Model DHS Directive for Direct Harm to U.S. Citizens

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SUBJECT: Statement of Policy on Direct Harm to U.S. Citizens (DHC) in Discretionary Immigration Decision-Making

I. Introduction

The purpose of the immigration laws of the United States is to serve and protect the interests of U.S. citizens. As the Supreme Court has long recognized, immigration to the United States is a privilege—not a right. For example, in *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950), the Court stated:

> "[W]e wish to point out that an alien who seeks admission to this country may not do so under any claim of right. Admission of aliens to the United States is a privilege granted by the sovereign United States Government. Such privilege is

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> granted to an alien only upon such terms as the United States shall prescribe. It must be exercised in accordance with the procedure which the United States provides."

See also Kleindienst v. Mandel, 408 U.S. 753, 762 (1972) (unadmitted and nonresident aliens have no constitutional right of entry). The Court recently reaffirmed this foundational principle in *Department of State v. Muñoz*, 602 U.S. 899, 901 (2024), reiterating that "[f]rom this Nation's beginnings, the admission of noncitizens into the country was characterized as 'of favor [and] not of right.'"

Consistent with this principle, Congress has vested the Department of Homeland Security (DHS) with broad discretionary authority across the spectrum of immigration decision-making. For example, DHS exercises statutory discretion over admissions and inspections (*e.g.,* 8 U.S.C. §§ 1184, 1225); adjudications of immigration benefits and humanitarian relief (*e.g.,* 8 U.S.C. §§ 1157, 1158, 1182(d)(5)(A), 1184, 1186a(c)(4), 1254a, 1255(a)); revocation of approved petitions (*e.g.,* 8 U.S.C. § 1155); custody, detention, and release determinations (*e.g.,* 8 U.S.C. §§ 1226, 1231); and enforcement and charging priorities, including whether and how removal proceedings are initiated (*e.g.,* 6 U.S.C. § 202(5); 8 U.S.C. §§ 1103(a), 1229a(a)(2)).

These discretionary authorities exist to permit DHS to account for individualized facts and circumstances that Congress necessarily left to executive judgment.

II. Institutional Gap

A. Absence of a Governing Policy Doctrine

Despite Congress's sweeping grant of discretionary authority, existing DHS policy and practice have failed to adequately protect U.S. citizens from harm inflicted by foreign nationals present in or seeking entry to the United States. Current frameworks do not consistently require immigration officers to identify, assess, or give meaningful weight to harm suffered by U.S. citizens when exercising discretionary authority. As a result, serious physical, mental, financial, legal, and social harms to Americans frequently go unaddressed in discretionary adjudications and enforcement decisions—particularly where misconduct does not result in criminal prosecution or conviction.

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This failure is not the product of statutory constraint. Rather, it reflects an institutional gap. Although DHS possesses ample discretion across the immigration lifecycle, it lacks any clear, DHS-wide statement of policy explaining how evidence of harm to U.S. citizens should be identified, evaluated, or incorporated into discretionary decision-making. Officers are left without guidance on whether such harm is relevant, how it should be weighed, or what consequences it should carry. In practice, harm to U.S. citizens is often treated as incidental, external, or irrelevant to immigration determinations—despite Congress's clear intent that discretion be exercised for the benefit of the American people.

B. Misalignment with Statutory Mission and Executive Order 14159

This institutional gap is incompatible with DHS's statutory mission and with Executive Order 14159, which affirms that "the American people deserve a Federal Government that puts their interests first and understands its sacred obligation to prioritize the safety, security, and financial and economic well-being of Americans." Absent a governing doctrine addressing harm to U.S. citizens, DHS cannot reliably fulfill this obligation.

Instead, discretionary authority—granted precisely to allow consideration of individualized facts Congress could not anticipate—is applied inconsistently or not at all when citizen harm is at issue. The result is underutilization of lawful discretion and erosion of public confidence in the immigration system's ability to protect the people it exists to serve.

C. Structural Failure of Existing Reporting Mechanisms

Existing fraud and tip-based reporting portals do not remedy this gap. These systems were not designed to support discretionary analysis grounded in citizen harm and are structurally incapable of doing so. They cannot ingest or evaluate structured evidentiary submissions; they do not distinguish professionally vetted reports from anonymous or frivolous tips; they lack routing mechanisms to ensure review by accountable decision-makers; and they operate within an institutional environment that provides no policy guidance, process, or structure for responding to harm inflicted on U.S. citizens.

