



Annual Report 2018

Citizenship and Immigration Services
Ombudsman

June 28, 2018



Homeland
Security

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*Office of the Citizenship and Immigration Services
Ombudsman*

U.S. Department of Homeland Security

Mail Stop 0180

Washington, DC 20528-0180



**Homeland
Security**

June 28, 2018

The Honorable Chuck E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Bob W. Goodlatte
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jerrold L. Nadler
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairmen and Ranking Members:

The Office of the Citizenship and Immigration Services Ombudsman is pleased to submit, pursuant to Section 452(c) of the Homeland Security Act of 2002, its 2018 Annual Report.

I am available to provide additional information upon request.

Sincerely,

A handwritten signature in black ink that reads "Julie Kirchner". The signature is written in a cursive style with a large, looped initial "J".

Julie Kirchner
Citizenship and Immigration Services Ombudsman

Message from the Ombudsman



Dear Members of Congress,

I am pleased to present to you the Ombudsman’s 2018 Annual Report to Congress. This report is required by Section 452 of the Homeland Security Act of 2002, which established the Office of the Citizenship and Immigration Services Ombudsman. It also charged us with the responsibility of helping applicants and employers solve difficulties encountered when applying for immigration benefits and working to improve systemic problems in the delivery of immigration services.

The year 2017 was one of significant change in immigration policy. Inaugurated in January, President Trump quickly signed multiple immigration-related executive orders for the purpose of ensuring that the nation’s immigration laws are faithfully executed. Immediately, the various immigration agencies within the Department of Homeland Security—including Customs and Border Protection, Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services (USCIS)—set out to execute those orders through draft regulations, new policy guidance, and revised processes.

With respect to immigration benefits, the changes were significant and wide-ranging. Some of the most notable changes, for example, included: requiring interviews for all employment-based immigrants; issuing revised specialty occupation guidance for H-1B workers; terminating Temporary Protected Status for certain individuals; initiating a phase-out of the Deferred Action for Childhood Arrivals Program; and curbing the use of parole. As USCIS worked to implement these changes, the agency faced additional challenges from the increase in immigration filings (up 42 percent since FY 2012), growth of processing times, and the goal of revamping the agency’s years-long program for digitizing its services, frequently referred to as “transformation.”

Given this context, it is not surprising that the Ombudsman’s Office received another record number of requests for case assistance in FY 2017. While the types of applications at issue varied, the large majority of our case work (69 percent) related to delays in processing times. These were particularly prevalent in green card applications (I-485s), naturalization applications (N-400s), and employment authorization documents (I-765s), which saw a spike in processing times at the end of 2017. This marks the fifth year in a row that processing times have been the largest driver of case work for our office.

While our Case Team tackled a growing case load, our policy advisors were working exceptionally hard to digest the myriad of changes in immigration policy and processes. Throughout the year, we sought to use the Ombudsman’s Office to educate the public via meetings, teleconferences, and our Annual Conference, where we were able once again to bring together government officials, practitioners, nonprofits, and other stakeholders to discuss the latest developments in the field of immigration and hear about potential solutions to some of the thornier problems facing those involved.

This year's Annual Report seeks to navigate the changing landscape of immigration by focusing on a handful of programs and processes that highlight key elements of USCIS' mission: efficiency and integrity. These goals are both critical—and compatible—within our immigration system. Indeed, combating fraud and security threats preserves resources for *bona fide* applicants; efficient processing can discourage fraud, deter potential security threats, and limit the opportunity for bad actors to engage in either. While we recognize that this report, due to the volume of material and resources available, touches on only some of the issues deserving attention, we hope this work offers readers a useful foundation and context for understanding numerous changes underway.

I would like to express my sincere gratitude to my staff for the long hours they have invested in this report. I would also like to thank our colleagues at USCIS, who met with us and provided us data as we developed this report. As always, we welcome your feedback on this year's report and all the work we do in the Ombudsman's Office to assist and inform individuals, employers, Congress, and other stakeholders concerning immigration benefits issues.

Sincerely,

A handwritten signature in black ink that reads "Julie Kirchner". The signature is written in a cursive style with a large, stylized initial "J".

Julie Kirchner
Citizenship and Immigration Services Ombudsman

Executive Summary

2017 in Review

U.S. Citizenship and Immigration Services (USCIS) administers an immigration benefits system that handles millions of applications and petitions annually. Americans and prospective Americans all have a stake in the proper administration of immigration benefits. While USCIS timely adjudicates the majority of filings in accordance with applicable statutes, regulations, and policy, the Ombudsman's Office is able to assist when applications are delayed past posted processing times or there are administrative or adjudication errors.

The Ombudsman works to resolve case issues directly with USCIS field offices, service centers, and other offices as a part of its mission. The Ombudsman identifies trends that are significant or problematic and addresses them with USCIS at the appropriate level. While not every Ombudsman inquiry results in a case approval, we make every effort to ensure USCIS treats each case in a fair and consistent manner and in line with applicable policy and procedure.

In 2017, the Ombudsman conducted almost 70 stakeholder engagements, including teleconferences, meetings with and presentations to attorneys and accredited representatives, community-based organizations, employers, Congressional staffers, state and local government officials, and individual applicants. The Ombudsman also held its seventh annual conference to bring together government officials, external stakeholders, and other interested parties in a unique forum to discuss and develop ideas for improving the delivery of immigration services.

USCIS Anti-Fraud Initiatives

USCIS anti-fraud initiatives foster both an efficient and a secure immigration benefits system. While USCIS has always ensured fraud detection was a substantial part of the mission, the development of the Fraud Detection and National Security (FDNS) Directorate has formalized

many of its processes and systems to ensure ineligible applicants do not receive benefits. In 2017, as part of FDNS's move toward a "risk-based" anti-fraud model, it expanded site visits to more employers and incorporated more electronic solutions. FDNS is improving its metrics for measuring case processing, but would benefit from the electronic case processing system envisioned by USCIS' transformation project.

Transformation

In 2017, USCIS revised its overarching electronic case management and benefits processing goals. USCIS now prioritizes the development of core capabilities, which cut across all form types. In tandem with these new goals, USCIS consolidated the former Office of Transformation Coordination into the Office of Information Technology, reporting through that office to the USCIS Director. In recent months, these changes have helped USCIS focus its efforts in electronic delivery of benefits adjudication through its electronic immigration system (ELIS). Stakeholders reported improvements in ELIS functionality but continue to voice concerns over a range of ELIS issues.

Background Checks

All applicants and petitioners applying for U.S. immigration benefits are required to undergo some type of criminal and national security background checks to ensure the integrity of the immigration system. The background check process can be confusing to stakeholders who may not understand how it works or how it impacts the adjudication of their cases. However, the Field Office Directorate, the Service Center Operations Directorate, and the Refugee, Asylum and International Operations Directorate all have standard operating procedures for running background checks on applications that are processed within their respective offices. With help from their partners at the U.S. Federal Bureau of Investigation, these offices have made improvements to parts of the

process. Recently, in response to Executive Order 13780, USCIS increased its screening of certain applicants, with plans to expand this heightened scrutiny. USCIS would further increase confidence in its anti-fraud and national security measures by educating the public on the basic elements of its processes, including how they can potentially impact the adjudication of cases.

Affirmative Asylum Backlog

As of March 31, 2018, USCIS had well over 300,000 affirmative asylum applications pending a final decision from the Asylum Division. While the backlog can be traced to the growing number of individuals filing asylum claims, the cause of the backlog stems from several converging factors. USCIS has taken a series of steps to reduce its pending caseload, but despite hiring new staff, changing processes, and opening additional

offices, reducing the backlog will take time and present an ongoing challenge.

EB-5 Immigrant Investor Program

While the EB-5 Program remains attractive to foreign investors, many stakeholders, including members of Congress, have increasingly voiced concerns regarding fraud and abuse, which undermine the original purpose of the program and detract from potential benefits offered by it. USCIS has sought to address these concerns through a range of reforms, including proposed regulations issued in January 2017 that increase program oversight and seek to curb some of the abuses. It remains to be seen whether these reforms will be sufficient to reassure those concerned about the increased oversight, or if they will have a chilling effect on participation.

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Office of the Citizenship and Immigration Services Ombudsman: 2017 in Review

The Office of the Citizenship and Immigration Services Ombudsman is an independent, impartial, and confidential organization within the Department of Homeland Security (DHS), charged with reviewing and assessing the activities of the U.S. Citizenship and Immigration Services (USCIS). The Ombudsman reports directly to the Deputy Secretary of DHS, and is neither a part of nor reports to USCIS.

The Ombudsman has a specific statutory mission:¹

- Assist individuals and employers in resolving problems with USCIS;
- Identify areas in which individuals and employers have problems in dealing with USCIS; and
- Propose changes in the administrative practices of USCIS to mitigate identified problems.

The Office achieves its mission through:

- Evaluating requests for assistance from individuals and employers and, where appropriate, recommending that USCIS take corrective action;
- Facilitating interagency collaboration and conducting outreach with a wide range of public and private stakeholders; and
- Reviewing USCIS' operations; researching applicable laws, regulations, policies, and procedures; and issuing recommendations (both formal and informal) to bring systemic issues to USCIS' attention.

Requests for Case Assistance

USCIS administers an immigration benefits system that handles millions of applications and petitions annually. On any given day, USCIS adjudicates more than 26,000 requests for various immigration benefits, from naturalization to travel documents to work authorization.² Individuals and employers rely on USCIS adjudications to begin or continue employment; reunite with family members; seek humanitarian protection; apply for drivers' licenses, Social Security numbers, health insurance, bank accounts, and mortgages; enroll in school; and travel outside of the United States, to name but a few essential activities. The American people rely on USCIS to maintain integrity within the immigration system, to prevent fraud, maintain national security, and overall ensure the immigration system serves the national interest. In short, Americans and prospective Americans all have a stake in the proper administration of immigration benefits.

USCIS timely adjudicates the majority of filings in accordance with applicable statutes, regulations, and policies. However, when cases are delayed past posted processing times or there are administrative or adjudication errors, individuals and employers may contact the Ombudsman for case assistance.

To effectively and efficiently carry out its mission, the Ombudsman works to resolve case issues directly with USCIS field offices, service centers, and other offices. Collaboration and open dialogue are key tools in resolving problems with pending applications or petitions that have been brought to the Ombudsman's attention.

Ombudsman case assistance, of course, does not always result in a case approval. Based on the Ombudsman's intervention, USCIS may take action on a long-pending case by issuing a Request for Evidence (RFE), a Notice of Intent to Deny

¹ Homeland Security Act of 2002 (HSA) § 452, 6 U.S.C. § 272.

² USCIS Webpage, "A Day in the Life of USCIS," <https://www.uscis.gov/about-us-0> (accessed May 1, 2018).

(NOID), or a denial. At times, cases that have fallen outside normal processing times have done so for reasons beyond the control of USCIS, such as a pending background check being conducted by another agency. Some adjudication issues are a matter of discretion, and USCIS may not change its decision after an Ombudsman inquiry. It is important to note that the Ombudsman's case assistance is never a substitute

for legal recourse; individuals and employers must timely file Motions to Reopen/Reconsider and appeals to preserve their rights, even after making a request for case assistance to the Ombudsman.³

³ See generally, 8 CFR § 103.3(a) (appeals), § 103.5 (motions to reopen/reconsider).

A DAY IN THE LIFE OF AN IMMIGRATION LAW ANALYST

The Ombudsman works to resolve a wide range of requests for assistance across employment, family, and humanitarian categories, ranging from cases that are outside posted processing times to more complex issues involving adjudicative, administrative, or multi-agency concerns.

Here is how some of our Immigration Law Analysts describe their casework.

Q. What types of cases do you work with on a daily basis?

A. I work on a variety of cases that include family, humanitarian, and employment issues. Many of us in the office specialize in certain areas, such as employment authorization, family immigration, adjustment of status, or naturalization.

Q. How do you determine if the Ombudsman can assist?

A. First, I determine the problem the applicant is facing and decide whether USCIS has jurisdiction over the issue. We cannot assist with issues related solely to U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), or the State Department (DOS). I check for the proper parties' consent and also check to see what steps the applicant has taken to resolve the issues with USCIS. As an office of last resort, we require that applicants first try to resolve the problem directly with USCIS before contacting our office for assistance. If the request is about processing delays, I check USCIS' processing times to ensure that the case inquiry date has passed the receipt date and that the case really is outside of normal processing times. Unless there are urgent circumstances, our office

closes inquiries that are within normal processing times. Our office uses the same expedite criteria as USCIS to determine which cases may be eligible to be expedited.⁴ If the applicant has submitted documentation to demonstrate the need for expedited processing of his case, I will move forward with contacting the appropriate USCIS office.

If the request is about an administrative or adjudication issue, I look at the supporting documents and review USCIS systems and the appropriate laws and regulations to determine whether USCIS may have failed to consider all the facts or inaccurately applied the law to the case.

Q. What do you do if you determine that the Ombudsman cannot assist?

A. If I determine that our office cannot assist, I will contact the applicant or legal representative by phone or email to explain that we cannot assist and why. Depending on the circumstances, I may include details on when they may contact us again, if necessary. For example, if our office is unable to assist because the case is within

⁴ USCIS Webpage, "Expedite Criteria" (Jul. 27, 2016); <https://www.uscis.gov/forms/expedite-criteria> (accessed Mar. 3, 2017). The criteria are severe financial loss to company or person; emergency situation; humanitarian reasons; nonprofit organization whose request is in furtherance of the cultural and social interests of the United States, Department of Defense, or national interest situation; USCIS error; or compelling interest of USCIS. Individuals or employers requesting expedited handling are instructed to clearly state so in Section 8 ("Description") of Form DHS-7001, briefly describe the nature of the emergency or other basis for the expedite request, and provide relevant documentation to support the expedite request. All expedite requests are reviewed on a case-by-case basis. While the Ombudsman will forward expedite requests, it is up to USCIS whether it will expedite the Ombudsman's inquiry and the application or petition.

processing times, I will let the applicant know that he or she may contact our office again once the case is outside normal processing times. If our office is closing the request for case assistance because the applicant has not attempted to resolve the issue with USCIS, I will provide the applicant with information on how to do so. If the issue is outside of USCIS, and the Ombudsman's jurisdiction, I may provide contact information for another federal agency. Often, applicants are referred to our office by someone who has had success with our services. As a result, when our office cannot assist an applicant, it is imperative that we provide a detailed explanation that allows the applicant to understand the uniqueness of each request we receive, and that also provides the applicant with a better understanding of when to contact our office for assistance.

Q. What steps do you typically take when working a case?

A. First, I look to see the priority the case has been assigned and work urgent cases accordingly. Then, I review the applicant's description of the problem. I contact the individual if I need additional information. Next, I research the law, precedent, or policies to know how best to proceed. At this stage, I might consult with one of my colleagues who is also a subject matter expert. Finally, I review the case history in several of USCIS' databases, where I can find the location of the file, confirm filing dates, and check on the next steps in the process.

Next, I write up the case history and an analysis of the problem and send it to a designated contact at the appropriate USCIS office. I ask USCIS to review the case to ensure that the law and policy have been applied properly. Finally, I contact the applicant to let him/her know that I have made an inquiry on their behalf and to share a reasonable timeline for a response from USCIS (generally USCIS has 15 business days to respond to normal inquiries and 5 business days to respond to expedited inquiries).⁵ I continue to follow up with USCIS until there is a final resolution to the issue.

⁵ "Memorandum of Understanding between U.S. Citizenship and Immigration Services and the Citizenship and Immigration Services Ombudsman" (Mar. 30, 2016) (copy on file with the Ombudsman).

Q. What do you do when you get a response from USCIS? What if that response cannot be disclosed to the applicant?

A. When I receive an update from USCIS, I make a notation in our database and, if it conveys a final action, I notify the applicant by email or by telephone. If necessary, I follow up with additional questions to USCIS, then inform the applicant that we are continuing to work toward final resolution.

If the information I get back from USCIS cannot be disclosed to the applicant, I share as much general information about processes and timelines as I can to assure the applicant that their case is not lost and enable them to plan their lives and work accordingly...I continue to assure applicants that our office will monitor their case until a final decision is made.

Q. To what extent do you engage with DHS components or agencies other than USCIS?

A. I communicate regularly with DOS's National Visa Center about its work with USCIS. I sometimes contact ICE and CBP to try to get applicants additional assistance or another avenue or resource to obtain further assistance on a case. I also visit offices, attend meetings, and participate in teleconferences hosted by USCIS and other agencies.

Q. How do the individual cases you work on contribute to the work of the Ombudsman's Policy Team?

A. Through the requests I see every day, I can identify trends and report them to our leadership, letting them know of hot topics or trouble areas that we need to bring to USCIS' attention through meetings or written recommendations that have the potential to impact thousands of individuals seeking immigration services. The trends can also serve as topics for teleconferences. We are the canary in the coal mine.

Q. What is most challenging about your work?

A. Cases can be extremely complex, but that can be overcome with expertise. What does create problems are when requestors forget an essential fact, like being represented by an attorney and forgetting to submit a notice of appearance, a Form G-28, for an application or petition. Another problem develops when requestors call and email frequently—sometimes every day—to get a status update. We take our contact with the public very seriously, and make every attempt to respond to status inquiries. Unfortunately, when they are overwhelming because of their frequency, responding to them comes at the expense of actually working on cases.

Q. What are the rewards of successfully resolving a case?

A. Helping others resolve problems is extremely rewarding. I always feel satisfied when I am able to assist someone navigate an immigration system that can be overwhelming—even to experts—and am able to make a difference in someone’s life. I am proud of our determination and commitment in assisting those who have run out of options.

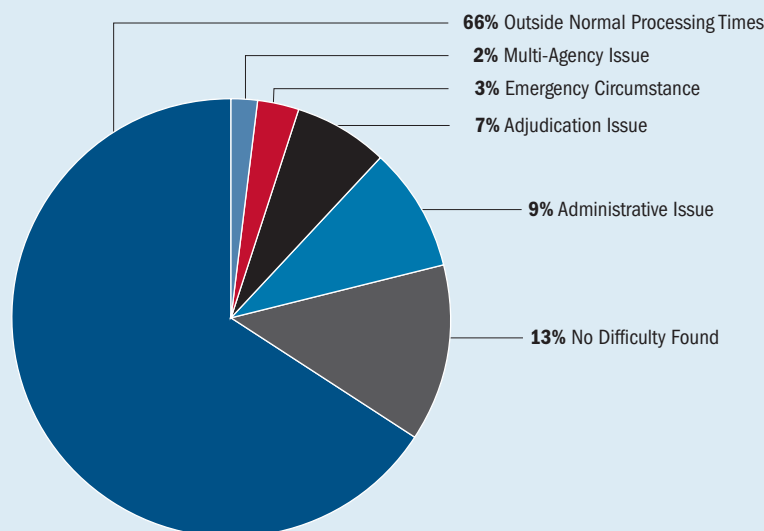
Q. What assistance can the Ombudsman provide that others in the federal government cannot?

A. The Ombudsman’s Office has a long-established relationship with USCIS that allows us to communicate directly with service centers, field offices, and refugee and asylum offices. My colleagues and I come from a variety of immigration backgrounds and agencies—private immigration law practice, USCIS, and other federal offices, including the U.S. Departments of Justice (DOJ), Labor (DOL), DOS, and we use our diversity of knowledge and experience to spot issues and offer solutions.

Q. What experience/training do you bring that helps you do your job?

A. Before coming to the Ombudsman’s Office, I served as an adjudicator at a USCIS service center and an asylum office. I learned quick problem-solving skills in the adjudications context, innovation to resolve serious case problems in new ways, team-building, triage and public-relations skills. Interviewing applicants taught me patience and compassion and to recognize that files represent real lives. I continue to take immigration law trainings and learn every day from my colleagues—the law and policy changes frequently.

2017: Issues Submitted in Requests for Case Assistance



Extended Review

Where USCIS does not provide a specific time frame for resolution, and the case is 6 months or more past USCIS' processing times, the Ombudsman will place the assistance request in a queue of long-pending cases, referred to as Extended Review. The Ombudsman follows up with USCIS Headquarters regularly on such cases until the agency takes action.

In March 2017, the Ombudsman reviewed its list of over 1,400 Extended Review cases and identified inquiries involving an application or petition that had been pending with USCIS for 5 years or longer. The Ombudsman asked that USCIS take a closer look at over 100 cases to see if any could be ripe for adjudication or if additional information could be provided to permit adjudication. Cases that USCIS had identified as being on hold for reasons outside of USCIS' control, such as Terrorism-Related Inadmissibility Grounds (TRIG)⁶ or litigation in the courts, were not included. To date, 63 percent of the identified cases have been resolved, and the Ombudsman continues to encourage USCIS to act on the remainder. This not only resolves these cases for the individuals involved but enhances system integrity by moving these individuals to the next stages, whether positive or not.

2017 Casework in Review

In calendar year 2017, the Ombudsman's team of approximately 18 analysts received 11,048 requests for assistance submitted by the public. Since 2013, the number of requests for assistance received has increased an average of 20 percent per year. The Office resolved 10,746 requests for assistance during that same time period. The team provides case assistance daily to the thousands of people who seek assistance.

The following cases illustrate just some of the types of assistance the Ombudsman provided in 2017.

■ **Lost Documentation.** The Ombudsman assisted the lawful permanent resident (LPR) parents of a child born in India. The child was admitted to the United States within 2 years of her birth and her passport was stamped appropriately to indicate she too was an LPR. The parents expected her green card to be mailed to them shortly after their entry. At a visit to the local

field office, USCIS confirmed the child's LPR status and asked the parents to submit Form I-90, *Application to Replace Permanent Resident Card*. Months later, when they still had not received the green card, the USCIS National Customer Service Center (NCSC) told the parents to go back to the local USCIS field office to complete a Form I-181, *Creation of Record of Lawful Permanent Residence* because USCIS had no record of the child's entry to the United States. At the local office, however, the parents were told there was no such process. A year later, the family received a notification that the Form I-90 application had been denied because USCIS did not have the entry materials. The same day they also received a notification from USCIS that the case had been reopened. Four months later, they received another denial from USCIS. The Ombudsman helped the family obtain the child's lost visa package and have the entry documents recreated so that USCIS could issue a green card for their daughter.

- **Processing Times.** One naturalization applicant contacted the Ombudsman when his application stalled. He had been fingerprinted and interviewed, had passed his naturalization test, but 16 months later still had not received an appointment for his oath ceremony. After both he and his attorney contacted USCIS with no resolution, the Ombudsman contacted the field office of jurisdiction and the applicant received an appointment for his oath ceremony.
- **USCIS Databases.** When a ten-year-old applicant for LPR status moved to a new home with her family, her mother contacted USCIS and the U.S. Postal Service to inform them of the family's new address. Seven days later, USCIS approved the daughter's application and ordered production of her green card. Unfortunately, because USCIS' systems were not updated in a timely manner, the card was mailed to her previous address. The Ombudsman assisted by getting a new card produced and sent out within the week.
- **Fee Waiver.** One applicant with a pending Form I-485, *Application to Register Permanent Residence or Adjust Status* filed for an employment authorization with a request for a fee waiver. USCIS waived the fee, but denied the employment authorization five months later, stating that it had not received the fee or a waiver request. The Ombudsman shared a copy of the fee waiver with USCIS to correct the error.

⁶ Inadmissibility exemptions may only be granted by the Secretaries of Homeland Security and State. INA § 212(d)(3)(B).

■ **Typographical Error.** When an LPR filed Form I-130, *Petition for Alien Relative* for his son, he received assistance from a notary who made a typographical error on the son's date of birth. The error led to USCIS classifying the son as an adult child, rather than a minor. The father sought a correction from USCIS, and the date of birth was changed, but the preference category was not. The Ombudsman contacted USCIS and immediately confirmed the typographical error and corrected the date. USCIS corrected the preference category in its data systems and issued an approval notice later that day.

■ **Mailing Issues.** USCIS issued an RFE on a Form I-526, *Immigrant Petition by Alien Entrepreneur*, which the U.S. Postal Service returned to USCIS as undeliverable. The attorney contacted the Ombudsman for assistance in getting a copy of the request in time to respond. Upon investigation, the Ombudsman determined that the RFE had been sent to an incorrect address. USCIS reissued the RFE, along with a new response time frame to respond.

■ **Erroneous Denial.** A woman applying to USCIS for student status was denied because the agency asserted she did not maintain her previous visitor status while USCIS adjudicated the change of status request. The denial was in error because she had in fact filed four applications for extension of her visitor status to bridge the 2 years that USCIS took to adjudicate the change of status application. The Ombudsman investigated the situation and discovered that the bridge applications for extension of status were pending at one USCIS service center while the application for change of status was pending at another. The Ombudsman contacted the center that had the extension applications to have them prioritize adjudication so that the second center could take corrective action on the change of status application and resolve the applicant's status.

The Year in Outreach

In 2017, the Ombudsman conducted 69 stakeholder engagements. These included meetings with and presentations to a wide range of groups, including attorneys and accredited representatives, community-based organizations, employers, Congressional staffers, state and local government officials, and individual applicants. The Ombudsman also conducted outreach through a series

of teleconferences with stakeholders. The Ombudsman hosted the following public teleconferences in 2017 to provide information and to receive feedback on issues and policy trends:

- Ombudsman's Annual Conference Highlights (January 26)
- Executive Orders Listening Session (February 9)
- USCIS AC21 Regulations (March 22)
- USCIS Office of Citizenship (May 24)
- H-1B, Specialty Occupation, FY2018 Cap Filing Season (June 20)
- Ombudsman's Annual Report Highlights (July 27)
- Employment-Based Adjustment Interviews (September 28)
- USCIS' Handling of Natural Disasters (October 25)
- Temporary Protected Status (December 14)

The Ombudsman's Seventh Annual Conference

On December 7, 2017, the Ombudsman hosted the seventh Annual Conference, *Government and Stakeholders Working Together to Improve Immigration Services*. There were over 300 attendees. The morning plenary sessions included remarks from USCIS Director L. Francis Cissna and then-Acting Director of the Executive Office for Immigration Review James McHenry. Director Cissna spoke of his goals for maintaining a fair and transparent immigration system that applies the law consistently, and about his plans to issue new regulations in accordance with the Administrative Procedure Act. Director McHenry spoke of his plans to add more immigration judges and support staff, improve infrastructure, and to continue to work effectively with partners at USCIS, ICE, and CBP.

Break-out sessions in the afternoon included panels on citizenship and naturalization issues, background checks and USCIS processing, E-Verify, transformation, and the H-1B Specialty Occupation program.



USCIS Anti-Fraud Initiatives

Responsible Office: *Fraud Detection and National Security Directorate*

Key Facts and Findings

- Over the past 6 years, the Fraud Detection and National Security (FDNS) Directorate’s authorized staffing levels more than doubled from 756 positions in FY 2012 to 1,548 positions in FY 2018.
- As part of FDNS’s pivot toward a “risk-based” anti-fraud model, in 2017 it implemented a Targeted Site Visit and Verification Program (TSVVP) focused on visits to H-1B employer worksites where fraud and abuse may be more likely to occur.
- Challenges in USCIS’ ongoing transition to a comprehensive electronic case filing and management system have limited FDNS’s capacity to combat fraud.

- Requests for case assistance submitted to the Ombudsman suggest that a small number of cases linked to fraud investigations remain pending for significant lengths of time. The Ombudsman’s Office recognizes the challenges inherent in assessing the efficiency of such investigations, and will continue to monitor the issue of efficiency as it relates to these and other anti-fraud activities.

Anti-Fraud Efforts Constitute a Core Part of the USCIS Mission

Administering an efficient *and* secure immigration benefits system lies at the core of USCIS’ mission.⁷ Anti-fraud initiatives undertaken by USCIS advance both prongs of this mandate. Combating fraud helps keep unscrupulous

⁷ See USCIS Webpage, “About Us” (Feb. 22, 2018); <https://www.uscis.gov/aboutus> (accessed Feb. 25, 2018).

actors from obtaining immigration benefits. Moreover, reducing fraud preserves agency resources for legitimate requests and leads to more efficient processing.

The recent history of USCIS and its predecessor, the Immigration and Naturalization Service (INS), reflects an elevated awareness of fraud's consequences and an enhanced commitment to combatting it. In 2002, shortly after the September 11, 2001 terrorist attacks, the Government Accountability Office (GAO) noted that "[i]mmigration benefit fraud has been a long-standing problem for INS that has grown more intense and serious" as foreign nationals "have used the application process for illegal activities, such as crimes of violence, narcotics trafficking, and terrorism."⁸ GAO concluded that INS's approach to deterring benefit fraud was "fragmented and unfocused" and urged a revised approach to identifying and investigating such fraud.⁹

By 2004, the newly-formed USCIS had established a Fraud Detection and National Security Office.¹⁰ Six years later, USCIS elevated this office to a directorate—a director-controlled department overseeing two or more divisions¹¹—enhancing FDNS's integration into and influence across the rest of the agency.¹²

USCIS vested FDNS with the mission of detecting, deterring, and combatting fraud, as well as national security challenges and threats to public safety in the immigration benefits process.¹³ FDNS seeks to execute this mission by, among other things: (1) conducting administrative investigations into possible acts of benefits fraud; (2) developing agency-wide policies and procedures governing anti-fraud measures; (3) discerning and eliminating "systemic vulnerabilities" in the agency's

benefits process; and (4) serving as the agency's principal liaison to law enforcement and intelligence partners.¹⁴

Case Management Entities (CMEs). A CME is a type of record maintained in the Fraud Detection and National Security Data System (FDNS-DS),¹⁵ which is USCIS' principal system for managing information and inquiries relating to fraud, public safety, and national security concerns.¹⁶ CMEs generally relate to and reflect FDNS review of one or more specific immigration applications or petitions.¹⁷ Common CMEs include:¹⁸

- **Leads.** These are referrals received by FDNS from internal or external sources that contain an allegation of immigration-related benefit fraud as well as associated biographic or corporate information.
- **Cases.** As defined within FDNS-DS, cases constitute leads supported by articulable and actionable evidence of fraud or involving a public safety concern.
- **Requests for Assistance.** These are requests made to FDNS for data, research, or other information. These requests may originate from inside or outside of USCIS.
- **Administrative Site Visit and Verification Program (ASVVP).** ASVVPs are compliance reviews carried out to verify the legitimacy of a petitioning organization and employment offer, which often include worksite visits.
- **Overseas Verifications.** FDNS conducts these verifications to confirm education, employment, or other events that have transpired in a foreign country or to authenticate potentially fraudulent documentation

⁸ U.S. Government Accountability Office Report, "Immigration Benefit Fraud," GAO-02-66 (Mar. 2002); <https://www.gao.gov/new.items/d0266.pdf> (accessed Feb. 25, 2018).

⁹ *Id.*

¹⁰ USCIS Webpage, "Fraud Detection and National Security Directorate" (Jul. 14, 2015); <https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security/fraud-detection-and-national-security-directorate> (accessed Feb. 25, 2018).

¹¹ USCIS Webpage, "Directorates and Program Offices" (Sep. 28, 2010); <https://www.uscis.gov/about-us/directorates-and-program-offices> (accessed Feb. 25, 2018).

¹² USCIS Webpage, "Fraud Detection and National Security Directorate" (Jul. 14, 2015); <https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security/fraud-detection-and-national-security-directorate> (accessed Feb. 25, 2018).

¹³ See DHS Privacy Impact Assessment, "Fraud Detection and National Security Directorate," DHS/USCIS/PIA-013-01 (Dec. 16, 2014); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf (accessed Feb. 25, 2018).

¹⁴ See DHS Privacy Impact Assessment, "Fraud Detection and National Security Directorate," DHS/USCIS/PIA-013-01 (Dec. 16, 2014); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf (accessed Feb. 25, 2018).

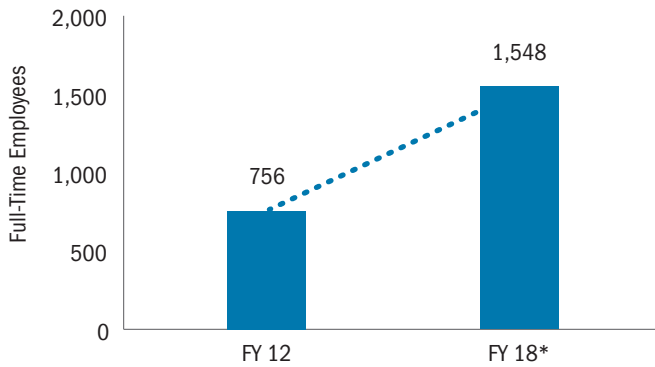
¹⁵ Information provided by USCIS (Apr. 18, 2018).

¹⁶ DHS Privacy Impact Assessment, "Fraud Detection and National Security Directorate Data System" (FDNS-DS), DHS/USCIS/PIA-013(a) (May 18, 2016); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-fdns-november2017.pdf> (accessed Apr. 26, 2018).

¹⁷ "The Security of U.S. Visa Programs," *before the U.S. Senate Committee on Homeland Security and Governmental Affairs*, 114th Cong. 2nd Sess. (2016) (Post-Hearing Questions for the Record Submitted to the Honorable Leon Rodriguez from Senator Ron Johnson); <https://www.gpo.gov/fdsys/pkg/CHRG-114shrg22768/pdf/CHRG-114shrg22768.pdf> (accessed May 24, 2018).

¹⁸ Information provided by USCIS (Apr. 18, 2018).

Figure 1.1: FDNS Staffing Levels



Data was current as of “Pay Period 4, 2018,” corresponding to the period from February 18, 2018 to March 3, 2018.

in collaboration with host countries’ document-issuing authorities.¹⁹

The number of personnel completing such work has grown proportionally to the Directorate’s profile within the agency. FDNS staffing levels increased from 756 authorized positions in FY 2012 to 1,548 authorized positions as of the pay period covering February 18, 2018 to March 3, 2018—nearly a 205 percent increase.²⁰

Personnel enhancements during this span were not unique to FDNS.²¹ From FY 2012 to FY 2017, USCIS’ case receipt volume increased 42 percent,²² significantly elevating the agency’s overall workload and staffing needs. See Figures 1.1 and 1.2.

FDNS maintains an organizational structure like most USCIS components, in which staff are divided between FDNS Headquarters (HQFDNS) in Washington, DC and various USCIS field offices across the country. Eighteen

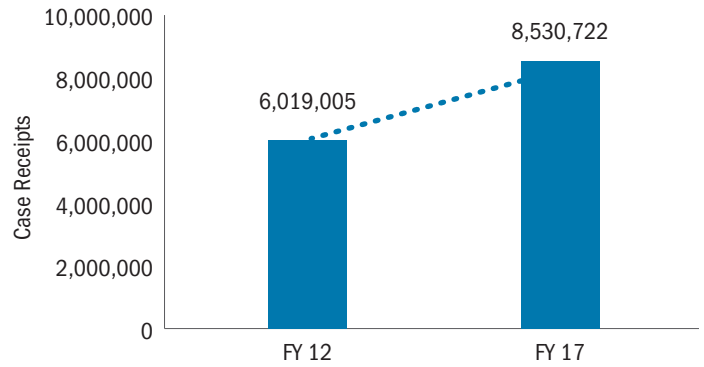
¹⁹ DHS Privacy Impact Assessment, “Fraud Detection and National Security Directorate,” DHS/USCIS/PIA-013-01 (Dec. 16, 2014); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf (accessed Feb. 25, 2018).

²⁰ Information provided by USCIS (Apr. 28, 2016 and Apr. 18, 2018).

²¹ See, e.g., “Affirmative Asylum Backlog” *infra* in this Report (describing increases in staffing within USCIS’ Asylum Division).

