



Annual Report 2020

Citizenship and Immigration Services
Ombudsman

June 30, 2020



Homeland
Security

Annual Report 2020

Citizenship and Immigration Services Ombudsman

June 30, 2020



Homeland
Security

*Office of the Citizenship and Immigration Services
Ombudsman*

U.S. Department of Homeland Security

Mail Stop 0180

Washington, DC 20528-0180



**Homeland
Security**

June 30, 2020

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jerrold Nadler
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 Jim Jordan
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 2020 Annual Report.

I am available to provide additional information upon request.

Sincerely,

A handwritten signature in blue ink that reads "M. T. Dougherty".

Michael T. Dougherty
Citizenship and Immigration Services Ombudsman

www.dhs.gov/cisombudsman

Message from the Ombudsman



I am pleased to present the Citizenship and Immigration Services Ombudsman's 2020 Annual Report to Congress.

The Office of the Citizenship and Immigration Services Ombudsman was created in the Homeland Security Act in 2002. The Office was designed as a separate component, independent of U.S. Citizenship and Immigration Services (USCIS). Our mission includes assisting individuals and employers in resolving difficulties they experience when seeking immigration benefits from USCIS and proposing changes to improve the delivery of those benefits. In performing these duties our office adheres to the principles of confidentiality, impartiality and independence. The Ombudsman's Office is expected to conduct full and substantive analysis of pervasive and serious problems and to include other information that the Ombudsman deems advisable. In addition, as a component of the Department of Homeland Security (DHS), our office supports the Department's larger mission objectives, core values and guiding principles, which include contributing to the integrity of the immigration system while identifying systemic risks that threaten the security and prosperity of the United States.

As this Report is being finalized, USCIS is facing two significant challenges: the staggered reopening of its public-facing offices in the wake of the global coronavirus (COVID-19) pandemic, and a budget shortfall that may result in furloughs. Stakeholders and the public have raised questions and concerns with the Ombudsman's

Office on how USCIS' processing of immigration benefits and services will be affected by the lingering effects of the pandemic and the potential furlough. The COVID-19 pandemic gave USCIS an opportunity to test out its continuity plan that made even more evident the importance of moving beyond the paper processing of immigration benefits applications to an environment in which filings and adjudications can be processed electronically. USCIS may want to intensify its efforts on implementing electronic filing and adjudication for all form types—a goal once set for the end of 2020.

Though USCIS has provided clarification and guidance on several issues of immediate concern, such as evidentiary response times and in-person interviews, as the COVID-19 pandemic has lengthened, important issues remain unresolved. The Office has supported USCIS by conveying stakeholder concerns and, where appropriate, by offering recommended action. Most of those impacted, from tourists to employers, wish to comply with U.S. immigration laws and need unambiguous guidance to do so. In this difficult period, our Office has encouraged (and will continue to encourage) USCIS to conduct frequent outreach to publicly set stakeholder expectations. We welcome the opportunity to collaborate with USCIS in such efforts. Regardless, the Ombudsman's Office will continue to fully satisfy its statutory obligations, in part through meetings with stakeholders and through outreach events such as webinars, in our belief that clear communications from DHS and USCIS are imperative to support the effective administration of U.S. immigration laws.

Perhaps the greatest immigration benefit that the United States can bestow on a foreign national is citizenship. Given its importance to individuals seeking to naturalize, it is not surprising we receive frequent queries from individuals seeking to understand the status of USCIS adjudications on their applications for citizenship among the thousands of requests for assistance we receive annually. In this Report, we study the increasing naturalization application backlog, and recommend ways to streamline more complicated cases and identify creative remote interview solutions. Given the significance of U.S. citizenship, we also study in this Report the challenges of denaturalizing those who, due to agency error or through

fraud, received the benefit despite being ineligible. While there is always pressure on USCIS to adjudicate applications, it is essential to maintain the integrity of the process, ensuring that appropriate vetting and screening of applicants is completed; once a benefit like citizenship is awarded to an unqualified individual, it is legally difficult and resource-intensive to later reverse it.

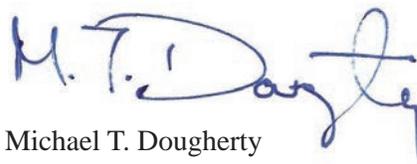
An important means of maintaining integrity in the immigration system is the promotion of data collection, data standards and reliable, objective data reporting as close to real time as possible. Accurate metrics-keeping promotes better situational awareness within DHS, but also provides leaders within the Executive and Legislative branches a clearer understanding of the status of the immigration system. In this Report, we cover the progress of the DHS Immigration Data Integration Initiative, which is enhancing technology and internal procedures to improve immigration metrics-keeping to ensure that relevant, accurate information is available to operational components and leadership at DHS.

The Report covers the rapid increase of the optional practical training (OPT) program, which enables approximately 200,000 foreign students to work annually in the United States in areas related to their course of study, including science, technology, engineering and mathematics (STEM). While practical training affords numerous advantages to foreign students, schools and U.S. employers, the OPT and STEM OPT programs have remained a source of concern in recent years due to their vulnerability to fraud and indicators that they are being leveraged by foreign governments as a means of conducting espionage or illicit technology transfer in the STEM areas. The Ombudsman examines how foreign students obtain practical training and, using open-source data, applies an objective analytical framework to the programs to determine potential risks to the security and prosperity of the United States.

The Office has had numerous opportunities to comment upon the processing of asylum applications, and this Report is no exception. The number of pending affirmative asylum applications now stands at approximately 350,000, despite USCIS' near tripling of its asylum staff. As always, the pressure on USCIS to complete applications in a secure and timely manner must be viewed in the context of its workload and business model: in FY 2019, it received 8.1 million applications and petitions, and it operates as a fee-funded agency. USCIS, like most other federal agencies, lacks the agility to rapidly staff and train personnel to meet dynamic surges in workloads like those experienced with asylum, naturalization, and employment authorization applications.

I wish to share my appreciation for the very positive experience that we have had with Congressional staff serving in district and state offices who assist individual constituents and other stakeholders in resolving immigration benefits problems. We appreciate their dedication and value the opportunity to meet frequently with them. I also wish to thank on behalf of our Office the USCIS staff and leadership team for their friendship and collaboration. Finally, I extend my sincere gratitude to the professional staff of the Ombudsman's Office, who, after seamlessly transitioning to a remote work environment, have continued to work with admirable diligence and creativity to achieve the mission of this Office.

Sincerely,

A handwritten signature in blue ink that reads "M. T. Dougherty". The signature is fluid and cursive, with the first name "M. T." written in a smaller, more distinct font than the last name "Dougherty".

Michael T. Dougherty

Table of Contents

- Letter to Congress iii
- Message from the Ombudsman iv
- Ombudsman’s Office: 2019 in Review—Looking Back, Looking Ahead2
- Key Developments and Areas of Focus
 - The Geometry of the Naturalization Backlog10
 - Denaturalization: Maintaining the Integrity of the Naturalization Program28
 - The Challenge of Decreasing USCIS’ Affirmative Asylum Backlog40
 - Spotlight: DHS Immigration Data Integration Initiative56
 - Foreign Students and the Risks of Optional Practical Training62
 - InfoMod (Year Two): Accomplishments, Lessons Learned, and Current Challenges86
- Appendices96
 - Ombudsman: By the Numbers96
 - Ombudsman 2019 Recommendations and Updates100
 - Homeland Security Act Section 452107
 - USCIS Naturalization and Adjustment of Status Processing Times109
 - U.S. Department of Homeland Security Organizational Chart110
 - How to Request Case Assistance from the Ombudsman111
 - Acronyms112

Office of the Citizenship and Immigration Services Ombudsman: 2019 in Review—Looking Back, Looking Ahead

Established by the Homeland Security Act of 2002, the Office of the Citizenship and Immigration Services Ombudsman (Ombudsman) is an independent, impartial, and confidential office within the Department of Homeland Security (DHS). The Ombudsman reports directly to the Deputy Secretary of DHS and is independent of U.S. Citizenship and Immigration Services (USCIS).

Pursuant to statute,¹ the mission of the Ombudsman is to:

- Assist individuals and employers in resolving problems with USCIS;
- Identify trends and areas in which individuals and employers have problems dealing with USCIS; and
- To the extent possible, propose changes in USCIS' administrative practices to mitigate identified problems.

The Ombudsman achieves its mission by:

- Evaluating requests for assistance from individuals and employers with cases before USCIS and, where appropriate, recommending that USCIS take corrective action;
- Facilitating interagency collaboration and conducting outreach with a wide range of public and private stakeholders;
- Working collaboratively with USCIS to identify problems and improve responsiveness in the delivery of immigration benefits and services; 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.

HOW THE OMBUDSMAN PROCESSES REQUESTS FOR CASE ASSISTANCE

Anyone with standing (applicants, petitioners, legal and other representatives) may contact the Ombudsman for assistance with specific case problems at USCIS. There is no cost to submit a request for case assistance. However, because the Ombudsman is a resource of last resort, one should first attempt to resolve concerns directly with USCIS through its public service channels. If USCIS is unable to resolve the problem, one may submit a Form DHS-7001, *Request for Case Assistance*, online through the Ombudsman's website, which automatically generates an email with the case number.² A paper version of Form DHS-7001 is available on the website for individuals who are unable to complete the form online.

Pre-Assignment. Each request for case assistance is reviewed initially by one of the Ombudsman's senior immigration law experts to determine whether the Ombudsman's Office has jurisdiction and to identify requests requiring expedited service.³ In general, the

¹ Homeland Security Act of 2002 (HSA) § 452, Pub. L. 107–296, title IV; 6 U.S.C. § 272 (2002).

² Citizenship and Immigration Services Ombudsman's Webpage, "Ombudsman—Case Assistance," <https://www.dhs.gov/case-assistance> (accessed Apr. 14, 2020). DHS firewalls unfortunately do not allow individuals outside of the United States to complete the form online. The office accepts requests by email, fax, or mail from individuals who have trouble filing online.

³ The Ombudsman aims to review all requests for assistance within 7 days of receipt.

Ombudsman’s mission is limited to issues dealing with immigration benefits, but in certain circumstances the Office can assist with cross-agency issues. For example, our immigration law analysts regularly communicate with the Department of State’s (DOS) National Visa Center to help with difficulties getting files transferred.

After determining that the Ombudsman has jurisdiction over the case, reviewers identify the level of urgency of the case. To help the Ombudsman assess emergency situations, individuals requesting assistance must submit documentation to demonstrate that their situation fits USCIS’ expedite



Tips for Requesting Case Assistance from the Ombudsman

- ✓ Try to resolve the problem with USCIS first. The Ombudsman is an office of last resort.
- ✓ Check USCIS’ posted processing times, paying particular attention to the “Receipt date for a case inquiry” date, before contacting USCIS or the Ombudsman.
- ✓ Provide only basic documentation related to your request such as receipt notices, Requests for Evidence (RFEs), and denial notices. We will contact you if we need more.
- ✓ Email the documentation if it cannot be submitted through the online submission process. Only mail or fax documents if you do not have access to a computer.
- ✓ You must be the petitioner, applicant, or representative to submit a request for case assistance. A beneficiary cannot submit a request for case assistance. For example, if you are an adjustment of status applicant, but the underlying petition has not yet been approved, we will need the petitioner’s consent.
- ✓ Submit the request under the applicant or petitioner’s name—not the name of the law firm, school, or organization representing them.
- ✓ Provide a clear and concise explanation of the problem, case history, and how you would like the Ombudsman to assist.
- ✓ If you are requesting expedited assistance, submit documentary evidence of the urgency or hardship (medical records, financial documents, letters from employers, etc.) and how you will be unable to withstand the hardship.
- ✓ If you are protected by federal confidentiality provisions, you must submit your signature on section 12 of the Form DHS-7001 as an attachment. Although the Ombudsman may communicate via email or telephone with legal representatives who have a properly completed Form G-28, *Notice of Entry of Appearance as Attorney or Accredited Representative*, on file with USCIS and the Ombudsman, the Ombudsman can only communicate via postal mail with unrepresented individuals protected by these confidentiality provisions. Your current address must be updated in the USCIS system because we can only send mail to that address, not the one provided on the Form DHS-7001.
- ✓ Each applicant or petitioner requires a separate Form DHS-7001. If you need assistance for more than one family member or employment petition, please submit separate requests for case assistance. You can email the office at cisombudsman@hq.dhs.gov after you have received your case numbers to let us know that the cases are related and should be worked together.
- ✓ Because many of our requests for help relate to mailing issues, please remember to timely update your current address with USCIS for every pending application or petition. The easiest way to do so is online at <https://egov.uscis.gov/coa/displayCOAForm.do>. You must also submit an updated Form AR-11 *Alien’s Change of Address Card* to USCIS to properly change your address.

criteria.⁴ In addition to cases meeting that criteria, the Ombudsman expedites all requests related to Employment Authorization Documents (EAD) that are outside of USCIS' posted processing times. Other examples of situations where the Ombudsman expedites its assistance include difficulties obtaining proof of status or travel documents, and administrative or legal errors made by USCIS.

A complete Form DHS-7001 submission includes a brief summary of the issue, receipt numbers for all associated applications or petitions, evidence of previous attempts to resolve with USCIS, consent from the proper party, copies of pertinent documents (*e.g.*, receipts, denials), and a copy of the Form G-28 submitted to USCIS if a legal representative is making the request. If additional information or documentation is required, an immigration law analyst will contact the petitioner, applicant, or representative.

If, after reviewing the submission, the reviewer determines that the Ombudsman cannot assist, we will contact the individual, employer, or legal representative to explain why.

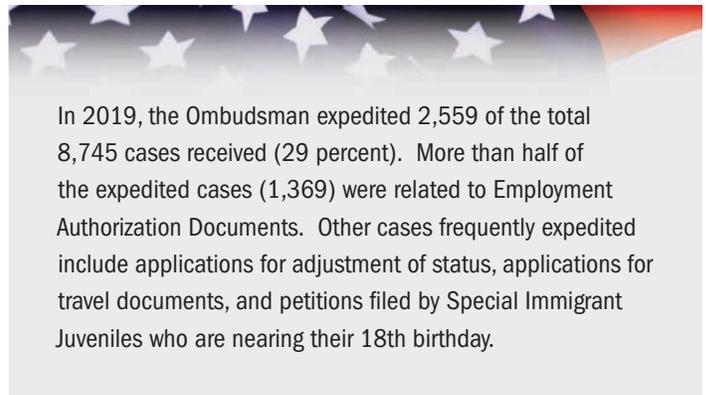
Assignment. With the exception of cases needing expediting, requests for case assistance are assigned and worked in the order in which they are received. Cases that meet USCIS' expedite criteria are assigned by supervisors to analysts every business day. In January 2019, the Case Team began assigning expedites to half of its analysts so that non-expedited cases would continue to be worked by those not assigned expedites.

Analysts review the facts and law related to each request and check the case history in USCIS' databases to learn the file's location, confirm filing dates, and check the status of the case.

The Ombudsman's team of analysts has a wide range of expertise. Many have worked in USCIS adjudication roles, private immigration law practice, and positions in other federal agencies such as the Departments of State, Labor, and Justice.

Contacting USCIS. When the request warrants an inquiry to USCIS, the Ombudsman communicates directly with designated points of contact at field offices, service centers, asylum offices, and other locations. Each inquiry includes a request that USCIS review the file to ensure that both law and policy have been properly applied.

⁴ USCIS Webpage, "Expedite Criteria," <https://www.uscis.gov/forms/expedite-criteria> (accessed Apr. 14, 2020).



USCIS Response. The Ombudsman does not close any request for case assistance until USCIS provides a substantive response. When USCIS responds to an inquiry, the analyst notifies the applicant, petitioner, or representative by email, telephone, or U.S. postal mail (in confidential cases).

The Ombudsman advocates for a fair and consistent process, and not for a particular outcome. A response from USCIS does not always result in an approved application or petition. 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.⁵

Extended Review. Where USCIS does not provide a specific timeframe for resolution, the Ombudsman adds the request to a queue of long-pending cases, generally referred to as the Extended Review list. Occasionally, cases that have fallen outside normal processing times have done so for reasons beyond the control of USCIS, such as a background check being conducted by another agency. The Ombudsman continues to follow up regularly with USCIS until it takes action on each case.