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Even if these portals were technologically improved, the core deficiency would remain. DHS currently lacks the most essential element: a statement of policy explaining what officers are expected to do when credible evidence of harm to a U.S. citizen exists.

D. Operational Consequences of Policy Vacuum

In the absence of such guidance, DHS cannot answer foundational operational questions, including who is responsible for reviewing harm-related evidence, what types of harm warrant discretionary action, what evidentiary threshold applies, how professionally vetted submissions should be weighed, how findings should be communicated across components in real time, or what practical effect a harm finding should have on front-line decisions.

The result is a system-wide blind spot. Foreign nationals who commit unprosecuted crimes, fraud, abuse, or exploitation against U.S. citizens often remain eligible for immigration benefits not because the law requires it, but because DHS lacks a defined policy framework directing officers to act on evidence of harm. Congress conferred broad discretion on the Secretary precisely to account for such individualized circumstances. Without a clear and uniform policy, that discretion remains underutilized—leaving DHS misaligned with its statutory mission and with Executive Order 14159's mandate to put the interests of the American people first.

Accordingly, the need for a clear, uniform, and landmark policy framework is not aspirational but operationally necessary. Without it, DHS cannot reliably fulfill its core obligation to protect the people it exists to serve.

III. Statement of Policy

A. The Policy

It is the policy of the DHS that Direct Harm to U.S. Citizens ("DHC") shall be treated as a mandatory significant negative factor in the exercise of all discretionary immigration authorities. For purposes of this directive, *DHC* means conduct by a foreign national that causes direct harm to a U.S. citizen, whether such conduct occurs

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before or after admission, arises in connection with an immigration benefit request or otherwise, or results in criminal charges.

This policy does not purport to create new statutory grounds of inadmissibility or removability, alter statutory eligibility requirements, or mandate specific outcomes in individual cases. Rather, it provides uniform, DHS-wide guidance on the proper exercise of discretion where credible evidence demonstrates that a foreign national has caused direct harm to a U.S. citizen.

By institutionalizing DHC as a required discretionary consideration, this policy ensures that the broad discretionary authority Congress has conferred upon the Secretary and DHS is exercised consistently, transparently, and in alignment with the core purpose of the immigration laws: protecting and benefiting the American people.

This policy is fully executable under existing law and requires no new legislation, no rulemaking, and no additional appropriations. DHS already possesses all necessary authority; this directive ensures that authority is exercised consistently and as Congress intended.

B. Types of Harm

For purposes of this directive, direct harm may be singular or cumulative and shall be evaluated based on the totality of the circumstances. The following categories provide illustrative, non-exclusive examples of conduct that may constitute DHC:

- **Physical Harm**: Physical harm includes acts or credible threats of violence against a U.S. citizen, including assault, battery, stalking, confinement, or intimidation, as well as abuse, neglect, or endangerment of a U.S.-citizen child or dependent that results in, or creates a reasonable risk of, bodily injury, physical restraint, or deprivation of basic care or safety.

- **Mental Harm**: Mental harm includes mental cruelty, coercion, patterns of control, extortion, intimidation, manipulation, or emotional abuse intended to dominate, isolate, or compel a U.S. citizen's behavior, even where no physical violence occurred.

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- **Financial Exploitation**: Financial exploitation includes intentional misuse of federal Form I-864 affidavits of support; failure to provide required financial or household support; theft, fraud, or deliberate financial waste; the concealment, dissipation, or diversion of joint assets; the transfer of joint funds or property abroad without the knowledge or consent of a U.S. citizen; and other acts undertaken to deprive a U.S. citizen of financial resources, evade legal obligations, or frustrate enforcement or recovery.

- **Legal Harm**: Legal harm includes misuse of legal or administrative processes, including false allegations, abusive filings, or strategic litigation used to obtain or retain immigration benefits at a U.S. citizen's expense.

- **Social Harm**: Social harm includes deliberate isolation, reputational damage, or interference with a U.S. citizen's professional, social, or community relationships, resulting in diminished standing or opportunity.

C. Scope of Application

This policy applies to the exercise of all discretionary immigration authorities vested in the Secretary and DHS. DHC shall be considered as a significant negative factor in any discretionary immigration decision, including but not limited to:

- **Admissions and Inspection**: Decisions concerning admission, inspection, or refusal of admission at ports of entry, including the application of discretionary waivers or exceptions (*e.g.*, 8 U.S.C. §§ 1182, 1184, 1225).