²² USCIS Webpage, “Service-wide Receipts and Approvals for All Form Types: Fiscal Year 2012: October 2011–September 2012” (Dec. 11, 2012); https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all-form-types-performance-data_fy2012_qtr4.pdf (accessed Apr. 24, 2018); “Number of Service-wide forms by Fiscal Year to Date, Quarter and Form Status 2017” (Dec. 07, 2017); https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY17Q4.pdf (accessed Apr. 24, 2018).

Figure 1.2: Total USCIS Case Receipts



Sources: Information provided by USCIS (Apr. 28, 2016 and Apr. 18, 2018); USCIS Webpages, “Service-wide Receipts and Approvals for All Form Types: Fiscal Year 2012: October 2011–September 2012” (Dec. 11, 2012); https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all-form-types-performance-data_fy2012_qtr4.pdf (accessed Apr. 24, 2018); “Number of Service-wide forms by Fiscal Year to Date, Quarter and Form Status 2017” (Dec. 07, 2017); https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY17Q4.pdf (accessed Apr. 24, 2018).

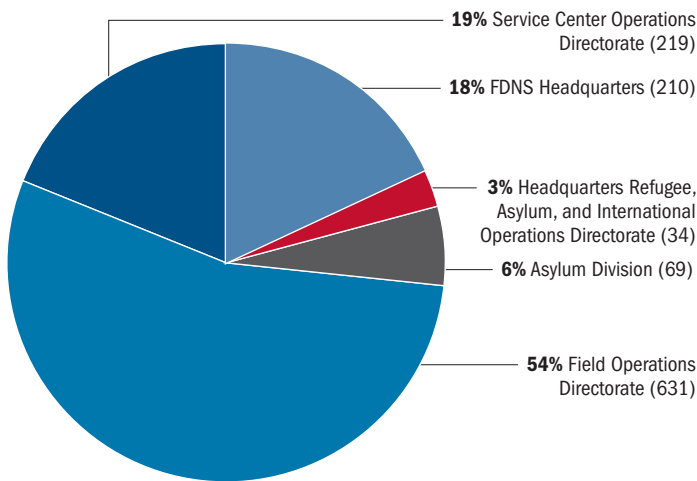
percent of FDNS’s on-board employees work at HQFDNS, which supports, among other divisions, a Fraud Division overseeing the Directorate’s anti-fraud activities.²³ In addition, every domestic USCIS field office, service center, and asylum office retains one or more FDNS officers, as do various USCIS offices abroad.²⁴ Although these field staff are employed by FDNS, they report in a unique relationship to both the Field Operations and FDNS Directorates. As of March 2018, a total of 1,163 FDNS employees currently work throughout the agency, with highest number of officers (631) assigned to the Field Operations Directorate (FOD). See Figure 1.3.

FDNS officers, both in headquarters and in the field, perform one of the Directorate’s critical activities: administrative investigations into suspected immigration

²³ Information provided by USCIS (Apr. 18, 2018).

²⁴ See DHS Privacy Impact Assessment “Fraud Detection and National Security Directorate,” DHS/USCIS/PIA-013-01 (Dec. 16, 2014); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf (accessed Feb. 25, 2018).

Figure 1.3: On-board FDNS Employees Within USCIS Directorates



Source: Information provided by USCIS (Apr. 18, 2018).

benefits fraud.²⁵ Information obtained through FDNS administrative investigations helps USCIS combat fraud in multiple ways. To begin with, it provides insights helpful to USCIS adjudicators when deciding benefits cases.²⁶ More broadly, it helps uncover fraud trends and vulnerabilities across the immigration process, informing the agency’s development of systemic remedies.

Below is a simplified description of FDNS’s fraud investigation process, including its intersection with ICE operations. This is a generalized summary—in practice the process may entail different stages and vary based on the associated benefit form type, nature of the potential fraud, and additional factors. See Figure 1.4.

²⁵ Complementing (and contrasting with) this work, ICE conducts criminal investigations into such fraud—investigations that may originate from USCIS referrals and rely on FDNS’ continuing support. See “The Aftermath of Fraud by Immigration Attorneys,” *before the* Subcommittee on Immigration Policy and Enforcement of the U.S. House Committee on the Judiciary, 112th Cong. 2nd Sess. (2012) (written statement of Sarah M. Kendall, FDNS Associate Director); http://judiciary.house.gov/_files/hearings/Hearings%202012/Kendall%2007242012.pdf (accessed May 24, 2018).

²⁶ See “The Aftermath of Fraud by Immigration Attorneys,” *before the* Subcommittee on Immigration Policy and Enforcement of the U.S. House Committee on the Judiciary, 112th Cong. 2nd Sess. (2012) (written statement of Sarah M. Kendall, FDNS Associate Director); http://judiciary.house.gov/_files/hearings/Hearings%202012/Kendall%2007242012.pdf (accessed May 24, 2018).

The FDNS Fraud Investigation Process

Stage 1—Initiation

A number of events trigger FDNS’s fraud investigation process. One catalyst is the submission of a fraud referral to FDNS by immigration officers or other USCIS adjudicators.²⁷ Officers undergo specific training on fraud indicators, identification of fraudulent documentation, and types of benefit fraud.²⁸ When officers encounter possible fraud, they may refer the implicated cases to FDNS for evaluation.²⁹ External agencies also make referrals to FDNS, as can members of the public through the USCIS fraud tip mailbox.³⁰

In addition to manual referrals, automated screenings conducted through FDNS-DS can prompt FDNS fraud investigations.³¹ USCIS’ receipt of an immigration benefit form or the capture of an applicant’s biometric fingerprints automatically activates an electronic screening mechanism within FDNS-DS called ATLAS.³² ATLAS pulls information from the relevant application or petition and associated biometric and biographic system checks, then runs that information through “a predefined set of rules to determine whether the information provided by the

²⁷ DHS Privacy Impact Assessment, “Fraud Detection and National Security Directorate,” DHS/USCIS/PIA-013-01 (Dec. 16, 2014); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf; “The Aftermath of Fraud by Immigration Attorneys,” *before the* Subcommittee on Immigration Policy and Enforcement of the U.S. House Committee on the Judiciary, 112th Cong. 2nd Sess. (2012) (written statement of Sarah M. Kendall, FDNS Associate Director); http://judiciary.house.gov/_files/hearings/Hearings%202012/Kendall%2007242012.pdf (accessed May 24, 2018).

²⁸ “Hearing on Vows for Visas: Investigating K-1 Fiancé Fraud,” *before the* U.S. Senate Committee on the Judiciary, 115th Cong. 1st Sess. (2017) (written statement of Field Operations Associate Director Daniel M. Renaud, Service Center Operations Associate Director Donald Neufeld, and FDNS Associate Director Matthew Emrich); <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-vows-visas-investigating-k-1-fiance-fraud-senate-committee-judiciary-march-15-2017> (accessed May 24, 2018).

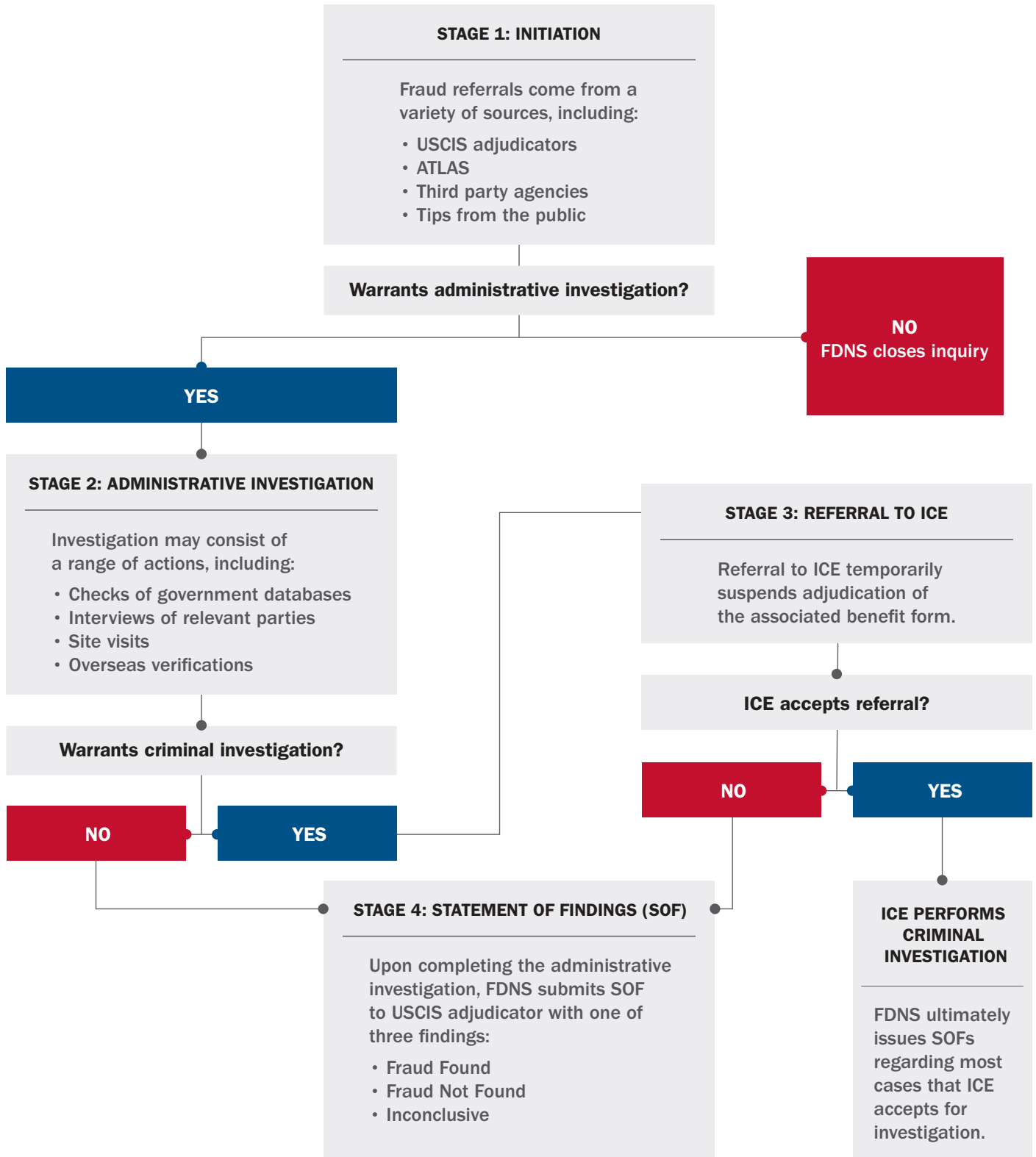
²⁹ *Id.*

³⁰ DHS Privacy Impact Assessment, “Fraud Detection and National Security Directorate,” DHS/USCIS/PIA-013-01 (Dec. 16, 2014); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf (accessed Apr. 26, 2018). See USCIS Webpage, “Report Immigration Scams” (Jul. 18, 2017); <https://www.uscis.gov/avoid-scams/report-scams> (accessed Jun. 11, 2018).

³¹ DHS Privacy Impact Assessment, “Fraud Detection and National Security Directorate Data System (FDNS-DS),” DHS/USCIS/PIA-013(a) (May 18, 2016); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdnsds-november2017.pdf> (accessed Apr. 26, 2018).

³² DHS Privacy Impact Assessment, “Fraud Detection and National Security Directorate Data System (FDNS-DS),” DHS/USCIS/PIA-013(a) (May 18, 2016); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdnsds-november2017.pdf> (accessed Apr. 26, 2018).

Figure 1.4: FDNS Fraud Investigation Flow Chart



Sources: See information provided by USCIS (Apr. 03, 2018 and Apr. 18, 2018); DHS Privacy Impact Assessment, “Fraud Detection and National Security Directorate Data System” (FDNS-DS), DHS/USCIS/PIA-013(a) (May 18, 2016); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdnsds-november2017.pdf> (accessed Apr. 26, 2018); “The Aftermath of Fraud by Immigration Attorneys,” *before the Subcommittee on Immigration Policy and Enforcement of the U.S. House Committee on the Judiciary*, 112th Cong. 2nd Sess. (2012) (written statement of Sarah M. Kendall, FDNS Associate Director); http://judiciary.house.gov/_files/hearings/Hearings%202012/Kendall%2007242012.pdf (accessed May 24, 2018); DHS Office of the Inspector General, “U.S. Citizenship and Immigration Services’ Tracking and Monitoring of Potentially Fraudulent Petitions and Applications for Family-Based Immigration Benefits,” OIG-13-97 (Jun. 2013); https://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-97_Jun13.pdf (accessed Apr. 26, 2018).

individual or obtained through the required checks presents a potential fraud, public safety, or national security concern.”³³ A rules match produces a “System-Generated Notification” (SGN).

Upon receipt of a referral/SGN, FDNS personnel review the matter to determine if it warrants administrative investigation.³⁴ This manual review may consist of additional systems checks and further research on the benefit seeker.³⁵ Relevant considerations in assessing the need for an investigation include “whether there is a reasonable suspicion of fraud that is clearly articulated and actionable.”³⁶ If FDNS determines that an investigation is necessary, it initiates one;³⁷ if not, FDNS closes the inquiry³⁸ and returns the file to that officer with an explanation of the decline.³⁹

Stage 2—Administrative Investigation

When FDNS determines administrative investigation is warranted, it takes some or all of the following steps: (1) checking government databases; (2) searching open source information, including social media; (3) reviewing government case files; (4) making physical

³³ *Id.*

³⁴ See DHS Privacy Impact Assessment for the Fraud Detection and National Security Directorate, DHS/USCIS/PIA-013-01 (Dec. 16, 2014); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf (accessed Feb. 25, 2017); DHS Privacy Impact Assessment for the Fraud Detection and National Security Directorate Data System (FDNS-DS), DHS/USCIS/PIA-013(a) (May 18, 2016); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2017.pdf> (accessed Apr. 26, 2018); “The Aftermath of Fraud by Immigration Attorneys,” *before the Subcommittee on Immigration Policy and Enforcement of the U.S. House Committee on the Judiciary*, 112th Cong. 2nd Sess. (2012) (written statement of Sarah M. Kendall, FDNS Associate Director); http://judiciary.house.gov/_files/hearings/Hearings%202012/Kendall%2007242012.pdf (accessed May 24, 2018).

³⁵ See DHS Privacy Impact Assessment for the Fraud Detection and National Security Directorate, DHS/USCIS/PIA-013-01 (Dec. 16, 2014); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf (accessed Feb. 25, 2017).

³⁶ “The Aftermath of Fraud by Immigration Attorneys,” *before the Subcommittee on Immigration Policy and Enforcement of the U.S. House Committee on the Judiciary*, 112th Cong. 2nd Sess. (2012) (written statement of Sarah M. Kendall, FDNS Associate Director); http://judiciary.house.gov/_files/hearings/Hearings%202012/Kendall%2007242012.pdf (accessed May 24, 2018). The Ombudsman’s Office did not identify publicly available information defining “clearly articulated and actionable.”

³⁷ DHS Privacy Impact Assessment, “Fraud Detection and National Security Directorate Data System (FDNS-DS), DHS/USCIS/PIA-013(a) (May 18, 2016); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2017.pdf> (accessed Feb. 25, 2018).

³⁸ *Id.*

³⁹ DHS Privacy Impact Assessment for the Fraud Detection and National Security Directorate, DHS/USCIS/PIA-013-01 (Dec. 16, 2014); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf (accessed Apr. 26, 2018).

site visits to locations ranging from residences to workplaces; (5) interviewing applicants, petitioners, and witnesses; (6) issuing written RFEs; and (7) carrying out overseas verifications.⁴⁰ FDNS sends its findings to USCIS adjudicators, who determine immigration benefit eligibility.

Pursuant to 8 CFR § 103.2(b)(18), USCIS may place “in abeyance” cases associated with ongoing investigations. Under this regulation, once an investigation has begun, USCIS may withhold adjudication of an associated case when the agency determines that disclosure to the benefit seeker of information pertaining to that adjudication would prejudice the investigation. “Information” may include facts uncovered through the investigation or the existence of the investigation itself.⁴¹

Stage 3—Referral to ICE (as warranted)

If during an administrative investigation FDNS finds information appearing to justify a criminal investigation,⁴² it may refer the case to ICE through an interagency Memorandum of Agreement.⁴³ ICE’s Benefits Fraud Unit conducts its own review, which then may refer the matter to Homeland Security Investigations (HSI). HSI either accepts it for criminal investigation, or declines and returns it to FDNS for resumption of an administrative investigation. ICE must notify FDNS within 60 days whether it will accept or decline a fraud referral.⁴⁴ HSI

⁴⁰ *Id.*

⁴¹ FDNS officers, USCIS adjudicators, and outside agencies may request withholding of adjudication. A USCIS District Director may authorize the request if, among other criteria, it meets regulatory requirements and serves the government’s best interests. USCIS must document the request, the District Director’s rationale for authorization, and additional supporting information. If an investigation has not concluded within 12 months after withholding begins, USCIS may extend the withholding period if the District Director obtains approval from his or her supervisor, as appropriate, to extend withholding for an additional 6 months. After 18 months, withholding may continue only if HQFDNS and the headquarters of the adjudicating directorate jointly approve an extension. Information provided by USCIS (Apr. 18, 2018).

⁴² “The Aftermath of Fraud by Immigration Attorneys,” *before the Subcommittee on Immigration Policy and Enforcement of the U.S. House Committee on the Judiciary*, 112th Cong. 2nd Sess. (2012) (written statement of Sarah M. Kendall, FDNS Associate Director); http://judiciary.house.gov/_files/hearings/Hearings%202012/Kendall%2007242012.pdf (accessed May 24, 2018).

⁴³ See “The Security of U.S. Visa Programs,” *before the U.S. Senate Committee on Homeland Security and Governmental Affairs*, 114th Cong. 2nd Sess. (2016) (Post-Hearing Questions for the Record Submitted to the Honorable Leon Rodriguez from Senator Ron Johnson); <https://www.gpo.gov/fdsys/pkg/CHRG-114shrg22768/pdf/CHRG-114shrg22768.pdf> (accessed May 24, 2018).

⁴⁴ Information provided by USCIS (Apr. 18, 2018).

declination does not bar USCIS from reaching a positive fraud finding and/or denying the associated benefit form.⁴⁵

FDNS's referral to ICE temporarily suspends USCIS adjudication of the associated benefit request.⁴⁶ Within 120 days of ICE's acceptance of a referral, ICE must notify FDNS in writing if it wishes to extend the adjudication suspension. If ICE does not provide timely notification, USCIS may resume adjudicating.⁴⁷ When criminal investigations run longer than a year from the date of referral acceptance, ICE must send FDNS an investigation update within that first year, then every 12 months thereafter.⁴⁸ FDNS ultimately issues a Statement of Findings (SOF) concerning most matters that ICE accepts for criminal investigation.⁴⁹

FDNS may lend information and expertise to HSI during its criminal investigations.⁵⁰ USCIS may also refer cases to law enforcement agencies other than ICE.⁵¹

Stage 4—Statement of Findings

Once FDNS completes an administrative investigation, it returns the case to the appropriate USCIS adjudications unit along with an SOF.⁵² The SOF summarizes FDNS's investigation and contains one of three determinations: “(1) Fraud Found; (2) Fraud Not Found; or (3) Inconclusive.”⁵³ This document informs the USCIS adjudicator's decision to approve, deny, or take other

action on the case.⁵⁴ Where appropriate, the adjudicator may then place the applicant in removal proceedings by issuing a Notice to Appear (NTA).⁵⁵ In instances where USCIS had approved a case prior to FDNS investigation, the SOF may support a decision to revoke the benefit awarded and initiate removal proceedings.⁵⁶

Fraud Scheme in Focus

The recent trial of an immigration attorney who ran a years-long fraud scheme illustrates the harmfulness of immigration fraud and shows FDNS's contributions toward combatting it. From 2013 to 2017, without his clients' knowledge, the attorney filed with USCIS over 250 fraudulent Forms I-192, *Application for Advance Permission to Enter as a Nonimmigrant*.⁵⁷ According to the Department of Justice (DOJ), these filings falsely portrayed the applicants as victims of crimes who had assisted law enforcement in associated investigations. The attorney charged his clients, who were unaware of his illegal actions, \$3,000 for each application.⁵⁸ USCIS consistently denied these cases.⁵⁹ The attorney thereby deprived good faith individuals of substantial funds and other opportunities at relief, while adding hundreds of fraudulent cases to the agency's adjudication queue. On March 9, 2018, the court sentenced him to 75 months in prison for defrauding clients and USCIS, and ordered him to compensate his victims a total amount of up to

⁴⁵ “The Aftermath of Fraud by Immigration Attorneys,” *before the* Subcommittee on Immigration Policy and Enforcement of the U.S. House Committee on the Judiciary, 112th Cong. 2nd Sess. (2012) (written statement of Sarah M. Kendall, FDNS Associate Director); http://judiciary.house.gov/_files/hearings/Hearings%202012/Kendall%2007242012.pdf (accessed May 24, 2018).

⁴⁶ *Id.*

⁴⁷ Information provided by USCIS (Apr. 18, 2018).

⁴⁸ *Id.*

⁴⁹ Information provided by USCIS (Apr. 03, 2018).

⁵⁰ “The Aftermath of Fraud by Immigration Attorneys,” *before the* Subcommittee on Immigration Policy and Enforcement of the U.S. House Committee on the Judiciary, 112th Cong. 2nd Sess. (2012) (written statement of Sarah M. Kendall, FDNS Associate Director); http://judiciary.house.gov/_files/hearings/Hearings%202012/Kendall%2007242012.pdf (accessed May 24, 2018).

⁵¹ *Id.*

⁵² *See, e.g.*, DHS Office of the Inspector General, “U.S. Citizenship and Immigration Services' Tracking and Monitoring of Potentially Fraudulent Petitions and Applications for Family-Based Immigration Benefits,” OIG-13-97 (Jun. 2013); https://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-97_Jun13.pdf (accessed Apr. 26, 2018).

⁵³ *Id.*

⁵⁴ *See, e.g.*, DHS Office of the Inspector General, “U.S. Citizenship and Immigration Services' Tracking and Monitoring of Potentially Fraudulent Petitions and Applications for Family-Based Immigration Benefits,” OIG-13-97 (Jun. 2013); https://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-97_Jun13.pdf (accessed Apr. 26, 2018).

⁵⁵ “The Aftermath of Fraud by Immigration Attorneys,” *before the* Subcommittee on Immigration Policy and Enforcement of the U.S. House Committee on the Judiciary, 112th Cong. 2nd Sess. (2012) (written statement of Sarah M. Kendall, FDNS Associate Director); http://judiciary.house.gov/_files/hearings/Hearings%202012/Kendall%2007242012.pdf (accessed May 24, 2018).

⁵⁶ *Id.*

⁵⁷ DOJ Press Release, “Immigration Attorney Sentenced to More Than Six Years in Prison for Fraud Scheme and Identity Theft in Relation to Visa Applications” (Mar. 09, 2018); <https://www.justice.gov/opa/pr/immigration-attorney-sentenced-more-six-years-prison-fraud-scheme-and-identity-theft-relation> (accessed Apr. 24, 2018).

⁵⁸ *Id.*

⁵⁹ *See* Susan Orr, “Indianapolis Attorney Pleads Guilty to Immigration Fraud,” *Indiana Lawyer* (Dec. 01, 2017); <https://www.theindianalawyer.com/articles/45521-indianapolis-attorney-pleads-guilty-to-immigration-fraud> (accessed Apr. 24, 2018).

\$750,000.⁶⁰ DOJ credited FDNS for contributing to the successful investigation of this scheme.⁶¹

Recent Anti-Fraud Initiatives

In tandem with such fraud investigations, FDNS and other federal agencies have recently implemented or begun implementing a range of initiatives designed, in part or whole, to more effectively combat immigration benefits fraud. These include the TSVVP, launched by FDNS in 2017,⁶² which to date has focused primarily on H-1B petitioner worksite visits.⁶³ In contrast to ASVVP site visits, which FDNS has historically conducted pursuant to a random selection of H-1B petitions,⁶⁴ TSVVP “seeks to reduce fraud by implementing a criteria-based referral mechanism for site visits where fraud and abuse may be more likely to occur.”⁶⁵ TSVVP is one prong of a broader FDNS shift to a “risk-based” anti-fraud approach that emphasizes, among other principles, allocation of Directorate resources as informed by the likelihood of fraud.⁶⁶

In addition to FDNS, the Refugee, Asylum and International Operations Directorate (RAIO) is pursuing a range of initiatives designed to better detect and prevent fraud. These include the development of analytic tools to automatically compare the text of affirmative asylum applications to a database of applications for the purpose of identifying boilerplate language and more effectively rooting out large-scale asylum fraud schemes.⁶⁷ Also, to identify fraud earlier in the application process, USCIS is collaborating with the United Nations High Commissioner for Refugees (UNHCR) to build UNHCR’s capacity to capture refugee applicants’ biometrics information before the cases undergo USCIS processing.⁶⁸ As discussed in this Report’s articles on the *Affirmative Asylum Backlog* and *Background Checks*, the Asylum Division has begun

staffing an asylum vetting center in Atlanta, Georgia that will centralize key vetting functions.⁶⁹ Finally, since 2016, FDNS’s Social Media Division has reviewed social media content associated with some asylum and refugee applicants, which can help adjudicators assess the credibility of these individuals’ claims.⁷⁰

Performance Measures and Challenges

FDNS maintains internal performance measures by which it evaluates performance, including efficiency, and reports that it successfully met all internal goals for FY 2017. In particular, FDNS indicates that in FY 2017 “91.7% of immigration benefits with a potential finding of fraud were not approved.”⁷¹ This represents a very slight uptick from 91.3 percent in FY 2016.⁷²

Efficiency of Investigations

The issue of efficiency in the investigation of potential immigration benefits fraud is important and complicated. Efficient investigations help bring bad actors to justice, deter further abuse in the immigration system, maintain fairness for would-be immigrants with *bona fide* applications, and preserve the robustness of the immigration system to serve the American people. The complexity of FDNS fraud investigations, however, makes it difficult to assess their efficiency. A case may require third agency input, link to a broad conspiracy scheme requiring years to investigate,⁷³ or pose other variables that complicate completion estimates, rendering certain deadlines impracticable and even harmful. An artificially rushed inquiry risks prejudicing a good faith benefit seeker or clearing an unscrupulous one.

Citing the complexity of fraud investigations, FDNS does not maintain performance goals relating to the overall length of its fraud investigations.⁷⁴ Instead, the Directorate relies on other mechanisms to monitor and advance the status of investigations, including ongoing reports identifying which cases within FDNS’s purview remain open and why.⁷⁵ To help isolate and respond to specific factors influencing delays, FDNS can

⁶⁰ DOJ Press Release, “Immigration Attorney Sentenced to More Than Six Years in Prison for Fraud Scheme and Identity Theft in Relation to Visa Applications” (Mar. 09, 2018); <https://www.justice.gov/opa/pr/immigration-attorney-sentenced-more-six-years-prison-fraud-scheme-and-identity-theft-relation> (accessed Apr. 24, 2018).

⁶¹ *Id.*

⁶² Information provided by USCIS (Apr. 18, 2018).

⁶³ Information provided by USCIS (Apr. 03, 2018).

⁶⁴ See DHS Office of the Inspector General, “USCIS Needs a Better Approach to Verify H-1B Visa Participants,” OIG-18-03 (Oct. 2017); <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-18-03-Oct17.pdf> (accessed May 24, 2018).

⁶⁵ Information provided by USCIS (Apr. 18, 2018).

⁶⁶ Information provided by USCIS (Apr. 03, 2018).

⁶⁷ Information provided by USCIS (Mar. 22, 2018).

⁶⁸ *Id.*

⁶⁹ See “Affirmative Asylum Backlog” and “Background Checks” *infra* in this Report.

⁷⁰ See information provided by USCIS (Apr. 18, 2018).

⁷¹ Information provided by USCIS (Apr. 18, 2018).

⁷² *Id.*

⁷³ Information provided by USCIS (Mar. 22, 2018).

⁷⁴ *Id.*

⁷⁵ *Id.*

search its case tracking data based on a range of fields, including the identity of individual officers conducting the investigations.⁷⁶

FDNS is in the process of improving how it tracks the length of fraud investigations. FDNS currently tracks the length on investigations from the creation of a CME to the issuance of SOFs, but does not track the length of an investigation from the date of a specific referral, as it does not comprehensively track the date of a fraud referral.⁷⁷ FDNS reports, however, that it is currently developing the capability to record the date of referral and thus track the length of investigations from referral to the SOF.⁷⁸

With respect to the data FDNS currently tracks, the chart below provides insight into FDNS’s performance. Overall, it shows that for SOFs issued in FY 2017, approximately 50 percent were issued within 91 days of the creation of the CME. In addition, the average length of an investigation, measured from CME to SOF, was approximately 269 days. *See* Figure 1.5. The fact that five percent of the SOFs required a considerably longer time (3 years or more) to complete reflects the fact that some investigations are significant, complex, and thus lengthy, leading to substantial delays for those applicants whose cases are involved in them.

Figure 1.5: Average Days from CME Created or Reopened to SOF Created for Fraud Cases and Leads, where the SOF was Created in FY 2017

Year	Average	Average Days at 50th Percentile
2017	269 Days	91 Days

Note: Data based on all SOFs created during FY17 for fraud leads and fraud cases. The 50th percentile was included because 5 percent of the SOFs required more than 3 years to complete. These cases are most likely large scheme cases that take a significant amount of time to complete.

Source: Information provided by USCIS (May 11, 2018).

⁷⁶ *Id.*

⁷⁷ Information provided by USCIS (Apr. 18, 2018).

⁷⁸ *Id.*

Requests for case assistance submitted to the Ombudsman’s Office also provide some visibility into the relationship between fraud investigations and overall case processing times, suggesting that a small number of cases linked to fraud inquiries remain pending for significant periods. In 2017, individuals and employers submitted 322 requests for case assistance relating to applications and petitions that the Ombudsman’s Office determined were under “extended review” by USCIS due to possible fraud.⁷⁹ As of April 17, 2018, 51 percent of that total had been removed from extended review in response to USCIS’ adjudication of the case or another agency’s action.⁸⁰ Of the remaining cases, 81 percent had been pending with USCIS for over 2 years, 10 percent of which have been pending for more than 5 years.⁸¹

Figure 1.6 provides a more complete breakdown of the pendency periods for this latter group of extended review cases.⁸² The data presented in Figure 1.6 reflect those requests for case assistance submitted to the Ombudsman’s Office during the reporting period, not in prior years. It represents only a sample of cases associated with fraud investigations, and only cases still unresolved. This information therefore serves as an anecdotal illustration of processing periods for some cases under suspicion of fraud rather than a statistically representative profile.

In all, the Ombudsman recognizes the importance of fraud investigation efficiency, the challenges inherent in its measurement, and the dangers of rushing the investigative process. The Ombudsman’s Office will continue its dialogue with FDNS on the issue of efficiency in investigations as well as in anti-fraud activities generally.

Transformation

Limited progress in “transformation”—USCIS’ effort to convert from a paper-based to a comprehensive electronic case filing, adjudication, and management system⁸³—has restricted the agency’s capacity to detect fraud. For

⁷⁹ Information obtained through requests for case assistance.

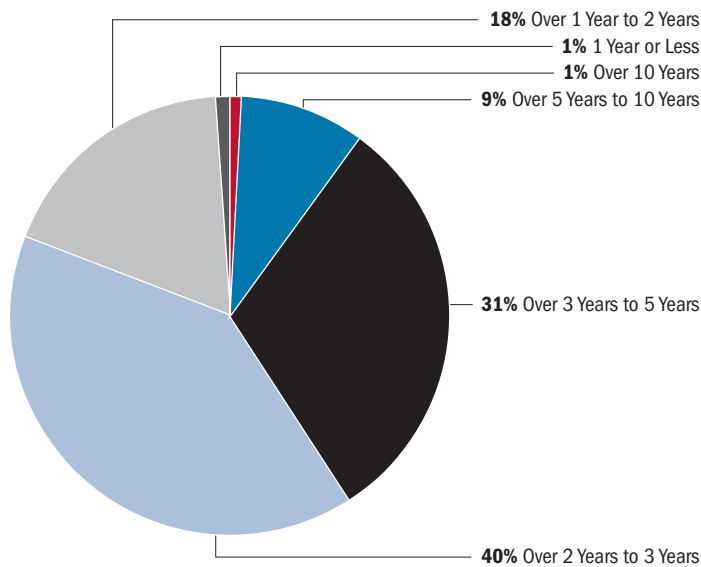
⁸⁰ Information obtained through requests for case assistance.

⁸¹ Information obtained through requests for case assistance.

⁸² The data presented in Figure 1.6 represent only a sample of cases associated with fraud investigations, and only cases still unresolved. This information serves as an anecdotal illustration of processing times for some cases under suspicion of fraud rather than a statistically representative profile. Moreover, the pendency periods reflect the entire length of time for which the cases have been pending, not merely the span during which the cases may have been under fraud investigation. This data does not in and of itself reflect the relative efficiency of the associated investigations.

⁸³ *See* “Transformation” *infra* in this Report.

Figure 1.6: Pendency Periods for Open Cases Linked to Possible Fraud Based on Requests for Case Assistance Submitted to the Ombudsman’s Office in Calendar Year 2017



Source: Information provided by Ombudsman Case Assistance Requests (Apr. 17, 2018).

instance, the continued necessity of shipping paper-based files, applications, and petitions—from adjudicators to FDNS to ICE or other agencies—delays the agency’s case review and fraud identification processes;⁸⁴ this represents an inefficiency that full digitization would help eliminate. A paper-based system also hinders the availability of electronic text analytic tools enabling the cross-comparison of applications for purposes of pinpointing boilerplate

⁸⁴ Information provided by USCIS (Apr. 18, 2018).

language and possible fraud schemes.⁸⁵ Universal electronic case filing could facilitate those tools’ implementation. Better technology would also help FDNS leadership discern how many initial fraud denials are overturned on appeal to measure performance and improve training. These examples represent only some of the ways in which a fully realized electronic platform would strengthen the agency’s anti-fraud operations.

Conclusion

Anti-fraud measures, including FDNS administrative investigations, are critical to limiting unscrupulous actors’ access to the immigration benefits system. Reflecting the critical nature of its work and the ever-increasing number of applications and petitions, FDNS has expanded its activities and increased its staff. Fraud investigations are, by their very nature, complex and can take considerable time, which delays case processing. FDNS is improving its performance measures but would be aided in its effort to stop fraud by the full implementation of transformation, or digitization, of the immigration application process. While recognizing the challenges in assessing the efficiency of variable-rich investigations and other anti-fraud activities, the Ombudsman’s Office will continue to monitor the impact of those activities on both the security and timely delivery of immigration benefits.

⁸⁵ See, e.g., U.S. Government Accountability Office Report, “Asylum: Additional Actions Needed to Assess and Address Fraud Risks,” GAO-16-50 (Dec. 2015); <https://www.gao.gov/assets/680/673941.pdf> (accessed Apr. 25, 2018).



Transformation

Responsible Offices: *Office of Information Technology; Office of Performance and Quality; and External Affairs Directorate*

Key Facts and Findings

- In 2017, USCIS revised its overarching electronic case management and benefits processing goals. USCIS now prioritizes the development of core capabilities, which cut across all form types, and the achievement of broader transformation business goals.⁸⁶
- In tandem with these new goals, USCIS consolidated the former Office of Transformation Coordination into the Office of Information Technology (OIT), which reports to the USCIS Director.⁸⁷

⁸⁶ Information provided by USCIS (Feb. 23, 2018).

⁸⁷ Information provided by USCIS (Apr. 12, 2017).