2019: CASEWORK IN REVIEW

In 2019, the Ombudsman's Case Team had between 7 and 9 immigration law analysts and immigration case assistants who worked 8,745 requests for case assistance submitted by the public, a decrease of nearly 23 percent from the previous year. As an office funded solely by appropriations from Congress, and not by fees from the

⁵ See generally, 8 C.F.R. § 103.3(a) (appeals), § 103.5 (motions to reopen/reconsider).

public, the Ombudsman's Office was closed for 35 days at the end of 2018 and beginning of 2019 during the partial lapse in appropriations. The Office did not accept any new requests during the funding lapse and was also prohibited from handling any work during that time. Approximately 900 requests for case assistance that would have otherwise been resolved during that time period were instead carried forward.

Once the Ombudsman's systems were brought back online, the Ombudsman received approximately 50 more requests for case assistance per week in the months immediately following the shutdown than in the weeks before the shutdown—an additional inventory of over 400 requests. The inability to work these requests during the funding lapse created a backlog that lasted through most of 2019. Upon return, moreover, the office focused first on expediting cases involving USCIS error, EAD expedites, and other time-sensitive cases, which used a disproportionate amount of resources. It was not until early 2020 that the Ombudsman's Office was able to return to taking action on requests for case assistance within 45 days of receipt, on average.

The following case examples are just a small sample of the types of requests the team completed in 2019.

Erroneous Denial. A *pro bono* attorney contacted the Ombudsman because USCIS erroneously denied his client's Form I-914, *Application for T Nonimmigrant Status*, claiming the applicant failed to respond to an RFE prior to the submission deadline. USCIS considered the application abandoned and denied it. The attorney had correspondence from USCIS as well as postal service tracking information showing that the RFE response was, in fact, received by USCIS prior to the deadline. The Ombudsman requested that USCIS review the case for possible service error. Two weeks later USCIS reopened the application on its own motion, sparing the applicant the need to file a costly and time-consuming Motion to Reopen.

Documents Lost Abroad. An adjustment of status applicant lost his advance parole document while traveling in India, and was therefore unable to board a plane to return to his family and job in the United States. While the applicant attempted other means of obtaining advance parole, he was unsuccessful until he reached out to the Ombudsman. In less than 2 weeks from the Ombudsman's request, USCIS had approved an emergency travel document and communicated with the DOS abroad to

complete the processing of documents that would allow the adjustment applicant to return to the United States.

Delayed Naturalization. An applicant for citizenship reached out to the Ombudsman when over a year had passed since her interview and test at USCIS. She had contacted USCIS several times to obtain an update, but without success. Thanks to the Ombudsman's inquiry, the applicant was at her local office to take the Oath of Citizenship less than a month later.

Incorrect Approval Dates. An agricultural employer sought assistance when its Form I-129, *Petition for a Nonimmigrant Worker* was approved with incorrect validity period dates, giving the employee less time to work for the company than requested. The Ombudsman asked USCIS to have a supervisor review the petition and supporting documentation from the Department of Labor. Subsequently, the petition was reopened and the validity dates corrected, giving the petitioning employer the agricultural help it needed throughout the season.

Misclassification of Status. After several unsuccessful service center requests and attempts to communicate with her Congressman's office, an applicant for adjustment of status contacted the Ombudsman's Office. Her application for a travel document was erroneously denied by USCIS. The denial notice stated that she had entered the United States unlawfully or as a crewmember in transit. The Ombudsman reviewed the applicant's documentation and USCIS' databases and located evidence that she had in fact entered appropriately as a J-1 Exchange Visitor. In less than a week, USCIS reopened and reviewed the file, and sent a travel document to be produced and mailed to the applicant.

Typographical Error. An applicant contacted the Ombudsman for assistance in correcting USCIS' typographical error of his first name on his receipt and approval notice, which caused difficulties not only for the applicant but also for his spouse, who required a correct approval notice to obtain the visa needed to join her husband in the United States. When the Ombudsman reviewed the case, it was discovered that the applicant's efforts to resolve the issue had resulted in the name being corrected in the USCIS databases, but amended documents had still not been produced and sent to the applicant. As a result of the Ombudsman's inquiry, USCIS printed and sent the corrected documents to the applicant within a week.

Adjudication Error. A petitioning employer requested the Ombudsman review the denial of a Form I-140, *Immigrant Petition for Alien Worker*. This was the second petition filed by the company—the first was previously denied due to a typographic error on the form. The second application was filed with a clear explanation that it relied on the previously submitted labor certification. Per USCIS policy, when a subsequent petition is filed after a denial, and the expired labor certification is otherwise valid, the certification may be used in the second petition. The adjudicator did not take this policy into account and denied the second petition for failure to include a current labor certification. At the Ombudsman’s request, the petition was reopened and approved.

Processing Delays. The Ombudsman assisted an applicant for adjustment of status who had not received a decision 8 months after his interview; at that point, the application was beyond the posted processing time range. Upon the Ombudsman’s inquiry, the USCIS field office located all the requisite information, including the applicant’s response to an RFE submitted several months before, and determined that the individual was eligible for lawful permanent residence. He received his approval notice a week later.

THE YEAR IN OUTREACH

In 2019, the Ombudsman conducted 85 stakeholder engagements, despite the lapse in appropriations that resulted in the Ombudsman’s Office remaining closed for 35 days between December 2018 and January 2019. These included meetings with, and presentations to, community-based organizations, employers, Congressional staffers, attorneys and accredited representatives, state and local government officials, and individual applicants. The Ombudsman also conducted outreach through a series of teleconferences with stakeholders. Moving into 2020, the office shifted its focus to using multiple platforms to reach out to the public, including online surveys and webinars.

LOOKING AHEAD: IMMIGRATION BENEFITS IN THE AGE OF COVID-19

As this Report is being finalized, the global coronavirus (COVID-19) pandemic continues to present significant operational and policy challenges for Federal agencies. Unsurprisingly, stakeholders and the public have raised numerous questions on how the processing of immigration benefits and services will be affected by DHS and USCIS actions in response to the pandemic. USCIS provided



“How can we begin to thank you and your team enough for your work on this case? We just received [the applicant’s] EAD for his OPT yesterday - at each stage of good news we receive, we’ve been jumping up and down and barely able to contain ourselves! We are both eternally grateful to your team ... for [this applicant’s] sake, and for the broader work that you do. ... I wish I had more words to convey the immenseness of our gratitude to you and your team’s work, this case and beyond! Many, many, many thanks again.”

clarification and guidance on several issues of immediate concern such as evidentiary response times and in-person interviews. The Ombudsman’s Office has supported USCIS by conveying stakeholder concerns and, where appropriate, offering recommended action. But as offices are reopening, important issues have remained unresolved. Most of those impacted, from tourists to employers, wish to comply with U.S. immigration laws and need unambiguous guidance to do so—guidance that has not been quick in coming from the agency. As we continue to live with uncertainty, clear communications from DHS and USCIS will remain imperative to support the administration of U.S. immigration laws.

Actions Taken by USCIS

Ordinarily, USCIS directly interacts with the public in its field offices, asylum offices, and Application Support Centers (ASCs), conducting face-to-face appointments, interviews, and oath ceremonies. In early March 2020, a USCIS field office closed after an employee tested positive for coronavirus; on March 18, USCIS announced it would close all of its public-facing offices in order to protect stakeholders and staff and to slow the spread of the virus. Soon after, USCIS issued announcements to its employees and the public on how certain policies and procedures would change during the COVID-19 crisis. These announcements were posted on the USCIS website and distributed through USCIS listservs. USCIS’ collective guidance was subsequently centralized on a USCIS webpage.⁶

- **Suspended in-person appointments.** Starting March 18, 2020, USCIS cancelled all routine in-person

⁶ USCIS webpage, “USCIS Response to COVID-19,” Apr. 29, 2020; <https://www.uscis.gov/about-us/uscis-response-covid-19> (accessed Apr. 29, 2020).

services, including all biometrics appointments. USCIS remained open for emergency in-person appointments that, if needed, could be obtained through the USCIS Contact Center. On April 4, 2020, USCIS announced its intent to begin to reopen offices “on or after” June 4, 2020. As this Report is being finalized, offices are reopening and rescheduling appointments. Certain questions regarding timing, process, and numbers have not been publicly resolved, but the Ombudsman will continue to work with USCIS to disseminate information to stakeholders regarding modifications being implemented in the reopening.

- **Extended biometrics when possible.** USCIS started using previously submitted biometrics for applicants who had filed a Form I-765, *Application for Employment Authorization*, to extend work authorizations. This enabled the agency to continue to process applications, although only in cases in which biometrics already existed and remained on file.
- **Extension of required responses.** Petitioners and applicants were given an additional 60 calendar days after the response due date set forth in a Request for Evidence, Notice of Intent to Deny, Notice of Intent to Revoke, or Notice of Intent to Terminate if such request or notice was issued and dated by USCIS between March 1 and July 1, 2020, inclusive.⁷
- **Amending H-2A and H-2B requirements.** USCIS published a temporary final rule to amend certain H-2A requirements to help U.S. agricultural employers meet workforce needs.⁸ On May 14, the agency published a temporary final rule to amend similar H-2B requirement.⁹
- **Added flexibility to extensions of stay and change of status.** USCIS published guidance on how to timely apply for an extension of status, along with guidance reminding the public of the agency’s authority to accept late applications.

USCIS’ Work During the COVID-19 Pandemic

The pandemic has altered USCIS’ way of managing its workforce and its workloads. As mentioned, USCIS eliminated all routine in-person appointments, including biometrics appointments and oath ceremonies, between closing in mid-March and when it initiated reopening on June 4. In-person interviews, such as adjustment and naturalization interviews were suspended during these office closings, but emergency in-person appointments remained an option. A majority of USCIS employees turned to working from home. This has brought additional challenges because while the agency has made strides in electronic processing of cases, many applications and petitions still require paper files. The transfer and tracking of these files in the pandemic as adjudicators continued their daily activities has presented additional logistical challenges. And the staff performing intake on new filings at USCIS facilities is necessarily smaller.

USCIS has issued public announcements on policy and program changes during the pandemic through its website and through its media channels, including Twitter and listservs. The agency has not, however, made any changes to established policies or regulations, except for the above-mentioned changes and reminders.

Ombudsman’s Work During the Pandemic

The Ombudsman’s Office has been able to maintain continuity of service during the COVID-19 crisis, seamlessly shifting its work to virtual platforms. Stakeholders have continued to submit requests for case assistance through the online case assistance system, and immigration law analysts continued to address these requests. The Office has seen a decrease in requests for case assistance. See Figure 1.1 (*Ombudsman Case Assistance Requests*). The Ombudsman and staff have continued to meet with stakeholder groups across the country using various media, including online webinar technology. The Policy Team continued to engage with USCIS through virtual meetings on non-COVID-19 related policy concerns.

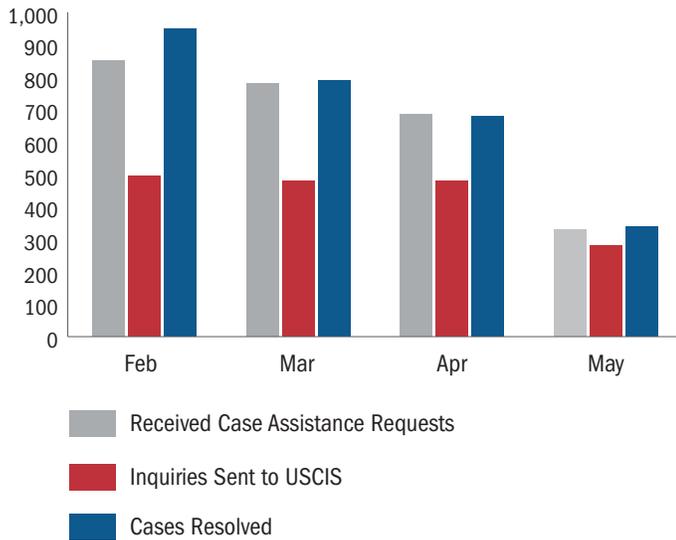
Shortly after USCIS’ announcement to temporarily suspend in-person appointments, the Ombudsman’s Office began to receive numerous questions and concerns from stakeholders, which the Office organized and relayed to USCIS. Among other things, stakeholders sought guidance on how USCIS might conduct naturalization interviews in a time of social distancing, and whether USCIS would grant flexibility in extensions or

⁷ USCIS Webpage, “USCIS Expands Flexibility for Responding to USCIS Requests” (Mar. 30, 2020); <https://www.uscis.gov/news/alerts/uscis-expands-flexibility-responding-uscis-requests> (accessed Apr. 29, 2020); “USCIS Expands Flexibility for Responding to USCIS Requests” (May 1, 2020); <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-responding-agency-requests> (accessed May 15, 2020).

⁸ “Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due to the COVID-19 National Emergency,” 85 Fed. Reg. 21739 (Apr. 20, 2020).

⁹ “Temporary Changes to Requirements Affecting H-2B Nonimmigrants Due to the COVID-19 National Emergency,” 85 Fed. Reg. 28843 (May 14, 2020).

Figure 1.1 Ombudsman Case Assistance Requests
(February–May 15, 2020)



amendments to individuals (such as H-1B workers and students) who were seeking to maintain status even as employers reduced work hours and schools employed distance learning.

MOVING FORWARD

1. The Ombudsman recommends that USCIS publicize its workforce plans going forward to inform the public and highlight continuity of services.

As this Report is being finalized, it is unclear how or whether USCIS has yet adopted a safe and timely way to collect, process and adjudicate paper filings. Case processing is often reliant upon an in-person examination. USCIS has just released details of its reopenings, particularly with respect to its interviews, as it reopens offices and reissues interview notices. To help manage expectations, the Ombudsman recommends that USCIS continue to share with the public how it intends to manage its workload to ensure continuity of services, particularly regarding how it will perform in-person services to minimize impact of contagion on the public and the USCIS workforce. The Ombudsman will continue to partner with USCIS to get this information to the affected communities to better inform their decisions.

2. The Ombudsman recommends that USCIS issue policy or program statements on certain critical status questions, including those submitted through the Ombudsman’s Office.

There is a public benefit to USCIS sharing information in response to the following critical questions:

- How does USCIS intend to meet statutory and regulatory obligations respecting the processing of naturalization applications?
- What actions is USCIS taking to respond to individuals with emergency needs, including those seeking temporary proof of lawful permanent resident status, advance parole, etc.?
- How is USCIS managing benefits applications from vulnerable populations (such as victims of human trafficking), where prolonged waiting periods could potentially endanger the applicant’s safety?
- What is USCIS planning to do with adjustment applications where it has the authority to waive the in-person requirement?

3. The Ombudsman recommends that USCIS reinstitute its national stakeholder meetings for its directorates to maintain communication with the public.

Given the disruptions and challenges faced by USCIS in responding to the COVID-19 crisis, there is renewed value in USCIS engaging in more national stakeholder engagements to ensure the public understands USCIS policy and guidance. Through consistent and routine public engagement, USCIS can clarify processes for both unrepresented and represented applicants and petitioners, reducing potential confusion, anxiety and queries from stakeholders wishing to conform with USCIS rules. It will also reduce fraud and bad actors who seek to take advantage of any vacuum in communication by promoting false stories to scam unsuspecting individuals.

CONCLUSION

USCIS’ future challenges are unknown, which is why it is important that it exercise clear communication with the public. Taking the Ombudsman’s recommendations would achieve this, as well as bring to light the work already being done within the agency. The Ombudsman will continue to support USCIS’ efforts and respond to our mutual stakeholder community.



The Geometry of the Naturalization Backlog

Responsible Office: Field Operations Directorate

KEY FACTS AND FINDINGS

- The N-400 backlog has steadily increased in the past decade, but surged significantly in fiscal years (FY) 2016 and 2017, resulting in a pending inventory of 652,431 applications at the end of 2019. The shutdown of offices caused by the global coronavirus (COVID-19) pandemic has only exacerbated this inventory, as interviews and oath ceremonies did not take place from mid-March through May, 2020.
- Unanticipated surges in applications were not met with additional resources, although efforts have been made to create efficiencies while maintaining integrity, the strain of expanded interview requirements has impacted processing times. Longer completion rates and lean staffing have also contributed to increased processing times.
- USCIS has implemented a series of initiatives to deal appropriately with its backlog, including increasing fees to more closely align to a full fee recovery, but the

COVID-19 shutdown has created a significant issue in righting processing delays.

- USCIS needs to consider additional steps to assist it with the adjudication of naturalization applications, including those pending for a significant time, such as concurrent adjudications with pending applications. The current pandemic also presents the agency with a unique opportunity to contemplate the feasibility of remote naturalization adjudications.