- **Adjudications**: Adjudication of applications or petitions requiring the favorable exercise of discretion, including adjustment of status, waivers of inadmissibility, parole and advance parole, employment authorization, asylum-related relief, refugee admissions, removal of conditions on permanent residence, and Temporary Protected Status (*e.g.*, 8 U.S.C. §§ 1157, 1158, 1182(d)(5)(A), 1184, 1186a(c)(4), 1254a, 1255(a)).

- **Revocations**: Revocation of previously approved immigrant or nonimmigrant petitions or benefits where the Secretary determines revocation to be for good and sufficient cause (*e.g.,* 8 U.S.C. § 1155).

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- **Detentions**: Discretionary decisions regarding arrest, detention, release on bond, conditional release or supervision, or continued detention pending removal proceedings or execution of a final order of removal (*e.g.*, 8 U.S.C. §§ 1226, 1231).

- **Removals**: Decisions concerning whether and how removal proceedings are initiated, enforcement prioritization, and the execution of final orders of removal, including prosecutorial discretion and charging determinations (*e.g.,* 6 U.S.C. § 202(5); 8 U.S.C. §§ 1103(a), 1229a(a)(2), 1231).

IV. Evidentiary Framework

To ensure that DHC is identified, evaluated, and weighed consistently across DHS components, the following evidentiary framework shall govern the intake, review, and use of evidence relating to DHC in discretionary immigration decision-making.

A. Sources of Evidence

Evidence relating to DHC may be submitted to DHS by any source without categorical exclusion. Permissible sources include, but are not limited to:

- A U.S. citizen who alleges direct harm;
- The foreign national whose conduct is at issue;
- Third-party witnesses with direct or personal knowledge of relevant facts;
- Licensed professionals acting within the scope of their professional expertise, including attorneys, physicians, and mental-health professionals;
- Federal, state, tribal, or local law-enforcement personnel acting in an official capacity;
- Other government officials or agencies; and
- Officers or employees of DHS acting in the course of their official duties.

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B. Types of Evidence

In evaluating DHC, DHS decision-makers may consider any type of evidence, regardless of form, without categorical exclusion. Permissible types of evidence include, but are not limited to:

1. **Sworn Statements and Declarations**: Affidavits, declarations, or other sworn statements from alleged victims, eyewitnesses, character witnesses, or other individuals with direct knowledge of relevant facts, including testimony regarding observed conduct, contemporaneous events, patterns of behavior, credibility, or the character and reliability of the individuals involved.

2. **Professional Evaluations and Opinions**: Written assessments, reports, or opinions prepared by licensed professionals acting within the scope of their professional expertise, including:

    a. Legal opinions by licensed attorneys addressing whether fraud, misrepresentation, or other unlawful conduct occurred;

    b. Medical opinions by licensed physicians addressing whether physical injury, trauma, or medically cognizable mental or emotional harm occurred; or

    c. Mental health evaluations by licensed mental health providers documenting emotional or psychological harm.

3. **Judicial and Court Records**: Records, findings, or orders issued by courts or quasi-judicial bodies, including but not limited to:

    a. Criminal verdicts or judgments;

    b. Protective or restraining orders;

    c. Deposition transcripts, sworn testimony, or evidentiary findings;

    d. Divorce decrees, annulment judgments, or judicial findings relating to fraud, abuse, or exploitation; or

    e. Civil judgments, settlement language and findings, or court-ordered relief.

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4. **Law-Enforcement and Public-Safety Records**: Records generated by law-enforcement or public-safety agencies, including:

    a. 911 call logs or recordings;

    b. Body camera footage;

    c. Incident reports, arrest records, or charging documents;

    d. Records of welfare checks, domestic-violence responses, or protective-service interventions; or

    e. Other reports from federal, state, tribal, or local law-enforcement agencies.

5. **Immigration Records and Filings**: Prior or pending immigration petitions, applications, supporting documentation, interview records, sworn statements, notices, and adjudicative findings maintained by DHS or other federal agencies.

6. **Financial and Commercial Records**: Bank records, credit reports, tax filings, contractual documents, property records, or other financial materials demonstrating fraud, coercion, misuse of affidavits of support, or economic exploitation of a U.S. citizen.

7. **Communications and Digital Evidence**: Emails, text messages, social-media communications, call logs, photographs, videos, metadata, or other electronic records or forensic reports that corroborate or refute allegations of harm.