- In 2018, the DHS Office of Inspector General (OIG) verified that USCIS had implemented improvements in its production and delivery of green cards processed through the Electronic Immigration System (ELIS), the platform for the transformation initiative.⁸⁸ The OIG awaits notification from USCIS that the agency has implemented OIG recommendations for improving the electronic processing of naturalization applications.⁸⁹
- Stakeholders reported improvements in ELIS functionality vis-à-vis the immigrant visa (IV) fee payment system, through which individuals can submit information, pay fees via credit card, and set

⁸⁸ DHS OIG, “Verification Review: Better Safeguards Are Needed in USCIS Green Card Issuance (OIG-17-11),” OIG-18-61 (Apr. 10, 2018); <https://www.oig.dhs.gov/sites/default/files/assets/2018-04/OIG-18-61-Apr18.pdf> (accessed Apr. 19, 2018).

⁸⁹ Information provided by DHS OIG (Feb. 26, 2018).

up the delivery of green cards using online accounts. Stakeholders continued to voice concerns over a range of ELIS issues, including challenges in updating mailing addresses and the continued inability to electronically file fee waivers.⁹⁰

Background

In 2006, USCIS launched its “Transformation” initiative, intended to convert the agency’s paper-based case filing, management, and adjudication systems into a single accessible electronic platform.⁹¹ USCIS developed ELIS to be the electronic case management system delivering these innovations to USCIS offices and the public. ELIS is a web-based system designed to centralize USCIS filings and adjudications, transforming the agency’s business operations “from a ‘transaction-centric’ model to a ‘person-centric’ model” through the establishment and maintenance of accounts unique to each applicant.⁹² In pursuing this electronic filing and processing environment, USCIS sought “to modernize the paper-based immigration benefits process, enhance national security and system integrity, and improve customer service and operational efficiency.”⁹³

USCIS intended its electronic case management system to:

- Allow applicants to submit digital applications through the website and track the status online;
- Enable the agency to automatically screen incoming applications to identify potential fraud and security issues;
- Provide adjudicators with electronic access to applications, relevant guidance, and external databases;
- Permit managers to track and allocate workload; and

⁹⁰ Information provided by stakeholders to the Ombudsman (Feb. 27 and Mar. 2, 2018).

⁹¹ Transformation has since been retitled as “transformation” for reasons explained further in this article, and will be referred to throughout by its current iteration. Prior to January 2017, the program was run by a separate Office of Transformation within USCIS. After that time, it was subsumed into USCIS’ Office of Information Technology, where it is one of many programs run by that office.

⁹² Privacy Impact Assessment, USCIS Electronic Immigration System, DHS/USCIS/PIA-056 (May 16, 2016).

⁹³ U.S. Government Accountability Office Report, “Immigration Benefits System: Significant Risks in USCIS Efforts to Develop its Adjudication and Case Management System,” GAO-17-486T (Mar. 16, 2017) at 3; <https://www.gao.gov/assets/690/683403.pdf> (accessed Apr. 19, 2018).

- Provide electronic linkages between ELIS and other agencies for data sharing.⁹⁴

Since the program’s inception, USCIS has faced substantial obstacles in implementation.⁹⁵ System breakdowns, design flaws, and partially-functioning programs that were not properly tested prior to deployment repeatedly interfered with achieving milestones. Consequently, the initiative has experienced significant cost increases and schedule delays.⁹⁶ As the Acting Director of USCIS acknowledged in March 2017, “[t]he original scope and purpose of the Transformation program was broad and vast. Unfortunately these broad intentions have made it difficult for the program to focus on specific business objectives, and to make good prioritization decisions about where to focus resources.”⁹⁷

These ongoing challenges, chronicled in a series of audits and reports from both GAO and the DHS OIG,⁹⁸ led to management and development overhauls of the program, one of which resulted in a major “restart” of USCIS ELIS development in 2015. This second version of ELIS, used today, still poses operational burdens for the agency, but has demonstrated more flexibility, enabling USCIS to move forward with online adjudications and filings.

⁹⁴ *Id.*

⁹⁵ *Id.* at 5.

⁹⁶ *Id.* at 5-9.

⁹⁷ U.S. Government Accountability Office Report, “Immigration Benefits Vetting: Examining Critical Weaknesses in USCIS Systems,” before the Subcommittee on Oversight and Management Efficiency of the US House Homeland Security Committee, 2017, 115th Cong. 1st Sess. 1–2 (Mar. 16, 2017) (written testimony of Lori Scialabba, Acting USCIS Director); <https://www.dhs.gov/news/2017/03/16/written-testimony-uscis-acting-director-house-homeland-security-subcommittee> (accessed May 4, 2018).

⁹⁸ U.S. Government Accountability Office Report, “Immigration Benefits System: Significant Risks in USCIS Efforts to Develop its Adjudication and Case Management System,” GAO-17-486T (Mar. 16, 2017) at 3; <https://www.gao.gov/assets/690/683403.pdf> (accessed Apr. 19, 2018); “Immigration Benefits System: U.S. Citizenship and Immigration Services Can Improve Program Management,” GAO-16-467 (Jul. 7, 2016); <http://www.gao.gov/assets/680/678266.pdf> (accessed May 10, 2017); “Immigration Benefits System: Better Informed Decision Making Needed on Transformation Program,” GAO-15-415 (pub. May 2015, released June 2015); <https://www.gao.gov/assets/680/670259.pdf> (accessed May 17, 2017); “Immigration Benefits: Consistent Adherence to DHS’s Acquisition Policy Could Help Improve Transformation Program Outcomes,” GAO-12-66 (Nov. 22, 2011); <https://www.gao.gov/assets/590/586460.pdf> (accessed May 17, 2017); “USCIS Transformation: Improvements to Performance, Human Capital, and Information Technology Management Needed as Modernization Proceeds,” GAO-07-1013R (Jul. 17, 2007); <https://www.gao.gov/assets/100/95013.pdf> (accessed May 17, 2018); “Information Technology: Near-Term Effort to Automate Paper-Based Immigration Files Needs Planning Improvements,” GAO-06-375 (Mar. 31, 2006); <https://www.gao.gov/assets/250/249529.pdf> (accessed May 16, 2018).

Originally driven by scheduled deadlines, USCIS insufficiently tested the system prior to deployment.⁹⁹ This led to operational failures that hindered the functionality of each form that was introduced in ELIS and also delayed the implementation of new forms into the system.¹⁰⁰ The problems ELIS had processing the Form N-400, *Application for Naturalization*, through 2016 and 2017 were particularly severe because repeated ELIS breakdowns caused work stoppages at a time when application submissions were rising, leading to even longer backlogs. However, the implementation of electronic adjudication, and then filing, of the N-400 represents the most significant achievement for transformation efforts to date, given the complexity and breadth of the adjudication across all USCIS field and district offices as well as the National Benefits Center (NBC).

The DHS OIG,¹⁰¹ GAO,¹⁰² and the Ombudsman’s Office¹⁰³ have reported multiple times on the challenges faced by USCIS and the public in connection with the implementation of forms deployment in ELIS. Through

⁹⁹ DHS OIG, “USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery,” OIG-18-23 (Nov. 30, 2017); <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf> (accessed Apr. 19, 2018); and DHS OIG, “Management Alert-U.S. Citizenship and Immigration Services’ Use of the Electronic Immigration System for Naturalization Benefits Processing,” OIG-17-26-MS (Jan. 19, 2017); <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-26-MA-011917.pdf> (accessed Apr. 30, 2008); see Ombudsman’s Annual Report 2017, p. 9.

¹⁰⁰ See Ombudsman’s Annual Report 2017, p. 53.

¹⁰¹ DHS Office of the Inspector General, “Verification Review: Better Safeguards Are Needed in USCIS Green Card Issuance, OIG-17-11,” OIG-18-61 (Apr. 10, 2018); <https://www.oig.dhs.gov/sites/default/files/assets/2018-04/OIG-18-61-Apr18.pdf> (accessed April 19, 2018); “USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery,” OIG-18-23 (Nov. 30, 2017); <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf> (accessed Apr. 19, 2018); “Management Alert-U.S. Citizenship and Immigration Services’ Use of the Electronic Immigration System for Naturalization Benefits Processing,” OIG-17-26-MA (Jan. 19, 2017); <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-26-MA-011917.pdf> (accessed Apr. 20, 2018); “USCIS Automation of Immigration Benefits Processing Remains Ineffective,” OIG 16-48 (Mar. 9, 2016); <https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/2016/OIG-16-48-Mar16.pdf> (accessed Apr. 20, 2018); “U.S. Citizenship and Immigration Services’ Progress in Modernizing Information Technology,” OIG-07-11 (Nov. 30, 2006); https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIG_07-11_Nov06.pdf (accessed Apr. 20, 2018); “USCIS Faces Challenges in Modernizing Technology,” OIG-05-41 (Sep. 2005); https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIG_05-41_Sep05.pdf (accessed Apr. 20, 2018).

¹⁰² U.S. Government Accountability Office Report, “Immigration Benefits System: Significant Risks in USCIS Efforts to Develop its Adjudication and Case Management System,” GAO-17-486T (Mar. 16, 2017); <https://www.gao.gov/assets/690/683403.pdf> (accessed Apr. 19, 2018).

¹⁰³ Ombudsman’s Annual Report 2017, pp. 51-55; Ombudsman’s Annual Report 2016, pp. 41-42; Ombudsman’s Annual Report 2015, pp. 86-89.

requests for case assistance and public outreach events, stakeholders have notified the Ombudsman’s Office of their own substantial frustrations with transformation.¹⁰⁴ Stakeholders noted they were unable to obtain information on processing times through their ELIS accounts because the ELIS accounts did not connect to other USCIS systems such as CLAIMS 4,¹⁰⁵ the system USCIS used to process and track naturalization applications before ELIS.¹⁰⁶

Another frequent complaint about transformation has been its inability to meet deadlines for implementing new form types in ELIS.¹⁰⁷ Technological advances have enabled USCIS to electronically process some form types that applicants submit by paper once the Lockbox processes them into ELIS. Taking into account both mailing and electronic methods of filing, as of December 2017, USCIS was processing in ELIS the forms and services listed below. See Figure 2.1.

Figure 2.1: USCIS Forms Processed through ELIS

Immigrant Visa Fee	(payment online and processing of permanent resident card)
Form I-90	<i>Application to Replace Permanent Resident Card</i>
Form I-131	<i>Application for Travel Document</i>
Form I-131A	<i>Application for Travel Document (Carrier Documentation) (fee payment online)</i>
Form I-765	<i>Application for Employment Authorization (concurrently filed with Form I-821 or I-821D)</i>
Form I-821	<i>Application for Temporary Protected Status</i>
Form I-821D	<i>Consideration of Deferred Action for Childhood Arrivals</i>
Form N-336	<i>Request for Hearing on a Decision in Naturalization Proceedings</i>
Form N-400	<i>Application for Naturalization</i>
Form N-445	<i>Notice of Naturalization Oath Ceremony</i>
Form N-565	<i>Application for Replacement Naturalization/ Citizenship Document</i>
Form G-28	<i>Notice of Entry of Appearance as Attorney or Accredited Representative</i>
Form G-281	<i>Notice of Entry of Appearance as Attorney in Matters Outside the Geographical Confines of the United States</i>

Source: Information provided by USCIS (Apr. 17, 2018).

¹⁰⁴ Information provided by stakeholders to the Ombudsman (Feb. 27 and Mar. 2, 2018).

¹⁰⁵ ELIS accounts, obtained through the *myUSCIS* portal, are what the public uses to access the system; they do not connect to other USCIS databases such as CLAIMS 4. Thus customers are not able to access forms and information that are elsewhere in USCIS systems, but not in ELIS.

¹⁰⁶ See generally Privacy Impact Assessment, USCIS Electronic Immigration System, DHS/USCIS/PIA-056 (May 16, 2016); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-056-uscis-eliseappendixupdate-february2017.pdf> (accessed May 25, 2018).

¹⁰⁷ Information provided by USCIS (Feb. 23, 2018).

In all, forms processed through ELIS now represent 40 percent of USCIS’ total workload.¹⁰⁸ USCIS intends to increase electronic processing of its workload by adding its high-volume forms into ELIS.¹⁰⁹

USCIS Response: Shift in Transformation Objectives and Structure

Responding to the series of critical reports, in 2017, USCIS significantly reorganized the transformation program. To begin with, the agency fundamentally changed transformation’s goals, marking a significant departure from the agency’s course over a decade of development. Until that point, USCIS had based its transformation milestones on the introduction of specific forms by set dates, even when those forms failed to meet the needs of the agency or the filing community. USCIS has indicated that this emphasis on timeliness over quality contributed to ongoing failures in ELIS processing of Form N-400, *Application for Naturalization*—which led to an October 2016 status “breach.”¹¹⁰ The end result was that the agency could not complete its launch of the citizenship product line by the deadline. Failure to meet this milestone forced USCIS to suspend further development in ELIS.¹¹¹

In response, USCIS reevaluated and reformed its model. Now, instead of scheduled form rollouts, the agency prioritizes the development of what it considers “ELIS core capabilities” applicable across form types and electronic systems. Those capabilities include:

- account setup and case/documentation intake;
- workflow management and case processing;
- biometric identification and appointment scheduling;
- continuous background checks;
- document and notice issuance; and
- e-records and data sharing.

USCIS envisions that the development of these capabilities will help the agency achieve its newly devised “transformation business goals”—depicted in Figure 2.2.

¹⁰⁸ Information provided by USCIS (Apr. 17, 2018).

¹⁰⁹ *Id.*

¹¹⁰ Information provided by USCIS (Feb. 23, 2018).

¹¹¹ DHS Office of the Inspector General, “USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery,” OIG-18-23 (Nov. 30, 2017) at 20-21; <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf> (accessed Apr. 19, 2018).

Figure 2.2: USCIS’ New Transformation Business Goals

TRANSFORMATION BUSINESS GOALS			
GOAL 1: EFFECTIVENESS	GOAL 2: SECURITY	GOAL 3: ADJUDICATION TIME	GOAL 4: LEAD TIME
Make sure the right information is available to adjudicators and that it is accurate	Adopt a best practices approach to securing the system from both internal and external threats	Reduce the amount of time spent by adjudicators on each case	Reduce the lead time (as experienced by the applicant/petitioner) for applications and petitions
GOAL 5: INTEGRATION	GOAL 6: DECOMMISSIONING	GOAL 7: PAPER MOVEMENT	GOAL 8: AGENCY WORKLOAD
Integrate with systems in order to share information and to accomplish their business goals	Reduce the maintenance burden of legacy systems	Reduce the movement of paper files	Increase the number of cases processed in ELIS

Source: Information provided by USCIS (Feb. 23, 2018).

As USCIS revised transformation’s goals, it also reshaped the underlying organizational structure that supports it. In January 2017, USCIS merged the Office of Transformation, which was responsible for leading the transformation effort, into the OIT.¹¹² USCIS indicated that this merger marked the shift from capital “T” to lowercase “t” for transformation—acknowledging the evolution from an initiative headed by a dedicated office to a broadly conceived modernization effort supported by the “Transformation Delivery Division.”¹¹³ The Transformation Delivery Division currently has a \$170 million annual budget for personnel, development, IT, and operations, employing approximately 40 federal government staff and between 300–350 contractors.¹¹⁴

Despite these changes, key pillars of the original initiative remain. ELIS continues to serve as the system platform. USCIS states that it will still work towards the integration of new forms into ELIS—just not on the same timetable as before, and without focusing on the quantity of new forms implemented. The agency strives to increase the percentage of form receipts processed through ELIS from 40 percent to 65 percent by 2019, but as a percentage of *overall* receipts, irrespective of the number of form types covered.¹¹⁵ The transformation goals reflected in Figure 2.2 demonstrate the shift in USCIS’ focus from pushing its 90 forms into ELIS to enhancing the system to better serve its business needs.

¹¹² Information provided by USCIS (Feb. 23, 2018).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

Efforts to Resolve ELIS Operational Challenges in 2017

As the shift in transformation goals and structure unfolded, USCIS continues to face a host of ELIS functionality problems, including incomplete background checks, inaccurate case statuses reflected in other USCIS systems, and a burdensome system for printing naturalization certificates and uploading documents.¹¹⁶ USCIS also has had to address ELIS outages and insufficient technical support for adjudicators. These issues have contributed to security vulnerabilities, resource inefficiencies, and slower case processing.

ELIS Interfered with Background Checks. Technical issues in ELIS hindered the completion of background checks, including Federal Bureau of Investigation (FBI) name checks, resulting in integrity gaps and delaying the processing of naturalization applications.¹¹⁷ Though USCIS intended for ELIS to increase efficiency in background checks, numerous technical challenges interfered with this aim, including: incomplete FBI name checks; system timeouts; incorrect handling by ELIS of certain background check results;¹¹⁸ mistakes in underlying ELIS codes such as improper filtering of names (spelling and letter combinations) that led to errors in background checks; and interface and connectivity issues that caused delays.¹¹⁹

These challenges have caused far-reaching consequences. In what posed a distinct security risk, from November 2016 to January 2017, ELIS permitted more than 15,000 applications to move forward in the adjudication process without having undergone proper name checks.¹²⁰ As a result, more than

200 applicants naturalized with incomplete name checks.¹²¹ USCIS quickly acknowledged this error and instructed field offices to place cases on hold to prevent applicants from proceeding to approval or oath of allegiance ceremonies without first completing proper background checks.¹²² ELIS background check failures also resulted in 230,000 background checks needing to be re-run in February 2017.¹²³ This required field office personnel to devote extra time to validate data transferred across USCIS systems due to the unreliability of the information stored in ELIS.

In July 2017, USCIS launched the Name Check Modernization project to eliminate submitting duplicative requests to the FBI and to obtain name check results more quickly.¹²⁴ ELIS has been processing name checks through this new method since September 2017.¹²⁵

ELIS Failed to Update the USCIS Central Index System.

In late 2017, the OIG reported that, due to deficiencies in ELIS, the USCIS Central Index System (CIS)—the main database that contains immigration status information for applicants—failed to accurately reflect the naturalization status of tens of thousands of individuals.¹²⁶ This hindered data sharing with CBP, whose agents rely on CIS to determine an individual’s eligibility to enter the United States.¹²⁷

ELIS directly connects to CIS, thus updates in ELIS regarding an individual’s immigration status should have been reflected in CIS.¹²⁸ However, CIS did not always reflect the most recent status of immigrants.

Specifically, adjudicators had difficulty completing the specific order of steps necessary to close out naturalization cases in CIS.¹²⁹ For naturalization cases in ELIS, USCIS personnel initially had to manually scan and upload completed Forms N-445, *Notices of Naturalization Oath Ceremony* for each and every naturalized applicant scheduled for the same oath ceremony before the cases could be closed and the appropriate status reflected in ELIS and CIS.¹³⁰

¹¹⁶ See DHS Office of the Inspector General, “USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery,” OIG-18-23 (Nov. 30, 2017); <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf> (accessed Apr. 27, 2018); U.S. Government Accountability Office Report, “Immigration Benefits System: Significant Risks in USCIS Efforts to Develop its Adjudication and Case Management System,” GAO-17-486T (Mar. 16, 2017); <https://www.gao.gov/assets/690/683403.pdf> (accessed Apr. 19, 2018); see also Ombudsman’s Annual Report 2016, pp. 9–14, 51–55.

¹¹⁷ USCIS requires background checks prior to issuing most immigration benefits. This helps ensure that the agency grants benefits only to qualifying individuals who do not pose a risk to national security or public safety. See the “Background Checks” section of this Report, *infra*.

¹¹⁸ TECS checks are background checks for applicants and petitioners using a system maintained by CBP to assist with screening and determinations regarding admissibility of arriving persons. See the “Background Checks” section of this Report, *infra*.

¹¹⁹ DHS Office of the Inspector General, “USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery,” OIG-18-23 (Nov. 30, 2017) at 7; <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf> (accessed Apr. 23, 2018).

¹²⁰ *Id.* at 27.

¹²¹ *Id.* at 36.

¹²² *Id.* at 33-34.

¹²³ *Id.* at 33-34.

¹²⁴ Information provided by USCIS (Apr. 9, 2018).

¹²⁵ *Id.*

¹²⁶ DHS Office of the Inspector General, “USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery,” OIG-18-23 (Nov. 30, 2017), at 12; <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf> (accessed Apr. 23, 2018).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

The Form N-445 is now processed in ELIS, thus eliminating the need to manually scan, save, and upload each document one at a time. The ability to electronically close cases has therefore eliminated cases remaining open unnecessarily and improved ELIS’s ability to update CIS.

ELIS Had Difficulties Uploading Documents. Obstacles to scanning and uploading documents in ELIS increased the risk of information loss and processing errors. Specifically, USCIS officers found that ELIS had problems scanning and uploading materials.¹³¹ As a workaround, officers scanned and uploaded those documents one page at a time, saving them to a computer file prior to manually uploading them into ELIS.¹³² This laborious process increased risks of information being lost, misplaced, or accidentally disregarded.¹³³ In June 2017, USCIS deployed a new feature to simplify the process into one step, allowing officers to scan and upload documents directly into ELIS.¹³⁴

ELIS Failed to Print Naturalization Certificates. In its initial stages, ELIS lacked the ability to print naturalization certificates, which sometimes resulted in field offices having to cancel oath ceremonies for applicants.¹³⁵ To print naturalization certificates, USCIS personnel relied on an interface with the Enterprise Print Manager Service (EPMS) because that system already served as USCIS’ vehicle for printing notices, cards, and booklets.¹³⁶ However, the OIG described this process as awkward, error-prone, time-consuming, and unreliable due to network connectivity issues and message delivery failures between ELIS and EPMS.¹³⁷

ELIS also lacked the capacity to batch print naturalization certificates to accommodate large naturalization ceremonies.¹³⁸ Field office personnel had to set up complex printing configurations to enable EPMS to print naturalization certificates for larger ceremonies.¹³⁹ Because of these workarounds, EPMS caused certificates to print with missing or incorrect data, despite the information being correctly recorded in ELIS.¹⁴⁰ USCIS created and tested a batch printing function within ELIS, which it deployed on April 10, 2017, finally eliminating the need for the EPMS workarounds.¹⁴¹

¹³¹ *Id.* at 10.

¹³² *Id.* at 10.

¹³³ *Id.* at 10.

¹³⁴ *Id.* at 10.

¹³⁵ *Id.* at 10.

¹³⁶ *Id.* at 10.

¹³⁷ *Id.* at 10.

¹³⁸ *Id.* at 10.

¹³⁹ *Id.* at 11.

¹⁴⁰ *Id.* at 11.

¹⁴¹ *Id.* at 11-12.

USCIS Lacked a Contingency Plan for ELIS Outages.

USCIS initially did not have a contingency plan in place to sustain processing of naturalization cases across its field offices when ELIS experienced glitches or outages.¹⁴² During these interruptions, officers could not access digitized files¹⁴³ or complete naturalization interviews.¹⁴⁴ Given the frequency of ELIS outages in the initial stage, USCIS personnel developed a workaround by shipping hard copies of A-files from the NBC to field offices that cost the agency approximately \$400,000 per quarter.¹⁴⁵ The lack of a contingency plan created more work for adjudicators as well as higher expenses for the agency.¹⁴⁶

Learning from these mistakes, USCIS established a contingency plan before returning to processing naturalization applications in ELIS, creating a separate digital repository for case files and evidentiary documents.¹⁴⁷ As a result, the NBC stopped receiving paper copies of ELIS naturalization files from the Lockboxes starting on October 26, 2017.¹⁴⁸ However, paper copies of ELIS naturalization files continued to be sent from the NBC to some field offices and used by officers as a backup system.¹⁴⁹

ELIS Lacked Adequate “End-User” Support. ELIS “end-users,” i.e., USCIS officers who render decisions on applications, have lacked timely support from and communication with ELIS developers, limiting the incorporation of valuable end-user feedback into ongoing system developments. This lack of communication led to increases in inquiries from USCIS personnel using the system. Between April and August 2017, USCIS received 1,100 to 1,600 trouble tickets a month submitted by personnel using ELIS.¹⁵⁰

¹⁴² *Id.* at 9. In 2017, planned and unplanned ELIS outages totaled 40, which was down from 170 in 2016, as a result of completed enhancements to DHS Network and connectivity. Compare information provided by USCIS (Apr. 19, 2017) to information provided by USCIS (Apr. 17, 2018).

¹⁴³ Information provided by DHS OIG (Feb. 26, 2018).

¹⁴⁴ DHS Office of the Inspector General, “USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery,” OIG-18-23 (Nov. 30, 2017) at 9; <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf> (accessed Apr. 23, 2018).

¹⁴⁵ *Id.* at 34.

¹⁴⁶ *Id.* at 34.

¹⁴⁷ See DHS Office of the Inspector General, “USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery,” OIG-18-23 (Nov. 30, 2017) at 9-10; <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf> (accessed Apr. 23, 2018) and Information provided by USCIS (Feb. 23, 2018).

¹⁴⁸ Information provided by USCIS (Apr. 17, 2018).

¹⁴⁹ Information provided by USCIS (Apr. 24, 2018).

¹⁵⁰ Information provided by USCIS (Feb. 23, 2018).

The transformation reorganization in the beginning of 2017 was intended to better connect system developers to adjudicators and other end-users.¹⁵¹ The agency adjusted its training plans to ensure that end-users received sufficient hands-on training prior to each program release. Now that they have access to more frequent training, there is swifter resolution of functionality issues.¹⁵² Service center and field office personnel have reported that communication with software developers and information technology support has improved.¹⁵³ The benefits of these changes are reflected in the decline in the number of ELIS trouble tickets submitted each month to less than 800 starting in September 2017.¹⁵⁴

Stakeholder Experiences with ELIS

ELIS Third Party Access. From the inception of ELIS, stakeholders and software developers have been concerned USCIS developed the system without coordinating with public users and data management companies that develop USCIS forms programs for immigration practitioners.¹⁵⁵ If USCIS provided outside software developers its electronic filing protocols and data sharing standards, it would allow them to make any necessary changes to ensure their systems are compatible with ELIS.¹⁵⁶ Public users and their legal representatives stated that USCIS needed to conduct much more public education and outreach on ELIS.¹⁵⁷ Legal representatives and their clients continue to want a seamless mechanism that would allow the legal representative to electronically file and pay fees on behalf of a client. Stakeholders also reported that mis-delivery and non-delivery of LPR cards and Employment Authorization Documents (EADs) produced from ELIS accounts remain a serious problem.¹⁵⁸

myUSCIS. In February 2015,¹⁵⁹ the agency introduced *myUSCIS*, an online public portal that interfaces with

ELIS and through which individuals may e-file Forms N-400 and I-90. E-filers may use the portal to pay fees (submitted via credit card/debit card, bank account, or check), update addresses, receive receipt notices and other documentation by email or text (while still receiving hard copies by mail), and communicate directly with the USCIS field office processing their cases.¹⁶⁰ The system even electronically detects errors in submissions thereby reducing the issuance of RFEs.¹⁶¹ In December 2017, USCIS expanded the capacity of applicants to file a Form N-400 through the *myUSCIS* portal.

Before using the e-filing and related features, one must establish a *myUSCIS* account. Without an account, an individual can only obtain general information about immigration benefits, access resources for citizenship preparation classes and practice tests, and find a list of USCIS-approved doctors for medical exams.¹⁶² The portal does not connect legal and accredited representatives with client accounts, preventing representatives from e-filing applications on behalf of clients.

By introducing *myUSCIS*, USCIS hoped to increase efficiency and decrease case processing times. The agency plans to integrate more forms into the portal, though it has not provided an implementation time frame.¹⁶³ The Ombudsman's Office will continue to review stakeholder feedback concerning *myUSCIS* and monitor the portal's effectiveness; it is too soon to determine how effective these changes have been.

Form Types and Fee Payments in Focus

USCIS has had to overcome various challenges to use ELIS to its full potential. Each application implemented through ELIS has provided a unique set of challenges and stakeholder issues.

Immigrant Visa Fee Processing. One of the first applications in ELIS was the online payment of the IV Fee beginning in May 2012.¹⁶⁴ USCIS began charging overseas applicants for production of their LPR cards and used the newly developed online payment system for this purpose. At that time, applicants and their legal representatives reported difficulty using the ELIS fee payment process, as it required a non-intuitive account registration process, posted

¹⁵¹ See generally *Id.*

¹⁵² Information provided by DHS Office of the Inspector General (Feb. 26, 2018); Information provided by USCIS (Apr. 16 and 24, 2018).

¹⁵³ Information provided by DHS OIG (Feb. 26, 2018); Information provided by USCIS (Apr. 16 and 24, 2018).

¹⁵⁴ Following up on a meeting with the USCIS OIT, USCIS provided the Ombudsman's Office with a copy of a presentation slides entitled "USCIS Transformation Program" (Feb. 23, 2018). Slide Transformation Delivery Division on page 5 gives an overview of how business operations have been aligned to provide direct, customer-focused support to users.

¹⁵⁵ Information provided to the Ombudsman (Mar. 6, 2017).

¹⁵⁶ Information provided by stakeholders (Apr. 12, 2018).

¹⁵⁷ Information provided to the Ombudsman (Mar. 6, 2017).

¹⁵⁸ *Id.*

¹⁵⁹ U.S. Digital Service Report, "Report to Congress—December 2016," (Dec. 2016) at 15; <https://www.usds.gov/resources/USDS-2016-Report-to-Congress.pdf> (accessed Apr. 27, 2018).

¹⁶⁰ Information provided by USCIS (Feb. 14, 2018).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Ombudsman's Annual Report 2014, p. 60.

frequent error messages, and suffered from ineffective technical support.¹⁶⁵ Some applicants found that address changes within ELIS did not result in their LPR cards being sent to the new address. Additionally, address changes in ELIS were difficult to execute because they required a separate process of identity verification.¹⁶⁶ Legal representatives were also unable to make payments in the system on behalf of their clients.¹⁶⁷

Since that time, USCIS has published additional instructions on its webpage concerning payment processes, including a handbook, and made system changes to improve the ease of submitting online payments.¹⁶⁸ Some legal representatives describe the current system for immigrant fee payments as straightforward, although they stress that the system still makes frequent errors involving mis-delivery and non-delivery of LPR cards, which may be due to faulty address change systems.¹⁶⁹

Form I-90, Application to Replace Permanent Residence Card. As of April 20, 2015, USCIS processes all Form I-90 applications in ELIS.¹⁷⁰ Since August 2016, the Potomac Service Center (PSC) has had exclusive jurisdiction over that form type.¹⁷¹ The Form I-90 is the second major benefit form type—following Form N-400s—that individuals can file online, and is currently PSC’s largest workload. DHS OIG audited the Form I-90 product line between April and June 2016, finding ELIS limitations had contributed to green card issuance errors, including cards issued with incorrect information, the production of duplicate cards, and cards sent to the wrong address.¹⁷² In 2017, many LPRs sought assistance from the Ombudsman’s Office because their cards were sent to the wrong address or contained incorrect information, such as another person’s photograph or the wrong signature, gender, country of birth, date of residence status, or name.

¹⁶⁵ *Id.*

¹⁶⁶ Information provided by USCIS (Apr. 24, 2014).

¹⁶⁷ *Id.*

¹⁶⁸ USCIS Webpage, “How Do I Pay the USCIS Immigrant Fee” (Apr. 17, 2018); <https://www.uscis.gov/tools/how-do-i-guides/how-do-i-pay-uscis-immigrant-fee> (accessed Apr. 30, 2018); USCIS Webpage, “Immigrant Fee Payment: Tips on Finding You’re a-Number and DOS Case ID” (Dec. 22, 2016); <https://www.uscis.gov/file-online/immigrant-fee-payment-tips-finding-your-number-and-dos-case-id> (accessed Apr. 30, 2018).

¹⁶⁹ Information provided by stakeholders (Mar. 2, 2018).

¹⁷⁰ USCIS Webpage, “What Happens After You Apply” (July 7, 2017); https://my.uscis.gov/exploremyoptions/renew_green_card#benefit-related-content-2 (accessed May 18, 2018).

¹⁷¹ Information provided by USCIS (Apr. 16, 2018).

¹⁷² DHS Office of the Inspector General, “Verification Review: Better Safeguards Are Needed in USCIS Green Card Issuance (OIG-17-11),” OIG-18-61 (Apr. 10, 2018); <https://www.oig.dhs.gov/sites/default/files/assets/2018-04/OIG-18-61-Apr18.pdf> (accessed Apr. 19, 2018).

Non-delivery of cards and changes of address are the top reasons why individuals have contacted the PSC for assistance.¹⁷³ Addresses are limited to 34 characters in ELIS,¹⁷⁴ so an officer has to determine how to abbreviate a longer address without compromising the U.S. Postal Service’s ability to deliver the card to the appropriate address.

Beginning in 2018, individuals with a *myUSCIS* account and an application in ELIS can now change their addresses in ELIS through their *myUSCIS* accounts, updating the change immediately.¹⁷⁵ Prior to that, applicants could not change their addresses in ELIS directly and the update could take several days, depending on how the applicant notified USCIS of the change of address.

DACA, TPS, and EADs. USCIS began adjudicating Forms I-821 and I-821D in ELIS in 2016,¹⁷⁶ including the Form I-765 based on an underlying Temporary Protected Status (TPS) or Deferred Action for Childhood Arrivals (DACA) application.¹⁷⁷

In 2017, DACA recipients requested assistance from the Ombudsman’s Office because they had not received EADs, notices, and other documents from USCIS. Of the 2,005 ELIS-related requests for assistance received in 2017 by the Ombudsman’s Office, 1,287 dealt with individuals attempting to obtain or renew benefits under DACA.

Additional Issues with Form N-400

Processing Delays. The OIG found that ELIS problems contributed to the backlog of Form N-400 applications, “adversely affect[ing] processing timeliness and customer service.”¹⁷⁸ During the reporting period, processing times for Form N-400 applications continued to increase beyond the USCIS goal of 5 months.¹⁷⁹ See Appendix, USCIS Naturalization and Adjustment of Status Processing Times. As of December 2017, the national average processing time for non-military naturalization applications rose

¹⁷³ Information provided by USCIS (Apr. 16, 2018).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

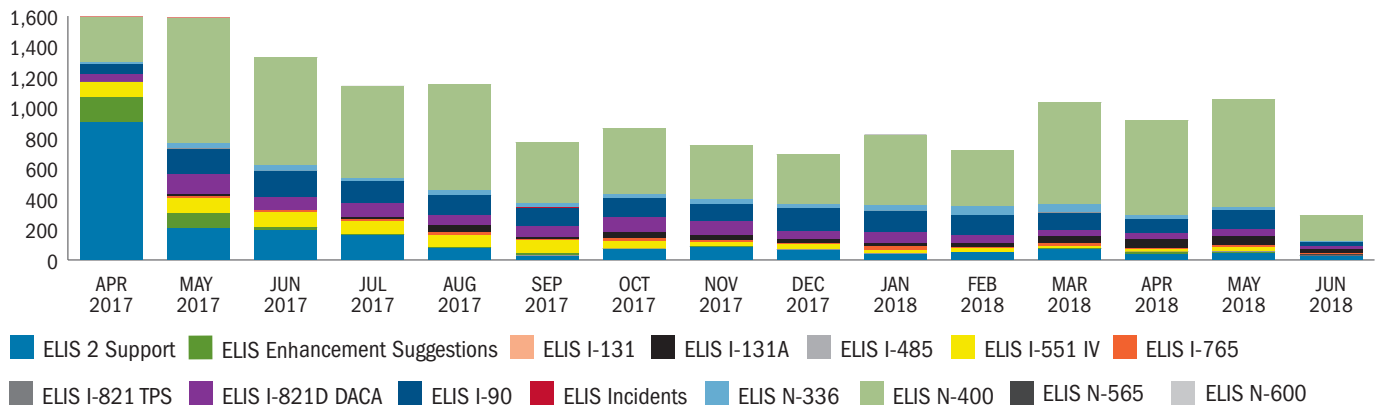
¹⁷⁶ Information provided by USCIS (Apr. 19, 2017).