BACKGROUND

In FY 2019, USCIS naturalized 833,000 new U.S. citizens, its highest number since FY 2009.¹⁰ However, this accomplishment resulted in only a modest reduction of pending Forms N-400, *Applications for Naturalization*.¹¹ The N-400 backlog has steadily increased in the past decade, but surged significantly in FY 2016 and FY 2017. As of December 31, 2019, USCIS had 652,431 pending N-400 applications,¹² which is 184 percent higher than the number of N-400 applications pending at the end of FY 2009.¹³

Before the COVID-19 pandemic, USCIS projected an increase in N-400 filings in FY 2020.¹⁴ Coupled with

the agency's financial constraints,¹⁵ the increase would present a considerable challenge to meaningfully reducing the ongoing backlog. In order to simply keep pace with the incoming caseload, the agency must not only achieve a "personal best" in completions, but also overcome a perennially challenging issue—lack of resources—by reconfiguring the way it processes N-400 applications. The agency is equally obliged to maintain the integrity of the naturalization process to ensure that the benefit is issued only to those who are legally qualified to receive it.

Although these two objectives are not mutually exclusive, the agency's history provides significant lessons on how the pressures of reducing backlogs and maintaining timetables may lead to compromising integrity. In 1995, faced with mounting application backlogs and external political pressures, the legacy Immigration and Naturalization Service (INS) prioritized production at the expense of accuracy, naturalizing 179,524 individuals without "a definitive criminal history check conducted by the FBI," which resulted in the naturalization of 10,800 individuals who "had been arrested for at least one felony offense."¹⁶ The Department of Justice Office of Inspector General (OIG) also determined that the INS' focus on quantity over quality resulted in inadequate training, reduced safeguards and the hasty implementation of unproven processing techniques.¹⁷ More recently, in 2016, USCIS' schedule-driven deployment of the N-400 in the Electronic Immigration System (ELIS) platform resulted in a finding of inadequate background security checks.¹⁸

¹⁰ USCIS Webpage, "Cuccinelli Announces USCIS' FY 2019 Accomplishments and Efforts to Implement President Trump's Goal" (Oct. 16, 2019); <https://www.uscis.gov/news/news-releases/cuccinelli-announces-uscis-fy-2019-accomplishments-and-efforts-implement-president-trumps-goals> (accessed May 9, 2020).

¹¹ From the end of FY 2018 to the end of FY 2019, the number of pending N-400 applications reduced by 12 percent. See USCIS Webpage, "Data Set: All USCIS Application and Petition Form Types" (Jan. 14, 2020 and Feb. 26, 2019); <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-all-uscis-application-and-petition-form-types> (accessed May 9, 2020).

¹² USCIS Webpage, "Data Set: All USCIS Application and Petition Form Types: Fiscal Year 2020, 1st Quarter" (Apr. 17, 2020); https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY2020Q1.pdf (accessed May 29, 2020).

¹³ See USCIS Webpage, "Data Set: Naturalization Benefits: September 2010;" <https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/N-400%20and%20Application%20for%20Benefits/n-400-natz-benefits-2010-sept.pdf> (accessed May 9, 2020).

¹⁴ In FY 2019, USCIS received 830,877 N-400 applications. Within its proposed fee schedule, USCIS projected that its N-400 receipts for FY 2019/2020 would average 913,500. See "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. 62280, 62290 (Nov. 14, 2019) (providing data for FY 2019/2020 projections). See USCIS Webpage, "Data Set: All USCIS Application and Petition Form Types: Fiscal Year 2019, 4th Quarter" (Jan. 14, 2020); https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY19Q4.pdf (accessed May 9, 2020) (providing data for FY 2019 N-400 receipts).

¹⁵ See "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. 62280, 62282 (Nov. 14, 2019).

¹⁶ DOJ Office of the Inspector General, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative, Criminal History Checking Procedures" (Jul. 2000), pp. 1–2; <https://oig.justice.gov/special/0007/crimhist.pdf> (accessed May 9, 2020).

¹⁷ "Under the pressure of production goals and in the absence of adjudicative standards, the evaluation of naturalization eligibility became more perfunctory. Adjudicators were trained and instructed to concentrate primarily on the minimal statutory criteria. In addition, their inquiries were limited by the frequent unavailability of the crucial tools of naturalization processing: applicant criminal history checks and permanent files. The procedures on which INS relied to make these tools available to adjudicators, clerical and automated processes, experienced even greater strain as production expectations increased. As a result of all these factors, naturalization processing integrity was compromised during CUSA." DOJ Office of the Inspector General, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative, Conclusions and Recommendations" (Jul. 2000), p. 2; <https://oig.justice.gov/special/0007/crimhist.pdf> (accessed May 9, 2020).

¹⁸ See DHS Office of the Inspector General, "USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery," OIG-18-23 (Nov. 2017); <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf> (accessed May 9, 2020).

Given that naturalization is the most significant benefit that USCIS confers, compromising benefit integrity cannot be an acceptable consequence of increased productivity. Moreover, as explained in further detail within this Report, denaturalization is a labor-intensive task, and U.S. Attorney’s Offices do not possess the necessary resources to serve as substitute for the hasty administration of naturalization benefits.

This article examines the drivers of the current backlog and upcoming events that may further exacerbate it. It also studies innovative measures USCIS has implemented to optimize its current resources, and considers additional steps the agency can take to address resource constraints and reduce its backlog—without sacrificing benefit integrity.

CAUSES OF CURRENT BACKLOG

Prior to discussing the current backlog numbers and its anticipated growth, it is necessary to define and explain how the term “backlog” will be used in this article.¹⁹ USCIS defines backlog as the number of pending applications and petitions that have been in process longer than the agency’s processing goals (i.e., 5 months for N-400 applications).²⁰ The agency further reduces this number by removing applications and petitions that are outside of its control (e.g., pending responses to Requests for Evidence (RFE) or re-examination).²¹ For the purposes of this article, we use the term “backlog” when referring to USCIS’ total pending N-400 inventory because we believe this portrays a more understandable and accurate description of the processing challenges

facing the agency.²² Including only cases that have been pending for longer than 5 months presents an incomplete picture and creates a potentially incorrect assumption that USCIS will process cases excluded from the count within its current goal (some will be, others will not).²³ Similarly, while removing cases that are outside of USCIS’ control correctly reduces the number of cases upon which USCIS cannot currently take action, it diminishes the length of time applicants who filed those now-removed cases wait to receive a continuation notice, and ignores the obstacles that inhibit USCIS’ ability to timely process the N-400 application once it has all the information it needs.²⁴

Finally, USCIS is actively working toward alternative ways to define and calculate processing time goals to better reflect actual cycle times, and it will remove performance measures within DHS’s Annual Performance Report used to assess the agency’s ability to meet its processing time goals.²⁵ This will have a significant impact on the number of cases USCIS considers as part of a defined backlog.

Examining the root causes of the current inventory provides necessary context for understanding the various approaches to reducing it.

Unanticipated Increase in Receipts. Projecting workload volume is a key element USCIS uses to determine the resources needed to timely process benefit

¹⁹ The term “backlog” is not intended as a pejorative. Rather, it is defined by USCIS itself and is in line with the Ombudsman’s statutory mission to study “problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications.” Homeland Security Act § 452(c)(1)(F); 6 U.S.C. § 272(c)(1)(F).

²⁰ See “Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security,” USCIS, p. ii fn. 2 (Apr. 29, 2020); <https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf> (accessed May 9, 2020).

²¹ USCIS refers to this figure as its net backlog. See “Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security,” USCIS, p. ii fn. 3 (Apr. 29, 2020); <https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf> (accessed May 9, 2020).

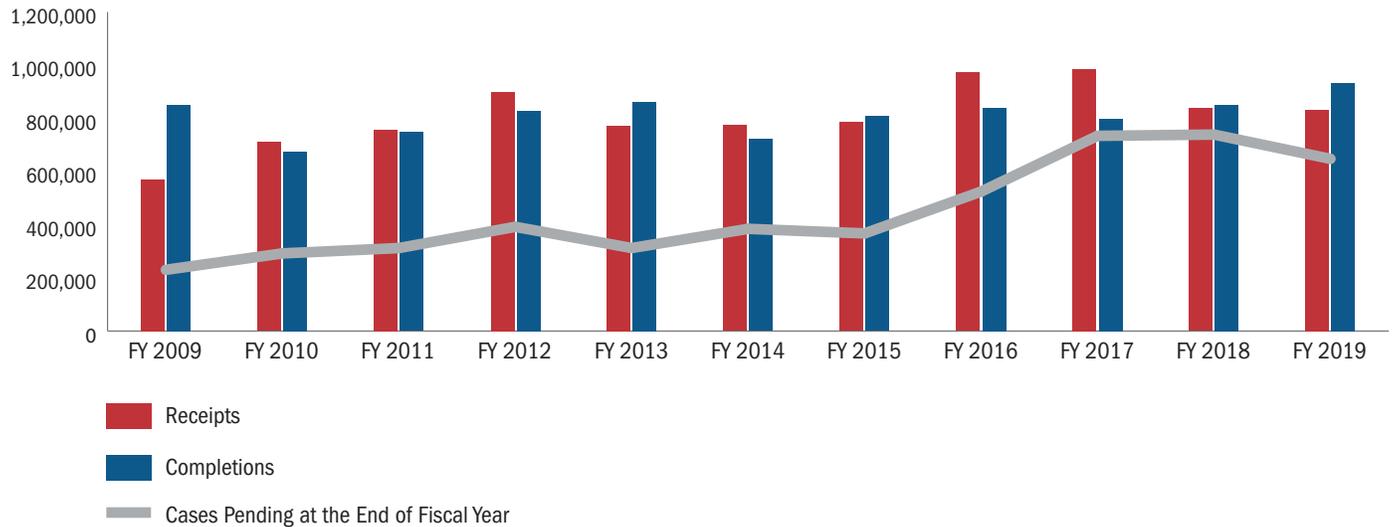
²² The Ombudsman notes that this definition is consistent with how the DHS OIG utilized this term within a recent report. See DHS Office of the Inspector General, “USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery,” OIG-18-23 (Nov. 2017); <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf> (accessed May 9, 2020).

²³ As of December 31, 2019, 78 percent of field offices’ median processing times were at or beyond the 5-month processing goal. Ombudsman’s calculation based on information provided by USCIS on March 6, 2020.

²⁴ At the end of FY 2019, USCIS had 647,585 N-400 applications pending and reported a net N-400 backlog of 263,405 cases. As noted above, we believe that it is reasonable to include the nearly 400,000 additional applications when discussing the resource challenges facing the agency, and in order to have a fuller understanding of the issue. See USCIS Webpage, “Immigration and Citizenship Data;” <https://www.uscis.gov/tools/reports-studies/immigration-forms-data> (accessed May 9, 2020) (providing data for FY 19 N-400 receipts) and “Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security,” USCIS, at Appendix A (Apr. 29, 2020); <https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf> (accessed May 9, 2020) (providing data for FY 2019 N-400 net backlog).

²⁵ “U.S. Department of Homeland Security Annual Performance Report for Fiscal Years (FY) 2019–2021,” DHS Office of the Chief Financial Officer, p. 91; https://www.dhs.gov/sites/default/files/publications/dhs_fy_2019-2021_apr_final.pdf (accessed May 9, 2020).

Figure 2.1: N-400 Backlog Growth



Source: USCIS Webpage, “Monthly Statistical Reports on Applications for Benefits and N-400 Naturalization Benefits” (providing data for FYs 2009–2012) and USCIS Webpage, “Immigration and Citizenship Data,” <https://www.uscis.gov/tools/reports-studies/immigration-forms-data> (accessed May 9, 2020) (providing data for FYs 2013–2019). Note: Pending data begins with the number of N-400 applications pending at the end of FY 2009 (i.e., September 30, 2009), and continues through the end of FY 2019. Completions are calculated by combining the total number of approvals and denials during the respective fiscal year.

requests.²⁶ Specifically, the agency’s Staffing Allocation Models (SAMs) rely on projected volumes to estimate the necessary staffing requirements for a variety of immigration benefits.²⁷ Unanticipated increases in receipts tend to have adverse effects on the backlog. To make workload projections, USCIS considers immigration receipt data from the past 15 years, historical events, and its own assessment of future developments.²⁸ The Volume Projection Committee (VPC), an internal working group that consists of representatives from all relevant USCIS directorates and program offices, is responsible for refining these projections.²⁹

As shown in Figure 2.1 (*N-400 Backlog Growth*), USCIS historically experiences a temporary increase in naturalization filings in presidential election years and when fee increases are proposed, followed by reduced

filings in the next fiscal year.³⁰ So, it was somewhat surprising when USCIS projected a 6 percent decrease in naturalization from FY 2015 to FY 2016, despite an anticipated fee increase and the 2016 election.³¹ Actual receipts were 25 percent higher than what was projected in FY 2016.³² To compound matters, N-400 receipts increased by approximately 16 percent in FY 2017,³³ and the total volume of filings was 14 percent higher from the previous year than USCIS had projected in its Annual

²⁶ See “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 84 Fed. Reg. at 62289.

²⁷ See “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 84 Fed. Reg. at 62286.

²⁸ See “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 84 Fed. Reg. at 62289.

²⁹ *Id.*

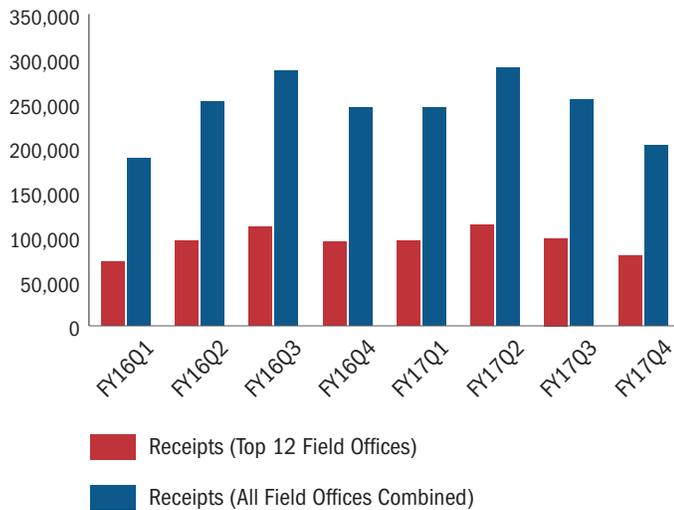
³⁰ Fee increases occurred in FY 2010 and FY 2016. “U.S. Citizenship and Immigration Services Fee Schedule,” 81 Fed. Reg. 26904, 26916 (May 4, 2016); and “U.S. Citizenship and Immigration Services Fee Schedule,” 75 Fed. Reg. 33446, 33461 (Jun. 11, 2010).

³¹ USCIS projected that it would receive 824,173 N-400 applications in FY 2015 and 774,634 N-400 applications in FY 2016. See William A. Kandel, Congressional Research Service, “U.S. Citizenship and Immigration Services (USCIS) Functions and Funding” p. 20 (May 15, 2015); <https://crsreports.congress.gov/product/pdf/R/R44038/3> (providing data for FY 2015 projected receipts) and Ombudsman’s Annual Report 2017, p.10 (providing data for FY 2016 projected receipts).

³² Information provided by USCIS (Mar. 24, 2017). USCIS confirmed that it is in the process of refining its methodology for volume projections to consider events such as presidential elections and anticipated fee increases. Information provided by USCIS (Apr. 24, 2020).

³³ USCIS Webpage, “USCIS Aims to Decrease Processing Times for N-400 and I-485,” <https://www.uscis.gov/news/alerts/uscis-aims-decrease-processing-times-n-400-and-i-485> (accessed May 9, 2020).

Figure 2.2: N-400 Receipt Disparities



Source for Ombudsman's calculations: USCIS Webpage, "Immigration and Citizenship Data," <https://www.uscis.gov/tools/reports-studies/immigration-forms-data> (accessed May 9, 2020). Note: The top 12 field offices for N-400 receipts during this timeframe were: New York, Newark, Chicago, Houston, San Francisco, Dallas, Atlanta, Los Angeles County, Long Island, Queens, Baltimore, Los Angeles (city).

Performance Report.³⁴ The N-400 backlog grew by 41 percent from October 2016 to October 2018 due in part to the unforeseen receipt increase.

