eligible for status under the Dream Act would be eligible to become lawful permanent residents immediately. Other undocumented people could apply for a new form of lawful status called “Lawful Provisional Immigrant” (LPI) status. After five years as LPs, they could then apply to become lawful permanent residents.

The bill would also recapture unused visas dating from 1992; make spouses, children, and parents of lawful permanent residents “immediate relatives” (who are immediately eligible for visas and who do not count toward the cap); make anyone waiting more than 10 years immediately eligible for a visa; and increase the per-country limit from 7% to 20% to decrease backlogs.

The USCA imposes new criminal bars to eligibility for the legalization program, on top of the already existing inadmissibility bars in current immigration law. It also encourages the construction of a “smart wall” and adds an additional ground for prosecution and penalties under 8 U.S.C. § 1324.

The USCA also includes some positive criminal-immigration reforms, including redefining the term “conviction” for immigration purposes, increasing the number of petty offense exceptions

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<sup>1</sup> Publication of the National Immigration Project of the National Lawyers Guild (NIPNLG), 2020. This primer is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). It provides a summary of the provisions of the bill as of February 19, 2021, and does not account for any future amendments. For questions about this primer, please contact Caitlin Bellis, Policy & Community Advocacy Attorney at NIPNLG, at [cbellis@nipnlg.org](mailto:cbellis@nipnlg.org).

<sup>2</sup> The bill was formally introduced in the House on February 18, 2020. The text of the House version is available [here](#). A parallel Senate version, available [here](#), is expected to be introduced on Monday February 22.

to the crimes involving moral turpitude ground of inadmissibility, and creating waivers that can excuse most grounds of inadmissibility and deportability. The waivers, however, are not universal, and continue to exclude people based on contact with the criminal legal system.

## II. Criminal Bars to Eligibility

Current immigration law already contains harsh criminal bars to receiving status. The USCA keeps in place most of these bars, and adds additional disqualifying grounds for the legalization program. In order to receive status under the USCA, a person must not:

- Have a conviction described in INA § 212(a)(2), which includes, among others:
  - Any crime involving moral turpitude (a vague category that has no statutory definition and which encompasses such minor criminal conduct as shoplifting);
  - *Any* controlled substance conviction;
  - Any two or more convictions where the person received an aggregate sentence of 5 years of imprisonment;
  - Any controlled substance “trafficking” conviction, a category that encompasses crimes involving sale and distribution of controlled substances;
- Have any felony conviction (except state law status-related felonies);
- Have three or more misdemeanors (except simple possession of marijuana, any marijuana offense that would not now be prosecutable under the state’s law, non-violent civil disobedience, and minor traffic offenses); or
- Be deemed a security threat.

## III. Waivers

The USCA permits a humanitarian waiver of the **crime involving moral turpitude ground**, the **controlled substance-related grounds**, and certain other non-criminal grounds.

It also permits a waiver of the **felony ground** and the **multiple convictions ground** provided that:

- the felony is not an aggravated felony under INA 101(a)(43)(A) (murder, rape, or sexual abuse of a minor); and
- the person has *no convictions* during the 10-year period preceding the application.

Finally, the USCA permits a waiver of **one misdemeanor** if the person has no convictions for the **five years** preceding the application; or **two misdemeanors** if the person has no convictions for the **ten years** preceding the application.

#### **IV. Criminal-Immigration Reforms**

##### *Redefinition of “conviction” for immigration purposes*

Under current immigration law, the definition of “conviction” includes outcomes that would not count as convictions for criminal law, including diversionary programs and expungements. The USCA redefines conviction to exclude these rehabilitative forms of relief, bringing the immigration definition of “conviction” more in line with the definition in the criminal legal system.

##### *Restoration of Judicial Recommendations Against Removal (JRADs)*

Prior to 1990, state and federal judges in criminal cases had the ability to issue a Judicial Recommendation Against Removal (JRAD). The JRAD precluded immigration authorities from deporting the person on the basis of that specific conviction, even if it otherwise would have constituted a ground of removal. The USCA restores JRADs, an important tool for mitigating the punitive consequences of convictions under current immigration law.

##### *Humanitarian waiver*

Outside the legalization program, the USCA restores discretion to the Department of Homeland Security (DHS) and immigration judges to **waive one or more ground of inadmissibility** (excluding security grounds) and to waive **one or more grounds of deportability** (excluding the security-related ground and the murder, rape, and sexual abuse of a minor aggravated felony ground). This waiver significantly narrows the grounds of mandatory deportation and mandatory detention.

##### *Presumption of release and barrier to removal for U & T Visa applicants*

The USCA would provide people who have applied for a U Visa or a T Visa or for relief under VAWA a rebuttable presumption of release from detention, and would prohibit their removal while an application is pending.

##### *Petty offense exception*

The USCA adds a second petty offense exception to the crime involving moral turpitude ground of inadmissibility.

#### **V. Repeal of the 3-year, 10-year, and permanent bars**

Under current law, anyone who has spent time in the United States without status and who leaves the United States cannot return without waiting three years if they spent 6 months to a year without status and ten years if they spent a year or more without status. People who spent over a year in the United States without status and who left (either of their own volition or because they

were deported) then returned without permission face a *permanent bar* to return if they ever leave.

These bars trap people in the United States and also prevent people who are eligible for visas now from receiving them. This is because anyone who entered without a visa needs to go through consular processing outside of the United States and re-enter with a visa. But, once they leave, they will trigger the “bars” and be unable to return.

The USCA repeals all three bars. However, it still imposes bars to the return of people who have been ordered removed. The bars vary in length depending on the circumstances, from 5 years to permanent (in the case of someone who has an aggravated felony conviction and was deported). It also provides for a waiver of these bars.

## **VI. “Smart Wall” and 8 U.S.C. § 1324**

The USCA authorizes DHS to appropriate funds for and deploy a “smart technology” strategy along the southern border. This “smart wall” would result in an increase in surveillance along the southern border, which can pose threats to the safety and privacy of border crossers and border communities.

The USCA also adds an additional ground to 8 U.S.C. § 1324, penalizing with up to 15 years in prison any person who, for profit or financial gain, “knowingly directs or participates in a scheme to cause 10 or more persons (other than a parent, spouse, sibling, son or daughter, grandparent, or grandchild of the offender) to enter or to attempt to enter the United States” unlawfully. This provision is extremely broad, and has been weaponized to prosecute people providing humanitarian aid and exercising important First Amendment rights.

## **VII. Conclusion**

The USCA includes some favorable criminal-immigration changes and a long-awaited legalization program, but continues to exclude people on the basis of their contacts with the criminal legal system. As the bill moves through Congress, we will continue to provide updates on its status and any changes. For questions about this primer or the bill, please contact Caitlin Bellis at [cbellis@nipnlg.org](mailto:cbellis@nipnlg.org).