¹⁷⁷ Information provided by USCIS (Apr. 17, 2018).

¹⁷⁸ DHS Office of the Inspector General, “USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery,” OIG-18-23 (Nov. 30, 2017) at 31; <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf> (accessed Apr. 27, 2018).

¹⁷⁹ DHS Annual Performance Report (Fiscal Years 2016–2018), p. 49; <https://www.dhs.gov/sites/default/files/publications/DHS%20FY%202016-2018%20APR.pdf> (accessed Mar. 26, 2017).

Figure 2.3: Number of Requests for Help with ELIS from Field Offices by Month



Source: Information provided by USCIS (Feb. 23, 2018).

to 8.4 months.¹⁸⁰ Many individuals experienced even longer delays. Applicants in New York City, for instance, waited 10 to 14 months for USCIS merely to schedule interviews.¹⁸¹ Applicants waiting to schedule oath ceremonies experienced similar delays.

Submission of Photographs. As part of the transition to electronic processing, USCIS announced in September 2016 that naturalization applicants, except those who reside overseas, no longer needed to submit passport-style photographs with their applications because their photos would be taken when they appeared at the Application Support Center (ASC) for their biometrics appointments.¹⁸² As of June 2017, however, field offices were still asking most applicants to submit two photographs during their interviews, at a cost to the applicant, due to continuing problems with ELIS in the capturing of the ASC photographs.¹⁸³ Moreover, USCIS did not send an announcement to stakeholders, as it had in September 2016, concerning this issue with photographs, resulting in confusion and delays. If an applicant was unable to provide the photos at the time of the interview, the officer could not continue processing the Form N-400. Thus, this ELIS glitch resulted in further delays for some applicants.

Working Through Two Systems. The agency is challenged with ensuring all officers retain their ELIS skills while also working through the older cases. In 2017,

all field offices with naturalization cases had a mix of cases in CLAIMS 4 and ELIS,¹⁸⁴ processing cases in the order in which they are received in each system.¹⁸⁵ Local offices reported processing a much greater percentage of naturalization applications in CLAIMS 4 than in ELIS, as cases in CLAIMS 4 made up 79 percent of the total number of naturalization applications pending the end of 2017.¹⁸⁶ Officers reported difficulty in splitting their workload between the two systems because of the need to train officers in the fine points of each.¹⁸⁷ Field offices continue to schedule a few days per month to process and adjudicate cases in ELIS so staff not only retain their operational knowledge of the system, but also to suggest enhancements to improve ELIS functionality.¹⁸⁸ As offices exhaust their CLAIMS 4 inventory, they will work Form N-400 applications through ELIS exclusively.

Strategic Suspension of ELIS. In October 2017, USCIS returned to manually entering all newly received naturalization applications into ELIS because it had made the necessary improvements identified in DHS OIG’s Management Alert.¹⁸⁹ ELIS improvements allowed USCIS to:

- Verify background checks had been completed before the case moved forward for processing;
- Update an individual’s status in CIS;

¹⁸⁰ Information provided by USCIS (Mar. 20, 2018).

¹⁸¹ Information provided by stakeholders (Apr. 28, 2017).

¹⁸² USCIS Message, “Updates to Filing Form N-400, Application for Naturalization” (Sep. 22, 2016).

¹⁸³ Information provided by stakeholders (June 6, 2017); Information provided by USCIS (Aug. 23, 2017).

¹⁸⁴ Information provided by USCIS (Apr. 17, 2018).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Information provided by USCIS (Apr. 24, 2018).

¹⁸⁸ Information provided by USCIS (Apr. 17, 2018).

¹⁸⁹ Information provided by USCIS (Feb. 23, 2018).

- Print naturalization certificates directly from ELIS; and
- Continue processing cases even when ELIS was down.

During 2017, USCIS entered 139,251 naturalization applications in ELIS.¹⁹⁰ While it is too early to properly evaluate the results of the return to ELIS processing, reports from field offices indicate progress.¹⁹¹ As Figure 2.3 reflects, “trouble tickets” filed by USCIS ELIS users have decreased between April 2017 and February 2018.

Ongoing Issues

While the steps taken by USCIS in 2017 to address ELIS challenges have improved the system, the OIG’s evaluation of USCIS’ efforts to improve automation of naturalization processing remains under review.

The Ombudsman applauds USCIS for adjusting its focus on improving back-end performance before opening more forms to electronic filing. However, stakeholders are eager for USCIS to implement ELIS capabilities for additional form types and requests. For example, ELIS does not allow applicants to submit requests for fee waivers or reduced fees,¹⁹² thereby limiting the system’s viability for applicants in need.¹⁹³ In 2017, almost 40 percent of Form N-400 applications were filed with a fee waiver request and slightly more than 20 percent of Form I-90 applications were filed with a fee waiver request.

Furthermore, ELIS has not yet resulted in improved processing times. The increase in processing times for naturalization applications, nationwide and at many field offices, to more than 5 months—DHS’s strategic goal—indicates that transformation continues to struggle to meet its goals.

Stakeholders continue to seek better information from USCIS regarding system updates and are anxious for improvements to the process of filing for immigration benefits. They have expressed to the Ombudsman’s Office their challenges with creating accounts, limited electronic filing, and the lack of

information available to allow preparers and outside software companies to adapt to the changes taking place at USCIS. USCIS would benefit from increasing its engagement with external stakeholders and its education efforts regarding a variety of improvements, including back-end changes not necessarily visible to the public, that will eventually lead to a better experience overall.

Conclusion

While USCIS took major steps forward to improve the digitization of the immigration benefits process in 2017, substantial problems remain. The recharacterization of the transformation effort is a step in the right direction. With its emphasis on processing and case management functions, USCIS will be better equipped in the future to ingest and adjudicate cases in ELIS.

Director Cissna has made a full commitment to implementing electronic filing for most forms by the end of 2020, which is an ambitious undertaking still despite the progress made. To meet that goal, more resources and attention will be needed. The lack of connectivity to accounts maintained by representatives is a flaw that will only grow more problematic as more forms are introduced into the system, especially employment-based forms. At the other end, the lack of a fee waiver function is a serious issue requiring immediate attention. The drive to move to e-filing has led to an intention to require e-filing of the two forms that are now available for that function.¹⁹⁴ This intention for e-filing to be required, not just preferred, will require the agency to be even more prepared for the challenges of working in a paperless environment. Finally, USCIS needs to update stakeholders on its progress updating the system, so they better understand the challenges the agency faces and can contribute to its improvement.

¹⁹⁰ Information provided by USCIS (Apr. 17, 2018).

¹⁹¹ Information provided by DHS OIG (Feb. 26, 2018).

¹⁹² Information provided by USCIS (Feb. 23, 2018).

¹⁹³ Information provided by USCIS (Mar. 7, 2018). Calculations based on information provided by USCIS on April 17, 2018 (report representing the total number of I-90, I-551, DACA, TPS and N-400 receipts submitted electronically and by paper during calendar year 2017), Mar. 7, 2018 (USCIS Fee Waivers by Office Received, Approved and Denied Fiscal Year 2017, Quarter 4, and Fiscal year 2018, Quarter 1), and Aug. 30, 2017 (USCIS Fee Waivers by Office Received, Approved and Denied Fiscal Year 2017, Quarters 2 and 3).

¹⁹⁴ DHS Spring Regulatory Agenda, RIN 1615-AC20, “Electronic Filing of Requests for Immigration Benefits” (ND); <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=1615-AC20> (accessed May 16, 2018).



Background Checks

Responsible Offices: *Field Operations, Service Center Operations, Refugee, Asylum and International Operations, Immigration Records and Identity Services, and Fraud Detection and National Security Directorates*

Key Facts and Findings

- Background checks are essential for maintaining the integrity of our immigration system.
- All applicants for U.S. immigration benefits are required to undergo criminal and national security background checks to ensure eligibility.
- Despite the universal nature of background checks, the process can be confusing to applicants, who may not understand how it works or how it impacts the adjudication of their cases.
- Over the past several years, USCIS' workload has increased substantially, both in volume and complexity. This has placed increasing demand on various aspects of the immigration system, including case adjudicators, who are constantly challenged to balance efficiency and integrity.
- Recently, in response to Executive Order 13780, USCIS increased its screening of certain applicants, with plans to expand this heightened scrutiny to other types of applications and petitions.¹⁹⁵

¹⁹⁵ "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 13209 (Mar. 9, 2017); UCSIS Webpage, "USCIS is Strengthening Screening for Family Members Abroad Seeking to Join Refugees in the United States" (Feb. 6, 2018); <https://www.uscis.gov/news/alerts/uscis-strengthening-screening-family-members-abroad-seeking-join-refugees-united-states> (accessed Apr. 19, 2018).

Terms and Definitions

“Background check” is a general term used for an inquiry into an individual’s identity and history using two types of information: biometric and biographic.¹⁹⁶ A biometric check typically uses the applicant’s fingerprints, often referred to as “the ten-prints.” USCIS generally captures this information at an ASC or, for refugee applicants, at the time of an interview.¹⁹⁷ Due to the digital nature of the information, biometric checks are a relatively straightforward step in the USCIS background check process.

A biographic check is, most commonly, a records check using the applicant’s name and date of birth, along with all aliases and other names.¹⁹⁸ While a biographic check may involve some analysis, USCIS for its part has automated most of the process. The FBI performs the majority of biographic checks for USCIS, providing USCIS with electronic records and a written analysis of any information found.¹⁹⁹ Expedited processing is available from the FBI but can only be requested by USCIS. To warrant expedited processing, a check must meet one or more of the following criteria: the individual’s membership in the military; compelling circumstances; mandamus actions; humanitarian reasons; age-outs; and selection for the Diversity Visa program.²⁰⁰ For individuals who request immigration benefits that are longer than one year in duration, USCIS typically requires the biometric and biographic checks set forth in the following charts. See Figure 3.1. For further details by USCIS directorate, please refer to the “Background Checks” section of the Appendix.

¹⁹⁶ DHS Privacy Impact Assessment, “Immigration Benefits Background Check Systems” (Nov. 5. 2010), p. 1; https://www.dhs.gov/sites/default/files/publications/privacy_pia_uscis_ibbcs.pdf (accessed Mar. 22, 2018).

¹⁹⁷ *Id.* at 3-4. USCIS Webpage, “Refugee Processing and Security Screening” (Dec. 3, 2015); <https://www.uscis.gov/refugeescreening> (accessed Apr. 17, 2018).

¹⁹⁸ DHS Privacy Impact Assessment, “Immigration Benefits Background Check Systems” (Nov. 5. 2010), pp. 4–8; https://www.dhs.gov/sites/default/files/publications/privacy_pia_uscis_ibbcs.pdf (accessed Mar. 22, 2018). Biographic name checks commonly include other information, such as: name (last, first, middle), may include SSN, two additional SSNs in the event that the applicant is using multiple SSNs either fraudulently or accidentally) street address, city, state, ZIP Code, up to five aliases, country of citizenship, DOB, two additional DOBs, sex, race, height, weight, eye color, hair color, place of birth, and A-number.

¹⁹⁹ DHS Privacy Impact Assessment, “Immigration Benefits Background Check Systems” (Nov. 5. 2010); https://www.dhs.gov/sites/default/files/publications/privacy_pia_uscis_ibbcs.pdf (accessed Mar. 22, 2018). See FBI Webpage, “National Name Check Program,” <https://www.fbi.gov/services/records-management/name-checks> (accessed Mar. 1, 2018). In FY 2017, the FBI processed over 3.6 million name checks.

²⁰⁰ USCIS Response to the Ombudsman’s 2016 Annual Report (Mar. 28, 2018), p. 15.

Figure 3.1: Biometrics and Biographic Checks

Biometric Check	
FBI Fingerprint Check	A check on the applicant’s ten-print biometrics against FBI data systems. Automated results typically return within hours of being sent.
IDENT Check*	A check on the applicant’s ten-print biometrics using US-VISIT/IDENT—DHS’s principal system for maintaining biometric data. The check assigns the applicant an identification number, if not already in the system, and the results provide information on the nature of the hit (e.g., whether the hit pertains to a potential criminal offense), if any. Those applicants requiring interviews may have their biometrics captured for identity verification purposes in the Identity Verification Tool in the Customer Profile Management System.*
Biographic Check	
CBP TECS Check†	A check on the applicant’s name and date of birth using Customs and Border Protection’s (CBP’s) TECS System, an information sharing platform used primarily to identify admissibility issues. Results return as either a positive or negative response. This check can be run again manually.
FBI Name Check††	A check on all names and dates of birth associated with the applicant. The FBI aims to process 90 percent or more of name check requests submitted to the FBI within 30 days of receipt, with the remaining requests completed within 90 days of receipt.

Sources: As indicated.

* DHS Privacy Impact Assessment, “DHS/NPPD/USVISIT/PIA-002” (Dec. 7, 2012), pp. 2-3; https://www.dhs.gov/sites/default/files/publications/privacy-pia-nppd-ident-06252013_0.pdf (accessed Apr. 27, 2018). DHS Privacy Impact Assessment, “Customer Profile Management Service, DHS/USCIS/PIA-060” (Dec. 17, 2015); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-cpms-december2015.pdf> (accessed May 30, 2018).

† DHS Privacy Impact Assessment for the TECS System: Platform, DHS/CBP/PIA-021 (Aug. 12, 2016), p. 15; <https://www.dhs.gov/sites/default/files/publications/DHS-PIA-ALL-021%20TECS%20System%20Platform.pdf> (accessed Apr. 27, 2018).

†† Information provided by the FBI (Apr. 19, 2018); see also DHS OIG, “USCIS has been Unsuccessful in Automating Naturalization Benefits Delivery, Report OIG-18-23, November 30, 2017; <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf> (accessed May 29, 2018).

If information is discovered through biographic background checks, FBI analysts must manually review it to determine its adjudicative value. If the FBI's National Name Check Program (NNCP) determines the information is not related to the name check subject, the request will be closed as a "No Reportable" (NR).²⁰¹ The FBI identifies the remaining name checks (usually about nine percent of the name checks originally submitted) as possibly being the subject of an FBI record and proceeds with the Analysis and Reporting stage of the name check process. During Analysis and Reporting, NNCP analysts are responsible for reviewing and analyzing FBI records and providing information to customers. The final summary of relevant information is then sent to USCIS via an electronic data sharing platform.²⁰²

To reduce the amount of time taken on these manual reviews, USCIS—the single largest requestor of FBI name checks—has been working with the FBI to modernize the submission and return of these checks. In July 2017, USCIS deployed the initial phase of their modernized FBI name check solution. With this new system, USCIS will now act as one agency rather than submissions being sent to the FBI from four different divisions of USCIS.²⁰³ This new system is intended to detect duplicative requests regarding the same person, and decrease wasteful duplicative volume.²⁰⁴ The two agencies are now using a web service that allows for automated system to system submission and receiving of responses.

Background Check Procedures by Directorate

Service Center Operations Directorate (SCOPS)

SCOPS conducts the biographic and biometric checks listed in Figure 3.1 on most of the applications and petitions filed at its service centers.²⁰⁵ For biographic checks, the service centers run a batch query, meaning multiple names are submitted to the FBI at one time, on the primary names and dates of birth (DOB) contained in

²⁰¹ Information provided by the FBI (Apr. 19, 2018).

²⁰² *Id.*

²⁰³ *Id.* See also USCIS Message, "USCIS Today: FBI Name Check Modernization Update" (July 14, 2017)(accessed May 29, 2018), on file with the Ombudsman.

²⁰⁴ Information provided by USCIS at the Seventh Annual Ombudsman's Conference (Dec. 7, 2017).

²⁰⁵ Biometrics are captured for beneficiaries between the ages of 14 and 75 years of age. Information provided by USCIS (Apr. 17, 2018). SCOPS handles a wide range of applications, including I-765, *Application for Employment Authorization Document*, I-821D, *Consideration of Deferred Action for Childhood Arrivals*, and certain Forms I-485, *Application to Register Permanent Residence or Adjust Status*, as well as most employment-based petitions.

all new applications/petitions within 15 calendar days of initial receipt.²⁰⁶ After 15 months, if a benefit decision has not been issued, the officer must request a refresh of the name check.²⁰⁷

Biometric checks begin at the ASCs, where staff collect digital fingerprints from applicants and submit them to the FBI within seconds of their capture.²⁰⁸ USCIS also runs the biometrics information through the TECS system.²⁰⁹ Most results are returned to the agency within minutes of submission.²¹⁰ USCIS uses a Customer Profile Management System to store and access the results of biometric and background check data. Using this system, USCIS can reuse biometric images and biographic information to initiate and update background checks, eliminating the need for repeat requests for the information.²¹¹

Background checks must be resolved before the adjudication process can proceed.²¹² If the results produce derogatory information, the adjudicator refers the case to the respective service center's Background Check Unit (BCU) for analysis, de-confliction, and resolution of the potential match.²¹³ During this process, the BCU will reach out to internal and external DHS entities responsible for the data or information to ensure that all available information is weighed when resolving the match.²¹⁴ Once the BCU resolves a case, it returns its findings to the immigration officer for final adjudication based on the date of receipt by first-in, first-out (FIFO) order.²¹⁵

Per regulation, if the derogatory information impacts the adjudication of the case, USCIS normally issues an RFE or NOID, allowing the applicant or petitioner to provide additional information.²¹⁶ However, if SCOPS delays

²⁰⁶ Information provided by USCIS (Apr. 17, 2018).

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Privacy Impact Assessment, "Update for the TECS System: CBP Primary and Secondary Processing (TECS) National SAR Initiative," DHS/CBP/PIA-009(a) (Aug. 5, 2011); https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp-tecs-sar-update_0.pdf (accessed Apr. 24, 2018).

²¹⁰ Information provided by USCIS (Apr. 17, 2018).

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ 8 CFR § 103.2(b)(16)(i); USCIS Policy Memorandum, "Requests for Evidence and Notices of Intent to Deny" (Jun 3, 2013); <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/June%202013/Requests%20for%20Evidence%20%28Final%29.pdf> (accessed Apr. 27, 2018). Policy verified through information provided by USCIS (Apr. 17, 2018).

in issuing an RFE or NOID or otherwise holds the case for any reason, the applicant has limited options to learn the cause or reason for the delay. While service centers have processes in place to routinely check for cases that have aged beyond the posted processing time, they do not communicate with the applicant, or appointed legal representative, when these efforts are made.²¹⁷

Field Office Directorate (FOD)

Applications and petitions filed with the FOD, whether at a field office or at the NBC, its central processing facility, undergo a standard set of background checks.²¹⁸ See Figure 3.1. FOD follows the guidelines and procedures set forth by the agency.²¹⁹ In most cases, within 15 days of USCIS receipt of the case, the NBC initiates an FBI name check on the applicant's primary name and date of birth, as well as a TECS check with CBP.²²⁰

The FBI, per its contractual agreement with USCIS, typically returns the FBI name check results within 30 to 90 days.²²¹ The FBI sends the NBC a weekly report on pending name checks.²²² If the FBI finds information in its name check, it will send to FOD a Letterhead Memorandum providing the information and its source.²²³ Most of this information is resolved at the NBC and, if reviewed by an FDNS Officer, receives an SOF in the applicant's file of record.²²⁴

Biometrics are then collected at the ASC and sent to the FBI within seconds of their capture.²²⁵ Most results are returned within minutes after sending.²²⁶ The NBC conducts daily data sweeps to check the system for the results of both FBI name and fingerprint checks.²²⁷

Once both types of background checks are received, which averages around 60 to 90 days of receipt, the NBC conducts a full review of the file for additional aliases, names, and date of birth prior to adjudication or shipment to the respective field office for interview. This process

²¹⁷ Information provided by USCIS (Apr. 17, 2018).

²¹⁸ The Field Operations Directorate adjudicates several applications requiring interviews, such as Form N-400, *Application for Naturalization*, and certain Forms 485, *Application to Register Permanent Residence or Adjust Status*.

²¹⁹ Information provided by USCIS (Apr. 17, 2018).

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.* See "USCIS Anti-Fraud Initiatives," *supra* in this Report for more information on SOFs.

²²⁵ Information provided by USCIS (Apr. 18, 2018).

²²⁶ *Id.*

²²⁷ Information provided by USCIS (Apr. 17, 2018).

is completed about 19 to 22 days, on average, before the scheduled interview date.²²⁸ The check is valid for 180 days with a refresh requirement every 180 days until the final adjudication is completed.²²⁹

At any time during its review, the NBC may refer the applicant's file to its own FDNS officers or to the BCU for reasons such as national security, public safety, and Adam Walsh Act cases.²³⁰ In addition to referrals, the BCU also receives a weekly report from the Immigration Records and Identity Services Directorate (IRIS), the entity that (among other things) oversees immigration, employment and identity information for USCIS, regarding all positive fingerprint results, including for Forms I-485 and N-400.²³¹ The NBC BCU reviews the report of concerns for potential referral to ICE. If identified as a public safety referral, the BCU sends the case to ICE. This results in an adjudication hold, lasting 60 to 75 days, pending notification from ICE as to whether it will take action or require additional coordination. In most instances, further coordination with the respective field office is required for public safety cases accepted by ICE.²³²

If the case is referred to FDNS, either at the NBC or at the local field office, an FDNS officer reviews the case to determine if there are fraud or national security concerns. Once the officer completes the review, an SOF will be added to the file to be considered when issuing a decision for the case. The FDNS officer also manages any referrals to ICE and includes in the SOF whether ICE accepted or declined to take action on the referral.²³³ Afterwards, the case returns to the shelf until it is ready for interview scheduling.²³⁴

FOD will not schedule an interview until the results of all background checks are available.²³⁵ However, receipt of the results does not mean the individual has "cleared background checks." Once the "A-file" arrives at the local USCIS field office, the adjudicator will review the results and determine the impact on the eligibility of the applicant or beneficiary.²³⁶ If the adjudicator identifies any indicators of possible fraud or national security concerns, he or she

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

may refer the case to FDNS for review.²³⁷ Derogatory information may result in the need for further research to determine whether, for example: the information establishes removability; the applicant is in removal proceedings; charges were reduced or dismissed; a final order of removal has been issued; or no final disposition has been made on a particular charge.²³⁸ As with SCOPs, regulations require FOD to issue an RFE or NOID to allow the applicant the opportunity to respond to derogatory evidence.²³⁹ Ultimately, the decision to grant or deny immigration benefits is based on the adjudicator’s judgment, based on the totality of the circumstances, which includes the A-file and the questions asked the applicant during the interview.²⁴⁰

*Refugee, Asylum and International Operations Directorate: Asylum Division*²⁴¹

Affirmative asylum applicants undergo extensive background checks at various stages throughout the USCIS adjudications process, which correlates with the standard background checks listed in Figure 3.1.²⁴² To apply for affirmative asylum, applicants submit a Form I-589, *Application for Asylum and for Withholding of Removal* at a USCIS service center.²⁴³ The USCIS service center enters the information into the USCIS Refugee, Asylum, and Parole System (RAPS).²⁴⁴ RAPS automatically initiates several background security check processes, including FBI name checks, IDENT, TECS, and FBI fingerprint checks.²⁴⁵ RAPS also stores the results of security checks.²⁴⁶ Later

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ 8 CFR § 103.2(b)(16)(i); USCIS Policy Memorandum, “Requests for Evidence and Notices of Intent to Deny” (Jun 3, 2013); <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/June%202013/Requests%20for%20Evidence%20%28Final%29.pdf> (accessed Apr. 27, 2018).

²⁴⁰ Information provided by USCIS (Apr. 17, 2018).

²⁴¹ This section only covers the affirmative asylum application process and is not intended to include credible or reasonable fear processing or defensive asylum processing.

²⁴² USCIS Webpage, “Asylum Background and Security Checks FAQ” (Mar. 12, 2015); <https://www.uscis.gov/faq-page/asylum-background-and-security-checks-faq#t12818n40080> (accessed Apr. 26, 2018); DHS Privacy Impact Assessment, “USCIS, Refugees, Asylum, and Parole, System and the Asylum Pre-Screening System” (Nov. 24, 2009), p. 4; https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_cis_rapsapss.pdf (accessed Apr. 26, 2018).

²⁴³ USCIS Webpage, “I-589, Application for Asylum and for Withholding of Removal;” <https://www.uscis.gov/i-589> (accessed Apr. 26, 2018). There are limited circumstances that allow for an applicant to file a Form I-589 at a local asylum office.

²⁴⁴ DHS Privacy Impact Assessment, “USCIS, Refugees, Asylum, and Parole, System and the Asylum Pre-Screening System” (Nov. 24, 2009), p. 3; https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_cis_rapsapss.pdf (accessed Apr. 26, 2018).

²⁴⁵ *Id.* at 4.

²⁴⁶ *Id.* at 4.

in the process, the applicant attends an appointment at the ASC to provide a ten-print and photographs for a biometrics check. This information will initiate the FBI fingerprint check, triggering another automatic background check query through the RAPS system.

The asylum officer may run additional background checks in specific cases, and may collaborate with an FDNS officer assigned to assist with fraud and national security cases.²⁴⁷ As with all cases pending before USCIS, with limited exceptions, the agency must issue an RFE or NOID to allow the applicant the opportunity to respond to derogatory evidence informing part of all of an adverse decision.²⁴⁸ The asylum officer may also resolve certain concerns during the interview process, which would be annotated in the interview notes and retained in the A-file. Any aliases or final name checks are run through a manual check in TECS.²⁴⁹

Refugee, Asylum and International Operations Directorate: Refugee Affairs Division (RAD)

The standard operating procedure at RAD is to conduct the following checks.²⁵⁰

Pre-decisional Checks:

- **IDENT check:** checks the applicant’s records relating to travel and immigration history for non-U.S. citizens, as well as for immigration violations and law enforcement and national security concerns. This helps CBP confirm identity at the port of entry.²⁵¹
- **FBI fingerprint check:** checks all applicants’ biometric records using the Next Generation Identification (NGI) system’s recurring biometric record checks.
- **USCIS Background IT Systems check:** a check using the applicant’s ten-print biometrics to search various

²⁴⁷ Information provided by USCIS (Apr. 18, 2018).

²⁴⁸ 8 CFR § 103.2(b)(16)(i); USCIS Policy Memorandum, “Requests for Evidence and Notices of Intent to Deny” (Jun 3, 2013); <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/June%202013/Requests%20for%20Evidence%20%28Final%29.pdf> (accessed Apr. 27, 2018).

²⁴⁹ DHS Privacy Impact Assessment, “USCIS, Refugees, Asylum, and Parole, System and the Asylum Pre-Screening System” (Nov. 24, 2009) p. 15; https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_cis_rapsapss.pdf (accessed Apr. 26, 2018).

²⁵⁰ This is a generalization and should not be used as an exclusive or comprehensive list of all types of background checks run for all refugee applications.

²⁵¹ DHS Privacy Impact Assessment, “Refugee Case Processing and Security Vetting” (Jul. 21, 2017), p. 8; <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-refugee-july2017.pdf> (accessed Apr. 26, 2018).

USCIS systems. Information collected on all applicants over the age of 13½ and under 80 years.²⁵²

■ **DOS Consular Lookout and Support System**

(CLASS) check: a check run on primary names as well as any variations used by the applicant.²⁵³

■ **Interagency Check (IAC):** USCIS shares the biographic data, including names, dates of birth, and other data points of all refugee applicants within designated age ranges that is captured at the time of pre-screening with intelligence community partners for checks against their holdings.²⁵⁴

■ **National Counterterrorism Center (NCTC) checks:** vets applicant’s information with interagency intelligence to identify suspicious activity.²⁵⁵

■ **Social Media Review:** USCIS FDNS conducts screening and vetting checks of certain refugee applicants from publicly available information on social media.²⁵⁶

■ **DoD Automated Biometric Identification System**

(ABIS) check: checks applicants’ information, biometric and biographic, to search information collected in the course of military operations.²⁵⁷

Post-decision and Pre-admission to the United States:

■ **TECS check:** run on any individuals associated with the asylum application who are between the age of 12 years and 9 months and 79 years of age.²⁵⁸

■ **CBP National Targeting Center—Passenger (NTC-P):** decision support tool that compares the applicants’ information against law enforcement, intelligence, and other enforcement data using risk-based scenarios and assessments.²⁵⁹

■ **Transportation Security Administration (TSA)**

Secure Flight Program check: screens aviation passengers and certain non-travelers before they access airport sterile areas or board an aircraft.²⁶⁰

²⁵² *Id.* at 5.

²⁵³ *Id.* at 6.

²⁵⁴ *Id.* at 6.

²⁵⁵ *Id.* at 7.

²⁵⁶ *Id.* at 7.

²⁵⁷ *Id.* at 8.

²⁵⁸ *Id.* at 10.

²⁵⁹ *Id.* at 10.

²⁶⁰ *Id.* at 10.

■ **CBP No Fly Selectee check:** compares applicants’ information to known terrorist watch lists maintained by the TSA.²⁶¹

A refugee applicant is subject to biographic and biometric security checks through a lengthy process. Generally, an individual initiates his or her request to resettle to another country through the UNHCR resettlement program. UNHCR establishes basic eligibility and then refers the individual to the Resettlement Service Center (RSC). The RSC conducts a prescreening interview and initiates biographic checks.²⁶² This information is recorded in the DOS Worldwide Refugee Admissions Processing System (WRAPS).²⁶³ USCIS then reviews the biographic check results and interviews the applicant. At the time of the interview, a USCIS refugee officer collects the applicant’s ten-prints and requests any additional biographic checks, which will be run through the many data systems listed above.²⁶⁴ At this stage, the applicant can correct misspellings or incorrect dates of birth and provide additional documentation to ensure the agency has complete and accurate information.

During the interview, a USCIS refugee officer trained in identifying any national security concerns can refer the file for Controlled Application Review and Resolution Program (CARRP) review.²⁶⁵ A case needing further USCIS Headquarters review is tracked using the Refugee Affairs Division Case Manager (RCM). In RCM, USCIS refugee officers can view cases that require review and how long those cases have been pending review.²⁶⁶ All data changes made in the system are logged to provide a complete record of the actions taken on each case.²⁶⁷ After all reviews are complete, the report of the analysis is uploaded to WRAPS.²⁶⁸

²⁶¹ *Id.* at 10.

²⁶² *Id.*

²⁶³ *Id.* at 2.

²⁶⁴ *Id.*

²⁶⁵ USCIS Webpage, “Refugee Processing and Security Screening” (Dec. 3, 2015); <https://www.uscis.gov/refugeescreening> (accessed Apr. 17, 2018). See also USCIS Memorandum “Policy for Vetting and Adjudicating Cases with National Security Concerns” (Apr. 11, 2008); https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies_and_Manuals/CARRP_Guidance.pdf (accessed Mar. 2, 2018).

²⁶⁶ DHS Privacy Impact Assessment, “Refugee Case Processing and Security Vetting” (Jul. 21, 2017), p. 3; <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-refugee-july2017.pdf> (accessed Apr. 26, 2018).

²⁶⁷ *Id.*

²⁶⁸ *Id.*

Once all biographic and biometric checks are resolved, USCIS will issue a decision on the applicant's Form I-590, *Registration for Classification as Refugee*.²⁶⁹ If the agency grants the resettlement request, the RSC assumes the task of processing the applicant for travel, including medical examinations and coordinating with a resettlement agency in the United States. The applicant undergoes another biometric and biographic check with CBP and the TSA through the flight manifest. Once CBP determines the applicant is admissible to the United States, the applicant is admitted as a refugee.²⁷⁰

In October 2017, USCIS Director Cissna outlined his plans for vetting enhancements called “Enhanced FDNS Review” while testifying before Congress.²⁷¹ USCIS initiated this plan pursuant to Executive Order 13780, which directed USCIS to enhance its screening process for nationals of certain countries.²⁷² Based on the Executive Order, USCIS and other agency partners conducted a 120-day review of the vetting process. The group identified several enhancements for screening and vetting refugees, some of which have been implemented today.²⁷³ The background check enhancements include those performed by two divisions within FDNS: the Social Media Division and the Intelligence Division.²⁷⁴ The information gained from the enhancements is intended to inform certain lines of questioning for the interviewing officer to determine the applicant's eligibility and credibility.²⁷⁵ Director Cissna acknowledged in his testimony that certain parts of the Executive Order had been under litigation and at times enjoined, but he emphasized the agency's commitment to work aggressively to strengthen the integrity of the United

States Refugee Admissions Program (USRAP),²⁷⁶ the interagency group that oversees the refugee resettlement process, through these enhancements.²⁷⁷

Additional Vetting Policies and Procedures

As circumstances warrant, USCIS vetting policies and processes permit one or more directorates within USCIS to follow policies and practices in addition to their standard procedures. Each of these policies and processes supports the agency's goal of mitigating fraud and upholding national security.

CARRP. USCIS subjects certain cases presenting national security concerns to additional review through CARRP. The CARRP process includes an assessment of the case file and, in most cases, additional screening to ensure eligibility for the benefit sought. CARRP requires regular supervisory review and agency headquarters coordination,²⁷⁸ oftentimes requiring close collaboration with law enforcement and intelligence agencies, including the FBI.²⁷⁹

Social Media Vetting. FDNS recently established a Social Media Division (SMD), which was piloted in 2014.²⁸⁰ The SMD screens refugee applicant data for select populations against designated, publicly available social media. It also performs social media vetting on certain asylum applications.²⁸¹ Other directorates, such as FOD, are exploring this option as an additional vetting tool.²⁸²

²⁶⁹ *Id.*

²⁷⁰ Entry of refugees to the United States is limited to only six US International Air Ports of Entry: Chicago, Houston, Los Angeles, Miami, Newark, and New York. DHS Privacy Impact Assessment, “Refugee Case Processing and Security Vetting” (Jul. 21, 2017) p. 10; <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-refugee-july2017.pdf> (accessed Apr. 26, 2018).

²⁷¹ Written Testimony of USCIS Director L. Francis Cissna for Congressional Hearing, “Refugee Admissions FY 2018” *before the Subcommittee on Immigration and Border Security House Committee on the Judiciary* (Oct. 26, 2017).

²⁷² Executive Order 13780, “Protecting the Nation from Foreign Terrorist Entry into the United States” (Mar. 6, 2017); 82 Fed. Reg. 13209 (Mar. 9, 2017); <https://www.gpo.gov/fdsys/pkg/FR-2017-03-09/pdf/2017-04837.pdf> (accessed May 30, 2018).

²⁷³ “Written Testimony of USCIS Director L. Francis Cissna for Congressional Hearing, “Refugee Admissions FY 2018” *before the Subcommittee on Immigration and Border Security House Committee on the Judiciary* (Oct. 26, 2017).

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ USCIS Webpage, “The United States Refugee Admissions Program (USRAP) Consultation & Worldwide Processing Priorities” (May 5, 2016); <https://www.uscis.gov/humanitarian/refugees-asylum/refugees/united-states-refugee-admissions-program-usrap-consultation-worldwide-processing-priorities> (accessed on Apr. 17, 2018).

²⁷⁷ Written Testimony of USCIS Director L. Francis Cissna for Congressional Hearing, “Refugee Admissions FY 2018” *before the Subcommittee on Immigration and Border Security House Committee on the Judiciary* (Oct. 26, 2017).

²⁷⁸ Written Testimony of Leon Rodriguez for Congressional Hearing, “The Security of the U.S. Visa Programs,” Senate Committee on Homeland Security and Governmental Affairs (Mar. 15, 2016).

²⁷⁹ *Id.*

²⁸⁰ Hearing on the “Refugee Admissions FY 2018” *before the Subcommittee on Immigration and Border Security House Committee on the Judiciary* on October 26, 2017 by USCIS Director L. Francis Cissna; <https://www.uscis.gov/tools/resources/hearing-refugee-admissions-fy-2018-subcommittee-immigration-and-border-security-house-committee-judiciary-october-26-2017-uscis-director-l-francis-cissna> (accessed Apr. 24, 2018).