The extraordinary receipt growth in N-400 filings in FY 2016 and FY 2017 did not impact all geographic locations equally. As demonstrated by Figure 2.2 (*N-400 Receipt Disparities*), 12 field offices (out of 88) received approximately 40 percent of the total naturalization filings in FY 2016 and FY 2017. Unsurprisingly, the filing surge had a lasting impact on these field offices' processing times, which has also resulted in processing time disparities across geographic locations.³⁵

Increased Workloads at Field Offices. Field offices are responsible for adjudicating various types of immigration benefit requests that require face-to-face

interviews.³⁶ Under current regulations and practice, applicants for naturalization appear for an in-person interview at their local field office.³⁷ USCIS may waive the interview requirement for other benefit requests,³⁸ but recently updated interview waiver guidance has increased the number of interviews that field offices must administer, which has necessarily limited the field offices' ability to reduce the backlogs of the N-400 and other workloads.³⁹ In addition, the lengthening of processing times for Form I-751, *Petition to Remove Conditions on Residence*, which resulted in an increase in concurrently pending Forms N-400 and Forms I-751, has presented additional challenges.

In October 2017, USCIS expanded in-person interview requirements for certain adjustment of status applicants in accordance with Executive Order 13780.⁴⁰ This resulted in a considerable increase in the number of employment-based adjustment of status interviews conducted at certain field offices. Because of priority dates and visa

³⁴ "U.S. Department of Homeland Security Annual Performance Report for Fiscal Years (FY) 2017–2019," DHS Office of the Chief Financial Officer, p. 30 fn. 2; https://www.dhs.gov/sites/default/files/publications/DHS%20FY%202017-2019%20APR_0.pdf (accessed May 9, 2020).

³⁵ As of December 31, 2019, the average median processing time for these twelve field offices is 8.9 months, which is approximately 1.6 months longer than the national average median. Ombudsman's calculation based on information provided by USCIS (Mar. 6, 2020).

³⁶ "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security," USCIS, p. 7 (Apr. 29, 2020); <https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf> (accessed May 9, 2020).

³⁷ 8 C.F.R. § 335.2(a).

³⁸ See, e.g., INA § 216(d)(3); 8 U.S.C. § 1186(d)(3) and 8 C.F.R. §§ 216.4(b)(1) and 245.6.

³⁹ "USCIS is also interviewing a greater proportion of adjustment of status applicants, requiring more time and effort to adjudicate Form I-485." See, "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62304.

⁴⁰ Among other things, Executive Order 13780 instructs DHS and other federal agencies to develop a uniform baseline for screening and vetting standards and procedures, such as in-person interviews, to detect fraud and national security concerns. In response, USCIS expanded in-person interview requirements for the following populations of cases: adjustment of status applications based on employment (Form I-485, *Application to Register Permanent Residence or Adjust Status*); refugee/asylee relative petitions (Form I-730, *Refugee/Asylee Relative Petition*) for beneficiaries who are in the United States and are petitioning to join a principal asylee/refugee applicant; and petitions to remove conditions on residence (Form I-751) received on or after December 10, 2018. See Executive Order 13780, "Protecting the Nation From Foreign Terrorist Entry Into the United States" (Mar. 6, 2017); 82 Fed. Reg. 13209, 13215 (Mar. 9, 2017). See also USCIS Webpage, "USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants" (Aug. 28, 2017); <https://www.uscis.gov/news/news-releases/uscis-expand-person-interview-requirements-certain-permanent-residency-applicants> (accessed May 9, 2020); and USCIS Webpage, "USCIS Revises Interview Waiver Guidance for Form I-751" (Dec. 10, 2018); <https://www.uscis.gov/news/alerts/uscis-revises-interview-waiver-guidance-form-i-751> (accessed May 9, 2020).

availability,⁴¹ field offices generally prioritize employment-based Forms I-485, *Application to Register Permanent Residence or Adjust Status*, to ensure maximizing visa usage.⁴² Simultaneously, USCIS attempts to balance processing times for its Forms N-400 and Forms I-485 workloads, and seeks to ensure that all field offices have similar processing times.⁴³ However, the expanded interview requirements resulted in additional workloads that have impacted overall adjudication times.⁴⁴

In addition, the presence of a concurrently pending I-751 in an applicant's record appears to lengthen the N-400 processing time. The I-751 is filed by conditional permanent residents⁴⁵ seeking to remove the conditions on their permanent resident status. An N-400 may not be approved if there is a pending I-751, as the removal of conditions of permanent residence is a necessary predicate to naturalization. Officers are instructed to adjudicate the petition to remove conditions prior to or concurrently with the adjudication of the naturalization application.⁴⁶ Procedural hurdles may prevent officers from adjudicating these benefit requests concurrently. For example, as USCIS is increasingly moving to an electronic environment to process N-400s, the physical file that contains the pending I-751 (still filed in paper format)

may not be available at the naturalization interview. In addition, an officer may wish to interview a petitioning spouse on a jointly filed I-751; however, due to time constraints and/or failure to notify the applicant to bring the spouse to the interview, USCIS must reschedule to continue the processing of the I-751 and the N-400. Further, in November 2018, USCIS revised its I-751 interview waiver guidance, which contains additional requirements USCIS officers must take into consideration before waiving an I-751 interview.⁴⁷ These multiple pending benefit requests increase the likelihood that USCIS will be unable to adjudicate the N-400 in the first instance, resulting in lengthening processing times and increased backlogs.

Insufficient Staffing Levels and Facilities. Although USCIS has almost doubled its authorized staffing since FY 2009, it remains unable to process all cases within time projections due to insufficient staffing levels and facilities.⁴⁸ Because of cost concerns, USCIS could not authorize staffing at the levels recommended by the SAMs.⁴⁹ The agency has also been unable to fill all authorized positions due to lags in the hiring process and the need to backfill existing positions.⁵⁰ Higher than anticipated staff attrition rates at certain field offices

⁴¹ For further information regarding employment-based immigration, see William A. Kandel, Congressional Research Service, "Permanent Employment-Based Immigration and the Per-country Ceiling" (Dec. 21, 2018); <https://crsreports.congress.gov/product/pdf/R/R45447> (accessed May 12, 2020).

⁴² Information provided by USCIS (Apr. 24, 2020).

⁴³ *Id.*

⁴⁴ See "Hearing on Policy Changes and Processing Delays at USCIS," before the Subcommittee on Immigration and Citizenship of the U.S. House Committee on the Judiciary, 116th Cong. 1st Sess. (Jul. 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operations Directorate; and Michael Hoefler, Chief, Office of Performance and Quality, Management Directorate); <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019> (accessed May 9, 2020).

⁴⁵ Permanent resident status is conditional when it is based on marriage to a U.S. citizen, and the marriage was less than 2 years old on the date of admission. In general, a conditional permanent resident must jointly file with his or her petitioning spouse a Form I-751 in order to remove the conditions. Absent good cause and extenuating circumstances, jointly filed Forms I-751 must be submitted to USCIS during the 90-day period immediately before conditional residence expires. Conditional permanent residents enjoy the same rights, privileges, responsibilities and duties as other permanent residents, including the right to apply for naturalization. Accordingly, conditional permanent residents may apply for naturalization while their I-751s remain pending. See generally INA § 216; 8 U.S.C. § 1186a and 8 C.F.R. § 216.

⁴⁶ 12 USCIS Policy Manual, Pt. G, Ch. 5(B)(2); <https://www.uscis.gov/policy-manual/volume-12-part-g-chapter-5> (accessed May 9, 2020).

⁴⁷ USCIS Webpage, "USCIS Revises Interview Waiver Guidance for Form I-751" (Dec. 10, 2018); <https://www.uscis.gov/news/alerts/uscis-revises-interview-waiver-guidance-form-i-751> (accessed May 9, 2020).

⁴⁸ See "Hearing on Policy Changes and Processing Delays at USCIS," before the Subcommittee on Immigration and Citizenship of the U.S. House Committee on the Judiciary, 116th Cong. 1st Sess. (Jul. 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operations Directorate; and Michael Hoefler, Chief, Office of Performance and Quality, Management Directorate); <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019> (accessed May 9, 2020).

⁴⁹ See Letter from former USCIS Director L. Francis Cissna to Representative Jesús G. "Chuy" Garcia (Apr. 5, 2019); https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays_-_Representative_Garcia.pdf (accessed May 9, 2020). "In FY 2019, USCIS authorized an additional 737 employees (a 5% increase) in the operational directorates that conduct adjudications." "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security," USCIS, p. 8 (Apr. 29, 2020); <https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf>.

⁵⁰ See Letter from former USCIS Director L. Francis Cissna to Representative Jesús G. "Chuy" Garcia (Apr. 5, 2019); https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays_-_Representative_Garcia.pdf (accessed May 9, 2020).

contributed to increases in N-400 processing times.⁵¹ Field offices commonly experience a lag in productivity with newly hired staff because they are not fully productive until they have completed their extensive on-the-job training.⁵² To accommodate more staff, USCIS would need to expand office space beyond its existing facilities, and it generally takes the General Services Administration (GSA) 18 to 36 months to deliver space that is ready to occupy.⁵³

Increased Completion Rates. USCIS uses completion rates to determine fees and appropriate staffing levels to address projected workloads.⁵⁴ Completion rates are the average amounts of time per adjudication of an immigration benefit request.⁵⁵ Declining completions per hour of work, coupled with a projected increase in receipts, will result in the need to hire more officers. However, when productivity expectations are not sustained, insufficient revenue is generated to support hiring at SAM-recommended staffing levels.⁵⁶ For example, within its 2016 proposed fee rule, USCIS indicated an N-400 completion rate of 1.25 hours.⁵⁷ However, technical and functional difficulties in the rollout of the N-400 in ELIS,⁵⁸

as well as enhanced vetting requirements,⁵⁹ resulted in a longer completion rate.⁶⁰

In addition to staffing and revenue issues, a decline in the completions per hour by itself can hinder USCIS' ability to reduce the backlog.⁶¹ On average, it currently takes officers approximately 30 minutes longer to adjudicate the N-400 than it did in 2010.⁶² Some key factors leading to increased completion rates include: the growing complexity of the naturalization adjudication process;⁶³ issues with the deployment of ELIS;⁶⁴ and the removal of numerical case production metrics from employee evaluations in FY 2014.⁶⁵ Regarding growing complexity, concurrently pending benefit requests such as N-400s and I-751s, and the submission of Forms N-648, *Medical Certification for Disability Exceptions* (N-648), have steadily increased in recent years. Also, in 2014, the length of the N-400 doubled from 10 pages to 20 pages,

⁵¹ For example, in FY 2018, the Reno Field Office had an attrition rate of 35 percent, and the Las Vegas Field Office had an attrition rate of 26 percent. See Letter from Acting Director K. Cuccinelli to Senator Catherine Cortez Masto (Jun. 25, 2019); https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_delays_in_Nevada_-_Senator_Cortez_Masto.pdf (accessed May 9, 2020).

⁵² See "Hearing on Policy Changes and Processing Delays at USCIS," *before the Subcommittee on Immigration and Citizenship of the U.S. House Committee on the Judiciary*, 116th Cong. 1st Sess. (July 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operations Directorate; and Michael Hofer, Chief, Office of Performance and Quality, Management Directorate); <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019> (accessed May 9, 2020).

⁵³ *Id.*

⁵⁴ "Generally, the more time spent adjudicating a request, the more cost that gets assigned, and therefore, the higher the fee." "U.S. Citizenship and Immigration Services Fee Schedule," 81 Fed. Reg. 26904, 26914 (May 4, 2016).

⁵⁵ See "FY 2016/2017 Immigration Examinations Fee Account Fee Review Supporting Documentation with Addendum," USCIS, p. 20 (October 2016); <https://www.regulations.gov/document?D=USCIS-2016-0001-0466> (accessed May 18, 2020).

⁵⁶ See "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security," USCIS, p. 8 (Apr. 29, 2020); <https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf> (accessed May 9, 2020).

⁵⁷ "U.S. Citizenship and Immigration Services Fee Schedule," 81 Fed. Reg. at 29625.

⁵⁸ Ombudsman's Annual Report 2017, pp. 12–13.

⁵⁹ See "Hearing on Policy Changes and Processing Delays at USCIS," *before the Subcommittee on Immigration and Citizenship of the U.S. House Committee on the Judiciary*, 116th Cong. 1st Sess. (July 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operations Directorate; and Michael Hofer, Chief, Office of Performance and Quality, Management Directorate); <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019> (accessed May 9, 2020).

⁶⁰ Within its 2019 proposed fee rule, USCIS reported an N-400 completion rate of 1.57 hours. "U.S. Citizenship and Immigration Services Fee Schedule," 84 Fed. Reg. at 62292.

⁶¹ See "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security," USCIS, p. 7 (Apr. 29, 2020); <https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf> (accessed May 9, 2020).

⁶² The N-400 completion rate reported in USCIS' 2010 proposed fee rule was 1.08 hours. "U.S. Citizenship and Immigration Services Fee Schedule," 75 Fed. Reg. at 33471.

⁶³ See "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62294.

⁶⁴ See DHS Office of the Inspector General, "USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery," OIG-18-23 (Nov. 2017) at 9; <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf> (accessed May 9, 2020).

⁶⁵ See "Hearing on Policy Changes and Processing Delays at USCIS," *before the Subcommittee on Immigration and Citizenship of the U.S. House Committee on the Judiciary*, 116th Cong. 1st Sess. (Jul. 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operations Directorate; and Michael Hofer, Chief, Office of Performance and Quality, Management Directorate); <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019> (accessed May 9, 2020).

which took more time to verify responses, an essential part of the now lengthened naturalization interview.

Continued Unpredictability and Additional Challenges.

Though it is uncertain what impact the COVID-19 pandemic might have on N-400 filings, it is common for USCIS to experience a surge in naturalization filings during presidential election years and when USCIS proposes to increase fees, both of which will occur in 2020.⁶⁶ However, unlike 2016, the agency faces additional challenges, such as budgetary restrictions and a national emergency, each of which might further exacerbate the N-400 backlog.

Proposed Fee Rule. USCIS has proposed to increase the filing fee for the naturalization application from \$640 to \$1,170, a \$530 or 83 percent increase.⁶⁷ In prior fee rules, USCIS set the N-400 filing fee at an amount less than its estimated costs in order to promote naturalization and immigrant integration.⁶⁸ This devaluation meant that USCIS had to shift costs and increase filing fees to other applicants.⁶⁹ Due to equity concerns, and given the significant increase in naturalization filing in recent years, the agency determined that it could no longer maintain a N-400 filing fee below actual cost.⁷⁰

In addition to the fee increase, USCIS is proposing to eliminate N-400 fee waiver requests, and to remove the reduced fee option for those naturalization applicants with family incomes greater than 150 percent and not more than 200 percent of the federal poverty guidelines. From January 2017 to March 2020, approximately 28 percent of the N-400s received were found eligible for a fee waiver.⁷¹ Since its inception in 2016, the reduced fee waiver has provided reduced fees to approximately

14,000 applicants.⁷² The proposed filing fee increase, coupled with the planned modifications to ensure all N-400 applicants pay the same amount, will likely motivate permanent residents to apply for naturalization before these changes are implemented—leading to increased filings in FY 2020.

Budgetary Constraints and Lags in Hiring. Budgetary restrictions will have a profound effect on USCIS' ability to meaningfully reduce the number of pending N-400s. USCIS' current fee structure, absent change, will leave the agency underfunded by approximately \$1.3 billion per fiscal year.⁷³ To remain solvent, USCIS has not been able to authorize staffing at the levels recommended by the SAMs.⁷⁴ As discussed above, insufficient staffing levels is one of the principal drivers of the N-400 backlog.

In order to address its budgetary shortfall and to increase resources dedicated to adjudicating more N-400s, USCIS has proposed to adjust its fees by a 21 percent weighted average.⁷⁵ USCIS calculates that the revenue generated from increased fees will provide USCIS with funds needed to pursue an aggressive backlog-reducing hiring strategy.⁷⁶ However, as noted above, certain field offices have exceeded their physical space capacity and cannot accommodate the additional staff needed to increase N-400 adjudications until existing facilities are modified. Moreover, due to delays in onboarding new employees and lags in productivity for newer employees, hiring will

⁶⁶ USCIS published its notice of proposed fee increase on November 14, 2019. 84 Fed. Reg. 62280.

⁶⁷ "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62280.

⁶⁸ See, e.g., "U.S. Citizenship and Immigration Services Fee Schedule," 81 Fed. Reg. at 26916; and "U.S. Citizenship and Immigration Services Fee Schedule," 75 Fed. Reg. at 33461.

⁶⁹ See "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62316.