8. **Administrative Findings and Official Determinations**: Findings, determinations, or factual conclusions issued in administrative or regulatory proceedings, including agency appeals, licensing actions, or disciplinary determinations.

9. **Other Relevant Evidence**: Any other material that, under the totality of the circumstances, bears on the existence, nature, or severity of direct harm to a U.S. citizen.

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C. Credibility Determinations

1. Centralized Review

To ensure uniform identification, evaluation, and treatment of DHC across all DHS components, DHS shall employ a centralized intake and review process for all DHC reports.

Centralized intake and review shall be conducted by designated officers who receive specialized training in identifying, evaluating, and contextualizing evidence of harm to U.S. citizens, including patterns of abuse, fraud, coercion, and exploitation that may not result in criminal prosecution.

Officers assigned to centralized DHC review shall exercise superseding authority solely with respect to DHC credibility determinations. Their determinations shall control whether DHC is deemed present for purposes of discretionary consideration across DHS components, subject only to supervisory review as provided in this directive.

This centralized function is intended to prevent fragmentation, inconsistency, and underutilization of lawful discretion by ensuring that DHC determinations are made by trained personnel applying a uniform standard.

2. Mandatory Threshold Assessment

DHC reports shall be routed through the centralized review process for the purpose of conducting a mandatory threshold credibility assessment. This assessment does not constitute an adjudication of guilt, liability, removability, or eligibility for any immigration benefit. Rather, it is a determination of whether the evidence, viewed in its totality, constitutes credible evidence of DHC sufficient to require consideration as a significant negative factor in the exercise of discretionary immigration authority.

3. Credibility Criteria

Credibility determinations shall be based on the totality of the evidence, with appropriate consideration given to the context in which the evidence arises and the realities of harm that may occur outside formal criminal proceedings. In assessing credibility, centralized reviewers may consider, among other factors:

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- The internal consistency of statements, records, and submissions;
- Consistency with independent, contemporaneous, or objective evidence;
- Corroboration by documentary, professional, or official records;
- The specificity, detail, and plausibility of the information provided;
- The timing of the evidence relative to the alleged conduct; and
- Whether the evidence was prepared, submitted, or verified by individuals subject to professional licensing, ethical rules, or regulatory oversight.

The absence of a criminal charge, arrest, investigation, or conviction shall not preclude a finding of credible evidence. Credibility shall not be discounted solely because harm occurred in a private, domestic, financial, or relational context.

4. Weight of Evidence

In determining credibility, evidence vetted or prepared by licensed professionals—including attorneys, physicians, and mental-health professionals—may be afforded greater probative weight due to their professional expertise, accountability, ethical obligations, and potential disciplinary consequences associated with such licensure.

Appropriate reliance on professionally vetted submissions is intended to improve the quality, reliability, and efficiency of DHS decision-making by leveraging specialized expertise that complements internal capabilities, reduces investigative uncertainty, and streamlines discretionary analysis. Such submissions may assist DHS in identifying complex patterns of abuse, fraud, coercion, or exploitation that are not readily apparent from lay evidence alone. However, this policy does not require the submission of professional opinions.

5. Decision

The outcome of the centralized credibility review shall be one of the following determinations:

- Credible

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- Not Credible

A credibility determination reflects an administrative assessment, based on the totality of the information submitted, of whether the evidence is sufficiently reliable to warrant consideration as DHC in discretionary immigration decision-making. It does not constitute a finding of fact, guilt, liability, or legal violation.

Each determination shall be recorded, time-stamped, and made available in real time to relevant DHS components exercising discretionary authority over the affected case. The decisionmaker shall briefly identify the principal factors supporting the determination. All discretionary outcomes remain governed by applicable law and the totality of the circumstances.

V. Clarifying 8 U.S.C. § 1367

A. Statutory Text and Limited Scope

Section 1367(a)(1) of Title 8 restricts certain federal officials and employees from making adverse determinations of admissibility or deportability based solely on information furnished by a person who has committed battery or extreme cruelty against the applicant, in specified humanitarian immigration contexts.

By its terms, § 1367(a)(1) applies only where both of the following conditions are present:

1. The source of the information is a person who has committed battery or extreme cruelty; and

2. The adverse immigration determination would rest exclusively on that person's information.

The statute does not establish a blanket evidentiary exclusion, does not convert allegations into findings of fact, and does not restrict DHS's authority to assess credibility, corroboration, or fraud in the adjudication of immigration benefits or the exercise of discretionary authority.