²⁸¹ *Id.*

²⁸² Hearing on Vows for Visas: Investigating K-1 Fiancé Fraud *before the Senate Committee on the Judiciary* (Mar. 15, 2017); <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-vows-visas-investigating-k-1-fiance-fraud-senate-committee-judiciary-march-15-2017> (accessed 4/24/2018).

USCIS Policy on Long-Pending Checks. Pursuant to a February 2009 policy memorandum, USCIS no longer automatically approves certain pending applications if background checks are delayed. Instead, adjudicators receive a point of contact at USCIS Headquarters for FBI name checks pending beyond 150 days. The USCIS Headquarters point of contact then communicates with the FBI to determine the reason for name check delay and in turn provides case specific guidance to the officer. This may include, where appropriate, authorization to approve the pending application prior to receiving the FBI name check results.²⁸³

Prior to this, USCIS policy directed adjudicators to approve certain forms (Form I-485, *Application to Register Permanent Residence or Adjust Status*; Form I-601, *Application for Waiver of Grounds of Inadmissibility*; I-687, *Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act*; and Form I-698, *Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)*), if otherwise approvable, where the FBI name check request had been pending for more than 180 days.²⁸⁴ USCIS changed this policy as a result of the FBI improving its response time. USCIS reported that the FBI was returning name checks on average in 90 days and that few, if any, remained pending at the FBI for 180 days.²⁸⁵

Conclusion

Background checks are vital in determining an applicant's eligibility for immigration benefits. USCIS, through its diverse offices, has standard operating procedures for

running background checks on biometric and biographic data using various databases available. The process is complex, requiring multiple layers of analysis. At times, depending on the circumstances, it can be lengthy. Per regulation, when derogatory information returned through a background check has an adverse impact on the adjudication, USCIS must issue an RFE or NOID to the applicant, providing him or her an opportunity to offer additional information.²⁸⁶

However, for cases that remain pending, the applicant receives little information and no updates. USCIS reports that it carefully monitors cases that are extensively delayed through the background check process, but it rarely communicates to the applicant that the reason for delay stems from background checks. There are strong law enforcement reasons for this—primarily to ensure that an investigation is not disrupted by alerting the subject to it. However, USCIS could improve public confidence in its efforts by providing the public more information on its process to review long-pending cases. This would help assure the public that when the adjudication of cases is delayed, it is done for good reason. For example, an agency-initiated notification to the applicant could be generated when the agency updates its files regarding the background check (when it follows up with the holding agency or receives information back). Such a notification could be done through a “myCase status” update or through an electronic notification in *myUSCIS* to reduce administrative burdens on the agency. A notification would help inform applicants and petitioners, improve transparency and highlight efforts on the agency's part to resolve a pending application; it would also better manage the applicant's expectations regarding the case processing timeline.

²⁸³ USCIS Memorandum, “National Security Adjudication and Reporting Requirements—Update” (Feb. 9, 2009); https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/national-security-adjudication-reporting-020909.pdf (accessed Apr. 18, 2018).

²⁸⁴ USCIS Interoffice Memorandum, “Revised National Security Adjudications and Reporting Requirements” (Feb. 4, 2008); https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2008/doc017.pdf (accessed Apr. 18, 2018).

²⁸⁵ Information provided by USCIS (April 17, 2018).

²⁸⁶ 8 CFR § 103.2 (b)(16)(i).



Affirmative Asylum Backlog

Responsible Office: *Refugee, Asylum, and International Operations Directorate, Asylum Office*

Key Facts and Findings

- As the number of affirmative asylum applications²⁸⁷ grew over the past few years, so did the backlog of cases pending final decision.
- As of March 31, 2018, USCIS had 318,624 affirmative asylum applications pending final decision from the Asylum Office.²⁸⁸

²⁸⁷ For example, for the one month period of March 2018, 8,055 asylum applications were filed. Information provided by USCIS Asylum Division Quarterly Stakeholder Meeting (May 1, 2018). For the month of November 2009, 2,394 applications were filed. USCIS Webpage, “Asylum Office Workload. November 2009” (Apr. 21, 2010); <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/Asylum%20Workload%20Nov%202009%20-%20Jan%202010.pdf> (accessed May 02, 2018).

²⁸⁸ Information provided by USCIS (May 1, 2018).

- The current backlog developed from a host of factors, including spikes in credible fear claims and a rapid increase in affirmative asylum filings.²⁸⁹
- To address the backlog, the Asylum Division has increased staff to 686 authorized positions for Fiscal Year (FY) 2018, up from 533 authorized officers in FY 2016.²⁹⁰
- In January 2018, the Asylum Division changed its interview scheduling protocol to “last-in, first-out” (LIFO), to prioritize affirmative applications received by the agency within 21 or fewer days before

²⁸⁹ Information provided by USCIS (Feb. 23, 2018).

²⁹⁰ Information provided by USCIS (Feb. 23, 2018) and Ombudsman’s Annual Report 2016, p.17.

scheduling its longer-pending applications.²⁹¹ Prior to this change, the Asylum Division had prioritized the scheduling of its oldest pending cases for interviews on a FIFO basis since 2015.²⁹²

- USCIS expects the scheduling change to reduce the number of new affirmative asylum filings, because it is likely to discourage the filing of frivolous applications.²⁹³

Development of Modern Asylum Law

The law of asylum, particularly as interpreted in the United States, traces a direct route from the refugee crises of the twentieth century.²⁹⁴ Through most of World War II, U.S. immigration did not include a formal refugee process.²⁹⁵ Eventually, President Roosevelt created a War Refugee Board in 1944 to implement a new policy of relief for victims of the Nazis.²⁹⁶ In 1945, President Truman eased quota restrictions to allow the admission of persons displaced by the Nazis. In 1948, Congress passed the Displaced Persons Act, providing hundreds of thousands of visas for postwar refugees.²⁹⁷

After World War II, the United Nations (U.N.) took up the issue of refugee policy. In 1951, the U.N. adopted the Convention Relating to the Status of Refugees, which established a common definition of the term refugee and an obligation on the part of contracting states not to return people to countries where their life or freedom would be threatened due to their race, religion, nationality, membership of a particular social group, or political opinion.²⁹⁸ In 1968, the United States signed on to the international treaties, affirming this obligation to the refugee population.²⁹⁹

Subsequently, Congress passed the Refugee Act of 1980,³⁰⁰ which codified the provisions of the 1951 Refugee Convention and its 1967 Protocol.³⁰¹ The Refugee Act created a mechanism for individuals to seek refuge in the United States if they could establish, among other eligibility criteria, a well-founded fear of persecution on account of one of the enumerated grounds of race, religion, nationality, membership in a particular social group, or political opinion.³⁰²

While closely related, the law and processes for refugee and asylum applicants differ. Refugees are defined in 8 U.S.C. § 1101(a)(42) and refer to persons who are outside of the United States and are applying for protection in the United States based on persecution. Asylum applicants are in the United States already and are applying for protection based on persecution. *See* INA § 208; 8 U.S.C. § 1158. In both cases, the required persecution is taken from a definition in international treaties adopted by the United States, the Refugee Convention, and the amendments of the Protocol Relating to the Status of Refugees. The qualifying applicant in both cases must have a well-founded fear of being persecuted for reasons of race,

²⁹¹ Information provided by USCIS Asylum Office Division Quarterly Stakeholder Meeting (Feb. 06, 2018). Under the newly established LIFO scheduling system, asylum applications filed in the last 21 days will be scheduled before any cases that have been pending longer than that, with the exception of applications for persons who had been scheduled prior to LIFO and were waiting rescheduling. *See* USCIS Webpage, “Affirmative Asylum Interview Scheduling” (Jan. 26, 2018); <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling> (accessed May 07, 2018).

²⁹² Information provided by USCIS Asylum Office Division Quarterly Stakeholder Meeting (Feb. 06, 2018).

²⁹³ Information provided by USCIS (Feb. 23, 2018).

²⁹⁴ There is indeed an entire body of academic research and writing regarding the refugee crisis during World War II. We do not attempt to summarize it here, but instead strive to provide readers some basic information on the foundations of current asylum law in the United States.

²⁹⁵ *See* U.S. Holocaust Memorial Museum Webpage, “Immigration to the United States, 1933–1941” <https://www.ushmm.org/wlc/en/article.php?ModuleId=10008297> (accessed Apr. 28, 2018). With no refugee policy, and a hostile national climate to refugees, the U.S. posed insurmountable hurdles to most refugees fleeing persecution and seeking U.S. entry during these years.

²⁹⁶ The tragedy of refugees refused entry was epitomized by the fate of the passengers of the *SS St. Louis*, who fled Germany in 1939 and were refused entry by both Cuba and the United States. Immigration and Refugee Law and Policy, Stephen Legomsky and Cristina Rodríguez, Sixth Edition, p. 903. Upon return to Europe, at least 254 of the 937 passengers were later known to have been killed by the Nazis. *See* U.S. Holocaust Memorial Museum Webpage, “Refugees” <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005139> (accessed Apr. 28, 2018).

²⁹⁷ *See* U.S. Holocaust Memorial Museum Webpage, “The Aftermath of the Holocaust,” <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005129> (accessed Apr. 28, 2018).

²⁹⁸ Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6223 (entered into force Oct. 4, 1967) at art. 1 para.1; <http://www.ohchr.org/Documents/ProfessionalInterest/refugees.pdf>. The Convention as drafted was limited to “events occurring [in Europe] before 1 January 1951.” It was modified in 1967 to remove the temporal and geographic limitations. Text of the 1967 Protocol Relating to the Status of Refugees; <http://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>.

²⁹⁹ UNHCR Webpage, “States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol,” <http://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html> (accessed May 25, 2018).

³⁰⁰ Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat.102 (March 17, 1980).

³⁰¹ INA § 101(a)(42) incorporated the definition of a refugee from the Refugee Convention, as amended by the Protocol, Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6223 (entered into force Oct. 4, 1967) at art. 1, para.1.

³⁰² INA § 101(a)(42) incorporated the definition of a refugee from the Refugee Convention, as amended by the Protocol.

religion, nationality, membership of a particular social group or political opinion.

Since passage of the 1980 Refugee Act, the process of requesting asylum has changed several ways. In 1990, the former INS established a specially trained asylum officer corps to adjudicate affirmative asylum claims and a process by which to adjudicate them.³⁰³ This enabled individuals who sought entry to the United States, or who had already entered the United States, to pursue the same asylum claims as refugees who were outside U.S. borders. In 1996, Congress added a one-year filing deadline, and permitted the expedited removal of asylum-seekers who failed to establish a “credible fear” of persecution during an abbreviated screening process.³⁰⁴ Expedited removal and credible fear screenings of asylum seekers have been expanded by recent Executive Orders.³⁰⁵

Individuals physically present or arriving in the United States, who are not U.S. citizens and not otherwise inadmissible, may apply for asylum on the basis of a claim of well-founded fear of persecution in their country of origin or last residence that makes them unwilling or

unable to return.³⁰⁶ Asylum applicants must demonstrate they qualify for classification as refugees, albeit ones at or after entry, based on one or more of five protected grounds—race, religion, nationality, political opinion, and membership in a particular social group—which must form “at least one central reason for persecuting the applicant.”³⁰⁷

The statute does not define persecution except to state that persons forced into abortion, involuntary sterilization, or who resist coercive population control shall be deemed to be persecuted on account of political opinion.³⁰⁸

Persecution has been further defined by administrative and court decisions.³⁰⁹ The Board of Immigration Appeals (BIA) defined persecution as harm or suffering inflicted upon an individual in order to punish the individual for possessing a belief or characteristic.³¹⁰ The BIA recognized that a “punitive” intent is not required for the harm to constitute persecution and stated that persecution can consist of objectively serious harm or suffering that is inflicted because of a characteristic (whether real or perceived) of the victim.³¹¹

Persecution can include more than physical harm or the threat of it, such as “the deliberate imposition of severe economic disadvantage or the deprivation of life, liberty, food, housing, employment, or other essentials of life.”³¹²

Acts that may constitute persecution included arbitrary deprivation of life; genocide; slavery; torture and other cruel, inhuman, or degrading treatment; prolonged detention without notice of and an opportunity to contest the grounds for detention; and rape or other severe forms of sexual violence.³¹³

³⁰³ The Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 5030-5038; “Asylum and Withholding of Deportation Procedures, Final Rule,” 55 Fed. Reg. 30674 (Jul. 27, 1990).

³⁰⁴ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546, 604 (one year filing deadline); 689 (defining refugee); §203(b) (1) (B) (i)-(ii), 110 Stat. 3009 (expedited removal for asylum seekers who do not establish a credible fear). Regulations for the one-year application deadline and its limited exceptions are found at 8 CFR §208.4(a). Applicants must apply for asylum within one year of their last arrival in the United States, unless they can demonstrate that there are changed circumstances that materially affect their eligibility for asylum or extraordinary circumstances directly related to their failure to file within one year. Changed or extraordinary circumstances may include certain changes in the conditions in their country, changes in their own circumstances, and other events. See USCIS Webpage, “Asylum Eligibility and Applications FAQ” (Jun. 18, 2013); <https://www.uscis.gov/faq-page/asylum-eligibility-and-applications-faq#t12802n40186> (accessed May 02, 2018). Congress intended the one-year filing deadline as a deterrent to fraudulent asylum claims, while allowing exceptions that would be fairly applied so as not to impede the protection the law should provide for genuine asylum seekers. See *Mendez Rojas v. Johnson*, 2018 WL 1532715 (W.D. Wash. 2018), quoting Senator Orrin Hatch during deliberations on the passage of the restriction in 1996: “The Senate provisions had established a 1-year time limit only on defensive claims of asylum, that is, those raised for the first time in deportation proceedings, and provided for a good cause exception. Let me say that I share the Senator’s concern that we continue to ensure that asylum is available for those with legitimate claims of asylum. The way in which the time limit was rewritten in the conference report— with the two exceptions specified—was intended to provide adequate protections to those with legitimate claims of asylum.”

³⁰⁵ “Executive Order 13767: Border Security and Immigration Enforcement Improvements” (signed Jan. 25, 2017), 82 Fed. Reg. 8793-8797 (Jan. 30, 2017).

³⁰⁶ The burden of proof on the applicant is to establish that he or she meets the definition of a refugee. INA § 208(b)(1)(B)(i); 8 U.S.C. § 1158(b)(1)(B)(i), 8 CFR § 1208.13(b).

³⁰⁷ INA § 208; 8 U.S.C. § 1158.

³⁰⁸ 8 USC § 1101(a); INA § 101(a)(42).

³⁰⁹ See U.S. Citizenship and Immigration Services RAIO Directorate—Officer Training (Jul. 11, 2012); available at http://www.aila.org/infonet/uscis-training-module-definition-of-persecution?utm_source=aila.org&utm_medium=InfoNet%20Search (accessed May 24, 2018).

³¹⁰ *Matter of Acosta*, 19 I&N Dec. 211, 22 (BIA 1985).

³¹¹ *Matter of Kasinga*, 21 I&N Dec. 357, 365 (BIA 1996).

³¹² *In Re T-Z*, 24 I&N Dec. 163, 169-71 (BIA 2007).

³¹³ See U.S. Citizenship and Immigration Services RAIO Directorate—Officer Training (Jul. 11, 2012); http://www.aila.org/infonet/uscis-training-module-definition-of-persecution?utm_source=aila.org&utm_medium=InfoNet%20Search (accessed May 24, 2018).

Persecution connotes government action or inaction, typically in the form of a direct government action or government-supported action.³¹⁴ Persecution may, however, involve a “government’s unwillingness or inability to control *private* conduct.”³¹⁵

The regulations state that the required well-founded fear is established when an applicant demonstrates that “there is a reasonable possibility of suffering such persecution if he or she were to return to that country; and he or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear.”³¹⁶ The applicant must demonstrate that a reasonable person in the applicant’s circumstances would fear persecution.³¹⁷ An applicant can establish eligibility by proving either a well-founded fear of future persecution, or that he or she has suffered past persecution.³¹⁸

Applicants are not required to prove that they would be singled out for persecution individually if they can establish that there is a pattern or practice of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion, and that the applicant is identified with that group.³¹⁹

Asylum Standard. An asylum applicant bears the burden of proving a well-founded fear of persecution, either as a result of past persecution or a well-founded fear of future persecution.³²⁰ A claim of past persecution creates a rebuttable presumption of a well-founded fear of future persecution. The government bears the burden of overcoming that presumption, which it may meet by establishing that: (1) circumstances have changed since the past persecution such that the applicant no longer has a well-founded fear of persecution; and/or (2) the applicant may reasonably relocate to an area within the home country where the individual would no longer face persecution.³²¹ A claim may also be based on a well-founded future fear, by demonstrating

a reasonable possibility of suffering such persecution upon return (which can be established by a pattern or practice of persecution of persons similarly situated to the applicant on account of the five protected grounds) and an unwillingness to return.³²² There are also a list of prohibitions that act as bars to eligibility, which the applicant must demonstrate do not apply in order to succeed in the asylum application.³²³

The Asylum Application Process. Asylum applications are generally filed in one of two ways, affirmatively or defensively. See Figure 4.1. Defensive asylum applications are filed in response to removability charges during hearings conducted by the Executive Office for Immigration Review (EOIR). Affirmative applications are filed by applicants in the United States who are not in removal proceedings directly with USCIS by submitting Form I-589, *Application for Asylum and for Withholding of Removal* within one year of arrival.³²⁴ USCIS’ RAIO oversees the operation of the Asylum Division, which administers the adjudication of affirmative asylum applications. Applicants are interviewed by USCIS at one of 12 asylum offices (nine full offices, three sub-offices) nationwide. After an asylum interview, applicants who are not granted asylum by USCIS (and who are not currently in valid status) are referred to Immigration Court, where they may present their asylum claim as a defense to removal to an immigration judge.

There are, however, two additional ways to raise a claim of asylum at or near our borders. The law provides for credible fear and reasonable fear screenings of those who either (1) present themselves at a port of entry with an intention to apply for asylum or indicate a fear of persecution, or (2) in violation of the law, cross the United States at a location other than an official port of entry, and are subject to expedited removal. Both are forms of expedited removal, but permit the applicant to seek asylum through an accelerated review of their claim.

³¹⁴ See, e.g., *Aldana-Ramos v. Holder*, 757 F.3d 9, 17 (1st Cir. 2014).

³¹⁵ *Aldana-Ramos v. Holder*, 757 F.3d 9, 17 (1st Cir. 2014)(emphasis added).

³¹⁶ 8 CFR § 208.13 (b)(2)(i)(B) and (C). However, “An applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant’s country of nationality or, if stateless, another part of the applicant’s country of last habitual residence, if under all the circumstances it would be reasonable to expect the applicant to do so.” 8 CFR § 208.13 (b)(2)(ii).

³¹⁷ *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987).

³¹⁸ 8 CFR § 208.13(b).

³¹⁹ 8 CFR § 208.13(b)(2)(iii).

³²⁰ 8 CFR § 1208.13.

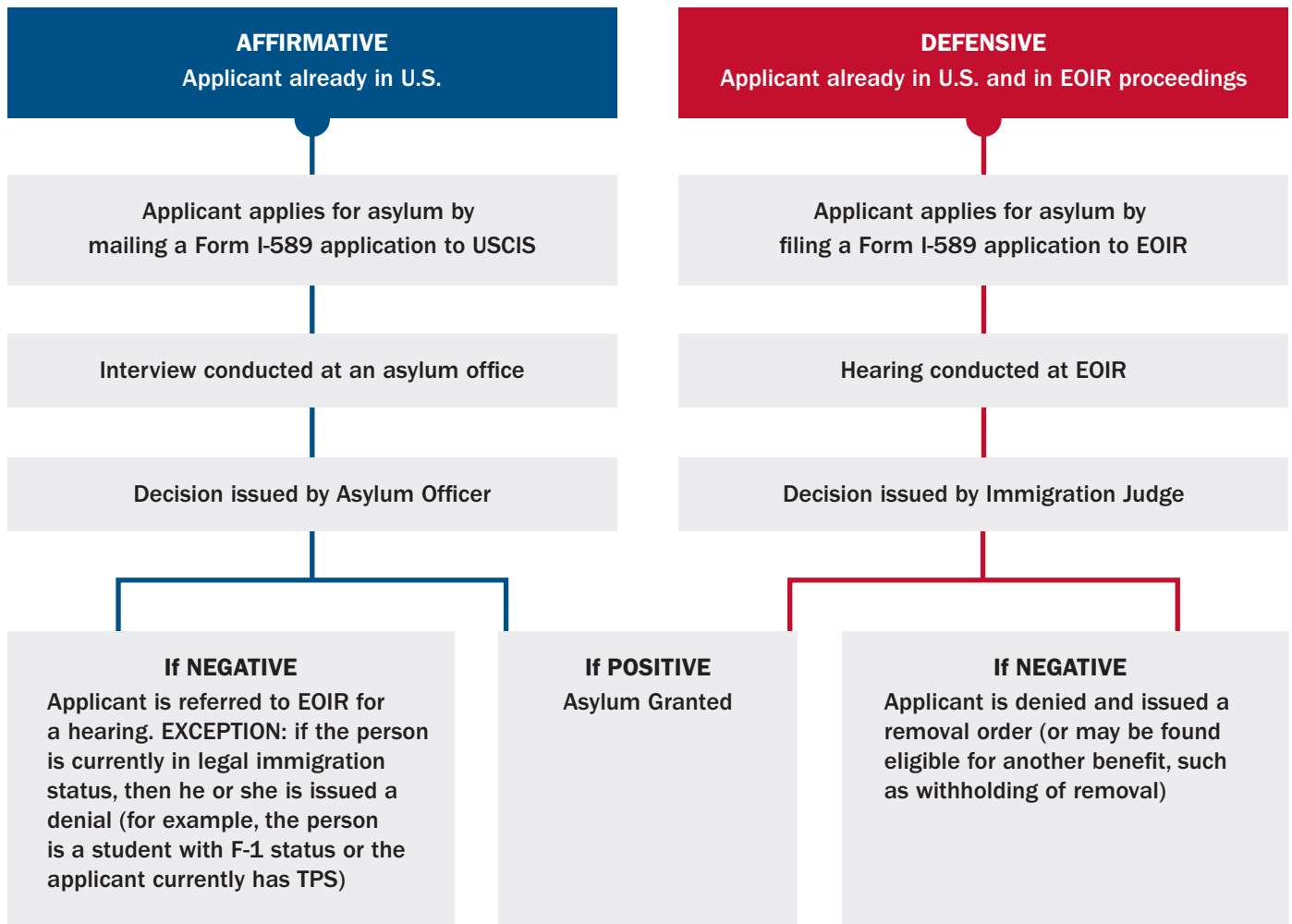
³²¹ 8 CFR § 1208.13(b)(1).

³²² 8 CFR § 1208.13(b)(2).

³²³ Individuals who filed for asylum more than a year after entry, unless able to meet one of the narrow enumerated exceptions in the statute, are barred from asylum. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546, 604. Also barred from asylum are persons convicted of an aggravated felony, or who materially supported a terrorist group, or who are deemed be a national security risk, or who are firmly resettled in another country, or who assisted in the persecution of others are barred from a grant of asylum. See INA § 208(a)(2)(A) and (B); 8 U.S.C. § 1158(a)(2)(A) and (B); (b)(2).

³²⁴ See Instructions for Form I-589, *Application for Asylum and for Withholding of Removal*; <https://www.uscis.gov/i-589> (accessed May 01, 2018).

Figure 4.1: The Asylum Application Process: Affirmative vs. Defensive



Source: See USCIS Webpage, “The Affirmative Asylum Process” (Jan. 26, 2018); <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-process> (accessed May 24, 2018); USCIS Webpage, “Obtaining Asylum in the United States” (Oct. 19, 2015); <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states> (accessed May 24, 2018).

Credible Fear Screening Process. Individuals who seek admission to the United States without proper entry documents or who have otherwise not been admitted are subject to immediate return, called expedited removal.³²⁵ However, if they claim a fear of persecution and a desire to apply for asylum, they are detained and receive a credible fear screening from an asylum officer.³²⁶ If the applicant establishes a “significant possibility” that he or she can prove the elements of a full asylum claim in a hearing before an immigration judge, the applicant is referred to proceedings and can apply for asylum in a removal

hearing.³²⁷ The less rigorous standard and easier burden of proof distinguishes the credible fear process as a pre-screening for asylum; the applicant must still meet the burden of a well-founded fear in removal.³²⁸

Reasonable Fear Screening Process. An individual who has unlawfully reentered the United States after being ordered removed or granted voluntary departure, and/or is subject to an administrative order of removal

³²⁵ See INA § 235; 8 U.S.C. § 1235.3(b).

³²⁶ See USCIS Webpage, “Questions and Answers: Credible Fear Screening” (Jul. 15, 2015); <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-answers-credible-fear-screening> (accessed May 02, 2018).

³²⁷ See 8 CFR § 208.30(f) and (g); USCIS Webpage, “Questions and Answers: Credible Fear Screening” (Jul. 15, 2015); <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-answers-credible-fear-screening> (accessed May 02, 2018).

³²⁸ Congressional Research Service, “Asylum and ‘Credible Fear’ Issues in U.S. Immigration Policy,” R41753, June 29, 2011; <https://fas.org/sgp/crs/homesecc/R41753.pdf> (accessed June 13, 2018).

as an aggravated felon,³²⁹ but who expresses a fear of persecution upon return is detained and referred for a reasonable fear interview rather than a credible fear screening.³³⁰ A positive reasonable fear determination does not grant any immigration benefit, but it does allow a person to be referred to immigration court where the individual may ask an immigration judge to grant other relief, such as withholding of removal or, in some cases, relief under the Convention Against Torture (CAT).³³¹ Similar to credible fear, if a reasonable fear determination is negative, then the person may ask that an immigration judge review the asylum officer's decision.³³²

Asylum Grants. Though USCIS' Asylum Division does not track the basis of the persecution grounds upon which an applicant filed the asylum applications, it does track the basis of the claim upon which the final decision was made.

In 2017, the overall approval rate for affirmative asylum applications was 34 percent.³³³ For FY 2018, the overall approval rate was 26 percent as of February, 2018.³³⁴ See Figure 4.2.

Asylum Benefits. The benefits of asylum are substantial. An approved asylee may remain in the United States indefinitely (absent termination of asylee status, which can occur if there are fundamental changes in circumstances or acquisition of third country citizenship)³³⁵ and is eligible to apply for permanent residence status after one year.³³⁶ Within two years of receiving asylum, an asylee may petition on the basis of the asylum status for spouses and unmarried children under 21 to join the applicant as an asylee.³³⁷ After five years of permanent resident status, eligible individuals may apply for naturalization and become U.S. citizens.³³⁸

³²⁹ See 8 CFR § 241.8 and USCIS Webpage, "Reasonable Fear FAQ" (Sept. 26, 2008); <https://www.uscis.gov/faq-page/reasonable-fear-faq#t12808n40007> (accessed Apr. 30, 2018).

³³⁰ See USCIS Webpage, "Reasonable Fear FAQ" (Sept. 26, 2008); <https://www.uscis.gov/faq-page/reasonable-fear-faq#t12808n40007> (accessed Apr. 30, 2018).

³³¹ *Id.*

³³² *Id.*

³³³ Information provided by USCIS Asylum Office Division Quarterly Stakeholder Meeting (Feb. 06, 2018).

³³⁴ *Id.*

³³⁵ See INA § 208(c)(2); 8 U.S.C. § 1158(c)(2).

³³⁶ See INA § 209(a)(1); 8 U.S.C. § 1159(a)(1).

³³⁷ See INA § 208(b)(3); 8 U.S.C. § 1158(b)(3); Form I-730, *Refugee/Asylee Relative Petition*; <https://www.uscis.gov/i-730> (accessed Mar. 07, 2018).

³³⁸ See INA § 316; 8 U.S.C. § 1427.

Figure 4.2: Grounds for Granting Affirmative Asylum in FY 2017

Nationality*	Referral/Denial rate**	Grant rate†	Top ground††	#2 ground	#3 ground
China	58%	42%	Religion	CFP	Political
El Salvador	65%	35%	PSG	none	Political
Guatemala	67%	33%	PSG	none	Race
Mexico	91%	9%	none	PSG	Political
Venezuela	28%	72%	Political	PSG	Multiple

Notes:

* With the exception of Venezuela, all listed nationalities are both most numerous new applications and most numerous applications completed by the Asylum Division during the fiscal year. Venezuela is *not* one of the nationalities with the most numerous applications completed by the Asylum Division.

** Referral/denial rate = (adjudicated referred + denied) / (granted + denied + adjudicated referred) x 100. Cases referred on the One Year Filing Deadline are included in adjudicated referred. This calculation does not include admin closures and unadjudicated referred cases (eg. no shows, no jurisdiction, withdrawals etc).

† Grant rate = granted / (granted + denied + adjudicated referred) x 100. This calculation does not include admin closures and unadjudicated referred cases (eg. no shows, no jurisdiction, withdrawals etc).

†† The top grounds are the highest number of cases per ground for adjudicated cases in FY 2017 and FY 2018 Q1.

Cases completed in any fiscal year could have been filed, received or reopened in previous fiscal years. Cases may include more than one individual, i.e. an applicant and a spouse and/or children.

Source: Information provided by USCIS (Mar. 29, 2018). PSG denotes particular social group, while CFP means coercive family planning.

The Growing Backlog

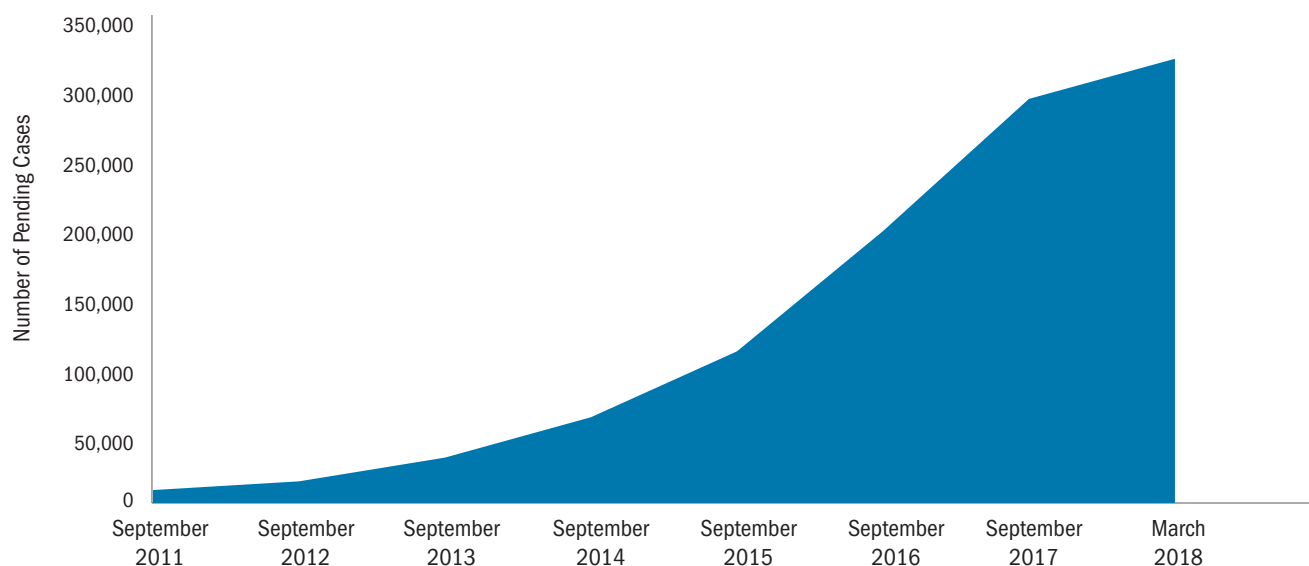
The asylum application backlog, defined by the Asylum Office as all pending applications, has reached record numbers.

A host of factors have contributed to the growth in the affirmative asylum backlog. These include: (1) a continuing high volume of credible and reasonable fear claims; (2) an increase in new affirmative asylum receipts; (3) an increase in affirmative asylum applications potentially motivated by obtaining employment authorization; (4) a potential rise in affirmative asylum cases filed for the purpose of obtaining access to immigration court to seek cancellation of removal; and (5) a rise in affirmative asylum claims by unaccompanied children.

High Volume of Credible and Reasonable Fear Claims.

Since FY 2012, a large number of Central American nationals arriving at the border have contributed to a high

Figure Asylum 4.3: The Rising Backlog of Affirmative Asylum Applications



Source: USCIS Webpage, “Notes from Previous Engagements” (ND); <https://www.uscis.gov/outreach/notes-previous-engagements> (accessed May 24, 2018).

volume of credible fear claims, which have constrained the Asylum Division’s capacity to direct resources to affirmative asylum adjudications. In FY 2011, credible fear case receipts numbered 8,254.³³⁹ In FY 2017, a total of 50,475 credible fear cases were received.³⁴⁰

Reasonable fear claims also increased during the same period. In FY 2017, USCIS received 5,630 reasonable fear cases,³⁴¹ more than double the FY 2011 total of 2,376³⁴² and a seven percent increase over the reasonable fear cases in FY 2016 (5,235).³⁴³ Nationals of the Northern Triangle of El Salvador, Honduras, and Guatemala

³³⁹ USCIS Webpage, “Credible Fear Workload Report Summary FY 2011;” <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2011/CredibleFearandReasonableFearWorkload.pdf> (accessed May 02, 2018).

³⁴⁰ USCIS Webpage, “Credible Fear Workload Report Summary FY 2017;” https://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-_Credible_Fear_and_Reasonable_Fear_Statistics_and_Nationality_Report.pdf (accessed May 02, 2018).

³⁴¹ USCIS Webpage, “Reasonable Fear Workload Report Summary FY 2017;” https://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-_Credible_Fear_and_Reasonable_Fear_Statistics_and_Nationality_Report.pdf (accessed May 02, 2018).

³⁴² USCIS Webpage, “Reasonable Fear Workload Report Summary FY 2011;” <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2011/CredibleFearandReasonableFearWorkload.pdf> (accessed May 02, 2018).

³⁴³ USCIS Webpage, “Reasonable Fear Workload Report Summary FY 2016;” <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/CredibleFearReasonableFearStatisticsNationalityReports.pdf> (accessed May 02, 2018).

submitted the majority of the FY 2017 credible fear and reasonable claims.³⁴⁴

The Asylum Division regularly sends asylum officers on temporary assignments to border locations to perform credible fear screenings³⁴⁵ of detained asylum seekers, limiting the availability of officers to adjudicate pending affirmative asylum applications. While many credible fear screenings are conducted telephonically, they still require hours of officer time, draining these finite resources.³⁴⁶

Increase in Affirmative Asylum Filings from New Sources.