⁷⁰ *Id.*

⁷¹ Information provided by USCIS (Apr. 24, 2020). "In the FY 2019/2020 fee review, USCIS determined that without changes to fee waiver policy, it would forgo revenue of approximately \$1,494 million. The proposed fee schedule estimates \$962 million forgone revenue from fee waivers and fee exemptions." "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62298.

⁷² Information provided by USCIS (Apr. 24, 2020).

⁷³ "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62282.

⁷⁴ See "Hearing on Policy Changes and Processing Delays at USCIS," *before the Subcommittee on Immigration and Citizenship of the U.S. House Committee on the Judiciary*, 116th Cong. 1st Sess. (Jul. 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operations Directorate; and Michael Hoefler, Chief, Office of Performance and Quality, Management Directorate); <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019> (accessed May 9, 2020).

⁷⁵ "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62280.

⁷⁶ The "strategy that aims to achieve a domestic backlog reduction of 76 percent by the end of FY 2024. The modeling used assumes an aggressive hiring initiative over the next three years." "USCIS Budget Overview Fiscal Year 2021 Congressional Justification," p. CIS-IEFA-12; https://www.dhs.gov/sites/default/files/publications/united_states_citizenship_and_immigration_services.pdf (accessed May 9, 2020).

Figure 2.3: Location of Pending N-400 Applications Within Order of Processing

Pending, awaiting initial interview	Pending, awaiting re-exam	Pending, awaiting decision	Approved, awaiting oath
558,973	28,781	16,841	88,621

Source: Information provided by USCIS (Apr. 24, 2020). Note: “Approved, awaiting oath” population is not counted within “Pending, awaiting decision” category.

not provide immediate relief for the growing backlog.⁷⁷ USCIS will still need to address the issue of high attrition rates at certain field offices.

National Emergency. Events in FY 2020 continue to challenge the agency with respect to its naturalization inventory. On March 17, 2020, USCIS announced that it was temporarily suspending in-person services at its field offices and canceling all naturalization ceremonies to help slow the spread of COVID-19. On June 4, 2020, certain USCIS field offices began resuming in-person services, such as naturalization ceremonies. Figure 2.3 (*Location of Pending N-400 Applications Within Order of Processing*) provides a breakdown of the pending N-400 inventory as of December 31, 2019, and where applications were located in the order of processing. Although the data predates the office closures, it provides insights into how the national emergency is likely to further bottleneck N-400 processing.

This temporary closure will impact N-400 applicants on the front end awaiting an interview or re-interview. It will also impact applicants with approved cases awaiting an oath ceremony. Conversely, suspension of in-person interviews will allow USCIS to focus its efforts on adjudicating already-interviewed cases awaiting decision, but approved applicants will still require an in-person oath ceremony. Federal and state guidance on the continued need for social distancing and limiting public gatherings may hamper USCIS’ ability to complete naturalizations. While it remains to be seen what impact reopening field offices will have on N-400 adjudications, the unpredictability of the COVID-19 pandemic will continue to present challenges for the agency in reducing the N-400 backlog.

⁷⁷ See “Hearing on Policy Changes and Processing Delays at USCIS,” before the Subcommittee on Immigration and Citizenship of the U.S. House Committee on the Judiciary, 116th Cong. 1st Sess. (Jul. 16, 2019) (testimony of Michael Hoefler, Chief, Office of Performance and Quality, Management Directorate).

EFFORTS MADE TO ADDRESS THE BACKLOG

Although USCIS requires additional staff to meaningfully reduce its N-400 backlog, hiring and maintaining necessary staffing levels to tackle that goal has proven difficult. In order to compensate, USCIS has launched a series of initiatives that focus on redistributing resources and increasing efficiencies in its field offices.

Workload Shifts. On June 19, 2019, USCIS announced that it would shift N-400 caseloads between field offices to address processing time and staffing disparities.⁷⁸ The case transfers were based upon a combination of zip code realignments, interview reassignments, continued case shifts, and other factors. For example, in attempting to reduce the N-400 processing times in the Seattle field office, USCIS shifted several N-400s to the Portland and Yakima field offices.⁷⁹ The agency reasoned that these shifts would allow impacted applicants to have their naturalization interviews scheduled approximately 11–12 months sooner than if they were interviewed in Seattle.⁸⁰

Due to system limitations, USCIS was unable to provide the Ombudsman’s Office with exact figures on the field offices that participated in the workload shifts, the number of cases that were transferred and completed, and the number of applicants who could not or did not appear for their interview at the new location. Notwithstanding, USCIS indicated that its workload shifts are a proven method of reducing wait times for the “giving office.” We note that the median processing times at the Seattle Field Office in July 2019 (the month after the announced workload shifts) and December 2019 remained the same.⁸¹ We recommend that the agency improve its ability to track and monitor its N-400 workload shifts to better analyze and illustrate the effectiveness and impact of this initiative.

ELIS. In order to increase efficiency, the agency is leveraging electronic processing and automation. ELIS serves as USCIS’ system for public-facing electronic filings, and is one of its internal electronic case

⁷⁸ USCIS Webpage, “USCIS Aims to Decrease Processing Times for N-400 and I-485” (Jun. 17, 2019); <https://www.uscis.gov/news/alerts/uscis-aims-decrease-processing-times-n-400-and-i-485> (accessed May 9, 2020).

⁷⁹ Letter from Acting Director K. Cuccinelli to Representative Pramila Jayapal (Aug. 5, 2019); https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Times_-_Representative_Jayapal.pdf (accessed May 9, 2020).

⁸⁰ *Id.*

⁸¹ The median N-400 processing time at the Seattle field office for both July and December 2019 was 15.2 months. Information provided by USCIS (Mar. 6, 2020).

management systems.⁸² On April 13, 2016, USCIS began processing naturalization applications in ELIS. Currently, prospective N-400 applicants have the option of filing online or by mail (paper) with the appropriate USCIS lockbox facility. For paper filings, the lockbox contractors convert the submitted N-400 application into an electronic format and transmit the benefit request information into ELIS.⁸³ Effective July 2019, all new N-400s began to be processed through ELIS regardless of how they are filed.⁸⁴

The agency expected its transition to an electronic filing and case management system to improve service, operational efficiency, and security.⁸⁵ Unfortunately, due to insufficient testing of the system, the initial introduction of the N-400 in ELIS was plagued with issues.⁸⁶ There was an understandable learning curve for officers as demonstrated by the drop in N-400 completions in FY 2017.⁸⁷ However, after resolving the initial glitches,⁸⁸ and with officers becoming more comfortable with the electronic processing environment, USCIS has turned a corner in its electronic processing of N-400

cases. Accordingly, the agency is now able to leverage automated functions in ELIS to enhance vetting and better manage workloads at field offices. The formalized check-in process and case sorting tool, discussed below, provide examples of USCIS' efforts to expand on ELIS' capabilities.

Formalized Check-In Process. Starting with its Central Region, in November 2018, USCIS piloted a process that transitioned non-decisional tasks into an expanded pre-interview "check-in" stage, allowing officers to focus principally on the benefit interview and reducing the overall length of time needed to conduct an interview. The goal of this pilot was to increase overall interview capacity and enable field offices to more appropriately utilize their resources.⁸⁹

The Formalized Check-In (FCI) project tested several variations of the process during the pilot phase. After demonstrating increased efficiencies overall and a more productive operation, USCIS determined that the features most beneficial to all field offices included the following:

- Conducting IDENTity Verification Tool (IVT) enrollment for all form types outside the traditional eligibility interview setting, either in a check-in stage or at reception;
- Using an automated N-400 assessment at the time of scheduling to identify less complex ELIS N-400 cases for the purpose of customizing interview time slots (discussed in further detail below); and
- Conducting the statutory naturalization English and civics testing requirements at the beginning of the interview. An applicant will only proceed with the remainder of the naturalization interview if they successfully complete all features of the naturalization test, or if they are exempt from the requirement.⁹⁰

Beginning in January 2020, all field offices were required to begin implementing these FCI features. During the pilot, some field offices gained interview capacity through additional FCI features. Field offices have the option of implementing these features based on their physical layout,

⁸² DHS Privacy Impact Assessment, "USCIS Electronic Immigration System (USCIS ELIS)," p. 1 (Dec. 3, 2018); <https://www.dhs.gov/sites/default/files/publications/pia-uscis-elis056a-december2018.pdf> (accessed May 10, 2020).

⁸³ DHS Privacy Impact Assessment, "USCIS Electronic Immigration System (USCIS ELIS)," p. 2 (Dec. 3, 2018); <https://www.dhs.gov/sites/default/files/publications/pia-uscis-elis056a-december2018.pdf> (accessed May 10, 2020).

⁸⁴ USCIS continues to adjudicate and track older N-400 applications via the legacy Computer-Linked Application Information Management System (CLAIMS) 4 system. As of December 31, 2019, USCIS had 28,617 N-400 applications that remain pending in its CLAIMS 4 system. Information provided by USCIS (May 5, 2020).

⁸⁵ "Immigration Benefits Vetting: Examining Critical Weaknesses in USCIS Systems," *before the Subcommittee on Oversight and Management Efficiency of the U.S. House Homeland Security Committee*, 2017, 115th Cong. 1st Sess., pp. 1–2 (Mar. 16, 2017) (written statement of Lori Scialabba, Acting USCIS Director); <http://docs.house.gov/meetings/HM/HM09/20170316/105629/HHRG-115-HM09-Wstate-ScialabbaL-20170316.pdf> (accessed Apr. 3, 2020).

⁸⁶ 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. 3, 2020); 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. 3, 2020); *see* Ombudsman's Annual Report 2017, p. 9.

⁸⁷ *See* Figure 2.1 (page 13). In FY 2017, USCIS made final adjudicative decisions on 223,609 cases using the ELIS online system; 205,777 of these completed cases have resulted in applicants proceeding through a full adjudication in the online system and taking the Oath of Allegiance. *See* USCIS 2017 Annual Report Response, p. 2 (May 11, 2018); https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_Ombudsmans_2017_Annual_Report_to_Congress.pdf (accessed May 10, 2020).

⁸⁸ *See* Letter from former Director Cissna to Representative Scott Perry (Mar. 2, 2018); https://www.uscis.gov/sites/default/files/files/nativedocuments/ELIS_-_Chairman_Perry.pdf (accessed May 10, 2020).

⁸⁹ Information provided by USCIS (Apr. 24, 2020).

⁹⁰ *Id.*

staffing, interview queues, and methods of operation.⁹¹ The COVID-19 pandemic has delayed the nationwide implementation of FCI.

N-400 Automated Interview Assessments. The FCI requires all field offices to use an automated N-400 assessment for the purpose of customizing interview time slots. The N-400 assessment leverages ELIS' technology to review application data and information available through other systems to identify factors that help inform the expected length of an interview.⁹² Generally, the criteria used to determine assessment levels relate to common issues that require additional interview time. Examples include derogatory information uncovered during background checks, evidence of extended absences from the United States, and other issues related to eligibility. These factors are grouped into assessment levels that field office schedulers consult prior to scheduling N-400 interviews. Using automated interview assessment to identify complexity allows the field offices to tailor the length of the interview to the anticipated case factors.

As the agency continues to look for ways to increase efficiency and leverage ELIS' technology, there are additional actions it should consider to improve processing of concurrently pending benefit requests and N-648s. In addition, in light of the current COVID-19 pandemic, the agency should also consider the feasibility of remote naturalization adjudications.

RECOMMENDATIONS

1. Improving Concurrent Processing of I-751/N-400

Due to the lengthening processing times, and the ability of conditional permanent residents to apply for naturalization, the number of concurrently pending I-751 petitions (removal of conditional residence) and N-400s has steadily increased since FY 2016. At the end of FY 2016, only 3,187 N-400s were pending with an I-751.⁹³ As of December 31, 2019, this number had increased to 34,491.⁹⁴ As of this writing, the I-751 processing times

range from 19.5 to 42.5 months at field offices, and 12.5 to 26 months at service centers.⁹⁵ Petitioners deemed eligible for interview waivers for a petition to remove conditions on residence will have their I-751s adjudicated at a service center, while those I-751s that do not meet the interview waiver criteria will be transferred to the appropriate field office for interview scheduling. Because service centers do not adjudicate N-400 applications, the increasing presence of these dual benefit requests has resulted in additional I-751 adjudications at the field offices.⁹⁶

Individuals with pending concurrent applications present a dilemma for the agency. Conditional permanent residents with pending I-751s can obtain evidence of their status throughout the pendency of their petitions, and the rights, privileges, responsibilities, and duties that apply to all other lawful permanent residents apply equally to conditional residents, including the right to apply for naturalization.⁹⁷ Accordingly, I-751s are not a priority for the agency because inaction does not delay the delivery of an immigration benefit (although it may complicate other things, including permanent proof of lawful permanent resident status, proof of employment and travel authorization, etc.). Conversely, N-400s are more of a priority for field offices because naturalization is considered the pinnacle of benefits the agency can bestow, conferring privileges unique to citizenship (e.g., the right to vote, a U.S. passport, federal jobs, etc.). The comingling of the N-400 and I-751 backlogs increases the likelihood of USCIS processing the I-751 faster than it otherwise would, but also may delay the processing of the N-400.

USCIS should consider taking steps to standardize its processing of these concurrently pending benefit requests to limit processing delay. Currently, USCIS instructs officers to adjudicate the I-751 prior to or concurrently with the adjudication of the N-400, but, as noted above, procedural hurdles often present complications for concurrent adjudication. Through its use of automated pre-interview assessments, USCIS may be able to limit unnecessary continuations by identifying which pending N-400 applications also have a pending I-751 *prior* to scheduling an interview. This would allow the agency

⁹¹ Optional features included: Assigning cases using an "off-the-top" methodology, in which the ISO conducts interviews based on the next case that is in the queue rather than having specific cases assigned to the officers prior to the interview date, and conducting the complete interview at the Information Counter for cases that have been assessed as likely less complex. *Id.*

⁹² *Id.*

⁹³ Information provided by USCIS (May 5, 2020).

⁹⁴ *Id.*

⁹⁵ USCIS Webpage, "Check Case Processing Times;" <https://egov.uscis.gov/processing-times/> (accessed May 10, 2020).

⁹⁶ Although having a pending N-400 does not automatically result in the referral of the I-751 for an interview, unadjudicated I-751s sit in A-files that are pulled by the Field Office Directorate's National Benefits Center (NBC) for pre-processing of the N-400. Therefore, if the I-751 is not adjudicated by the time the NBC receives the A-file for pre-processing, the field office will be responsible for adjudicating the petition.

⁹⁷ 8 C.F.R. § 216.1.

to ensure that the pending I-751 (as the I-751 is still a paper filing) is available to the officer at the time of the naturalization interview. USCIS could tailor its naturalization interview notices appropriately and instruct N-400 applicants with a pending I-751 to bring their spouses (if jointly filed) to the interview, as both may be interviewed to satisfy the officer of the continuing viability of the marriage and remove the conditions.

In addition to leveraging its technology, USCIS could provide supplementary guidance to officers regarding the overlapping eligibility determinations made for jointly filed I-751s and N-400s filed pursuant to INA § 319(a), which requires a higher level of evidence (i.e., marital union and joint residence) than is required for the approval of I-751s filed jointly (i.e., *bona fide* marriage). An applicant is not eligible for naturalization if his or her lawful permanent resident status was obtained by mistake or fraud, or if the admission to the United States was otherwise not in compliance with the law. If a naturalization applicant satisfies his or her burden with respect to marital union, joint residence, and the lawful admission requirement, this should satisfy the officer's inquiry into the *bona fides* of the marriage. Providing clearer guidance to officers with respect to these overlapping eligibility determinations will limit duplicative efforts and increase adjudicative efficiencies.