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B. Pattern of Misapplication

In prior practice, § 1367 has been routinely misapplied in a manner that extends far beyond its text. In particular, mere allegations of abuse have been treated as sufficient to trigger evidentiary exclusion, resulting in U.S. citizens accused of abuse—often without notice, process, or adjudication—being designated as "prohibited sources" and too often silenced in immigration proceedings.

This misapplication has produced serious and unintended consequences, including:

- Treating untested allegations as established fact;
- Converting confidentiality protections into evidentiary shields;
- Facilitating fraud, coercion, or exploitation in VAWA self-petitions, U-visa and T-visa applications, and I-751 waiver proceedings; and
- Enabling one-sided adjudications that deprive U.S. citizens of basic fairness and due process.

DHS components lack authority to adjudicate whether a U.S. citizen has committed a criminal offense. Allegations alone cannot substitute for criminal convictions or civil adjudications conducted with full due-process safeguards.

C. Distinguishing Roles for Purposes of § 1367

For purposes of applying § 1367 accurately and consistently, DHS shall distinguish among the following roles:

- **Accuser**: An applicant or petitioner for an immigration benefit who alleges battery, extreme cruelty, or other abusive or criminal conduct in support of a benefit request.
- **Accused**: An individual—often a U.S. citizen spouse, former spouse, or sponsor—who is alleged to have committed battery, extreme cruelty, or other abusive or criminal conduct, but against whom no criminal conviction or civil adjudication affording due-process protections has been entered.

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- **Abuser**: A person who has been formally determined, through a criminal conviction or a civil adjudication conducted with full due-process safeguards, to have committed battery or extreme cruelty.

An allegation alone, or an internal eligibility determination made by DHS for purposes of adjudicating a humanitarian immigration benefit, does not convert an accused individual into an "abuser" within the meaning of § 1367.

Administrative determinations made by DHS for benefit eligibility purposes do not constitute findings of criminal guilt, civil liability, or factual culpability against a U.S. citizen. They may not be treated as such for evidentiary exclusion under § 1367.

D. Proper Evidentiary Treatment Under § 1367

Section 1367(a)(1) limits reliance on information furnished solely by an actual abuser in narrow circumstances. It does not impose a categorical bar on evidence, nor does it prohibit DHS from:

- Considering evidence submitted by the accused;
- Considering evidence submitted by victims, witnesses, or independent third parties; or
- Assessing the credibility, corroboration, and reliability of information provided by any source.

Even where information is furnished by a person who has been formally determined to be an abuser, DHS may not automatically disregard such information. Before declining to consider evidence on § 1367 grounds, DHS shall take reasonable steps to determine whether the information can be corroborated through independent, lawful means.

In no case shall § 1367 be used to block or exclude evidence submitted by a U.S. citizen unless a supervisory official confirms that the information cannot be corroborated and that exclusion is legally required.

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E. Preservation of Humanitarian Programs and Due Process

Nothing in this directive alters statutory eligibility standards for humanitarian immigration benefits, including VAWA self-petitions, U visas, T visas, or I-751 waivers, which may be adjudicated in the absence of a criminal conviction.

At the same time, the absence of a conviction does not authorize DHS components to:

- Treat allegations as established fact against a U.S. citizen;
- Exclude relevant, corroborated evidence submitted by the accused or third parties; or
- Impose de facto criminal, civil, or reputational consequences without due process of law.

An individual may have suffered abuse, and an applicant may also have engaged in fraud, coercion, or exploitation in pursuit of immigration benefits. These circumstances are not mutually exclusive, and § 1367 does not require DHS to ignore one in order to recognize the other.

This clarification ensures that § 1367 is applied in accordance with its text, preserves humanitarian protections, and prevents the statute from being misused to suppress evidence, shield fraud, or undermine DHS's obligation to safeguard U.S. citizens.

VI. DHC Findings

A. Definition of a DHC Finding

A DHC finding is a centralized administrative determination that credible evidence of DHC exists with respect to a foreign national. It does not constitute a determination of removability, criminal guilt, civil liability, or legal culpability. Rather, it functions as an internal signal to facilitate informed discretionary judgment under existing statutory authorities. A DHC finding is not itself a discretionary determination, but a required input into discretionary decision-making.