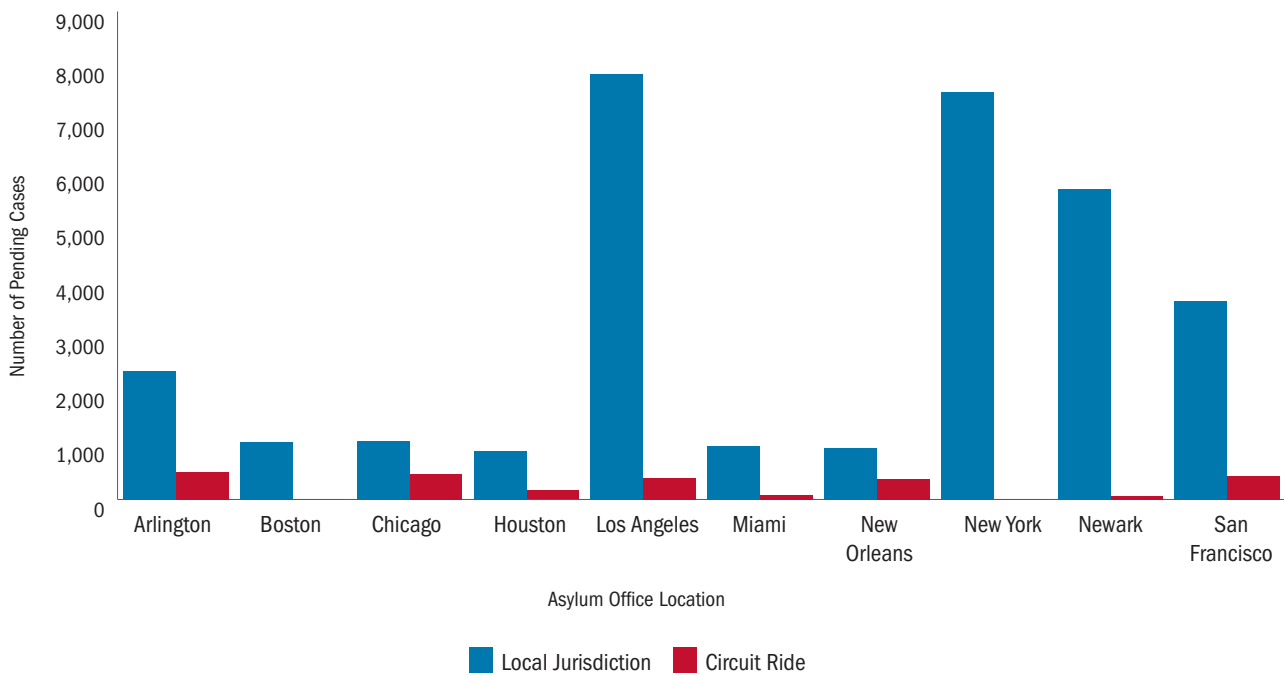
Not only has the Asylum Division been inundated with credible fear and reasonable fear interviews, but it also is receiving a higher number of new affirmative asylum cases. See Figures 4.3 and 5.2. In 2009, the Asylum Division received approximately 2,400 applications per month; by

³⁴⁴ USCIS Webpage, “Monthly Credible and Reasonable Fear Nationality Reports;” https://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-_Credible_Fear_and_Reasonable_Fear_Statistics_and_Nationality_Report.pdf (accessed May 02, 2018).

³⁴⁵ USCIS Asylum Division does not adjudicate asylum applications arising from credible fear screenings. These defensive applications are adjudicated by EOIR.

³⁴⁶ Information provided by USCIS (Feb. 23, 2018).

Figure 4.4: Pending Caseloads by Asylum Office



Source: Information provided by USCIS (Mar. 29, 2018). Note that circuit ride locations are staffed on a periodic basis by one of the 12 permanent asylum offices, which assign staff to conduct interviews on scheduled visits to more remote geographic locations. The Boston and New York Asylum Offices do not at this time conduct circuit rides.

FY 2018, it was receiving over 8,000 filings per month.³⁴⁷ As of March 31, 2018, USCIS had 318,624 affirmative asylum applications pending final decision from the Asylum Division.

A rise in receipts from nationals of countries experiencing acute hardship has contributed to this trend.³⁴⁸ For example, in FY 2017, Venezuela ranked as the number one country of nationality for affirmative asylum applicants, surpassing China, which has a much larger population and had been the leading country of nationality for affirmative asylum applicants for the past ten years.³⁴⁹

Employment Authorization Incentive. The growing backlog of affirmative asylum filings has lengthened processing times. Applications now often remain pending for well over a year, depending on the jurisdiction, before

asylum seekers are even interviewed. This is long beyond the 180-day adjudication time frame specified in the statute.³⁵⁰ See Figure 4.5.

The Asylum Division surmises that this long wait has incentivized individuals to claim asylum in order to obtain work authorization.³⁵¹ The law requires those filing an asylum application to wait 150 days before requesting employment authorization, with the caveat that USCIS may not grant work authorization to an asylum applicant until 180 days after filing.³⁵² When the Asylum Division had a smaller pending caseload and adjudicated affirmative asylum cases more quickly, it often reached asylum decisions prior to the 150-day mark, including denials of meritless applications, which rendered the applicants ineligible for employment authorization. However, USCIS

³⁴⁷ For example, for the one month period of March 2018, 8,055 asylum applications were filed. Information provided by USCIS Asylum Division Quarterly Stakeholder Meeting (May 01, 2018). For the month of November 2009, 2,394 applications were filed. USCIS Webpage, “Asylum Office Workload, November 2009” (Apr. 21, 2010); <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/Asylum%20Workload%20Nov%202009%20-%20Jan%202010.pdf> (accessed May 02, 2018).

³⁴⁸ Information provided by USCIS (Feb. 23, 2018).

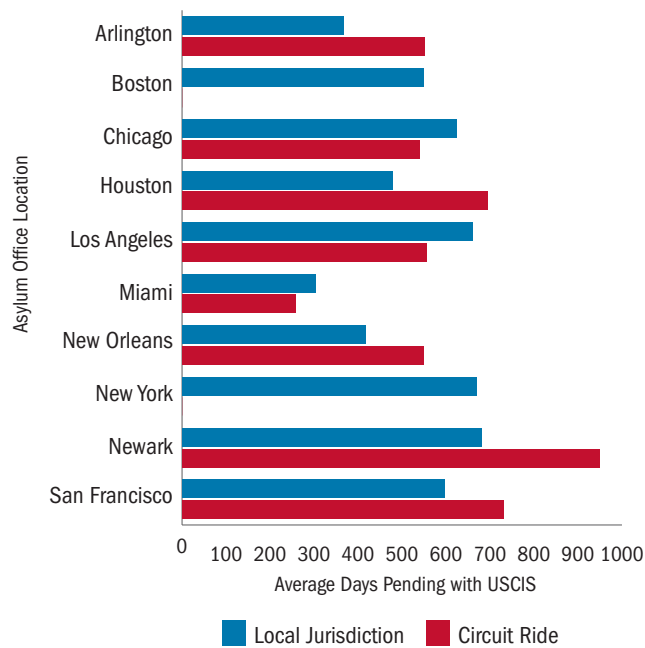
³⁴⁹ *Id.*

³⁵⁰ INA § 208(d)(5); 8 U.S.C. § 1158(d)(5) (“in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed”). See also Human Rights First Webpage, “Asylum Office Backlog and Delays” (Nov. 16, 2016); <http://www.humanrightsfirst.org/resource/asylum-office-backlog-and-delays> (accessed March 8, 2018).

³⁵¹ Information provided by USCIS (Feb. 23, 2018).

³⁵² 8 CFR § 208.7(a)(1).

Figure 4.5: Average Number of Days Pending from Application Filing Date to Interview



Source: Information provided by USCIS (Mar. 29, 2018). The Boston and New York Asylum Offices do not at this time conduct circuit rides.

presumes the backlog has created an incentive to apply for asylum—without a strong case, or even fraudulently, for the purpose of obtaining an EAD while the delays continue.³⁵³ The agency suspects that these EAD-motivated applications have exacerbated the backlog.

Cancellation of Removal Incentive. The Asylum Division also reports that another contributing factor to the asylum backlog is an increase of applicants who file for affirmative asylum seeking a path into immigration court to apply for cancellation of removal.³⁵⁴ Cancellation of removal, a statutory defense against removal after ten years of physical presence, is not a benefit for which an individual may affirmatively apply. It is a defense to removal, available only to those who are already in removal proceedings, as jurisdiction lies solely before an immigration judge.³⁵⁵ The Asylum Division recently performed an audit identifying up to 50,000 pending

³⁵³ Information provided by USCIS Asylum Office Division Quarterly Stakeholder Meeting (Feb. 06, 2018).

³⁵⁴ Information provided by USCIS (Feb. 23, 2018).

³⁵⁵ Cancellation of removal is a defense to removal under INA §240A (b) which is only available to individuals in removal proceedings before an immigration judge who have been physically present in the U.S. for not less than 10 years and can prove exceptional and extremely unusual hardship to the alien’s spouse, parent or child who is a U.S. citizen or LPR.

affirmative asylum applications filed by individuals who entered the United States more than ten years ago, despite the one-year filing requirement.³⁵⁶ The Asylum Division suspects this group of asylum applicants filed for asylum, anticipating referral to immigration court where they could then apply for cancellation of removal, an avenue not otherwise available.³⁵⁷

Trafficking Victims Protection Reauthorization Act (TVPPRA) Preference for UAC Applications. As the number of asylum applications has increased, the number of UACs claiming asylum also has grown exponentially, further complicating the Asylum Division’s resource issues. Until new scheduling priorities were announced in 2018,³⁵⁸ USCIS prioritized affirmative asylum interviews of UACs ahead of other categories of asylum applicants. In 2012, only 410 UACs filed asylum claims, which grew to 14,711 in 2016.³⁵⁹ This has not only increased the sheer number of affirmative asylum claims, but impacted the timing in which the claims were processed. Some of these cases required moving resources to family residential centers in remote locations where asylum officers had to travel to interview them in person.³⁶⁰ This further slowed down affirmative asylum processing and pushed interview wait times because asylum officers were not immediately available to conduct affirmative interviews.

Efforts to Address the Backlog and Mitigate its Effects

USCIS has undertaken a range of initiatives to address the backlog and mitigate its consequences for asylum seekers, agency operations, and the integrity of the asylum system. These efforts include: (1) revised scheduling priorities including changing from FIFO order processing to LIFO order; (2) staffing increases and retention initiatives; (3) acquiring new asylum division facilities; (4) assigning refugee officers to the Asylum Division; (5) conducting remote screenings; and (6) launching a pilot program for

³⁵⁶ Information provided by USCIS (Feb. 23, 2018). The one-year filing deadline regulations outline a few important exceptions for unaccompanied minors, changed circumstances affecting eligibility for asylum, or extraordinary circumstances that created a delay in filing an application. 8 CFR § 208.4(a)(4) and (5).

³⁵⁷ Information provided by USCIS (Feb. 23, 2018).

³⁵⁸ See USCIS Webpage, “Affirmative Asylum Interview Scheduling” (Jan. 26, 2018); <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling> (accessed May 07, 2018).

³⁵⁹ Information provided by USCIS (May 04, 2017). See also Ombudsman’s Annual Report 2017, p. 40.

³⁶⁰ Information provided by USCIS (Feb. 23, 2018).

applicants seeking a route to immigration court to request cancellation of removal.

Revised Interview Scheduling Priorities. A significant scheduling change occurred in January 2018 with FIFO scheduling returning to LIFO scheduling order. Previously implemented in 1995, LIFO remained in effect until 2014.³⁶¹ Under FIFO scheduling, USCIS generally processed affirmative asylum applications in the order they were filed, although priority scheduling applied to some cases, such as those involving rescheduled interviews and the statutorily-required UACs. The now-operative LIFO scheduling methodology prioritizes newly-filed applications. Statutory requirements call for an interview (in the absence of exceptional circumstances) within 45 days of the filing of an application.³⁶² With the return to LIFO scheduling, USCIS indicates that it will schedule asylum interviews using the following order of priority for those cases that fall under the nine primary asylum office locations:

- **First Priority:** Rescheduled interviews.³⁶³ These include applications that were scheduled for an interview, but the interview had to be rescheduled either by USCIS or at the applicant's request.
- **Second Priority:** Applications pending 21 days or less.³⁶⁴
- **Third Priority:** All other pending affirmative asylum applications will be scheduled for interviews starting with newer filings and working back toward older filings.³⁶⁵

Cases subject to interviews at “circuit ride” locations (generally a USCIS field office situated closer than the asylum office to an applicant's residence) will not fall under the 21-day time frame. Rather, the Asylum Division will schedule these cases for interviews as resources permit.³⁶⁶

³⁶¹ See Information provided by USCIS Asylum Office Division Stakeholder Meeting (Feb. 06, 2018).

³⁶² INA § 208(d)(5); 8 U.S.C. § 1158(d)(5).

³⁶³ See USCIS Webpage, “Affirmative Asylum Interview Scheduling” (Jan. 26, 2018); <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling> (accessed May 07, 2018).

³⁶⁴ *Id.*

³⁶⁵ *Id.* Local offices report that 90 percent of cases scheduled for interviews fall within the first two priorities, that is, reschedules and cases aged within 21 days of receipt. Information provided by USCIS (May 01, 2018).

³⁶⁶ See USCIS Webpage, “Affirmative Asylum Interview Scheduling” (Jan. 26, 2018); <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling> (accessed May 07, 2018).

USCIS reverted to this scheduling methodology to reduce the potential incentive to file an asylum application merely as a means of acquiring an EAD.³⁶⁷ With interview scheduling based on filing date under FIFO, and with applicants able to apply for an EAD once their asylum application has been pending 150 days, applicants could acquire an EAD before being contacted for an asylum interview. Under LIFO, potential asylum applicants will be much more likely to have an interview, and potentially a decision, before their application reaches the 150-day threshold. Local offices report a 25 percent drop in affirmative receipts in the immediate aftermath of the change to LIFO scheduling.³⁶⁸

Asylum offices continue to grant a limited number of expedited interview requests on a case-by-case basis.³⁶⁹ Each asylum office has a process for adjudicating expedited interview requests that generally requires a written request to the asylum office.³⁷⁰ Apart from the expedite process, many offices also maintain a standby list. Applicants can request placement on that list in the event of last-minute interview cancellations.³⁷¹

Local offices report that they have adopted additional initiatives to ease the processing of cases quickly, such as requiring the submission of any additional evidence one week prior to a scheduled interview, allowing officers time to review documentation necessary to conduct the interview.³⁷²

One issue arising from the change in the priorities is the removal of UACs from the priority list. As discussed above, TVPRA provides USCIS with initial jurisdiction

³⁶⁷ Information provided by USCIS Asylum Office Division Stakeholder Meeting (Feb. 06, 2018).

³⁶⁸ Information provided by USCIS (May 01, 2018).

³⁶⁹ See USCIS Webpage, “Affirmative Asylum Scheduling Bulletin” (Jan. 26, 2018); <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-scheduling-bulletin> (accessed Mar. 07, 2018).

³⁷⁰ See USCIS Webpage, “Questions and Answers USCIS Asylum Division Quarterly Stakeholder Meeting” (Feb. 07, 2017); https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AsylumQuarterlyEngagementQA02072017.pdf (accessed Mar. 09, 2017); see also Information provided by USCIS at the Sixth Annual Ombudsman's Conference (Dec. 06, 2016); USCIS Webpage, “Affirmative Asylum Scheduling Bulletin” (Mar. 06, 2017); <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-scheduling-bulletin> (accessed Mar. 10, 2017).

³⁷¹ Information provided by USCIS at the Sixth Annual Ombudsman's Conference (Dec. 06, 2016); See USCIS Webpage, “Questions and Answers USCIS Asylum Division Quarterly Stakeholder Meeting” (Nov. 4, 2016); https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AsylumQuarterlyEngagementQA11042016.pdf (accessed Mar. 09, 2017).

³⁷² Information provided by USCIS (May 01, 2018).

over all asylum applications filed by UACs, even those initially filed in removal proceedings.³⁷³ The revised priorities will mean UACs may now wait longer for interviews, although they will still fall under the new LIFO process.

Staffing Increases and Retention Initiatives. Since 2015, USCIS has increased the number of asylum officer positions by more than 50 percent, from 448 officers authorized for FY 2015 to 686 officers authorized for FY 2018.³⁷⁴ Along with these staffing enhancements, RAO increased the frequency with which it offered the RAO Directorates' Combined Training and Asylum Division Officer Training Course, thereby reducing the amount of time spent in training.³⁷⁵ Moreover, to address asylum officer turnover, the Asylum Division has made efforts to increase telework options and expand opportunities for advancement.³⁷⁶

New Asylum Division Facilities. The Asylum Division also expanded its field operations, opening sub-offices in Boston, New Orleans, and Arlington, VA. Its most significant expansion, however, is just getting underway. Currently, the Asylum Division is establishing an asylum vetting center—distinct from the planned DHS-wide National Vetting Center—in Atlanta, Georgia. This center will allow for the initiation of certain security checks from a central location, rather than at individual asylum offices, in an effort to alleviate the administrative burden on asylum officers and to promote vetting and processing efficiency. USCIS has already begun hiring for the center, which will ultimately staff approximately 300 personnel, composed of both asylum and FDNS positions.³⁷⁷ USCIS expects completion of the center's construction in 2019 or 2020.³⁷⁸

³⁷³ TVPRA § 235(d)(7)(B).

³⁷⁴ Information Provided by USCIS (Apr. 12, 2017). As of Jan. 1, 2017 the Asylum Division has 528 Asylum Officers and is projected to reach 562 by September 30, 2017). Information provided by USCIS at the Sixth Annual Ombudsman's Conference (Dec. 06, 2016); see also USCIS Webpage, "Questions and Answers USCIS Asylum Division Quarterly Stakeholder Meeting" (Feb. 07, 2017); https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AsylumQuarterlyEngagementQA02072017.pdf (accessed Mar. 09, 2017).

³⁷⁵ See USCIS Webpage, "Questions and Answers USCIS Asylum Division Quarterly Stakeholder Meeting" (Aug. 02, 2016) (reflects two simultaneous trainings for scheduled for new asylum officers); https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AsylumQuarterlyQandA080216.pdf (accessed Mar. 24, 2017).

³⁷⁶ Information provided by USCIS (Feb. 23, 2018).

³⁷⁷ *Id.*

³⁷⁸ *Id.*

Remote Screenings: Telephonic and Videoconference. In 2016, the Asylum Division established a sub-office of the Arlington Asylum Office dedicated to adjudicating credible and reasonable fear claims. This sub-office performs remote (primarily telephonic) screenings of applicants who are located in detention facilities throughout the country.³⁷⁹ This leaves the interviewers performing assessments of the applicants via telephonic screenings, which enables the interviewers to access their offices, files, and research, but has consequences distinct from an in-person interview in terms of the physical remoteness of the interviewer from the applicant. USCIS may assign personnel on the ground at the facilities as needed to manage logistics and conduct certain interviews in-person and on-site. For example, currently all interviews involving children must be conducted in person, so these are instead conducted by officers rotating to facilities.³⁸⁰

The Asylum Division states that its practice of performing remote telephonic screenings of credible and reasonable fear claims have enhanced processing efficiency since implementation.³⁸¹ These screenings allow asylum offices greater agility and speed in reaching asylum seekers whose arrival patterns in the United States are not always predictable and who may be detained at remote detention facilities.³⁸²

Refugee Officers Assigned to the Asylum Division.

Throughout 2018, RAO plans to have approximately 100 refugee officers serving 12-week assignments with the Asylum Division at any given time.³⁸³ As the refugee quota diminished, refugee office personnel became available to perform other functions. The annual U.S. Refugee Admissions Program cap—which designates the number of refugees that the United States may resettle in a given year—increased from 70,000 in FY 2015 to 85,000 in FY 2016³⁸⁴ and was set to increase in FY 2017 to 110,000.³⁸⁵ As

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ Reasonable fear screenings used to only be conducted in person or by secure video, but since 2015, they have been done by phone as well. Information provided by USCIS (Feb. 23, 2018).

³⁸² Information provided by USCIS (Feb. 23, 2018).

³⁸³ *Id.*

³⁸⁴ Department of State Webpage, "Proposed Refugee Admissions for Fiscal Year 2017" (Sept. 15, 2016); <http://www.state.gov/j/prm/releases/docsforcongress/247770.htm> (accessed Mar. 07, 2018); Department of State Webpage, "Proposed Refugee Admissions for Fiscal Year 2016" (Oct. 01, 2015); <https://www.state.gov/j/prm/releases/docsforcongress/247770.htm> (accessed Mar. 07, 2018).

³⁸⁵ Department of State Webpage, "Proposed Refugee Admissions for Fiscal Year 2017" (Sept. 15, 2016); <http://www.state.gov/j/prm/releases/docsforcongress/247770.htm> (accessed March 07, 2018).

this cap grew, USCIS increasingly loaned asylum officers to RAI0's Refugee Division to meet the growing refugee processing workload. With a cap of 45,000 for FY 2018,³⁸⁶ the trend has reversed, with refugee officers now being loaned to the Asylum Division. These refugee officers are able to interview affirmative asylum cases, conduct credible fear and reasonable fear screenings, and provide operational support.³⁸⁷ RAI0 assigns refugee officers both to asylum offices and DHS's family residential centers. The Administration cited the affirmative asylum backlog as a factor influencing its 2018 refugee ceiling determination, stating that agency resource allocations would reflect prioritization of the backlog.³⁸⁸

Pilot Program for Applicants who Appear to be Seeking Cancellation of Removal. As noted above, the Asylum Division recently identified up to 50,000 pending affirmative asylum applications filed by individuals who entered the United States more than 10 years ago, who may actually be seeking a referral to immigration court where they could then apply for cancellation of removal. Recently, the Asylum Division began a pilot program in which it notified 1500 of these applicants of an option to voluntarily waive their asylum interviews and proceed directly to immigration court.³⁸⁹ The Asylum Division will evaluate the results of the pilot and consider expansion in the future.

Other Impacts of the Backlog

Security concerns have been raised about a large pool of people in the United States awaiting action on their immigration cases, including security vetting.³⁹⁰ The plans already underway to develop a pre-processing center for asylum filings, which will centralize security checks, could ease this concern. A systematic and centralized security process will make such checks more efficient and more consistent, providing stability in the process and enabling adjudicators to focus on the merits of each claim. The center, however, will not be in full operation for at least a year from the time of publication of this Report, by

which time the backlog of applications is not likely to be substantially reduced.³⁹¹

Conclusion

The Asylum Division has carefully planned and implemented a comprehensive backlog reduction plan that will begin to chip away at the more than 300,000 pending asylum applications. Some offices already report a 25 percent drop in affirmative asylum filings since implementation of the LIFO scheduling system in January 2018.³⁹² Despite the gains that USCIS predicts, the backlog may be difficult to reduce due to other factors such as changes in enforcement and loss of status by certain groups based on new policy changes.

One potential challenge for reducing the affirmative asylum backlog is the possibility of a new wave of asylum claims from individuals currently holding TPS. TPS for nationals of El Salvador will end in 2019,³⁹³ and it is likely that some percentage of the approximately 200,000³⁹⁴ individuals left without status may be eligible to affirmatively apply for asylum. Asylum applications from El Salvador are currently the second highest number of filings at the Asylum Division.³⁹⁵ TPS is ending for several other nationalities, as well. Haitians will lose TPS on July 22, 2019,³⁹⁶ and Hondurans will lose TPS on January 5, 2020.³⁹⁷ The Asylum Division may face more challenges if some portion of this population becomes part of the pending affirmative asylum caseload.

³⁹¹ Information provided by USCIS (Feb. 23, 2018).

³⁹² Information provided by USCIS (May 1, 2018).

³⁹³ See USCIS Webpage, "Re-Registration Period Now Open for Salvadorans with Temporary Protected Status" (Jan. 18, 2018); <https://www.uscis.gov/news/news-releases/re-registration-period-now-open-salvadorans-temporary-protected-status> (accessed May 07, 2018) announcing one last extension and the end of the program on September 9, 2019.

³⁹⁴ Information provided by USCIS (Feb. 23, 2018).

³⁹⁵ See USCIS Webpage, "Asylum Office Workload, December 2017" (Feb. 06, 2018); https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_AffirmativeAsylumStatisticsDecember2017.pdf (accessed May 07, 2018).

³⁹⁶ See USCIS Webpage, "Temporary Protected Status Haiti" (May 09, 2018) <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-haiti> (accessed May 16, 2018).

³⁹⁷ See USCIS Webpage, "Temporary Protected Status Honduras" (May 09, 2018) <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-honduras> (accessed May 16, 2018).

³⁸⁶ Department of State Webpage, "Proposed Refugee Admissions for Fiscal Year 2018" (Oct. 04, 2017); <https://www.state.gov/j/prm/releases/docsforcongress/274613.htm> (accessed March 07, 2018).

³⁸⁷ Information provided by USCIS (Feb. 23, 2018).

³⁸⁸ Department of State Webpage, "Proposed Refugee Admissions for Fiscal Year 2018" (Oct. 04, 2017); <https://www.state.gov/j/prm/releases/docsforcongress/274613.htm> (accessed March 0018).

³⁸⁹ Information provided by USCIS (Feb. 23, 2018).

³⁹⁰ Department of State Webpage, "Proposed Refugee Admissions for Fiscal Year 2018" (Oct. 04, 2017); <https://www.state.gov/j/prm/releases/docsforcongress/274613.htm> (accessed March 07, 2018).



EB-5 Immigrant Investor Program

Responsible Office: *Field Operations Directorate, Immigrant Investor Program Office*

Key Facts and Findings

- As usage of the EB-5 Program has grown, stakeholders, including members of Congress, have increasingly voiced concerns regarding program integrity, possible exploitation of foreign investors and the potential for EB-5 investors to use funds from unlawful sources.
- Stakeholders have criticized Targeted Employment Area (TEA) gerrymandering, which has concentrated investments in wealthy urban areas rather than rural and high-unemployment areas as originally intended.
- USCIS has sought to address these concerns and others through a range of reforms, including proposed

regulations issued in January 2017 that increase program oversight and redefine TEAs.

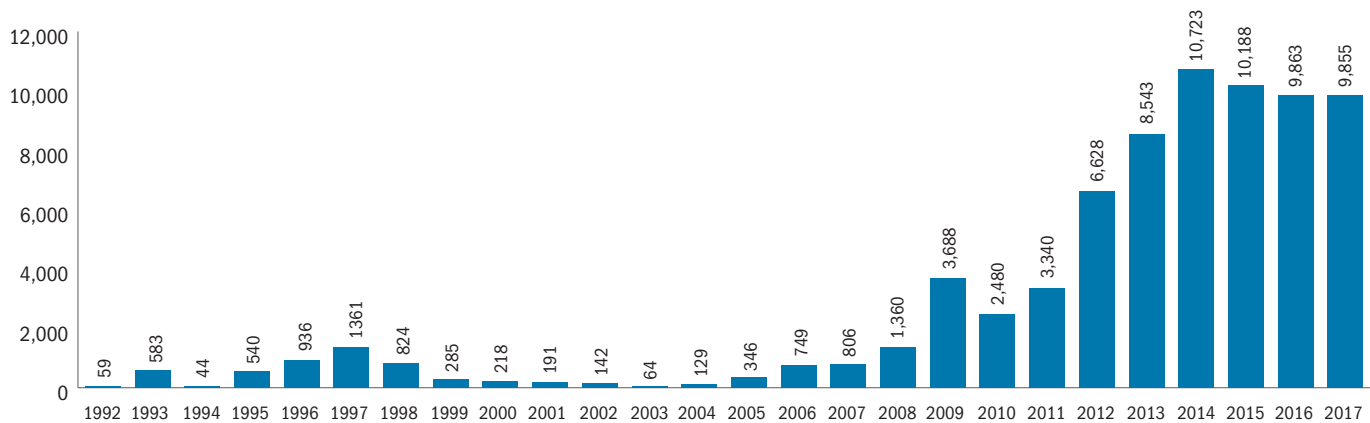
Background

Congress established the EB-5 Immigrant Investor program in 1990 to encourage foreign entrepreneurs to make capital investments in the United States and produce jobs for American workers.³⁹⁸ Under the EB-5 program, foreign nationals who invest \$1 million in a new or existing U.S. for-profit entity and create ten full-time positions for U.S. workers are eligible to apply for an immigrant visa.³⁹⁹ The required investment decreases to \$500,000 when the business operates within a TEA, which

³⁹⁸ Section 121(a) of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978; as codified in scattered sections of the U.S. Code.

³⁹⁹ INA § 203(b)(5)(A), 8 U.S.C. § 1153(b)(5)(A); 8 CFR § 204.6(j).

Figure 5.1: EB-5 Admissions, FY 1992–2017



Source DHS Office of Immigration Statistics, Yearbook of Immigration Statistics; multiple years; <https://www.dhs.gov/immigration-statistics/yearbook> (accessed May 23, 2018).*

*In FYs 2014 and 2015 the number of EB-5 visas exceeded the 9,800 authorized under the INA (7 percent of the total number of employment-based (EB) immigrant visas that are available in the year, which is usually 140,000), as the statute specifies that unused family-based (FB) immigrant visas in a fiscal year are to be added to the number of EB visas that are made available for use in the following year. INA § 201(d), 8 U.S.C. § 1151(d). This is what happened in FYs 2013 and 2014, when unused FB visas were added to the EB allocations for use in FYs 2014 and 2015.

is a rural area or an area with high unemployment rates.⁴⁰⁰ Congress allocates approximately 10,000 immigrant visas annually to immigrant investors and their immediate family members.⁴⁰¹

At the outset of the EB-5 program, foreign investors used a small fraction of the 10,000 annual visa allotment. In 1992, Congress attempted to spur more participation by creating the EB-5 Regional Center Pilot Program (Regional Center Program).⁴⁰² The Regional Center Program allowed investors to pool investments into larger projects that would have greater impact on the U.S. economy.⁴⁰³ Investors now could meet program requirements through direct and indirect job creation—a new job based on an employer-employee relationship between the new commercial enterprise and the people it employs or a new job held outside of the new commercial enterprise created as a result of the enterprise.⁴⁰⁴ This pilot program was intended to sunset after five years, but

⁴⁰⁰ INA § 203(b)(5)(B)-(C), 8 U.S.C. § 1153 (b)(5)(B)-(C). The employment rate must be at least 150 percent of the national average. INA § 203(b)(5)(ii).

⁴⁰¹ INA §§ 201(d), 203(b)(5)(A), 8 U.S.C. §§ 1151(d), 1153(b)(5)(A).

⁴⁰² Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. 102-395, 106 Stat. 1828 (Oct. 6, 1992).

⁴⁰³ USCIS Policy Manual, vol. 6, Chapter 1, *citing* S. Rep. 102-331 at 118 (July 23, 1992); <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartG-Chapter1.html>.

⁴⁰⁴ 8 CFR § 204.6(e)(definition of “employee”).

Congress has repeatedly extended it, with the most recent grant scheduled to end on October 23, 2018.⁴⁰⁵

Congress’s expansion of investor visa options through the Regional Center Program did not lead to increased use of the EB-5 program throughout its first 15 years of existence.⁴⁰⁶ See Figure 5.1.

Other changes dampened interest in the program. For example, USCIS issued four precedent decisions through the Administrative Appeals Office (AAO) that restricted business practices and financial maneuverings deemed incompatible with EB-5 law and regulations. These decisions: (1) eliminated repayment/redemption guarantees that meant the EB-5 investment capital was no longer “at risk,” which is a program requirement;⁴⁰⁷ (2) emphasized that the investor bears the burden of clearly establishing the lawful source of the investment capital;⁴⁰⁸ (3) clarified when a reorganized business may qualify as a “new commercial enterprise;”⁴⁰⁹ and (4) restricted the use of investor promissory notes as a qualifying capital

⁴⁰⁵ Consolidated Appropriations Act, 2018, Pub. L. 115-141 (March 23, 2018).

⁴⁰⁶ USCIS Website, “Data Set: Form I-526 Immigrant Petition by Alien Entrepreneur;” <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-526-immigrant-petition-alien-entrepreneur> (accessed May 9, 2018).

⁴⁰⁷ *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm’r Examinations 1998).

⁴⁰⁸ *Matter of Soffici*, 22 I&N Dec. 158 (Assoc. Comm’r Examinations 1998).

⁴⁰⁹ *Id.*

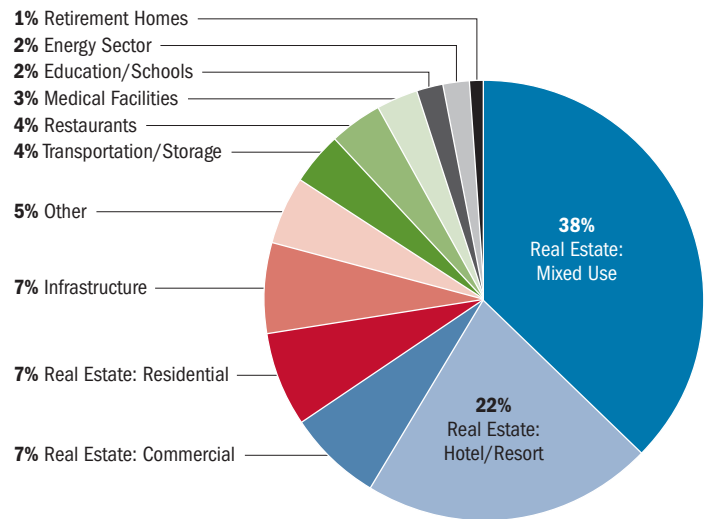
investment if not secured by the investor’s assets in full.⁴¹⁰ In addition, these decisions required investors to submit a well-developed business plan for the commercial enterprise that addressed specified issues with the investor petition (Form I-526, *Immigrant Petition by Alien Entrepreneur*) outlined by the AAO.⁴¹¹

Since 2008, regional center filings have increased dramatically, a trend that began during the financial crisis; currently, almost all EB-5 filings are now through regional centers. Prior to 2008, the EB-5 program received on average fewer than 600 immigrant petitions per year. However, since 2008, the program has averaged over 5,500 petitions per year, primarily due to the increase in regional center filings.⁴¹² In the fourth quarter of FY 2015, a random sampling taken by GAO of pending immigrant investor petitions showed approximately 91 percent of EB-5 investments were made through regional centers, and 99 percent of all EB-5 projects were located in a TEA.⁴¹³

The financial crisis resulted in the closure of many U.S. lending institutions, reawakening interest in the EB-5 program from investors, as well as project developers. As the United States fell deeper into recession, it became more difficult for large-scale commercial real estate developers to access conventional financing for their projects.⁴¹⁴ In response, developers and other intermediaries turned to the EB-5 program to raise capital.⁴¹⁵ The program attracted commercial real estate and other developers as a way to access below-prime lending rates using foreign investor

funds.⁴¹⁶ By September 2016, nearly 74 percent of petitioners investing in a TEA used various types of real estate projects including mixed use, hotels and resorts, commercial, and residential developments.⁴¹⁷ See Figure 5.2.

Figure 5.2: GAO Breakdown of EB-5 Capital Investment Usage



Source: GAO Testimony, “Immigrant Investor Program, Proposed Project Investments in Targeted Employment Areas,” Statement of Rebecca Gambler, Director, Homeland Security and Justice Issues, GAO-17-487T; <https://judiciary.house.gov/wp-content/uploads/2017/03/Gambler-Testimony.pdf> (accessed May 9, 2018).

USCIS strove to maintain program controls and provide stakeholders with adequate guidance on increasingly complex program issues. In 2010, USCIS began a comprehensive review of the entire EB-5 program to document, streamline, and consolidate its adjudication policies and procedures, as well as to address concerns raised by EB-5 stakeholders.⁴¹⁸ Following discussions

⁴¹⁰ *Matter of Hsiung*, 22 I&N Dec. 201 (Assoc. Comm’r Examinations 1998).

⁴¹¹ *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm’r Examinations 1998).

⁴¹² “EB-5 Immigrant Investor Program Modernization,” 82 Fed. Reg. 4738, 4743-4744 (Jan. 13, 2017).

⁴¹³ U.S. Government Accountability Office Testimony, “Immigrant Investor Program, Proposed Project Investments in Targeted Employment Areas,” Statement of Rebecca Gambler Director, Homeland Security and Justice Issues, GAO-17-487T; <https://judiciary.house.gov/wp-content/uploads/2017/03/Gambler-Testimony.pdf> (accessed May 9, 2018).