2. Improving N-648 Processing

The Form N-648 is used by applicants seeking an exception to the English and/or civics requirements because of a physical or developmental disability or mental impairment. The form must be completed by a certified medical professional, such as a medical doctor, doctor of osteopathy, or clinical psychologist. The submission of an N-648, especially at the time of the interview, can increase the complexity of the N-400 adjudication; exception requests often contain medical terminology explaining complex disability and mental impairment issues. In addition, the N-648 process is potentially vulnerable to fraud and “doctor shopping,”⁹⁸ which may result in

referrals to USCIS' Fraud Detection and National Security (FDNS) division.⁹⁹

On December 12, 2018, USCIS updated its N-648 filing procedures with new guidance. Among other things, this guidance clarifies that, absent a credible explanation, the N-648 must be submitted with the N-400.¹⁰⁰ In addition, the update explains that officers can find an N-648 insufficient if there is a finding of credible doubt, discrepancies, misrepresentation or fraud.¹⁰¹

In their review of the N-648 for sufficiency, officers are instructed to not only review the form for completeness, but to also assess the following components:

- Ensure that the N-648 relates to the applicant and that there are no discrepancies between the form and other available information, including biographic data, testimony during the interview, or information contained in the applicant's A-file;¹⁰²
- Determine whether the N-648 contains enough information to establish that the applicant is eligible for the exception by a preponderance of the evidence. This determination includes ensuring that the medical professional's explanation is both sufficiently detailed as well as specific to the applicant and to the applicant's stated disability (rather than a generic, “one size fits all” explanation);
- Ensure the N-648 fully addresses the underlying medical condition and its causal connection or nexus with the applicant's inability to comply with the English or civics requirements or both; and
- If the record reflects that the applicant has a regularly treating medical professional, but another medical professional has completed the N-648, ensure that the form includes a credible and sufficiently detailed

⁹⁸ DHS officials have informed the Ombudsman's Office that fraud and “doctor shopping” are both significant concerns within the N-648 process. “Doctor shopping” occurs when an applicant actively seeks out a doctor who is willing to misrepresent the applicant's diagnosis on the N-648 for the purpose of obtaining an exception to the English and/or civics requirement. Applicants may engage in doctor shopping when they are aware of a doctor who is known to complete fraudulent N-648s and/or their regular treating physician will not attest to a disability or mental impairment under the penalty of perjury.

⁹⁹ USCIS Policy Manual, Pt. E, Ch. 3.D.5; <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3> (accessed May 10, 2020).

¹⁰⁰ USCIS Policy Manual, Pt. E, Ch. 3.B.2; <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3> (accessed May 10, 2020).

¹⁰¹ USCIS Policy Manual, Pt. E, Ch. 3.E.5; <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3> (accessed May 10, 2020).

¹⁰² The A-file contains official immigration records of aliens or persons who are not citizens or nationals of the United States. DHS Privacy Impact Assessment, “Integrated Digitization Document Management Program (IDDMP),” p. 2 (Dec. 3, 2018); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-iddmp-09242013.pdf> (accessed May 10, 2020).

explanation for the reason that the regularly treating medical professional did not complete the N-648.¹⁰³

Requiring applicants to submit their N-648s at the time of filing may help ensure that officers have ample time to review the application before an interview, including an assessment of the claimed disabilities in light of their impact on the applicant's ability to meet the requirements. Having these issues settled in advance may result in a more streamlined interview process.¹⁰⁴

In order to further increase efficiencies and fraud detection, USCIS should consider pre-adjudicating concurrently filed N-648s at its National Benefits Center (NBC) prior to transferring the file to the field office for an interview. USCIS has acknowledged that the centralization of certain pre-interview assessments allows interviewing officers to focus on the person applying for the benefit and to increase the number of interviews a field office can schedule.¹⁰⁵ N-648s submitted at the time of filing provide the agency with an opportunity to centralize and streamline another pre-interview task, which will increase efficiency by removing an adjudicative burden from the interviewing officer.¹⁰⁶ The centralization of N-648 determinations will also allow the agency to better track and monitor suspicious filing patterns by doctors (e.g., boiler plate language, assessments beyond the specialty possessed by the medical professional), and other fraud concerns.

USCIS' current regulatory agenda includes proposing a process that would both designate and revoke the status of licensed physicians authorized to complete N-648s.¹⁰⁷ A similar process exists for civil surgeon designations.¹⁰⁸ Creating a comparable process for the N-648 will help deter unscrupulous medical professionals from preparing fraudulent exception requests, in turn, making the N-400 process more efficient. A formal designation process will discourage questioning the validity of the diagnosis as officers will have more confidence in the medical professionals authorized to prepare the form.¹⁰⁹ Similarly, revoking the designation of an unethical medical professional will allow officers to more efficiently dismiss subsequent N-648s prepared by such individuals. In order to increase efficiencies and combat fraud, the Ombudsman's Office encourages USCIS to move forward with proposing a process to designate and revoke the status of medical professionals authorized to complete N-648s.

3. *Expanding Remote Capabilities*

The resumption of in-person services and the continued need for social distancing presents USCIS with an opportunity to introduce video teleconferencing technology (VTC) into its naturalization process. In the short-term, VTC offers USCIS a legally permissible and operationally feasible solution for resuming interviews and oath-taking ceremonies while ensuring greater protections for its employees and applicants. In the long term, remote naturalization has the potential to increase efficiencies, creating long-term solutions for better balancing workloads and overcoming resource constraints. USCIS can build upon its current remote interview capabilities and adopt best practices from other federal agencies that

¹⁰³ USCIS Policy Manual, Pt. E, Ch. 3.E.1; <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3> (accessed May 10, 2020).

¹⁰⁴ USCIS Teleconference, "N-648, Medical Certification for Disability Exceptions" (Feb. 12, 2019), p. 6; https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_Teleconference_on_Form_N-648_Medical_Certification_for_Disability_Exceptions.pdf (accessed May 10, 2020).

¹⁰⁵ See "Hearing on Policy Changes and Processing Delays at USCIS," *before the Subcommittee on Immigration and Citizenship of the U.S. House Committee on the Judiciary*, 116th Cong. 1st Sess. (Jul. 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operation Directorate; and Michael Hoefler, Chief, Office of Performance and Quality, Management Directorate); <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019> (accessed May 9, 2020).

¹⁰⁶ An applicant must submit Form N-648 as an attachment to their N-400. See 8 C.F.R. § 312.2(b)(2). As discussed above, current USCIS policy allows for applicants to submit the N-648 after filing (*i.e.*, prior to or at the time of the naturalization interview) if the applicant provides a credible explanation and supporting evidence for the late submission. See USCIS Policy Manual, Pt. E, Ch. 3.B.2; <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3> (accessed May 10, 2020).

¹⁰⁷ U.S. Office of Management and Budget Webpage, "Unified Agenda and Regulatory Plan" (Fall 2019), "Improvements to the Medical Certification for Disability Exceptions Processing;" <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1615-AC23> (accessed May 10, 2020).

¹⁰⁸ See 8 C.F.R. § 232.2.

¹⁰⁹ Although officers are instructed to not second-guess the medical diagnosis, legitimate fraud concerns in the N-648 process can make this a difficult task. For example, some medical professional may engage in a pattern of submitting N-648s with "boiler plate" language. Although the generic language may accurately reflect the medical diagnosis for any particular applicant, the pattern itself raises reasonable suspicions that require further inquiries and a potential fraud investigation. See *generally* USCIS Policy Manual, Pt. E, Ch. 3.E.5; <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3> (accessed May 10, 2020).

currently utilize VTC for case adjudications. Through remote naturalization, USCIS can also achieve several of its stated realignment goals.¹¹⁰

Legal Authority. The Immigration and Nationality Act does not specify the manner in which naturalization interviews must be conducted.¹¹¹ The corresponding regulations require that each naturalization applicant appear in person before a USCIS officer, and that the interview take place in a setting apart from the public.¹¹² While it is for USCIS to determine its interpretation of its authorizing statute, it is within the agency’s discretion to determine the mode of interview—in-person or VTC—and remote interviews can be implemented in a way that satisfies the legal requirements.¹¹³ Regarding administrative naturalization ceremonies, unless USCIS excuses the appearance, the applicant must appear in person at a public ceremony.¹¹⁴ Remote ceremonies may also be structured in a way so as to meet the legal requirements. For example, applicants appearing at a USCIS facility for their remote ceremony would meet the “in-person” requirement. In addition, remote ceremonies can meet the “public” requirement by allowing the applicant to bring guests to the remote ceremony or providing a publicly available streaming capacity for the applicant to share with family and friends.

Technological Considerations. Although not utilized agency-wide, remote adjudications are not a new concept to USCIS,¹¹⁵ or the federal government.¹¹⁶ In order to effectively introduce remote naturalization technology, USCIS should examine existing operating procedures and confer with other agencies better-versed in VTC adjudications. USCIS offices with experience in conducting remote interviews could offer existing operational guidance and best practices on some of the following key considerations: protecting privacy and confidentiality; addressing credibility concerns; permitting an interpreter; and including an attorney or representative. Several federal administrative agencies utilize VTC for court hearings or case adjudications such as the Department of Justice’s Executive Office for Immigration Review (EOIR),¹¹⁷ the Social Security Administration,¹¹⁸ the Department of Veteran Affairs,¹¹⁹ and the Department of Health and Human Services.¹²⁰ In considering issues related to equipment and infrastructure, USCIS should consult with other agencies that have brought VTC to scale. Supplementing USCIS’ expertise with the knowledge of agencies more experienced in VTC adjudications will assist in the efficient roll-out of remote naturalization technology.

¹¹⁰ On October 1, 2019, USCIS announced that it was realigning the organization and structure of its domestic regional, district, and field offices. Through realignment, USCIS created regions and districts of similar sizes to balance workloads and staffing levels, and to improve consistency across organizational and management structures in the field. USCIS Message, “USCIS Field Operations Directorate (FOD) Realigns Districts” (Oct. 1, 2019) (in the possession of the Ombudsman).

¹¹¹ INA § 335(b); 8 U.S.C. § 1446(b).

¹¹² 8 C.F.R. §§ 335.2(a), (c).

¹¹³ For example, although officers would conduct the examination remotely, naturalization applicants could appear in person at a designated USCIS location, and their interviews could occur in a private setting in front of a USCIS officer. This would enable USCIS to validate identity and control the proceeding in a secure environment.

¹¹⁴ INA § 337(a); 8 U.S.C. § 1448(a).

¹¹⁵ The Asylum Division conducts credible and reasonable fear screenings telephonically, and in 2016, it established an office dedicated to adjudicating these claims remotely. See “Asylum Application, Interview, and Employment Authorization for Applicants,” 84 Fed. Reg. 62374, 62393 (Nov. 14, 2019). Also, in FY 2016, the Investor Program Office (IPO) began utilizing VTC to conduct interviews of select foreign investors seeking to remove their conditional status. See “Citizenship for Sale: Oversight of the EB-5 Investor Visa Program,” hearing before the Senate Committee on the Judiciary, 115th Cong. 2nd Sess. (Jun. 19, 2018) (statement of L. Francis Cissna, Director); <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-citizenship-sale-oversight-eb-5-investor-visa-program-senate-committee-judiciary-june-19-2018-uscis-director-l-francis-cissna> (accessed May 10, 2020).

¹¹⁶ See “Memorandum on the History of Agency Video Teleconferencing Adjudications,” Administrative Conference of the United States (Nov. 26, 2015); https://www.acus.gov/sites/default/files/documents/VTC%20Hearing%20History_FINAL.pdf (accessed May 10, 2020).

¹¹⁷ During the first quarter of fiscal year 2020 (October–December 2019) one out of every six (17 percent) of the 57,182 final immigration court hearings that concluded an immigrant’s case was held by video. TRAC Immigration, *Use of Video in Place of In-Person Court Hearings* (Jan. 28, 2020); <https://trac.syr.edu/immigration/reports/593/> (accessed May 10, 2020).

¹¹⁸ See “Setting the Manner for the Appearance of Parties and Witnesses at a Hearing,” 84 Fed. Reg. 69298 (Dec. 18, 2019).

¹¹⁹ In FY 2017, the Board of Veterans’ Appeals held 61 percent of its hearings by VTC. Department of Veteran Affairs, Board of Veterans’ Appeals, FY 2017 Annual Report, p. 23; https://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2017AR.pdf (accessed May 10, 2020).

¹²⁰ See U.S. Department of Health & Human Services Webpage, “Appeal to Administrative Law Judges, Hearing Procedures;” <https://www.hhs.gov/about/agencies/dab/different-appeals-at-dab/appeals-to-alj/procedures/hearing/index.html> (accessed May 9, 2020).

Operationalizing Remote Naturalization. A shift to remote naturalization would be a major undertaking for the agency, even in pilot form. But USCIS has acknowledged that technological resources are needed to effectively reduce its backlog and it has already moved forward with implementing significant changes to the naturalization process.¹²¹ Remote naturalization allows the agency to better adhere to the Centers for Disease Control and Prevention’s (CDC) current COVID-19 mitigation guidance.¹²² Prior to rolling out new proposals nationwide, USCIS typically begins with a pilot program where a limited number of field offices are used to test the new processing methods. This enables the agency to evaluate efficiencies gained/lost, resolve unforeseen challenges, and ultimately determine if the pilot will benefit the agency nationwide. The transition to remote naturalization should be tested and implemented in a similar fashion.

In deciding which field offices to select for the pilot, USCIS might consider pairing offices within the same district with disparate processing times and staffing levels. During the initial implementation, the availability of physical office space will also need to be a consideration. The primary candidates for such pairing would likely be understaffed offices with lengthy processing times that have the space necessary to stage or host additional interviews but lack the staff to conduct those interviews, collaborating with adequately staffed offices with median N-400 processing times below the national average. In addition to achieving a better workload balance, pairing offices will allow officers to familiarize themselves with regional issues (e.g., fraud associated with N-648s, interpreters, and other localized concerns). It will also allow management at each respective office to effectively coordinate on matters related to resource availability, interview and ceremony scheduling, and consistency in adjudications.

¹²¹ See “Hearing on Policy Changes and Processing Delays at USCIS,” *before the Subcommittee on Immigration and Citizenship of the U.S. House Committee on the Judiciary*, 116th Cong. 1st Sess. (Jul. 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operation Directorate; and Michael Hoefler, Chief, Office of Performance and Quality, Management Directorate); <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019> (accessed May 9, 2020).

¹²² See Centers for Disease Control and Protection Webpage, “Communities, Schools, Workplaces, and Events;” <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html> (accessed May 9, 2020).

Once the appropriate offices have been selected, remote naturalization will require adjustments. By using hypothetical field offices and segmenting the naturalization process, USCIS might identify procedures in need of modification and explore how the advent of ELIS, FCI and automated N-400 case assessments increase the operational feasibility of remote naturalization. In the examples provided below, Office A represents the understaffed field office, while Office B represents the adequately staffed office.

Interview Scheduling: On a typical day, Office A interviews 100 naturalization interviews, while Office B conducts 300. Office A has 5 vacant offices. Office B is in need of additional office space and currently allows 5 of its officers to telework each day so that offices can be shared. Naturalization applications are generally arranged for scheduling by filing date. Due to Office A’s lengthy processing times, the oldest N-400 applications awaiting scheduling consist mainly of Office A’s cases, and Office B will be assigned a certain number of Office A’s cases to interview remotely. The N-400 automated assessment tool, which identifies factors that inform the interview length, provides Office B with visibility into Office A’s pending interview queue. Office B is also able to identify cases for scheduling where USCIS has the A-file in electronic format, and there is no need for a physical file transfer. After factoring in the information from the assessment and considering the ability for telework employees to interview remotely, Office B can increase its interview capacity and assist Office A in reducing its processing times.

Interview Check-In: The naturalization applicant appears at Office A on the date of his or her interview. Although Office B will be responsible for conducting the naturalization examination, FCI allows Office A to utilize non-adjudicative staff to complete identity verification and other administrative tasks that can occur prior to the interview. In addition to increasing the time the interviewing officer has to focus on eligibility requirements and fraud detection, this process also ensures that identity verification occurs at the office where the applicant appears in person. After the FCI is completed successfully, the applicant will be escorted to one of the vacant offices designated for remote interviews.

Interview: Office B will conduct the remote naturalization interview via VTC. Due to advances in this technology, interviewing officers should be able to interact and elicit testimony as effectively through VTC as they

would in the current interview setting.¹²³ Because the electronic online environment provided by ELIS facilitates remote interview capabilities, the interviewing officer will be able to view the N-400 application, administer the naturalization test, record changes to the application, and have the applicant review and certify revisions via a tablet.¹²⁴ All of these operations can be performed remotely. Moreover, the digitization of certain A-files provides electronic access to records.¹²⁵ After conducting the interview, the remote officer will notify support staff at Office A that the interview has been completed, and transmit the Form N-652, *Naturalization Interview Results*, which Office A will provide to the applicant.

Post-Interview Actions—Approval: If the applicant has established eligibility for naturalization, Office B will move forward with approving the N-400 application. The application will go through the “appropriate internal procedures” at Office A before the applicant is scheduled to appear at a naturalization ceremony.¹²⁶ Ideally, if Office A is located within a jurisdiction where federal district courts do not exercise exclusive oath authority,¹²⁷ and the applicant is not requesting a name change,¹²⁸ he or she can be naturalized on the same day as the interview.¹²⁹ If Office A does not have the resources to conduct a same-day ceremony, it could once again rely on VTC and Office B to administer the oath of allegiance.¹³⁰

¹²³ See “Setting the Manner for the Appearance of Parties and Witnesses at a Hearing,” 84 Fed. Reg. at 69300.