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B. Effect and Use of a DHC Finding

Once issued, a DHC finding shall be treated as a significant negative factor in the exercise of all discretionary immigration authority across DHS. When exercising discretion in a case involving a DHC finding, officers and adjudicators shall:

- Acknowledge the existence of the DHC finding in the discretionary analysis;
- Consider the nature, severity, and recency of the underlying conduct;
- Evaluate whether the foreign national's immigration status, benefit request, or continued presence was obtained, maintained, or preserved through conduct involving DHC; and
- Weigh the DHC finding alongside all other relevant discretionary factors under the totality of the circumstances.

Nothing in this section mandates a particular outcome. However, failure to consider an existing DHC finding when exercising discretion is inconsistent with this policy.

C. Transmission of DHC Findings

1. Recording and System Integration

Upon issuance, a DHC finding shall be recorded and time-stamped in the DHS system of record associated with the foreign national. The finding shall be linked to the individual's alien file and incorporated into existing case-management, adjudication, and enforcement systems to the extent permitted by law and consistent with current DHS information-sharing practices.

2. Notification and Dissemination

Following issuance, appropriate DHS components with current or prospective jurisdiction over the foreign national shall be notified promptly of the DHC finding for review and action, consistent with existing inter-component notification and referral mechanisms. Notification shall be sufficient to alert adjudicators, enforcement personnel, and supervisory officials to the existence of the DHC finding and to ensure that the finding is considered before any discretionary immigration action is taken.

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3. Availability of Supporting Materials

Supporting evidence underlying a DHC finding shall be retained in DHS systems and made available internally to authorized personnel on a need-to-know basis, consistent with existing confidentiality, privacy, and information-security requirements.

4. Inter-Component Reliance

All DHS components shall rely on the centralized DHC finding for purposes of discretionary decision-making. Components may not independently disregard, recharacterize, or relitigate the underlying credibility determination, except as provided through supervisory review mechanisms established by this directive.

The purpose of centralized transmission and reliance is to ensure uniform treatment of DHC across the immigration lifecycle and to prevent fragmentation, duplication, or inconsistent discretionary outcomes.

D. Illustrative Impact of DHC Findings

The following examples illustrate how a DHC finding should inform discretionary review. These examples are non-exhaustive and do not mandate specific outcomes.

1. Lawful Permanent Residents Present in the United States

Where a DHC finding relates to a lawful permanent resident (LPR):

- The finding shall be transmitted to the DHS component responsible for revocation, rescission, and enforcement review, including review under the Secretary's authority to revoke approved petitions for good and sufficient cause and to initiate removal proceedings where authorized by law (e.g., 8 U.S.C. § 1155; 8 U.S.C. §§ 1227, 1229).

- The receiving office shall evaluate whether discretionary revocation, rescission, or enforcement action is warranted, including whether LPR status was obtained or maintained through conduct involving DHC.

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- The DHC finding shall weigh against the favorable exercise of discretion to preserve or decline to act on the individual's status.

2. Nonimmigrants and Parolees Present in the United States

Where a DHC finding relates to a nonimmigrant or parolee:

- The finding shall be transmitted to the DHS component responsible for status review, revocation, termination, and enforcement coordination.
- The receiving office shall assess whether discretionary termination of status, parole revocation, benefit denial, or initiation of removal proceedings is appropriate.
- The DHC finding shall weigh strongly against the favorable exercise of discretion to extend, renew, or preserve nonimmigrant or parole-based benefits.

3. Applicants for Admission or Immigration Benefits

Where a DHC finding relates to a foreign national seeking admission or applying for an immigration benefit:

- The finding shall be made available to adjudicators and inspection personnel, including officers at ports of entry.
- The finding shall be treated as a significant negative factor in discretionary determinations concerning admission, parole, waivers, or benefit approval.

E. Decisions Contrary to a DHC Finding

1. Required Documentation

If an officer proposes or renders a favorable discretionary decision notwithstanding an existing DHC finding, the decision record must include a written explanation that:

- Identifies the specific countervailing factors relied upon;
- Explains why, under the totality of the circumstances, those factors were determined to outweigh the DHC finding; and

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- Identifies both the deciding officer and the supervising official who approved the determination.

This requirement promotes consistency, transparency, and accountability and facilitates supervisory review and inter-component coordination. It does not create any enforceable right or benefit.

2. Supervisory Concurrence

In any case involving a DHC finding in which a favorable discretionary outcome is proposed, supervisory concurrence shall be obtained and documented in the record.