⁴¹⁴ See “EB-5 Immigrant Investor Program Modernization,” 82 Fed. Reg. 4738, 4755 (Jan. 13, 2017) (“EB-5 filings grew rapidly starting in 2008, when the U.S. financial crisis reduced available U.S.-based commercial lending funds and alternative funding sources, such as the EB-5 program, were sought. Based on the type of projects that Form I-526 petitions describe, it appears that EB-5 capital has been used as a source of financing for a variety of projects, including a large number of commercial real estate development projects to develop hotels, assisted living facilities, and office buildings”). See also The Nat’l Bureau of Econ. Research, U.S., *Business Cycle Expansions and Contractions*; www.nber.org/cycles.html (accessed May 9, 2018).

⁴¹⁵ Bipartisan Policy Center, “EB-5 Program: Successes, Challenges, and Opportunities for States and Localities,” September 2015, p. 11; <https://bipartisanpolicy.org/wp-content/uploads/2015/09/BPC-Immigration-EB5-Visa-Program.pdf> (accessed May 29, 2018).

⁴¹⁶ GAO Report, “Immigrant Investor Program—Progress Made to Detect and Prevent Fraud, but Additional Actions Could Further Agency Efforts,” GAO-16-828, p. 6 (Sept. 2016); <https://www.gao.gov/assets/680/679723.pdf>. See also Jeanne Calderon and Gary Friedland, “A Roadmap to the Use of EB-5 Capital: An Alternative Financing Tool for Commercial Real Estate Projects” (May 22, 2015), New York University Stern Center for Real Estate Finance Research; <http://www.stern.nyu.edu/sites/default/files/assets/documents/EB5%20paper%20final%205.24.2015.pdf>. See also Bipartisan Policy Center, “EB-5 Program: Successes, Challenges, and Opportunities for States and Localities,” September 2015, p. 21; <https://bipartisanpolicy.org/wp-content/uploads/2015/09/BPC-Immigration-EB5-Visa-Program.pdf>.

⁴¹⁷ GAO Testimony, “Immigrant Investor Program, Proposed Project Investments in Targeted Employment Areas,” Statement of Rebecca Gambler Director, Homeland Security and Justice Issues, GAO-17-487T; <https://judiciary.house.gov/wp-content/uploads/2017/03/Gambler-Testimony.pdf> (accessed May 9, 2018).

⁴¹⁸ See Ombudsman Annual Report 2011, pp. 25–26; <https://www.dhs.gov/xlibrary/assets/cisomb-annual-report-2011.pdf>; see also USCIS, “EB-5 Immigrant Investor Program Stakeholder Meeting” (Dec. 16, 2010); <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Events/eb-5-dec-16-2010-present.pdf> (accessed May 9, 2018).

with USCIS adjudicators at the California Service Center (CSC), where the EB-5 program was housed, and a series of meetings with stakeholders, USCIS began to articulate unified policy statements on a variety of EB-5 topics. The agency committed to an interactive process that enabled stakeholders to comment on proposed policy changes before implementation.⁴¹⁹

USCIS issued a comprehensive EB-5 policy memorandum on May 30, 2013.⁴²⁰ The memorandum addressed several longstanding stakeholder concerns, many of which the Ombudsman’s Office had raised with USCIS previously, including when and to what extent USCIS adjudicators should accord deference to prior adjudications.⁴²¹ In June 2013, the agency centralized EB-5 program operations in Washington D.C., and began staffing the newly-established Immigrant Investor Program Office (IPO).

Program Integrity Challenges

The EB-5 program has faced a number of challenges since inception. Among the issues are fraud committed by principal investors; fraud and malfeasance committed by attorneys; gerrymandering of TEAs for the benefit of investors; and sourcing of funds in ways that have the potential to threaten national security. Congress, federal agencies, and the public have all expressed concern that Americans have not seen the benefit of the program as designed (jobs, investment, etc.) while fraud and questionable practices result in foreign nationals losing their money and immigration benefits they sought.

Fraud, Embezzlement and Other Abuses. Fraud and abuse, in the form of embezzlement, Ponzi schemes, and securities violations, continue to be ongoing challenges for the EB-5 program, particularly the Regional Center Program. Fraud impacts direct investors as well as the intended beneficiaries of the investment, both direct and indirect. The U.S. government has prosecuted dozens of EB-5 fraud cases where attorneys, or regional

center principals and officials, and other financial personnel funneled investors’ funds for personal or other impermissible use.⁴²² The U.S. Securities and Exchange Committee (SEC) has charged several lawyers with offering EB-5 investments without registering as brokers, as is required under the Securities Exchange Act,⁴²³ and without disclosing the commissions received from investment offers. Some faced prosecution; others have settled the charges without admitting or denying SEC’s findings.⁴²⁴ Those prosecuted are often sentenced to prison and ordered to pay restitution to the victim investors.

When USCIS discovers fraud, it not only terminates the regional center’s designation, but also revokes project investors’ immigration benefits, regardless of their involvement in the scheme. The immigrant EB-5 petitioner, whose goal was to obtain permanent resident status, loses this opportunity, along with the investment.

Targeted Employment Area Issues. Another area of concern is the designation and use of the TEAs. In an address to Congress, Senator Grassley noted that existing EB-5 regulations do not prohibit TEA gerrymandering—stitching together contiguous census tracts to allow projects physically located in affluent areas to benefit from the lower \$500,000 investment threshold. Under the current rules, Senator Grassley stated that there is “little incentive to invest EB-5 funds in distressed or rural areas,

⁴¹⁹ This iterative process continued for three years and ultimately culminated in the incorporation of this work into a chapter in the USCIS Policy Manual that first issued in 2013. See USCIS Policy Manual, Volume 6—Immigrants, Part G—Investors; <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6.html> (accessed May 9, 2018).

⁴²⁰ USCIS Policy Memorandum, “EB-5 Adjudications Policy” (May 30, 2013); <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20%28Approved%20as%20final%205-30-13%29.pdf> (accessed May 9, 2018).

⁴²¹ Ombudsman Annual Report 2013, pp 33–38; https://www.dhs.gov/sites/default/files/publications/cisomb_2013_annual_report%20508%20final_1.pdf (accessed May 25, 2018).

⁴²² U.S. Attorney’s Office, “Attorney Pleads Guilty to Federal Charges Stemming from \$50 Million Scheme that Defrauded the EB-5 Visa Program and Chinese Investors” (Nov. 27, 2017); <https://www.justice.gov/usao-cdca/pr/attorney-pleads-guilty-federal-charges-stemming-50-million-scheme-defrauded-eb-5-visa> (accessed May 9, 2018); U.S. Attorney’s Office, Central District of California, “Orange County Attorney Who Pleaded Guilty to Federal Charges in \$8 Million Fraud Scheme Sentenced to Over Five Years in Prison” (Feb. 29, 2016); <https://www.justice.gov/usao-cdca/pr/orange-county-attorney-who-pleaded-guilty-federal-charges-8-million-fraud-scheme> (accessed May 10, 2018); U.S. Attorney’s Office, Western District of Washington, “Developer Pleads Guilty to Defrauding Investors seeking Citizenship under Federal Immigration Program” (Jan. 4, 2017); <https://www.justice.gov/usao-wdwa/pr/developer-pleads-guilty-defrauding-investors-seeking-citizenship-under-federal> (accessed May 10, 2018); U.S. Attorney’s Office, Northern District of Illinois, “Hotel Developer Sentenced to Three Years in Prison for Exploiting U.S. Visa Program” (Feb. 21, 2017); <https://www.justice.gov/usao-ndil/pr/hotel-developer-sentenced-three-years-prison-exploiting-us-visa-program>; U.S. Securities and Exchange Commission, Press Release, “SEC Charges Lawyer With Stealing Investor Money in EB-5 Offerings” (Dec. 27, 2016); <https://www.sec.gov/news/pressrelease/2016-281.html> (accessed May 10, 2018).

⁴²³ SEC, Press Release, “SEC Charges Unregistered Broker for Illegally Brokering Sales of EB-5 Securities” (Mar. 5, 2018); <https://www.sec.gov/news/press-release/2018-30> (accessed May 10, 2018).

⁴²⁴ SEC, Press Release, “SEC: Lawyers Offered EB-5 Investments as Unregistered Brokers” (Dec. 7, 2015); <https://www.sec.gov/news/pressrelease/2015-274.html> (accessed May 10, 2018).

as was envisioned by Senators when [the EB-5 program] was created.”⁴²⁵

One example made public by news coverage is the Hudson Yards TEA project in Manhattan. This multi-phase commercial, retail, and residential development project qualified as a TEA by tacking together contiguously adjoining/bordering plats from the actual project site through Central Park to high unemployment areas near the East River, miles away. See Figure 5.3. The result of this kind of gerrymandering is that communities that truly are TEAs are less likely to receive much needed investment and more affluent markets receive higher amounts of investment than Congress intended.

Figure 5.3: Map of Hudson Yards TEA



The census tracts used to qualify Hudson Yards as a TEA for its second round of EB-5 financing in 2016. Public-housing projects along the route helped it achieve the necessary aggregate unemployment figure to qualify for a lower threshold. (Mark Byrnes/CityLab)

Source: K. Capps, “When Harlem Unemployment Pays for Midtown Luxury,” Citylab (Jan. 31, 2017); <https://www.citylab.com/equity/2017/01/how-to-fix-the-broken-eb5-cash-for-visas-immigration-program-trump/511265/> (accessed May 17, 2018).

⁴²⁵ Senator Charles E. Grassley, Press Release, “EB-5 Program Too Flawed to Continue Without Reforms,” Sept. 22, 2016; <https://www.grassley.senate.gov/news/news-releases/grassley-eb-5-program-too-flawed-continue-without-reforms> (accessed May 25, 2018).

Lawful Source of Funds Issues. Another challenge for the EB-5 program has been the development of money laundering schemes and proving the lawful source of funds. The EB-5 regulations require immigrant investors to identify the source of EB-5 funds to establish they were obtained lawfully.⁴²⁶ This investor burden is met through business records, such as foreign business registration records; business and personal tax return filings in any country within the past five years; and/or evidence identifying other sources of capital such as business entity reports, audited financial statements, income earning statements, gift instruments, and property ownership.⁴²⁷

However, even with the presentation of these documents, USCIS finds that in many countries, investors are permitted to self-identify and self-report the sources of their assets and income, making it difficult for USCIS to verify the lawfulness of the source of funds that are then invested in the EB-5 program.⁴²⁸ Critics of the program have raised concerns regarding the origin of investors’ funds. They have raised the potential for abuse of the program by corrupt foreign officials and criminals attempting to evade laws and protect illicitly gained funds.⁴²⁹ Others argue that the agency is hyper-technical in its requirements, making it nearly impossible to meet the burden identifying fund sources.⁴³⁰ Both sides would agree that the standard requires review by the agency.

Finding Administrative Solutions to Long-Standing Concerns

Due to the challenges that have evolved with the EB-5 program, the DHS OIG and GAO have conducted formal studies and issued recommendations. In addition, USCIS

⁴²⁶ 8 CFR §§ 204.6(e), 204.6(j)(3). See also *In Re Soffici*, 22 I&N. Dec. 158, 165 (BIA 1998).

⁴²⁷ USCIS Policy Manual, Volume 6, Part G, Chapter 2; <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartG-Chapter2.html>. Furthermore, if applicable, USCIS also requests certified copies of any judgments or evidence of all pending civil or criminal matters, governmental administrative proceedings, or any private civil actions involving monetary judgments against the immigrant investor within the past 15 years.

⁴²⁸ Congressional Research Service, “EB-5 Immigrant Investor Visa,” R44475, pp. 19–21 (April 22, 2016); <https://www.everycrsreport.com/reports/R44475.html#Content> (accessed May 25, 2018).

⁴²⁹ Senator Charles E. Grassley, Press Release, “Newly-Discovered EB-5 Scam Highlights Fraud, National Security Weaknesses, Need for Long-Term Reform,” <https://www.grassley.senate.gov/news/news-releases/newly-discovered-eb-5-scam-highlights-fraud-national-security-weaknesses-need>.

⁴³⁰ Stephen Yale-Loehr, “Show Me the Money: Proving Lawful Source of Funds for EB-5 Immigrant Investors” (Jan. 15, 2015); https://www.researchgate.net/publication/265274892_Show_Me_the_Money_Proving_Lawful_Source_of_Funds_for_EB-5_Immigrant_Investors (accessed May 25, 2018).

has initiated solutions and programmatic adjustments to address stakeholder concerns.

Oversight Reports and Recommendations

In 2013, the DHS OIG conducted an audit and issued a report on the EB-5 program and its adjudication process, finding that USCIS lacked the authority needed to deny or terminate a regional center based on fraud or national security concerns. It further concluded that USCIS could not demonstrate the benefits of foreign investment into the U.S. economy.⁴³¹ These challenges, the report cited, made it difficult for USCIS to ensure the integrity of the EB-5 Regional Center Program and vulnerable to perceptions of internal and external influences.⁴³² Based on these findings, the OIG made four recommendations:

- (1) Update and clarify federal regulations to give USCIS the authority to deny or terminate a regional center involved in fraud or national security concerns;
- (2) Develop memoranda of understanding with the Departments of Commerce and Labor and the SEC to ensure interagency participation and expertise as needed in Regional Center Program adjudications;
- (3) Conduct comprehensive reviews to determine to what extent EB-5 funds have stimulated growth in the U.S. economy in accordance with program intent; and
- (4) Establish quality assurance steps to promote program integrity and ensure that regional centers comply with regulatory requirements.⁴³³

USCIS concurred with all but the third recommendation, stating that it lacked authority to conduct a broader assessment of the program's economic impact beyond the statutory requirement to determine job creation during the course of adjudications.⁴³⁴ Further discussion of the agency's specific actions to address these concerns are highlighted below.

In 2014, GAO reviewed fraud risks and economic benefits for the EB-5 Program. Its investigation revealed that

⁴³¹ U.S. Department of Homeland Security, Office of the Inspector General, "United States Citizenship and Immigration Services' Employment Based Fifth Preference (EB5) Regional Center Program," OIG-14-19, p. 5 (Dec. 2013); https://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-19_Dec13.pdf (accessed May 25, 2018).

⁴³² *Id.*

⁴³³ *Id.* at 14-18.

⁴³⁴ *Id.* at 17.

USCIS was not consistently conducting fraud assessments to strengthen the program.⁴³⁵ In its report to Congress in August 2015, GAO recommended that USCIS conduct regular fraud risk assessments to strengthen EB-5 fraud prevention, detection, and mitigation capabilities.⁴³⁶ USCIS agreed with the recommendation, stating that it would conduct at least one fraud, national security, or intelligence assessment in the EB-5 program annually.⁴³⁷ USCIS also agreed with the GAO's recommendation that it interview EB-5 investors when it adjudicates Form I-829, *Petition to Remove Conditions* 2 years after admission as a Conditional LPR.⁴³⁸

Agency Efforts to Improve the Integrity of the EB-5 Program

The IPO has taken a number of steps to combat EB-5 fraud and enhance program integrity, including the establishment of a compliance review team; creation of hybrid teams for comprehensive adjudication; site visits; implementation of GAO and OIG recommendations; rollout of document assessment initiatives; and improved coordination with other government components including the DOJ, FBI, SEC, and Financial Crimes Enforcement Network. While public concerns remain, USCIS has made great strides to offset fraud and national security challenges and improve program integrity.

Establishment of the IPO Compliance Review Program.

In 2015, the IPO announced the formation of a compliance review team dedicated to increasing industry compliance with EB-5 law, where reviewers issued Notices of Intent to Terminate if a regional center no longer met the program's requirements.⁴³⁹ This division's responsibilities subsequently expanded to include: (1) undertaking in-person interviews of regional center investors and

⁴³⁵ U.S. Government Accountability Office, "Immigrant Investor Program Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit," GAO-15-696, August 2015; <https://www.gao.gov/assets/680/671940.pdf> (accessed May 10, 2018).

⁴³⁶ *Id.* at 45.

⁴³⁷ U.S. Government Accountability Office, "Immigrant Investor Program Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit," GAO-15-696 (August 2015), p. 47; <https://www.gao.gov/assets/680/671940.pdf> (accessed May 10, 2018).

⁴³⁸ IPO Chief Nick Colucci Remarks, USCIS EB-5 National Stakeholder Engagement, March 3, 2017; https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_IPO_ChiefColucciRemarks_03032017.pdf (accessed May 25, 2018).

⁴³⁹ IPO Chief Nick Colucci Remarks, USCIS EB-5 National Stakeholder Engagement, August 13, 2015; https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED-IPO_Chief_Nicholas_Coluccis_Remarks.pdf.

I-829 petitioners; (2) conducting site visits to verify the authenticity of EB-5 program documents and the continued progress of EB-5 projects; (3) auditing financial records to verify that funds are spent in accordance with the offerings documents, economic analysis, and business plan; and (4) holding public engagements focused on regional centers to explain and clarify relevant laws, regulations, and other requirements.⁴⁴⁰

To further bolster EB-5 program integrity, in 2017 IPO hired auditors and initiated compliance reviews. According to IPO, the compliance review team “verifies the information provided by designated regional centers in applications and annual certifications. It also verifies compliance with applicable laws and authorities to ensure continued eligibility for the regional center designation. This process includes, for example, researching information in government systems, reviewing commercial and public records, and reviewing evidence that accompanies regional center applications and certifications.”⁴⁴¹

To date, the IPO has conducted two full rounds of compliance reviews, obtaining information on a consensual basis, engaging in site visits, and performing related document assessments.⁴⁴² The IPO has indicated its plan is to conduct compliance reviews of approximately five to ten percent of the regional center population each year.⁴⁴³

Improving Consistency in Adjudications. In response to the OIG critique of inconsistent adjudications, the EB-5 program has added adjudication steps to eliminate bias and inconsistencies. To help ensure that the required documents are available at the beginning of the adjudication process, IPO auditors and economists conduct document assessments for Form I-924, *Application for Regional Center Designation under the Immigrant Investor Program*.⁴⁴⁴ Officers adjudicating Form I-829, *Petition by Entrepreneur to Remove Conditions on Permanent Resident Status* also conduct document assessments, audits, and site visits to the Job Creating Enterprise (JCE).

⁴⁴⁰ *Id.*

⁴⁴¹ Information provided by USCIS (Apr. 18, 2018).

⁴⁴² *Id.*

⁴⁴³ IPO Acting Chief Julia Harrison Remarks, USCIS EB-5 National Stakeholder Engagement, November 7, 2017; https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_EB5EngagementTalkingPoints_11072017.pdf.

⁴⁴⁴ IPO Meeting with the Ombudsman’s Office (Dec. 1, 2017).

The IPO has expanded its use of site visits to further implement the GAO and OIG recommendations. The IPO trains its officers to use site visits to verify business documents submitted in the course of filing with USCIS.⁴⁴⁵ The agency also emphasizes that site inspectors receive comprehensive training on the EB-5 program and on the process of gathering evidence and recording relevant information.⁴⁴⁶ Currently, the IPO conducts a 100 percent JCE site review rate for Form I-829 filings. The information obtained is used to inform adjudications.⁴⁴⁷ These efforts further the agency’s goal to improve program integrity and reduce fraud.

The IPO recently reorganized its staffing model so adjudicators, economists, auditors, and fraud detection officers serve on common teams.⁴⁴⁸ The IPO believes that this intra-team diversity helps its subject matter experts understand the significance of each other’s work in the overall EB-5 adjudication process.⁴⁴⁹

AAO Activity. In 2017, the AAO issued a non-precedent decision setting out a framework for considering whether a regional center should be recertified or terminated.⁴⁵⁰ Under the new analysis, the IPO engages in a process that identifies and evaluates both the positive and negative factors that must be considered in determining whether the regional center has been and continues to be capable of promoting economic growth.⁴⁵¹ The AAO noted that the positive factors, such as “the extent of any job creation, the amount of investment, and the overall economic impact,” should be measured against the liabilities, including “inaction, mismanagement, theft, or fraud by the regional center or related entities, any

⁴⁴⁵ IPO Chief Nick Colucci Remarks, USCIS EB-5 National Stakeholder Engagement, March 3, 2017; https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_IPO_ChiefColucciRemarks_03032017.pdf. See also Information provided by USCIS (April 18, 2018).

⁴⁴⁶ *Id.*

⁴⁴⁷ Information provided by USCIS (Apr. 18, 2018).

⁴⁴⁸ *Id.* See also IPO Meeting with the Ombudsman’s Office (Dec. 1, 2017).

⁴⁴⁹ *Id.*

⁴⁵⁰ *Matter of P-A-S-*, ID#513109 (AAO Dec. 21, 2017); https://www.uscis.gov/sites/default/files/err/K1%20-%20Request%20for%20Participation%20as%20Regional%20Center/Decisions_Issued_in_2017/DEC212017_01K1610.pdf (accessed May 10, 2018).

⁴⁵¹ The decision also noted: “The [EB-5] program’s success is most often described in terms of jobs created, dollars invested, and project completed. But the program’s success also depends upon DHS’ effective oversight to maintain integrity.” *Matter of P-A-S-*, LLC, ID#513109, at 8 (AAO Dec. 21, 2017); https://www.uscis.gov/sites/default/files/err/K1%20-%20Request%20for%20Participation%20as%20Regional%20Center/Decisions_Issued_in_2017/DEC212017_01K1610.pdf (accessed May 10, 2018).

resulting damage, and the risk imposed to the investors or the economy by continued designation.”⁴⁵²

Regulatory Reforms

In January 2017, USCIS issued an Advance Notice of Proposed Rulemaking (ANPRM) and a Notice of Proposed Rulemaking (NPRM) to reform several core features of the EB-5 program. The proposed regulation addressed some of the concerns and recommendations raised in prior OIG and GAO reports, as well as continuing concerns expressed by Congress and other stakeholders to improve integrity and minimize opportunities for program abuse. The proposed regulations have been characterized by Senators Grassley and Leahy as well as Representative Goodlatte as proposals that would, “if finalized, dramatically reform the EB-5 program and re-align the program with what Congress envisioned in 1990.”⁴⁵³ The NPRM also proposed to update statutory changes and codify existing policies.⁴⁵⁴ As of this writing, the NPRM has not been finalized; the current Regulatory Agenda anticipates a publication date for a final rule in August 2018.⁴⁵⁵

Proposed Regulatory Changes in the NPRM

Increased Threshold Capital Investment Amount.

EB-5 capital investment thresholds have not changed since the creation of the program in 1990, resulting in erosion of the relative value of the investment due to

⁴⁵² *Matter of P-A-S*, ID#513109 at 3 (AAO Dec. 21, 2017); https://www.uscis.gov/sites/default/files/err/K1%20-%20Request%20for%20Participation%20as%20Regional%20Center/Decisions_Issued_in_2017/DEC212017_01K1610.pdf (accessed May 10, 2018).

⁴⁵³ Letter from Representative Robert Goodlatte and Senators Charles Grassley and Patrick Leahy to Kirstjen Nielsen, Secretary, DHS (April 5, 2018); <https://www.judiciary.senate.gov/imo/media/doc/2018-04-05%20CEG,%20BG,%20PJL%20to%20DHS%20EB-5%20Regs.pdf> (accessed May 18, 2018).

⁴⁵⁴ See also “EB-5 Immigrant Investor Regional Center Program: Advance Notice of Proposed Rulemaking,” 82 Fed. Reg. 3211 (Jan. 11, 2017), which focuses on regional center reforms and processing issues. The agency put forward a proposal to bifurcate the Form I-924 application process. USCIS would first require a more general application for initial designation as a Regional Center. After designation, USCIS would require a more specific application for approval of an exemplar project. The ANPRM proposed a separate form and fee for each step. DHS believes these changes would significantly reduce the issuance of Requests for Evidence and Notices of Intent to Deny, and thereby improve processing times for both Form I-924 and Form I-526.

⁴⁵⁵ DHS Spring 2018 Unified Regulatory Agenda, RIN: 1615-AC07, EB-5 Immigrant Investor Program Modernization; <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=1615-AC07> (accessed May 18, 2018).

the effect of inflation. The NPRM would increase the minimum qualifying investment amount from \$1 million to \$1.8 million and from \$500,000 to \$1.35 million for TEAs.⁴⁵⁶ The proposed investment thresholds represent an adjustment for inflation from 1990 to 2015, as measured by the unadjusted Consumer Price Index for All Urban Consumers.⁴⁵⁷ Among the benefits cited are the potential to increase the overall investment inflow, resulting in greater economic activity and job growth, and allowing regional centers to raise the requisite funds with fewer investors.⁴⁵⁸

Interview Requirements for Form I-829. Another change proposed in the NPRM involves providing flexibility in the interview location for I-829 petitioners, as investors are not required to live in the local USCIS office’s geographical jurisdiction, and may live hundreds or even thousands of miles away. The NPRM further clarifies that derivatives may file the Form I-829, *Petition by Entrepreneur to Remove Conditions on Permanent Resident Status* separately from the immigrant investor, who may have relinquished his or her permanent resident status.⁴⁵⁹

Shifting Authority for TEA Designations. The NPRM also proposes to shift state-authority to identify a TEA to USCIS. Reassignment of the TEA authority to USCIS would likely buffer the process from local influences, and will result in more standardized outcomes regardless of the proposed TEA location throughout the United States. Stakeholders have highlighted the need for states and localities to provide input during this process.

Retention of Priority Dates. Finally, the proposed rule would allow EB-5 investors to retain their priority dates if subsequent filings are needed due to changed circumstances or the termination of a regional center, bringing the EB-5 program in line with other business immigration visa categories that permit priority date retention.⁴⁶⁰

⁴⁵⁶ “EB-5 Immigrant Investor Program Modernization,” 82 Fed. Reg. 4738 (Jan. 13, 2017); <https://www.federalregister.gov/documents/2017/01/13/2017-00447/eb-5-immigrant-investor-program-modernization>.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

⁴⁶⁰ See, e.g., 8 CFR § 204.5(e).

Summary of NPRM Comments

The NPRM received 290 public comments from stakeholders. Comments focused on two main issues: (1) increasing the qualifying capital investment threshold; and (2) modifying the TEA designation rules and authorities.

Comments were mixed concerning proposed increases in the threshold qualifying capital contribution from \$500,000 to \$1.3 million for investments made into a business/job-creating enterprise located in a TEA, and from \$1,000,000 to \$1,800,000 for business/job-creating enterprises located elsewhere. While there was general agreement that it was appropriate to update the qualifying capital contribution levels to account for inflation and other factors, acceptance of the proposal to increase the thresholds appear to hinge on USCIS' agreement to grandfather in all I-526 petitions that were filed based on the rules that were in effect at the time the investor made his or her capital contribution. Commenters expressed differing opinions on how high to raise the minimum qualifying funding figure, with some suggesting that if set too high, it could potentially discourage foreign investors from participating in the EB-5 program and draw them to competing immigration investment programs offered by other countries. Some suggested that the proposed increase in the investment threshold be phased in over a period of years. Other comments focused on whether the differential between the qualifying contribution levels between those in, and those located outside a TEA, are correct, with some suggesting the differential should be greater if the agency wants to encourage more EB-5 money to flow to more rural and economically distressed areas.

Comments concerning the proposal to revise to how to determine a TEA, to end what many believed is a methodology that encourages gerrymandering, were generally favorable. The main thrust of the comments focused on eliminating what was considered abusive gerrymandering, the stringing together of contiguous tracts to allow a TEA to qualify a project located in an affluent census tract area with census tracts that have high unemployment many miles away. Comments suggested that moving from a methodology that limits TEA configurations to one that permits the census tract where the project is located, with each of the immediately surrounding and adjoining census tracts, will accomplish this goal. It will also level the playing field for other EB-5 developers and projects competing for the same foreign investment monies. Some commenters expressed

concern that the proposed rules do not grandfather in partially-completed projects, and that this could result in project failures in some circumstances as new investors choose to place their money into other projects rather than invest \$1.8 million into a project that no longer qualifies as a TEA. Some commenters also expressed concern that under the new TEA rule, USCIS will be making the TEA determination, and not the states, which have been responsible up to now for this assessment.

Conclusion

The EB-5 program has been in existence for more than 25 years, and its increasing popularity in the last 10 years has resulted in foreign investment into the United States and full-time jobs for U.S. workers.⁴⁶¹ The extent of the investment and job creation, however, is the subject of debate. Moreover, there have been numerous instances of fraud and abuse that undermine any benefits of the program. USCIS is directing additional resources to EB-5 compliance activities, including the expanded use of site visits, document audits, and program analysis, and working closely with other regulatory and law enforcement agencies to decrease criminal and civil abuses. The Ombudsman expects USCIS to soon finalize the regulations designed to address at least some of these concerns.

Whether and how investors will respond to the imminent regulatory changes remains unknown, but according to information provided by DOS, heavy demand for EB-5 visas around the globe will require the imposition of Visa Bulletin cut-off dates for several countries in the near future. Joining China and Vietnam (which are currently oversubscribed and are subject to an EB-5 cut-off date), DOS expects to impose cut-off dates for India, Brazil, and South Korea in FY 2019, with EB-5 visas remaining "current" for nationals of all other countries during this same time frame. As the level of interest in the EB-5 program appears to be only increasing, administration of the program will likely continue to receive significant scrutiny.

⁴⁶¹ According to a Department of Commerce 2017 Report analyzing EB-5 related projects that were active in FYs 2012 and 2013 estimated that \$5,773,000,000, and 174,039 jobs could be traced to the EB-5 program, and that on average, 16 new full-time jobs are generated by each EB-5 investor. Department of Commerce, Economics and Statistics Administration, *Estimating the Investment and Job Creation Impact of the EB-5 Program*, pp. 2, 18; http://www.esa.doc.gov/sites/default/files/estimating-the-investment-and-job-creation-impact-of-the-eb-5-program_0.pdf (accessed May 20, 2018).

Appendices

Common USCIS Background Checks: The Basics, By Directorate

Service Center Operations Directorate

The standard operating procedure at SCOPS is to conduct the following checks:¹

FBI Name Check	Automated check within 15 days of filing with USCIS and returned on average between 30–60 days, per inter-agency agreement. Valid for 15 months. ²
FBI Fingerprint Check	Automated check and sent in seconds after collection at the ASC.
CBP TECS Check	A check using the applicant's ten-print biometrics to check various USCIS systems, including: FMNS, CICS, FD-258 MF, and BBSS.
IDENT Check	Automated and manual check of applicant's biographic information.
USCIS Background IT Systems Check	Manual check using the applicant's ten-print biometrics to check various USCIS systems, including: FMNS, CICS, FD-258 MF, and BBSS.

¹ This is a generalization and should not be used as an exclusive or comprehensive list of all types of background checks run for all applications or petitions at a service center.

² Information provided by USCIS (Apr. 17, 2018).

Field Operations Directorate

The standard operating procedure at the Field Operations Directorate is to conduct the following checks:¹

FBI Name Check	Automated check within 15 days of filing at the National Benefits Center (NBC) and returned on average between 30–90 days, per inter-agency agreement. ²
FBI Fingerprint Check	Automated check and sent in seconds after collection at the ASC, usually processed within 60 days of receipt of filing. ³
CBP TECS Check	Automated and manual check of CBP data repository. Completed within 15 days of filing with the NBC and valid for 180 days. ⁴
IDENT Check	Automated and manual check of applicant's biographic information.
USCIS Background IT Systems Check	Manual check using the applicant's ten-print biometrics to check various USCIS systems, including: FMNS, CICS, FD-258 MF, and BBSS.

¹ This is a generalization and should not be used as an exclusive or comprehensive list of all types of background checks run for all applications or petitions at a field office.

² Information provided by USCIS (Apr. 17, 2018).

³ *Id.*

⁴ *Id.*

Refugee, Asylum and International Operations Directorate: Asylum Division¹

The standard operating procedure at the Asylum Division is to conduct the following checks:²

FBI Name Check	Automated check on any individuals associated with the asylum application who are between the age of 12 years and 9 months and 79 years of age. ³
FBI Fingerprint Check	Automated check on any individuals associated with the asylum application who are between the age of 12 years and 9 months and 79 years of age. ⁴ Typically sent seconds after collection at the ASC and processed within 60 days of receipt of filing. ⁵
CBP TECS Check	Automated and then a manual check of CBP data repository completed for any individuals associated with the asylum application who are between the age of 12 years and 9 months and 79 years of age. ⁶
IDENT Check	Automated and manual check of applicant's biographic information. ⁷
USCIS Background IT Systems Check	Manual check using the applicant's ten-print biometrics to check various USCIS systems, including: FMNS, CICS, FD-258 MF, and BBSS.

¹ This section only covers the affirmative asylum application process and is not intended to include credible or reasonable fear processing or defensive asylum processing.

² This is a generalization and should not be used as an exclusive or comprehensive list of all types of background checks run for all applications or petitions at an asylum office.

³ USCIS Webpage, "Asylum Background and Security Checks FAQ" (Mar. 12, 2015); <https://www.uscis.gov/faq-page/asylum-background-and-security-checks-faq#t12818n40080> (accessed Apr. 26, 2018); DHS Privacy Impact Assessment, "USCIS, Refugees, Asylum, and Parole, System and the Asylum Pre-Screening System" (Nov. 24, 2009) p. 4; https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_cis_rapsapss.pdf (accessed Apr. 26, 2018).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Refugee, Asylum and International Operations Directorate: Refugee Affairs Division

The standard operating procedure at the Refugee Affairs Division is to conduct the following checks:¹

Pre-decisional Checks

IDENT Check	Checks the applicant's records relating to travel and immigration history for non-U.S. citizens, as well as for immigration violations and law enforcement and national security concerns. Enrollment helps CBP confirm identity at the port of entry. ²
FBI Fingerprint Check	Checks all applicants' biometric records using the Next Generation Identification (NGI) system's recurring biometric record checks.
USCIS Background IT Systems Check	A check using the applicant's ten-print biometrics to check various USCIS systems. Information collected on all applicants over the age of 13½ and under 80 years. ³
DOS Consular Lookout and Support System (CLASS) Check	A check run on primary names as well as any variations used by the applicant. ⁴
Interagency Check (IAC)	USCIS shares the biographic data, including names, dates of birth, and other data points of all refugee applicants within designated age ranges that is captured at the time of pre-screening with intelligence community partners for checks against their holdings. ⁵
National Counterterrorism Center (NCTC) Checks	Vets applicant's information interagency intelligence to identify suspicious activity. ⁶
Social Media Review	USCIS FDNS conducts screening and vetting checks of refugee applicants from publicly available information on social media. ⁷
DoD Automated Biometric Identification System (ABIS) Check	Checks applicants' information, biometric and biographic, to search information collected in the course of military operations. ⁸

Post-decision and Pre-admission to the United States

CBP TECS Check	Run on any individuals associated with the asylum application who are between the age of 12 years and 9 months and 79 years of age. ⁹
CBP National Targeting Center—Passenger (NTC-P)	Decision support tool that compares the applicants' information against law enforcement, intelligence, and other enforcement data using risk-based scenarios and assessments. ¹⁰
Transportation Security Administration (TSA) Secure Flight Program Check	Screens aviation passengers and certain non-travelers before they access airport sterile areas or board aircraft. ¹¹
CBP No Fly Selectee Check	Compares applicants' information to known terrorist watch lists maintained by the Transportation Security Administration. ¹²

¹ This is a generalization and should not be used as an exclusive or comprehensive list of all types of background checks run for all refugee applications.

² DHS Privacy Impact Assessment, "Refugee Case Processing and Security Vetting" (Jul. 21, 2017) p. 8; <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-refugee-july2017.pdf> (accessed Apr. 26, 2018).

³ *Id.* at 5.

⁴ *Id.* at 6.

⁵ *Id.* at 6.

⁶ *Id.* at 7.

⁷ *Id.* at 7.

⁸ *Id.* at 8.

⁹ *Id.* at 10.

¹⁰ *Id.* at 10.

¹¹ *Id.* at 10.

¹² *Id.* at 10.