¹²⁴ DHS Privacy Impact Assessment, “USCIS Electronic Immigration System (USCIS ELIS),” p. 11 (Dec. 3, 2018); <https://www.dhs.gov/sites/default/files/publications/pia-uscis-elis056a-december2018.pdf> (accessed May 10, 2020).

¹²⁵ Not all A-files are digitized. As noted above, digitized A-files should be given priority for remote interview scheduling. For further information on A-file digitization, see DHS Privacy Impact Assessment, “Integrated Digitization Document Management Program (IDDMP)” (Dec. 3, 2018); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-iddmp-09242013.pdf> (accessed May 10, 2020).

¹²⁶ USCIS Policy Manual, Pt. B, Ch. 4.A; <https://www.uscis.gov/policy-manual/volume-12-part-b-chapter-4> (accessed May 10, 2020).

¹²⁷ INA § 310(b); 8 U.S.C. § 1421(b).

¹²⁸ Courts administer the oath for any approved applicant wishing to make a name change at the time of naturalization. INA § 336(e); 8 U.S.C. § 1447(e); see also 8 C.F.R. § 337.2.

¹²⁹ For further discussion on ways USCIS can make naturalization oath ceremonies more convenient for applicants, see Ombudsman Recommendations, “Study and Recommendations on Naturalization Oath Ceremonies” (Dec. 16, 2008); https://www.dhs.gov/xlibrary/assets/cisomb_naturalization_recommendation_2008-12-16.pdf (accessed May 19, 2020).

¹³⁰ USCIS officials with authority to administer the oath, such as Field Office Directors, may re-delegate this authority within their chains of command. See INA §§ 310 and 337, and 8 C.F.R. §§ 310.3(e) and 337.2(b). See also Section II(V) of DHS Delegation 0150.1 (issued Jun. 5, 2003).

USCIS is required to conduct ceremonies in such a manner as to preserve the dignity and significance of the occasion,¹³¹ and has developed a Model Plan for Naturalization Ceremonies to satisfy this requirement.¹³² Slight procedural modifications should be considered to increase efficiencies and to facilitate remote processing. For example, it is common at naturalization events for USCIS officers to perform a check-in process where they review and collect the Form N-445, *Notice of Naturalization*, and all USCIS-issued travel documents and lawful permanent resident cards that have been previously issued to each applicant.¹³³ In our scenario, Office A’s support staff would be responsible for reviewing and collecting the necessary documents prior to escorting the applicant to the remote naturalization room. After Office B completed the ceremony, Office A would be responsible for providing the applicant with his or her Form N-550, *Certificate of Naturalization*.

Post-Interview Actions—Continuation or Denial: If Office B determines that additional information is needed or the applicant is ineligible for naturalization, it will take action as appropriate. In determining which office will ultimately be responsible for adjudicating continued cases or cases that require a re-examination to resolve eligibility issues, USCIS should consider best practices from its previous N-400 workload shifts.

Post-Pilot: In evaluating the success of the pilot, USCIS should ensure that it tracks metrics that will allow it answer questions concerning the program’s overall effectiveness, such as:

- Was the pilot successful in eliminating disparities in processing times between the paired field offices?
- What was the overall impact on interview capacity and completion rates at each office?
- How much time and money were invested in resolving technological issues? If processing times reduced overall, do the resources spent justify the reduction?
- What was the impact on adjudicative quality? For example, what impact did the pilot have on fraud referrals to FDNS?
- What positive or negative effects were observed on individuals being naturalized?

¹³¹ INA § 337(a); 8 U.S.C. § 1448(a).

¹³² See USCIS Policy Manual, Pt. J, Ch. 5; <https://www.uscis.gov/policy-manual/volume-12-part-j-chapter-5> (accessed May 10, 2020).

¹³³ *Id.*

In addition to increasing the number of pilot sites or implementing nationwide, the agency could establish an office dedicated to remote naturalization similar to the Asylum Division's remote unit, and lease available federal space where applicants can appear for their interviews. Ultimately, the decision to conduct remote naturalizations may hinge on USCIS' fiscal situation.

Potential Efficiencies Gained from Remote Naturalization. Remote naturalization coincides with the Field Office Directorate's realignment objectives—to increase interview capacity and provide more consistent processing times across the United States. Remote naturalization provides USCIS with the opportunity to better balance its workloads. As discussed above, the agency has utilized workload transfers in an effort to decrease wide disparities in N-400 processing times across field office jurisdictions. If naturalization interviews were conducted remotely, officers would not be limited to interviewing applicants that reside within or near their office's jurisdiction. This would provide the agency greater flexibility in distributing workloads between disparate offices. In the end, this might help the agency to appropriately balance its N-400 workload, and achieve one of its realignment goals.

Improving remote capabilities should reduce the delays and costs associated with increasing physical office space. USCIS has cited insufficient space at certain field offices as a backlog contributor. Due to its current financial difficulties and GSA delays, adding additional space may not be feasible at this time. Remote naturalization offers the agency a more immediate solution. Offices that are unable to accommodate additional staff will benefit from the reduced physical footprint of remote naturalization. The Ombudsman acknowledges that the proposal in its current form will initially require dedicated space at field offices; however, the COVID-19 pandemic has provided numerous government agencies, including USCIS, with

protracted telework experience. The agency should leverage this experience to utilize current office space to its fullest potential (e.g., telework, office sharing, shift work, hoteling, etc.). In particular, USCIS staff who are not interviewing applicants should not occupy space dedicated to remote interviews.

Remote naturalization also places the agency in a better position to ensure continuity of services throughout the COVID-19 pandemic. As it reopens to the public, the agency will need to integrate federal guidelines for maintaining social distancing as well as various state restrictions on public gatherings. Remote naturalization may permit USCIS to incorporate these mitigation requirements into its interview and ceremony process. It is unclear at this time when USCIS will be able to resume normal operations nationwide, but remote naturalization provides the agency with the best opportunity to continue interviewing and naturalizing while also following federal and state guidelines.

CONCLUSION

Prior to the COVID-19 pandemic, the agency's backlog reduction efforts faced significant challenges from an anticipated 2020 filing surge and inadequate resources. These challenges are now compounded by the burdens placed on the system from delayed interviews, unpredictable receipt levels, and the likely strain to come once the agency is again fully operational. USCIS has rolled out several different measures to process N-400s more efficiently. It should consider additional reforms to improve the processing of concurrently pending benefit requests and N-648s, as well as establishing remote adjudication capabilities in order to limit the backlog growth. With continued ingenuity and capital, the agency can effectively reduce the backlog without sacrificing benefit integrity.



Denaturalization: Maintaining the Integrity of the Naturalization Program

Responsible Office: Field Operations Directorate

KEY FACTS AND FINDINGS

- USCIS has worked to increase and centralize its denaturalization operations and referrals, in part due to weaknesses in the background check process that resulted in ineligible applicants becoming naturalized citizens.
- To address ineligible individuals becoming naturalized citizens, USCIS is using the revocation of naturalization provisions under section 340 of the Immigration and Nationality Act to revoke their citizenship when it was illegally procured or obtained by concealment of a material fact or willful misrepresentation.
- In January 2018, USCIS created the Historical Fingerprint Enrollment (HFE) Unit in Los Angeles, renamed the

Benefits Integrity Office (BIO) in November 2019, to review questionable naturalization cases identified in DHS OIG’s report on Operation Janus.

- BIO’s denaturalization workload has since expanded and USCIS continues to analyze and learn from the cases to implement front end measures to prevent fraud and the erroneous naturalization of ineligible applicants.

BACKGROUND

Naturalized citizens, upon swearing allegiance to the United States and receiving certificates of naturalization, are correspondingly granted the same privileges and responsibilities that those born within our borders receive at birth. These citizens are distinguishable from native-born citizens by only a few exceptions, so significant they are inscribed in the U.S. Constitution. Becoming a naturalized citizen culminates an immigrant’s often long and expensive U.S. immigration journey; many, for good reason, consider naturalization the most significant immigration benefit that the U.S. government can bestow.

USCIS considers maintaining the integrity of the naturalization process to be a core mission, ensuring that only qualified individuals are naturalized by validating identities and completing background checks. The naturalization application process is one of few with a regulatory requirement that the individual appear before USCIS in person to demonstrate eligibility.¹³⁴ In the past, USCIS has at several junctures focused more on production than integrity. This has resulted in the need to revoke citizenship, also known as denaturalization,¹³⁵ sometimes decades after the benefit is bestowed. Denaturalization is a costly and time-consuming process, involving multiple cabinet-level departments and federal litigation and requiring a significant expenditure of resources.

Investigations into naturalization irregularities in the Citizenship USA (CUSA) initiative from the late 1990s, in which thousands of applicants were naturalized in a promotion of citizenship, and Operation Janus demonstrate how weaknesses in the adjudication process, specifically in background checks, can impact the integrity of the naturalization program. In the late 1990s, a Department of Justice (DOJ) investigative report found weaknesses in the Immigration and Naturalization Service’s (INS)

implementation of CUSA, resulting in the naturalization of individuals later found to have disqualifying criminal records.¹³⁶ When resources permitted, the federal government identified ineligible citizens and rescinded their citizenship.

In 2008, a Customs and Border Protection (CBP) agent discovered 206 fingerprint cards (cards on which fingerprints were printed for use in identity verification and criminal background checks) that had not been uploaded into USCIS’ digital fingerprint repository, and so were not accessible to adjudicators prior to granting immigration benefits to those individuals, including lawful permanent resident (LPR) status and naturalization. Subsequently, other DHS components searched for undigitized fingerprints, increasing the number of unrecorded fingerprint records to 315,000; this undertaking became known as Operation Janus. A DHS OIG investigation eventually determined at least 1,811 naturalized citizens with final deportation orders or criminal records may not have had their fingerprint records in the digital fingerprint repository at the time USCIS adjudicated their naturalization applications.¹³⁷ In 2016, USCIS staff located at the National Benefits Center reviewed those files and referred those deemed ineligible for naturalization to DOJ for denaturalization proceedings.¹³⁸ Operation Janus concluded in 2016.¹³⁹

Since Operation Janus, USCIS has revamped its denaturalization review and referral process to mitigate fraud and the naturalization of ineligible applicants. In January 2018, it created the HFE Unit in Los Angeles, renamed the BIO in November 2019,¹⁴⁰ to review questionable naturalization cases. USCIS continues to analyze and learn from the cases reviewed by BIO to determine measures it can implement on the front end to prevent fraud and the naturalization of ineligible applicants.¹⁴¹ While it may be too early to assess

¹³⁴ INA § 335(b); 8 U.S.C. § 1446(b). *See also* 8 C.F.R. § 335.2(a).

¹³⁵ Revocation of naturalization is also commonly referred to as “denaturalization.” 12 USCIS Policy Manual, Pt. L, Ch. 1(A); <https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-1> (accessed May 7, 2020).

¹³⁶ In September 1996, INS initiated Citizenship USA to reduce its backlog of pending naturalization applications. *See* DOJ OIG, “Semiannual Report to Congress, October 1, 1999–March 31, 2000,” <https://oig.justice.gov/semiannual/0003/sa201p1.htm> (accessed May 4, 2020).

¹³⁷ DHS OIG, “Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records,” OIG-16-130 (Sep. 2016) at 14, fn 1; <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf> (accessed May 21, 2020).

¹³⁸ Information provided by USCIS (Apr. 22, 2020).

¹³⁹ DHS OIG, “Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records,” OIG-16-130 (Sep. 2016) at 7; <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf> (accessed May 21, 2020).

¹⁴⁰ Information provided by USCIS (May 7, 2020).

¹⁴¹ Information provided by USCIS (Apr. 22, 2020).

BIO's progress, the revamped denaturalization process shows potential for diminishing the use of USCIS' limited resources to correct preventable mistakes. The Ombudsman is studying the scope and progress of this aspect of USCIS' efforts to maintain the integrity of the naturalization process.

THE CULMINATION OF THE IMMIGRATION JOURNEY: BECOMING A NATURALIZED CITIZEN

Article 1, Section 8 of the U.S. Constitution gives Congress the power to establish a uniform rule of naturalization. In the Naturalization Act of 1790, Congress authorized courts to accept requests to naturalize and determine an applicant's eligibility, and delineated the requirements and process to become a naturalized citizen, such as requiring the individual be a "free white person" of good moral character, reside within the United States for 2 years, and take an oath to support the U.S. Constitution.¹⁴² Many years later, subsequent laws removed restrictions to naturalization, such as marital status, gender, race, and nationality.¹⁴³ The last significant piece of legislation amending naturalization procedures, the Immigration Act of 1990, transferred the authority to naturalize from the federal courts, where it had resided for 200 years, to the Executive Branch (then the Attorney General, now the DHS).¹⁴⁴ Other than courts taking on a more ceremonial role in the last step of the naturalization process—the oath of allegiance—the initial statutory framework remains essentially the same.

Section 316 of the Immigration and Nationality Act (INA) provides that to become a naturalized citizen, an applicant must: have been an LPR for at least 5 years; have been and continue to be a person of good moral character during the required period of LPR status; have continuously resided in the United States as an LPR for 5 years immediately before applying and throughout the naturalization application process; and be physically present in the United States for at least half of that 5-year

period.¹⁴⁵ The requisite 5 years may be reduced to 3 years if the applicant's naturalization eligibility is based on marriage to a U.S. citizen,¹⁴⁶ or excused completely in certain circumstances provided in the INA.

Naturalization Application Process. Shortly after the LPR has filed his or her Form N-400, *Application for Naturalization*, and supporting documents, USCIS schedules a biometrics (i.e., fingerprints, photograph, and signature) appointment at a local Application Support Center (ASC), which triggers a background check.¹⁴⁷ The background check verifies an individual's identity, a principal first step in the secure delivery of immigration benefits, and establishes eligibility for the benefit sought.¹⁴⁸ USCIS' ELIS now automatically initiates applicants' fingerprint searches in the Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation's (FBI) digital repository Next Generation Identification (NGI),¹⁴⁹ where USCIS can examine whether an applicant has used other identities, been arrested or convicted of a crime, been deported, or has links to terrorist activities. Applicants must inform USCIS on the N-400 or during the interview of whether they have applied for immigration benefits using a different or alternate identity, or whether they have ever been previously ordered deported or removed.

A USCIS officer reviews the results of the background check and resolves any derogatory information

¹⁴² An Act to Establish a Uniform Rule of Naturalization, Ch. 3, §1-103 (Mar. 26, 1790) (repealed 1795).

¹⁴³ See Patrick Weil, "The Sovereign Citizen," *passim* (2012); <https://muse.jhu.edu/book/21278> (accessed May 7, 2020). See generally Marian L. Smith, "INS Administration of Racial Provisions in U.S. Immigration and Nationality Law Since 1898," *National Archives Prologue Magazine* (Summer 2002); <https://www.archives.gov/publications/prologue/2002/summer/immigration-law-1.html> (accessed May 27, 2020).

¹⁴⁴ Immigration Act of 1990, Pub. L. 101-649, § 310, 104 Stat. 5038 (Nov. 29, 1990) (codified as INA § 310).

¹⁴⁵ INA § 316(a)–(d).

¹⁴⁶ INA § 319(a).

¹⁴⁷ Information provided by USCIS (Apr. 22, 2020). USCIS is in the process of developing continuous immigration vetting, which will move USCIS away from many of the point-in-time checks, background checks being triggered by the filing of an application or petition, to a holistic, recurrent vetting model with an emphasis on "person-centric" identification and screening—meaning certain security checks will be associated with an individual, not an application, petition, or benefit request. However, these initiatives are still under development and not fully implemented at this time. Information provided by USCIS (Apr. 24, 2020).

¹⁴⁸ Information provided by USCIS (Apr. 24, 2020). See also 12 USCIS Policy Manual, Pt. B, Ch. 2(A); <https://www.uscis.gov/policy-manual/volume-12-part-b-chapter-2> (accessed May 7, 2020).