F. Confidentiality

DHC reports are internal DHS records and are not required to be disclosed to foreign nationals. Nothing in this section alters existing disclosure obligations under applicable law or regulation. A DHC finding does not, by itself, create a right to access, discovery, or disclosure. Nothing in this section limits DHS's ability to share DHC findings internally for public-safety, enforcement, or adjudicative purposes.

VII. Implementation

Consistent with Executive Order 14159's recognition of the Federal Government's sacred obligation to prioritize the safety, security, and financial and economic well-being of Americans, this directive shall be implemented through a phased, DHS-wide approach designed to ensure uniform, effective, and durable protection of U.S. citizens across the immigration lifecycle.

A. Establishment of the DHC Working Group

This memorandum establishes a Direct Harm to U.S. Citizens (DHC) Working Group to oversee DHS-wide implementation of this policy and to ensure coordinated execution across all DHS components.

The Working Group shall be chaired by the Under Secretary for Strategy, Policy, and Plans (OSPP) and composed of senior representatives designated by:

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- U.S. Citizenship and Immigration Services (USCIS);
- U.S. Immigration and Customs Enforcement (ICE); and
- U.S. Customs and Border Protection (CBP).

Within 14 days of issuance of this memorandum, the Under Secretary for Strategy, Policy, and Plans and the heads of USCIS, ICE, and CBP shall designate their respective representatives to the Working Group.

The Working Group shall operate under the direction of the Secretary and serve as DHS's central coordinating body for implementation of this policy across the full immigration lifecycle.

B. Mandate and Core Responsibilities

The DHC Working Group is authorized to act on behalf of the Secretary for purposes of coordinating, standardizing, and overseeing DHS-wide implementation of this directive. It shall serve as DHS's central implementation authority for DHC within existing statutory and regulatory frameworks.

Within the scope of this memorandum, the Working Group is authorized and directed to:

- Develop and issue DHS-wide implementation guidance necessary to effectuate this policy;
- Establish and operationalize a centralized DHC credibility-review function with DHS-wide superseding authority over threshold DHC determinations;
- Design and implement standardized DHS-wide operational processes governing:
    - Intake of DHC reports;
    - Credibility determinations;
    - Recording, dissemination, and reliance on DHC findings; and
    - Integration of DHC findings into discretionary decision-making;

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- Establish protocols for real-time information sharing, supervisory review, documentation, and inter-component coordination where DHC findings are implicated;

- Direct DHS components to align internal procedures and guidance with this directive and with DHS-wide implementation guidance;

- Identify training, staffing, and operational requirements necessary to sustain effective implementation; and

- Monitor compliance, identify systemic gaps or inconsistencies, and recommend or direct corrective actions where implementation deviates from this policy.

The Working Group does not adjudicate immigration benefits, make enforcement decisions, or exercise component-specific statutory authorities. Its function is to ensure that discretionary authorities exercised by DHS components are informed by DHC findings in a uniform, timely, and lawful manner consistent with this directive.

Compliance with DHS-wide implementation guidance issued by the Working Group pursuant to this directive shall be mandatory for all DHS components.

C. Institutional Structure for DHC Administration

The Working Group shall design and recommend a permanent institutional structure for the long-term administration of DHC.

Any structure adopted must include centralized credibility determinations with DHS-wide superseding effect and must be capable of supporting real-time transmission, inter-component reliance, and supervisory oversight.

In developing its recommendation, the Working Group shall evaluate, at a minimum:

- Expansion or repurposing of an existing DHS office;

- Creation of a new centralized or inter-component entity; or

- A hybrid model combining centralized credibility review with component-specific execution.

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No decentralized or component-specific model that lacks centralized credibility authority shall satisfy this requirement.

The Working Group shall submit its structural recommendation to the Secretary within 30 days of issuance of this memorandum.

D. Derivative Component Guidance

Within 60 days of the issuance of this directive, each DHS component represented on the DHC Working Group shall prepare and issue derivative internal guidance consistent with this directive and any implementation instructions issued by the Working Group.

Such component guidance shall, at a minimum:

- Incorporate DHC as a required consideration in discretionary decision-making where applicable;
- Identify designated points of contact responsible for DHC coordination;
- Establish internal procedures for receiving, acting upon, and documenting DHC findings; and
- Require supervisory review and documentation where discretionary outcomes depart from the treatment of DHC as a significant negative factor.

Component guidance shall not narrow, condition, delay, or dilute the application or effect of DHC findings beyond what is expressly set forth in this directive or in DHS-wide implementation guidance issued pursuant to it.