Recommendations Update

Pursuant to statutory requirements, the Ombudsman makes recommendations to the USCIS Director as appropriate. The agency has 3 months to respond in writing.⁴⁶²

From 2013 to 2017, the Ombudsman’s Office issued six formal recommendations to improve the delivery of immigration services and benefits. USCIS took action on some of the recommendations, but has not implemented others.

Recommendation No. 61—Strengthen Efficiency, Safety, Accessibility, and Overall Effectiveness of the Central American Minors (CAM) Refugee/Parole Program (December 21, 2016)
USCIS Response: Pending—due March 21, 2017.

- USCIS, in coordination with DOS, should increase the volume of interviews and associated Refugee Access Verification Unit processing of CAM cases.
- USCIS should permit access to counsel in CAM interviews.
- USCIS, in coordination with DOS, should create a plain language, comprehensive CAM “Information Guide.”
- USCIS, in coordination with DOS, should publish and regularly update CAM processing times.

Update: Pursuant to Executive Order 13767, issued January 25, 2017, USCIS has revised its policies on parole. Accordingly, USCIS stopped offering parole through the CAM program on August 16, 2017; stopped accepting new CAM refugee applications on November 9, 2017; and stopped interviewing CAM refugee applicants on January 31, 2018. The Ombudsman has not received a formal response from USCIS to this recommendation.

Recommendation No. 60—Implement Parole for U Visa Principal and Derivative Eligible Petitioners Residing Abroad (June 16, 2016); USCIS Response: September 29, 2016.

- USCIS should afford parole to eligible U visa petitioners on the waiting list and qualifying derivative family members who reside abroad by creating a policy to facilitate entry into the United States while waiting for a visa to become available.
- USCIS should allow for concurrent filings of the U visa petitions and requests for parole.
- Cases should be adjudicated at the Vermont Service Center to ensure consistent and effective adjudication.

Update: In 2016, USCIS agreed to the first recommendation but in 2017, pursuant to Executive Order 13767, revised its policies on parole and no longer plans to offer parole for principal and derivative petitioners abroad. Thus, it has not established a parole policy for petitioners or a stand-alone application process for parole requests.

Recommendation No. 59—Ensure Process Efficiency and Legal Sufficiency in Special Immigrant Juvenile Adjudications (December 11, 2015); USCIS Response: April 19, 2016.

- USCIS should centralize Special Immigrant Juvenile (SIJ) adjudications in a facility whose personnel are familiar with the sensitivities surrounding the adjudication of humanitarian benefits for vulnerable populations.
- USCIS should take into account the best interests of the child when applying criteria for interview waivers.
- USCIS should issue final SIJ regulations that fully incorporate all statutory amendments.
- USCIS should interpret the consent function consistently with the statute by according greater deference to state court findings.

Update: Beginning November 1, 2017, USCIS centralized the processing of Forms I-360 and I-485 at the NBC. The agency refers to field offices those cases needing in-person interviews. USCIS’ current policy is to

⁴⁶² Homeland Security Act (HSA) of 2002 § 452, 6 U.S.C. § 272 (e), (f).

refer cases for interviews only when necessary to secure information through in-person assessments. The agency has committed to training its officers on child interviewing techniques. USCIS also issued clarifying policy guidance through the USCIS Policy Manual and stated that it will amend SIJ regulations by continuing the rulemaking process. The DHS Spring 2018 Regulatory Agenda does not include SIJ program regulations. USCIS does not agree with the recommendation to defer to state court findings, finding that its consent function serves as an essential first step in any adjudication.

Recommendation No. 58—to Improve the Quality and Consistency in Notices to Appear (June 11, 2014); USCIS Response: September 30, 2016.

- USCIS should provide additional guidance for Notice to Appear (NTA) issuance with input from ICE and the U.S. Executive Office for Immigration Review (EOIR).
- USCIS should require USCIS attorneys to review NTAs prior to their issuance and provide comprehensive legal training.
- USCIS should create a working group with representation from ICE and EOIR to improve tracking, information sharing, and coordination of NTA issuance.

Update: In consultation with ICE, USCIS has updated its agency guidance for NTA issuance. USCIS did not concur with the recommendation to have USCIS attorneys review all NTAs prior to issuance, but did concur with improving legal training.

Recommendation No. 57—Employment Eligibility for Derivatives of Conrad State 30 Program Physicians (March 24, 2014); USCIS Response: June 24, 2014.

- USCIS should publish new regulations that permit independently eligible J-2 dependents of J-1 physicians approved for a Conrad State 30 program waiver to change to other employment-authorized nonimmigrant classifications.

- USCIS should issue new policy guidance clearly explaining that J-2 visa holders, who are derivative beneficiaries of a Conrad State 30 program waiver, may change to any nonimmigrant status for which they are otherwise qualified and eligible.

Update: USCIS partially concurred with the first recommendation and rejected the second, maintaining that the INA does not permit J-2 dependents to change to another immigrant or nonimmigrant status, except to a T or U status.

Recommendation No. 56—Improving the Process for Removal of Conditions on Residence for Spouses and Children (February 28, 2013); USCIS Response: July 10, 2013.

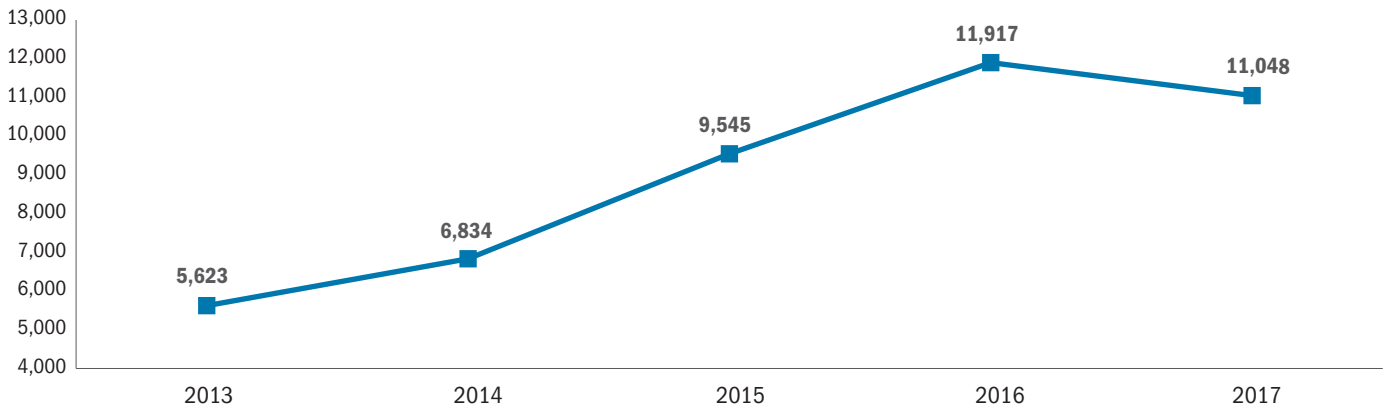
- USCIS should provide timely, effective, and accurate notice to petitioner(s) and their attorneys or accredited representatives on Form I-751, *Petition to Remove Conditions on Residence* receipt, processing and adjudication requirements and decisions.
- USCIS should ensure Adjudicator’s Field Manual (AFM) Chapter 25⁴⁶³ is updated, accurate, and complete, or create a superseding source of consolidated information for Form I-751 adjudications.
- USCIS should train staff to apply the updated AFM or superseding guidance with an emphasis on waiver standards and procedures.

Update: USCIS partially concurred. It declined to create a system to ensure it properly conferred conditional permanent resident (CPR) status because it believes the vast majority of CPR statuses are accurate. Yet the agency committed to: (1) extracting the address from the AR-11 change of address information system; (2) updating the tracking system to give copies of notices to the petitioner and attorney of record; (3) providing additional guidance if an officer’s RFE is not clear; and (4) making processing improvements via the USCIS transformation initiative. As of this time, the Form I-751 is not being processed via ELIS. Further, there have been no updates to USCIS Policy Manual to reflect the Ombudsman’s recommendations.

⁴⁶³ The Adjudicator’s Field Manual has been superseded in parts by the USCIS Policy Manual.

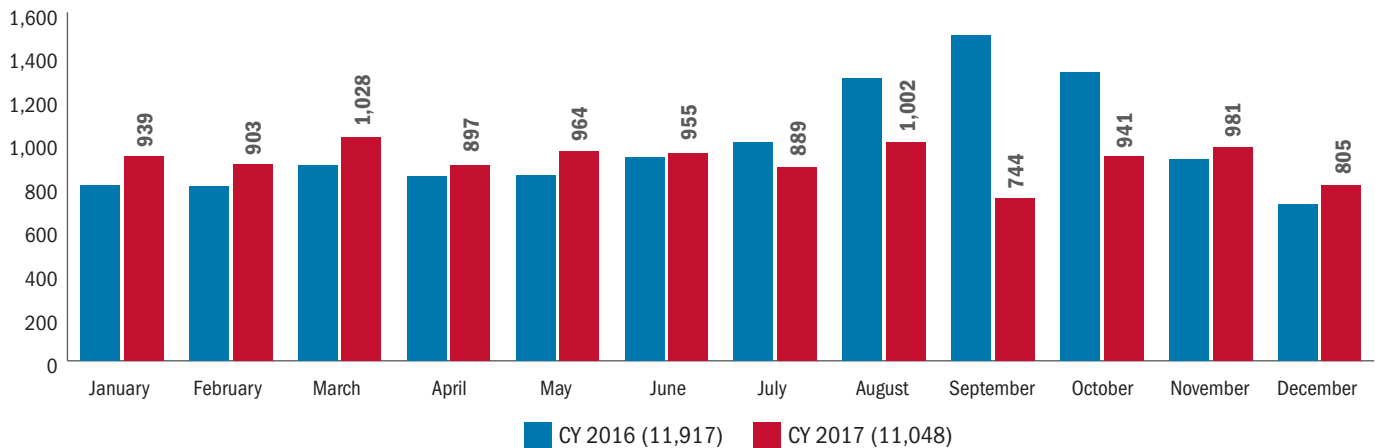
The Ombudsman by the Numbers

Requests for Ombudsman Case Assistance Received by Calendar Year*

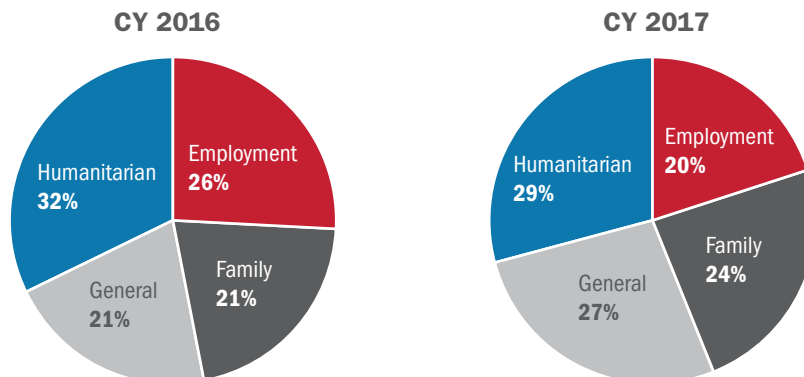


* The Ombudsman also calculates its annual numbers by fiscal year for appropriations purposes. In FY 2017, the requests received were 11,289, an increase from the FY 2016 requests received (11,169). The types of requests and the top primary forms do not deviate when reviewed by fiscal year.

Requests for Ombudsman Case Assistance Received by Month for Calendar Years 2016 and 2017





Requests for Ombudsman Case Assistance—Submission by Category





Top Primary Form Types	# Received	% change from 2016
N-400, Application for Naturalization	1,789	38%
I-765, Application for Employment Authorization	1,439	-21%
I-821D, Consideration of Deferred Action for Childhood Arrivals	1,201	-41%
I-130, Petition for Alien Relative	1,073	-3%
I-485, Application to Register Permanent Residence or Adjust Status	2,188	7%
I-485 (Based on an I-130), Application to Register Permanent Residence or Adjust Status (Family-Based)	798	23%
I-485 (Other Classification), Application to Register Permanent Residence or Adjust Status (Other Classification)	726	-3%
I-485 (Based on an I-140), Application to Register Permanent Residence or Adjust Status (Employment-Based)	664	2%
I-751, Petition to Remove the Conditions of Residence	218	-11%
I-90, Application to Replace Permanent Resident Card	214	5%
I-131, Application for Travel Document	214	-14%

Top Ten States Where Applicants Reside and the Top Five Primary Form Types

California		
Requests Received: 1,839		
Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	368	20%
N-400, Application for Naturalization	287	16%
I-821D, Consideration of Deferred Action for Childhood Arrivals	269	15%
I-765, Application for Employment Authorization	250	14%
I-130, Petition for Alien Relative	114	6%

New York		
Requests Received: 1,109		
Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	251	23%
N-400, Application for Naturalization	219	20%
I-765, Application for Employment Authorization	144	13%
I-130, Petition for Alien Relative	138	12%
I-821D, Consideration of Deferred Action for Childhood Arrivals	98	9%

Texas		
Requests Received: 1,193		
Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	283	24%
I-821D, Consideration of Deferred Action for Childhood Arrivals	248	21%
N-400, Application for Naturalization	155	13%
I-765, Application for Employment Authorization	155	13%
I-130, Petition for Alien Relative	101	8%

Illinois		
Requests Received: 843		
Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	248	29%
I-130, Petition for Alien Relative	130	15%
I-821D, Consideration of Deferred Action for Childhood Arrivals	113	13%
N-400, Application for Naturalization	99	12%
I-765, Application for Employment Authorization	93	11%

Florida
Requests Received: 682



Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	140	21%
N-400, Application for Naturalization	120	18%
I-765, Application for Employment Authorization	101	15%
I-130, Petition for Alien Relative	59	9%
I-821D, Consideration of Deferred Action for Childhood Arrivals	51	7%

Virginia
Requests Received: 524



Top Primary Form Types:	Count	% of Total
N-400, Application for Naturalization	112	21%
I-485, Application to Register Permanent Residence or Adjust Status	103	20%
I-765, Application for Employment Authorization	77	15%
I-130, Petition for Alien Relative	56	11%
I-821D, Consideration of Deferred Action for Childhood Arrivals	37	7%

Maryland
Requests Received: 389



Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	94	24%
N-400, Application for Naturalization	88	23%
I-765, Application for Employment Authorization	52	13%
I-130, Petition for Alien Relative	49	13%
I-589, Application for Asylum and Withholding of Removal	16	4%

New Jersey
Requests Received: 385



Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	76	20%
I-765, Application for Employment Authorization	62	16%
N-400, Application for Naturalization	60	16%
I-130, Petition for Alien Relative	37	10%
I-821D, Consideration of Deferred Action for Childhood Arrivals	32	8%

Georgia
Requests Received: 344



Top Primary Form Types:	Count	% of Total
N-400, Application for Naturalization	72	21%
I-485, Application to Register Permanent Residence or Adjust Status	71	21%
I-821D, Consideration of Deferred Action for Childhood Arrivals	48	14%
I-765, Application for Employment Authorization	37	11%
I-130, Petition for Alien Relative	32	9%

Washington
Requests Received: 298



Top Primary Form Types:	Count	% of Total
N-400, Application for Naturalization	57	19%
I-765, Application for Employment Authorization	50	17%
I-485, Application to Register Permanent Residence or Adjust Status	46	15%
I-130, Petition for Alien Relative	37	12%
I-821D, Consideration of Deferred Action for Childhood Arrivals	24	8%

Homeland Security Act— Section 452—Citizenship and Immigration Services Ombudsman

SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL—Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the ‘Ombudsman’). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS—It shall be the function of the Ombudsman—

- 1) To assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;
- 2) To identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and
- 3) To the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

(c) ANNUAL REPORTS—

1) OBJECTIVES—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) Shall identify the recommendation the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

- (B) Shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;
- (C) Shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;
- (D) Shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;
- (E) Shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;
- (F) Shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and
- (G) Shall include such other information as the Ombudsman may deem advisable.
- 2) REPORT TO BE SUBMITTED DIRECTLY**—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.
- (d) OTHER RESPONSIBILITIES**—The Ombudsman—
- 1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;
 - 2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;
 - 3) shall ensure that the local telephone number for each local office of the Ombudsman is published and

available to individuals and employers served by the office; and

- 4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS—

- 1) **IN GENERAL—**The Ombudsman shall have the responsibility and authority—

- (A) To appoint local ombudsmen and make available at least 1 such ombudsman for each State; and
- (B) To evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

- 2) **CONSULTATION—**The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

- (f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES—**The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES—

- 1) **IN GENERAL—**Each local ombudsman—

- (A) shall report to the Ombudsman or the delegate thereof;
- (B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;
- (C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and
- (D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

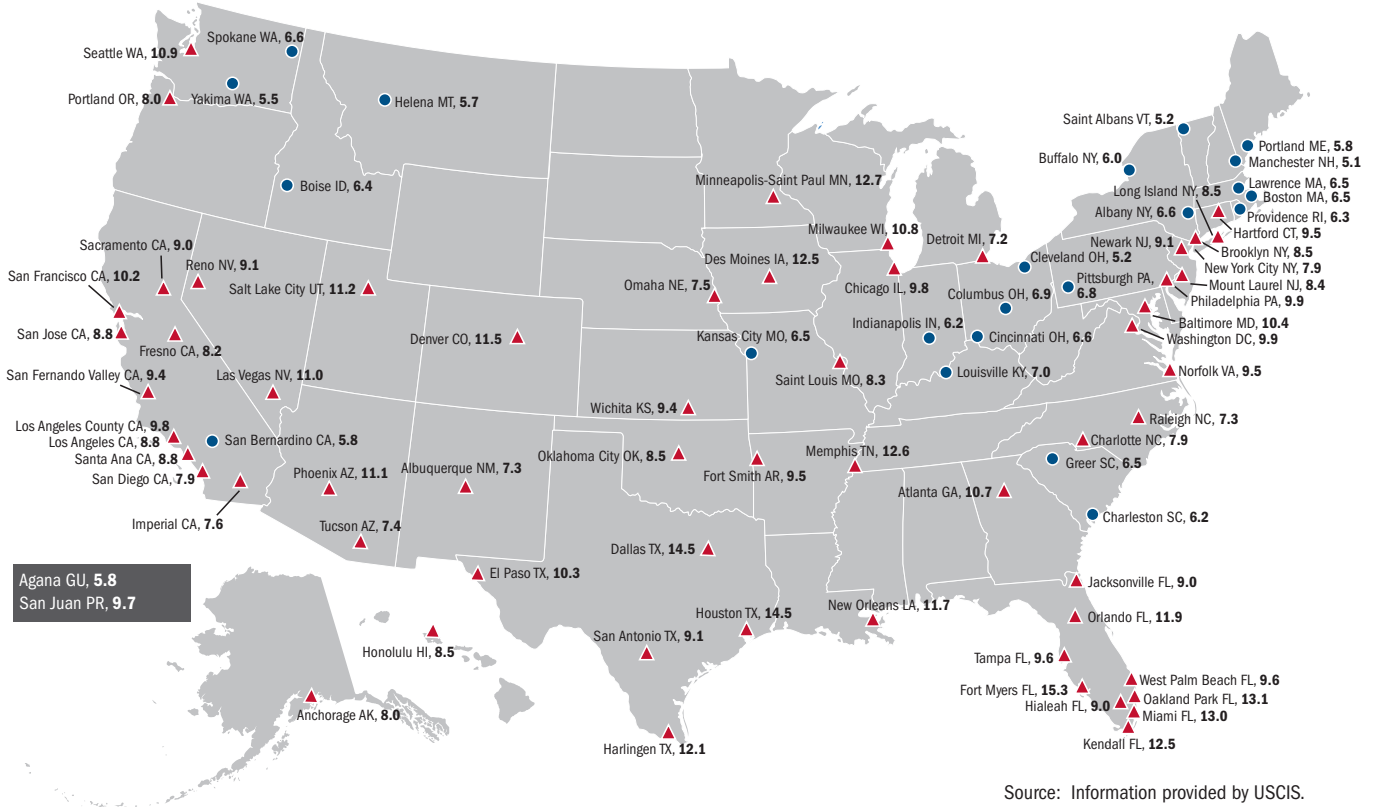
- 2) **MAINTENANCE OF INDEPENDENT COMMUNICATIONS—**Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

USCIS Naturalization and Adjustment of Status Processing Times

Average Processing Times for USCIS Field Offices for Forms N-400, Application for Naturalization

July-Sep. 2017 (FY 2017 4th Quarter)

■ = 0-5 months ● = 5-7 months ▲ = 7+ months

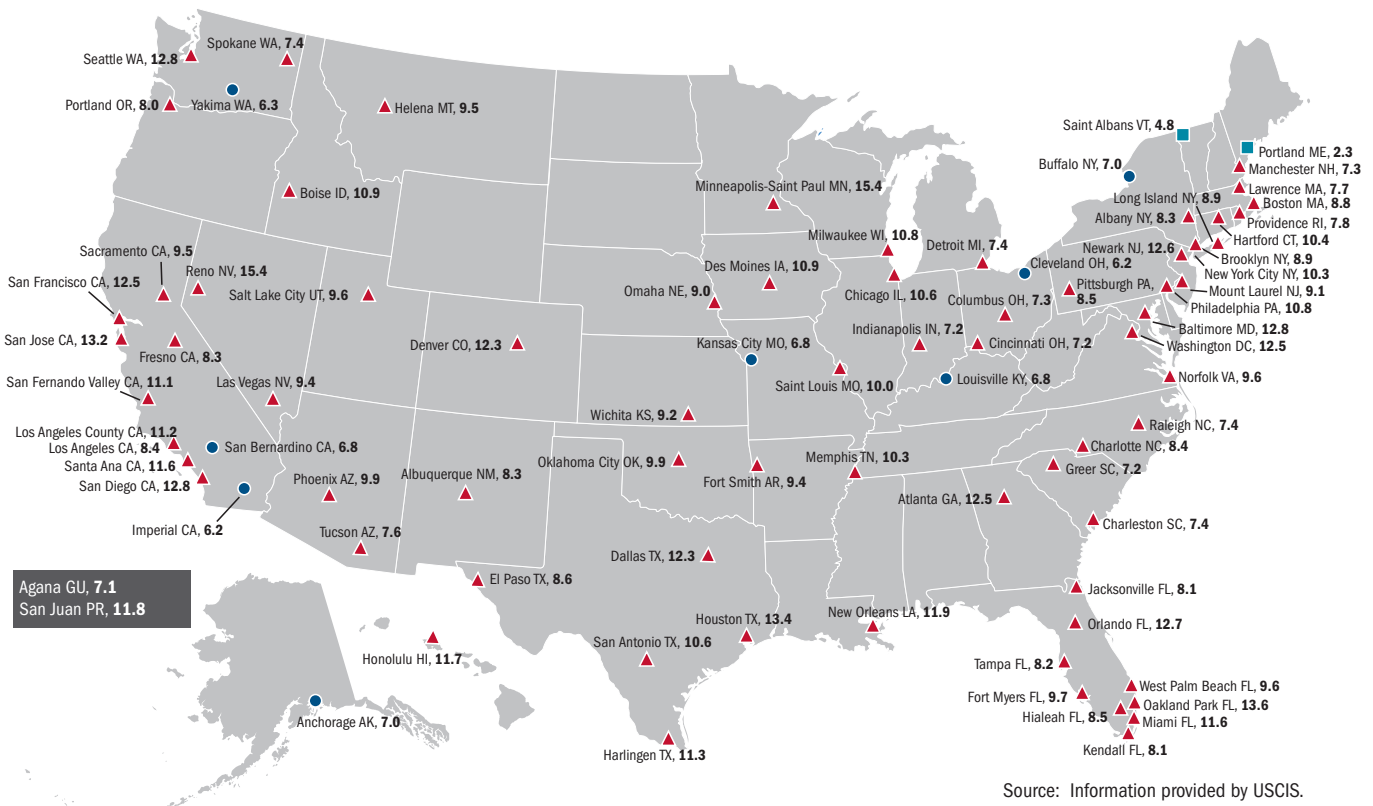


Source: Information provided by USCIS.

Average Processing Times for USCIS Field Offices for Forms I-485, Application to Register Permanent Residence or Adjust Status

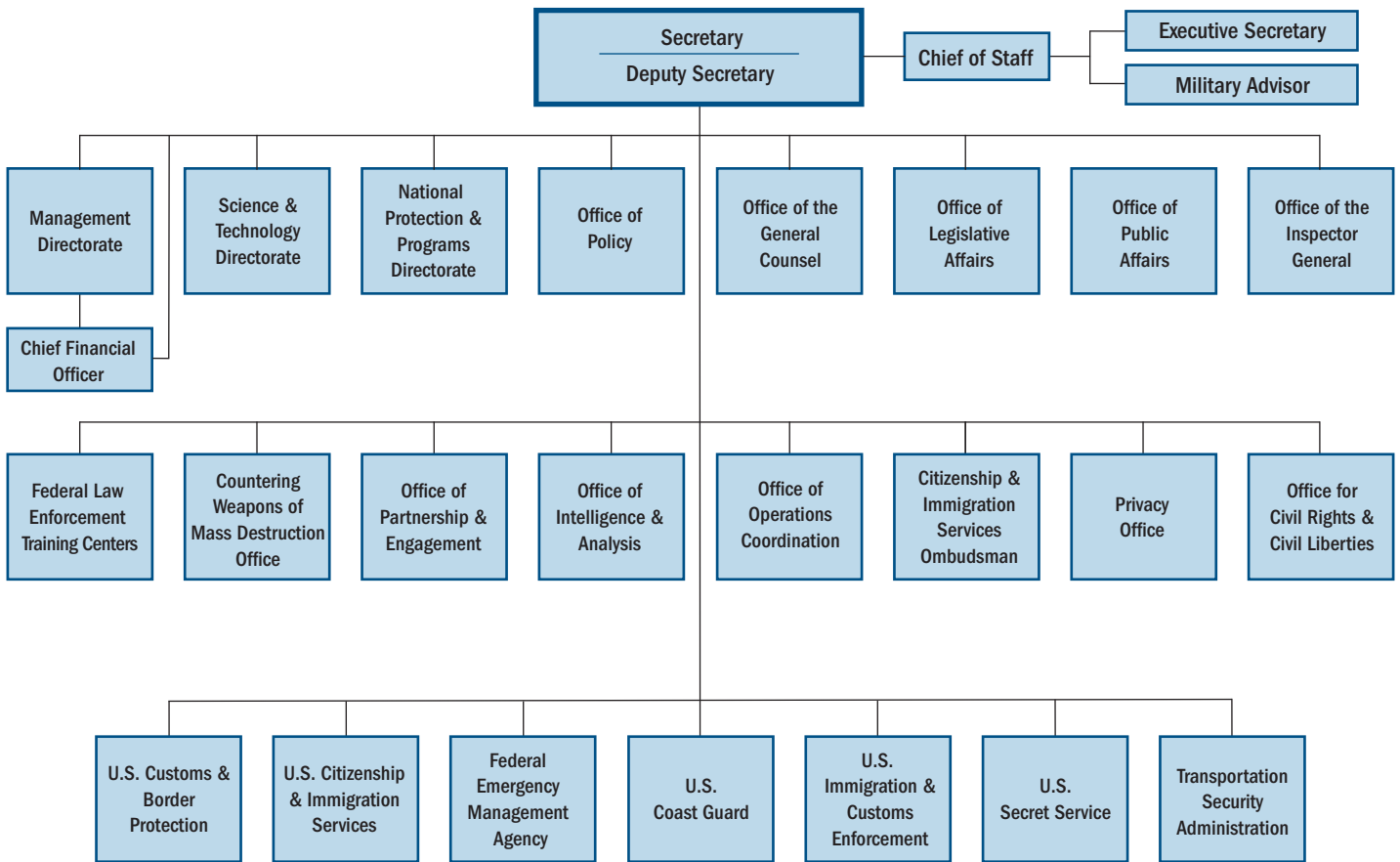
July-Sep. 2017 (FY 2017 4th Quarter)

■ = 0-5 months ● = 5-7 months ▲ = 7+ months



Source: Information provided by USCIS.

U.S. Department of Homeland Security Organization Chart

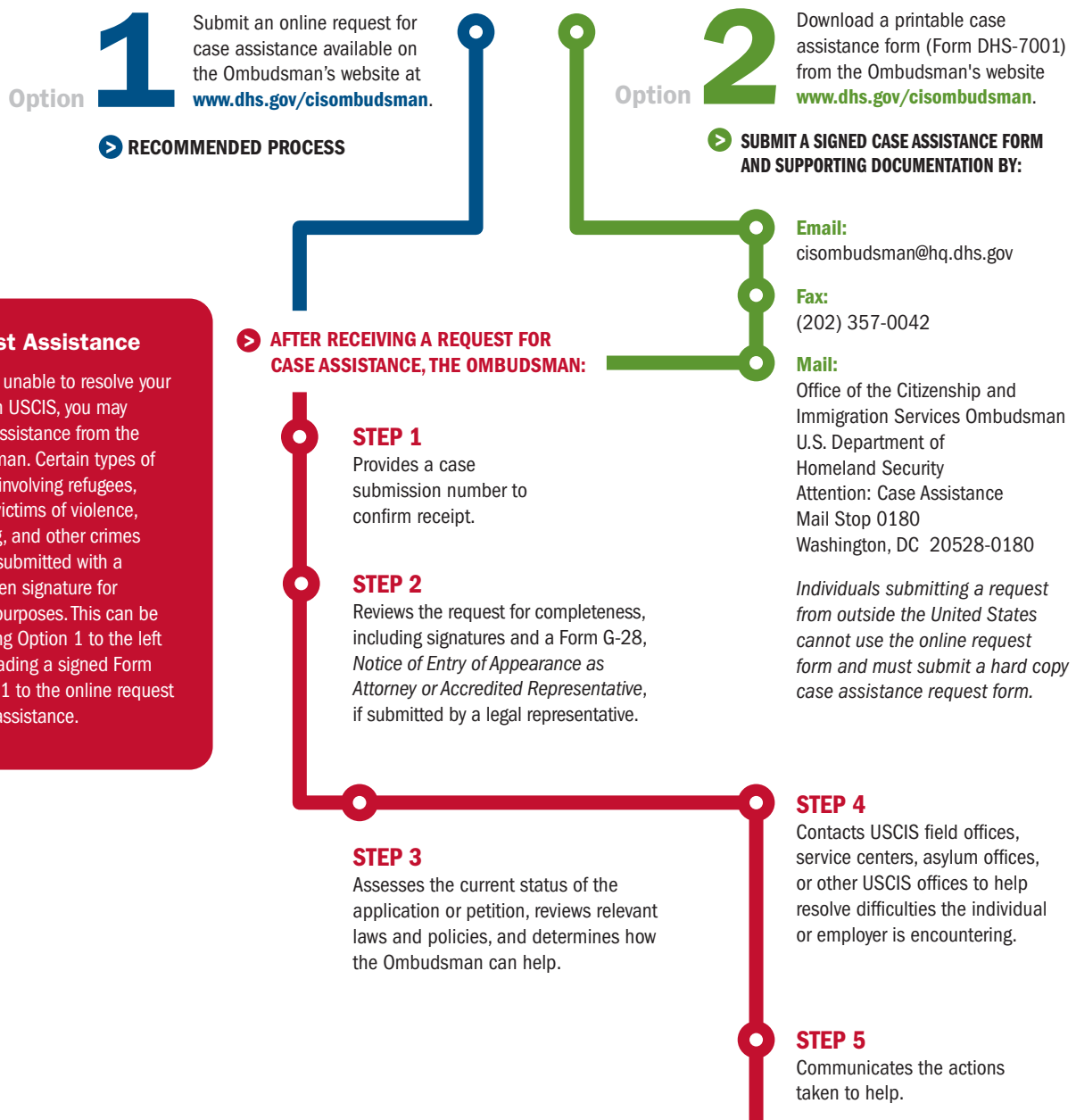


How to Request Case Assistance from the Ombudsman: Scope of Assistance Provided

Helping Individuals and Employers Resolve Problems with USCIS

Before asking the Ombudsman for help with an application or petition, try to resolve the issue with USCIS by:

- Obtaining information about the case at USCIS My Case Status at www.uscis.gov.
- Submitting an e-Request with USCIS online at <https://egov.uscis.gov/e-Request>.
- Contacting the USCIS National Customer Service Center (NCSC) for assistance at **1-800-375-5283**.
- Making an InfoPass appointment to speak directly with a USCIS Immigration Services Officer in a field office at www.infopass.uscis.gov.



Request Assistance

If you are unable to resolve your issue with USCIS, you may request assistance from the Ombudsman. Certain types of requests involving refugees, asylees, victims of violence, trafficking, and other crimes must be submitted with a handwritten signature for consent purposes. This can be done using Option 1 to the left and uploading a signed Form DHS-7001 to the online request for case assistance.

Acronyms

AAO	Administrative Appeals Office	JCE	Job Creating Enterprise
AFM	Adjudicator’s Field Manual	LPR	Legal (Lawful) Permanent Resident
ANPRM	Advance Notice of Proposed Rulemaking	LIFO	Last-In, First-Out
ASC	Application Support Center	NBC	National Benefits Center
ASVVP	Administrative Site Visit and Verification Program	NCSC	National Customer Service Center
BIA	Board of Immigration Appeals	NOID	Notice of Intent to Deny
BCU	Background Check Unit	NPRM	Notice of Proposed Rulemaking
CAM	Central American Minors	NSC	Nebraska Service Center
CARRP	Controlled Application Review and Resolution Program	NTA	Notice to Appear
CBP	Customs and Border Protection	OIG	Office of Inspector General
CIS	Central Index System	OIT	Office of Information Technology
CLAIMS	Computer Linked Application Information Management System	PIA	Privacy Impact Assessment
CLASS	DOS Consular Lookout and Support System	PSC	Potomac Service Center
CSC	California Service Center	RAIO	Refugee, Asylum, and International Operations
CY	Calendar Year	RAPS	Refugee, Asylum, and Parole System
DACA	Deferred Action for Childhood Arrivals	RFE	Request for Evidence
DHS	U.S. Department of Homeland Security	RSC	Resettlement Service Center
DOJ	U.S. Department of Justice	SCOPS	Service Center Operations Directorate
DOS	U.S. Department of State	SEC	Securities Exchange Commission
EAD	Employment Authorization Document	SGN	System-Generated Notification
ELIS	Electronic Immigration System	SMD	Social Media Division
EOIR	Executive Office for Immigration Review	SOF	Statement of Findings
EPMS	Enterprise Print Management System	TEA	Targeted Employment Area
FBI	Federal Bureau of Investigation	TPS	Temporary Protected Status
FIFO	First-In, First-Out	TRIG	Terrorism-Related Inadmissibility Grounds
FOD	Field Operations Directorate	TSA	Transportation Security Administration
FDNS	Fraud Detection and National Security Directorate	TSC	Texas Service Center
FY	Fiscal Year	TSVVP	Targeted Site Visit and Verification Program
GAO	U.S. Government Accountability Office	TVPRA	Trafficking Victims Protection Reauthorization Act
HSA	Homeland Security Act	UAC	Unaccompanied Alien Children
HSI	Homeland Security Investigations	UNHCR	U.N. High Commissioner for Refugees
ICE	U.S. Immigration and Customs Enforcement	USCIS	U.S. Citizenship and Immigration Services
INA	Immigration and Nationality Act	VSC	Vermont Service Center
INS	Immigration and Naturalization Service	WRAPS	Worldwide Refugee Admissions Processing System
IRIS	Immigration Records and Identity Services Directorate		



Homeland
Security

**Citizenship and Immigration Services Ombudsman
U.S. Department of Homeland Security**

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<http://www.dhs.gov/cisombudsman>

Send your comments to: cisombudsman@hq.dhs.gov