E. Training and Workforce Development

Within 90 days of the issuance of this directive, DHS shall develop and begin deployment of targeted training for officers, adjudicators, investigators, attorneys, and supervisors whose duties implicate discretionary immigration decision-making.

Such training shall, at a minimum, address:

Codias Law

- Identification and assessment of DHC-related evidence across adjudicative, enforcement, and custodial contexts;
- Application of DHC in discretionary decision-making consistent with governing statutes, regulations, and this directive;
- Distinguishing DHC credibility determinations from findings of guilt, removability, or legal liability; and
- Inter-component coordination and information-sharing obligations related to DHC findings.

Training shall be integrated into existing training programs to the maximum extent practicable and updated periodically to reflect implementation experience, evolving operational needs, and best practices identified by the DHC Working Group.

F. Resource Alignment and Cost Neutrality

Implementation of this policy shall, to the maximum extent practicable, be cost neutral and carried out using existing DHS resources, authorities, and personnel.

The DHC Working Group shall identify opportunities to realign, reassign, or redeploy existing staff and operational capacity to support DHC intake, credibility review, coordination, and oversight functions. Where necessary, this may include reassignment of personnel from benefit adjudication or processing functions to DHC-related review and coordination activities, consistent with applicable law and operational needs.

The protection of U.S. citizens from abuse, fraud, and exploitation is a core mission function of DHS, and resource allocation decisions shall reflect that priority.

G. Monitoring, Reporting, and Continuous Improvement

The DHC Working Group shall monitor implementation of this directive, identify systemic or operational deficiencies, and recommend corrective actions necessary to ensure consistent and effective DHS-wide application.

The Working Group shall provide written updates and recommendations to the Secretary at the following implementation milestones:

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1. **Institutional Structure**: Within the timeframe specified in this directive, the Working Group shall evaluate alternative institutional models and submit a formal recommendation to the Secretary regarding the permanent structure for centralized DHC administration, including placement, authority, staffing, and oversight. The recommendation shall explain how the proposed structure ensures centralized credibility determinations with DHS-wide effect, operational efficiency, and consistent application across components.

2. **Derivative Component Guidance**: Upon issuance of derivative internal guidance by DHS components, the Working Group shall report to the Secretary on the status, scope, and consistency of such guidance and identify any deviations, gaps, or corrective actions required.

3. **Training Deployment**: Upon initial deployment of DHC-related training, the Working Group shall report to the Secretary on training coverage, affected personnel, and any implementation issues impacting effective application of this policy.

Within 120 days of issuance of this memorandum, the Working Group shall submit a consolidated implementation status report to the Secretary that:

- Describes progress achieved at each milestone;
- Confirms the status of the recommended institutional structure;
- Identifies legal, operational, or resource challenges encountered;
- Assesses consistency of application across DHS components; and
- Recommends any corrective actions, additional guidance, or structural refinements necessary to ensure sustained and effective implementation.

Thereafter, the Working Group shall provide additional updates or recommendations to the Secretary as warranted by implementation experience, emerging risks, or identified deficiencies, in support of continuous improvement and faithful execution of this directive.

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VIII. Conclusion

This directive marks a decisive shift in the administration of the Nation's immigration laws. DHS formally affirms that harm inflicted on U.S. citizens is not peripheral to immigration decision-making, but a core consideration in the exercise of lawful discretion. The consistent identification, evaluation, and treatment of such harm is essential to restoring the integrity, credibility, and public purpose of the immigration system.

Every officer, adjudicator, supervisor, and enforcement official exercises authority entrusted by Congress to DHS for a singular reason: to serve and protect the American people. Discretion exists not to excuse misconduct or obscure consequences, but to ensure that the law is applied with judgment, responsibility, and fidelity to the public interest. This directive reaffirms that obligation and provides a clear framework for its execution.

In implementing this policy, DHS personnel are reminded that immigration benefits are a privilege, not a right, and that the ultimate beneficiaries of the immigration system are the citizens of the United States. All components are expected to exercise their lawful discretion with clarity, consistency, and resolve—guided by the principle that the safety, dignity, and well-being of U.S. citizens must always come first.

[Signed]
Secretary

***Disclaimer**: This document is a draft policy proposal prepared for advocacy and public discussion. It does not reflect an official position of the Department of Homeland Security or any government agency and has not been adopted or issued by DHS.*

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