¹⁴⁹ DHS Privacy Impact Assessment, "USCIS Electronic Immigration System (USCIS ELIS)" (Dec. 3, 2018) pp. 9–10; <https://www.dhs.gov/sites/default/files/publications/pia-uscis-elis056a-december2018.pdf> (accessed May 4, 2020).

appropriately.¹⁵⁰ An applicant's criminal record may prevent them from meeting the good moral character requirement under section 316(a)(3) of the INA.¹⁵¹ In addition, section 318 of the INA prohibits applicants with pending or final orders of deportation from naturalizing, unless their naturalization is based on U.S. military service.¹⁵² Once the preliminary background check is complete, an officer will interview the individual under oath and issue English proficiency and civics examinations that the applicant must pass before the officer approves the naturalization application.¹⁵³ The applicant must also acknowledge support for the U.S. Constitution by taking an Oath of Allegiance.¹⁵⁴ Thereafter, USCIS will issue the individual a Certificate of Naturalization. If USCIS discovers the applicant was not eligible to become a naturalized citizen at the time citizenship was conferred, it can refer the individual to DOJ for denaturalization.

PITFALLS IN THE NATURALIZATION PROGRAM

Citizenship USA. The 1986 Immigration Reform and Control Act (IRCA) created a path to citizenship for certain foreign nationals residing unlawfully in the United States¹⁵⁵ or who worked as special agricultural workers (SAW).¹⁵⁶ In the 1990s, millions of beneficiaries of these programs became eligible to apply for naturalization.¹⁵⁷ Between FYs 1995 and 1997, INS received over 3.6 million applications for naturalization, which was 2.2 million more than what it received during the previous

3 fiscal years.¹⁵⁸ Accordingly, INS was faced with an overwhelming surge in naturalization applications that it was not equipped to adjudicate in a timely fashion.

On August 31, 1995, INS announced the Citizenship USA program, promoting the benefits of citizenship, with a goal to naturalize over 1 million applicants within a year.¹⁵⁹ At the same time, INS attempted to address the increasing number of naturalization applications pending adjudication by hiring adjudication officers, establishing naturalization interview centers, and implementing process efficiencies. In FY 1996 alone, over 1.1 million LPRs took the Oath of Allegiance and became naturalized citizens.¹⁶⁰ However, this milestone came at a cost of allegations of partisan political activities and insufficient criminal background checks.¹⁶¹ INS may have naturalized over 6,000 unqualified individuals.¹⁶²

The DOJ OIG investigated the CUSA program, finding significant long-term mismanagement in naturalization processing, especially as it involved identity verification, despite repeated interventions by the OIG, Congress and the Government Accountability Office.¹⁶³ The OIG cataloged weaknesses in the training of new hires, the database systems and the transmission of information between systems, criminal background check procedures, and other areas that could have led to unlawful naturalizations. Of the total number of naturalized individuals under the CUSA program, the FBI did not complete the criminal history check for 18 percent of them; the FBI was unable to read the fingerprint cards for

¹⁵⁰ If there are inconsistencies between the information provided by the applicant and the background check results, the officer can review the applicant's physical A-file and information contained in other USCIS accessible systems to determine which information is verifiable or relevant and make updates to the applicant's information in ELIS, if necessary. See DHS Privacy Impact Assessment, "USCIS Electronic Immigration System (USCIS ELIS)" (Dec. 3, 2018) pp. 9–10; <https://www.dhs.gov/sites/default/files/publications/pia-uscis-elis056a-december2018.pdf> (accessed May 4, 2020).

¹⁵¹ See INA § 101(f) and 8 C.F.R. 316.10(b) (defining statutory and discretionary ineligibility for good moral character).

¹⁵² See INA § 328(b)(2).

¹⁵³ 8 C.F.R. § 335.2(b).

¹⁵⁴ INA § 337(a).

¹⁵⁵ Immigration Reform and Control Act of 1986, Pub. L. 99-603, § 201; 8 U.S.C. § 1255a.

¹⁵⁶ Immigration Reform and Control Act of 1986, Pub. L. 99-603, § 210; 8 U.S.C. § 1160.

¹⁵⁷ Nancy F. Rytina and Chunnong Saeger, "Naturalizations in the United States: 2004," DHS Office of Immigration Statistics (Jun. 2005), p. 3; https://www.dhs.gov/sites/default/files/publications/Naturalizations_2004.pdf (accessed May 29, 2020).

¹⁵⁸ USCIS Webpage, "Yearly Naturalization Statistics 1992–2015" (Sep. 30, 2015); https://www.uscis.gov/sites/default/files/files/nativedocuments/Yearly_Natz_Stats.pdf (accessed Apr. 20, 2020).

¹⁵⁹ DOJ Office of the Inspector General, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative, The Implementation of CUSA" (Jul. 2000) at 2; <https://oig.justice.gov/special/0007/cusaimp.pdf> (accessed Mar. 9, 2020).

¹⁶⁰ USCIS Webpage, "Yearly Naturalization Statistics 1992–2015" (Sep. 30, 2015); https://www.uscis.gov/sites/default/files/files/nativedocuments/Yearly_Natz_Stats.pdf (accessed Apr. 20, 2020).

¹⁶¹ See DOJ Office of the Inspector General, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative, The Implementation of CUSA" (Jul. 2000) at 32-33, 38-39; <https://oig.justice.gov/special/0007/cusaimp.pdf> (accessed May 27, 2020).

¹⁶² Jon B. Hultman, "Administrative Denaturalization: Is There Nothing You Can Do That Can't Be [Un]Done," 34 Loy. L.A. L. Rev. 895 at 907 (2001); <https://digitalcommons.lmu.edu/llr/vol34/iss2/16> (accessed May 7, 2020).

¹⁶³ See DOJ Office of the Inspector General, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative, Executive Summary" (Jul. 2000); <https://oig.justice.gov/special/0007/excesum.pdf> (accessed May 29, 2020).

124,711 of the applicants and did not receive fingerprint cards for another 61,366.¹⁶⁴

A break-down in communication between INS and the FBI contributed to INS naturalizing applicants when the FBI could not complete a fingerprint check. Before and during CUSA, naturalization applications included fingerprint cards (Form FD-258) prepared by local private vendors and police stations.¹⁶⁵ The cards contained biographical information, including the applicant's name, date of birth, and sex. INS would remove the fingerprint cards from the rest of the application and send them to the FBI for a "name-check" and fingerprint comparison.¹⁶⁶ Because INS did not conduct the fingerprinting, it could not verify that the fingerprints on the FD-258 attached to the naturalization application were that of the applicant.

Before conducting the fingerprint check, the FBI would determine whether the fingerprint cards were readable, or classifiable.¹⁶⁷ Cards were classifiable if all ten fingerprints were legible. If the cards were classifiable, then FBI conducted an automated search of its fingerprint repository, verified any matches by manually comparing the applicant's fingerprint card to the card on file with the FBI, and provided the results to INS.¹⁶⁸ Smudged, unclassifiable cards decreased the effectiveness of the automatic reader and the manual comparison of the fingerprints. If the name check results indicated the applicant had a criminal history, but the FBI could not verify the results through its repository, the FBI returned the unclassifiable cards to INS with the notation "no record based on name-check."¹⁶⁹ At this point, INS could have asked the applicant to submit a new fingerprint card, which INS would forward to the FBI at no extra cost to the INS. Unfortunately, INS interpreted the FBI's notation to mean that the FBI had completed its criminal history check and discovered no criminal record.¹⁷⁰ Instead of submitting new cards so FBI could confirm an individual's identity and criminal history, INS went forward with naturalization. This missed communication contributed to INS not completing the first step in securing delivery

of immigration benefits, verifying the identity of the applicant, and ultimately led to naturalizing hundreds of thousands of applicants without completing their checks.

While the OIG report did not specifically recommend reviewing the CUSA cases for denaturalization proceedings, DOJ and INS attorneys decided to explore their options.

Operation Janus. In 2008, a CBP employee uncovered old fingerprint cards for 206 foreign nationals who had deportation orders but who had been granted immigration benefits, such as LPR status or citizenship, under different names and dates of birth.¹⁷¹ Due to inconsistent practices by INS, and later ICE, the individuals' fingerprint cards had never been uploaded into digital fingerprint records. Further research uncovered a total of 315,000 fingerprint cards of individuals who were criminals or had final deportation orders dating back to 1990 that had not been digitized.¹⁷² This undertaking became known as Operation Janus.

To fully understand Operation Janus and the OIG findings, one must also understand the process for collecting and storing fingerprints, an essential evidentiary piece of the adjudication process (enabling USCIS to verify a person's identity as well as criminal history). In 1999, the FBI began digitizing the fingerprints it had collected from state, local, and other Federal agencies and maintaining them in its Integrated Automated Fingerprint Identification System (IAFIS)—the precursor to the current digital repository, NGI.¹⁷³ Prior to digitization, fingerprints were captured on Forms FD-258.¹⁷⁴ INS, and later, ICE were supposed to share the fingerprint cards collected from foreign nationals with the FBI to run against IAFIS holdings, but neither did do so consistently.¹⁷⁵ Nor did INS always provide updated information to the FBI on individuals associated with the fingerprint records. In addition, when INS developed IDENT in 1994, it had not uploaded all the fingerprint cards into the system.¹⁷⁶ As a result, USCIS adjudicated naturalization applications without having

¹⁶⁴ DOJ Office of the Inspector General, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative, Criminal History Checking Procedures" (Jul. 2000) at 2 fn 1; <https://oig.justice.gov/special/0007/crimhist.pdf> (accessed May 27, 2020).

¹⁶⁵ *Id.* at 8 fn 8.

¹⁶⁶ *See Id.* at 8-9.

¹⁶⁷ *Id.* at 9.

¹⁶⁸ *Id.* at 9-10.

¹⁶⁹ *Id.* at 10-11; <https://oig.justice.gov/special/0007/crimhist.pdf> (accessed May 27, 2020).

¹⁷⁰ *Id.* at 11 fn 13.

¹⁷¹ *See* DHS Office of the Inspector General, "Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records," OIG-16-130 (Sep. 2016) at 1; <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf> (accessed Mar. 12, 2020).

¹⁷² *See Id.* at 4.

¹⁷³ *See Id.* at 3-4.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ DHS Office of the Inspector General, "Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records," OIG-16-130 (Sep. 2016) at 5; <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf> (accessed Mar. 12, 2020).

complete information about the applicants, which led to USCIS erroneously naturalizing at least some portion of those committing fraud in using adopted aliases, because they could not match the fingerprints associated with the original identity. The original fingerprint records of the individuals revealed some were subject to final orders of deportation or removal from the United States under a different identity.

The 2016 DHS OIG report, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records*, found that the government had in its possession 315,000 paper fingerprint records that it had never uploaded into IDENT.¹⁷⁷ As a result of the incomplete background checks, an unknown number of ineligible individuals received immigration benefits. The OIG concluded the incomplete digital fingerprint records hindered USCIS' ability to fully evaluate applicant eligibility, and recommended that USCIS establish a plan for reviewing cases of naturalized citizens who may have been ineligible for the benefit.¹⁷⁸

Following Operation Janus, ICE initiated Operation Second Look to review hundreds of thousands of files of individuals who had been ordered deported from the United States, at least some portion of which had unlawfully remained in the country. ICE reviewed the naturalized citizen files for potential criminal denaturalization, one of three ways to denaturalize. Cases not eligible for criminal denaturalization were referred to USCIS for civil denaturalization. In a budget request for FY 2019, the administration asked for \$207.6 million to investigate 887 anticipated leads and to review another 700,000 immigrant files as part of ICE's second phase of Operation Second Look.¹⁷⁹ Congress did not approve this proposal.¹⁸⁰

¹⁷⁷ See *Id.* at 4.

¹⁷⁸ See *Id.* at 3 and 8.

¹⁷⁹ See DHS ICE, "Budget Overview: Congressional Justification" (2019); <https://www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf> (accessed Mar. 30, 2020). See also DHS USCIS, "Budget Overview: Congressional Justification (2019); <https://www.dhs.gov/sites/default/files/publications/U.%20S.%20Citizenship%20and%20Immigration%20Services.pdf> (accessed Mar. 3, 2020).

¹⁸⁰ See Letter from former USCIS Director L. Francis Cissna to Representative Jesús G. "Chuy" Garcia p. 6 (Apr. 5, 2019); https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays_-_Representative_Garcia.pdf (accessed Jun. 1, 2020).

MITIGATING MISTAKES ON THE BACK END: DENATURALIZATION

In the beginning of the twentieth century, Congress turned its attention to the integrity of the naturalization system to combat naturalization obtained by fraud. In 1906, Congress passed the Naturalization Act of 1906, authorizing U.S. attorneys, upon the showing of good cause, to initiate in courts authorized to naturalize proceedings that would take away an individual's naturalization "on the ground of fraud or on the ground that such certificate of citizenship was illegally procured."¹⁸¹ This procedure remains mostly unchanged. The Immigration and Nationality Act of 1952 established the current statutory provision for denaturalization under section 340 of the INA and changed the fraud ground to "concealment of a material fact or by willful misrepresentation."¹⁸² Illegal procurement remains a ground for denaturalization.

*Three ways to denaturalize: administrative, criminal, and civil procedures.*¹⁸³ In 1996, the Attorney General began to interpret the INA to authorize INS to create its own procedure for administrative denaturalization.¹⁸⁴ INS sent Notices of Intent to Revoke Naturalization to individuals who had become naturalized citizens under CUSA. However, a Ninth Circuit decision held INS had no statutory authority to administratively revoke a person's naturalization status.¹⁸⁵ Since this decision, the INS, and now USCIS, has considered itself obliged to pursue revocation proceedings in federal court.¹⁸⁶

¹⁸¹ An Act to Establish a Bureau of Immigration and Naturalization, ch. 3592, § 15, Pub. L. No. 338 (1906).

¹⁸² INA § 340; 8 U.S.C. § 1451.

¹⁸³ USCIS can cancel a Certificate of Citizenship or Certificate of Naturalization without going through revocation proceedings if it determines the named individual created or obtained the certificate illegally or fraudulently. The cancellation does not impact the individual's underlying LPR status because the person is not considered to have ever been naturalized by USCIS. The naturalization certificate document itself does not confer citizenship. See 12 USCIS Policy Manual, Pt. L, Ch. 1(C); <https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-1> (accessed May 15, 2020).

¹⁸⁴ Jon B. Hultman, "Administrative Denaturalization: Is There Nothing You Can Do That Can't Be [Un]Done," 34 Loy. L.A. L. Rev. 895 (2001); <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2274&context=llr> (accessed May 7, 2020).

¹⁸⁵ *Gorbach v. Reno*, 219 F.3d 1087 (9th Cir. 2000) (*en banc*); *Gorbach v. Reno*, 2001 WL 34145464 (W.D. Wash. Feb. 14, 2001) (INS enjoined permanently nationwide from applying and executing revocation of naturalization regulations); 12 USCIS Policy Manual, Pt. L, Ch. 1(C); <https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-1> (accessed May 15, 2020).

¹⁸⁶ See 12 USCIS Policy Manual, Pt. L, Ch. 1(B); <https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-1> (accessed May 15, 2020); see also Patrick Weil, *The Sovereign Citizen*, p. 179 (2012); <https://muse.jhu.edu/book/21278> (accessed May 7, 2020).

Upon USCIS referral under 8 C.F.R. § 340.2, the U.S. Attorney’s Office (USAO) initiates a denaturalization case in either criminal or civil proceedings in a U.S. district court. In criminal denaturalization proceedings, the U.S. Attorney must prove “beyond a reasonable doubt,” the same burden of proof standard for all criminal cases, that the individual obtained naturalization by fraud pursuant to 18 U.S.C. § 1425.¹⁸⁷ The statute of limitations for pursuing a criminal denaturalization conviction is 10 years.

In civil proceedings under INA § 340(a), a U.S. district court judge can revoke citizenship if the naturalized person: (1) illegally procured naturalization; (2) concealed or willfully misrepresented a material fact; or (3) refused to testify before Congress within 10 years of naturalizing concerning their subversive activities.¹⁸⁸ Under INA § 340(c), the court can revoke the citizenship of a naturalized person who was a member of or affiliated with the Communist party, other totalitarian party, or terrorist organization within 5 years of naturalizing.¹⁸⁹ Under INA § 329(c), the court may revoke an individual’s naturalization if within 5 years of naturalizing they received other than an honorable discharge.¹⁹⁰

In contrast to criminal proceedings, the U.S. Attorney in a civil case must prove by “clear, unequivocal, and convincing” evidence that the individual met one of the above-mentioned grounds for revocation.¹⁹¹ This standard of proof is higher than the preponderance of the evidence standard but lower than the criminal proceeding standard (*e.g.*, beyond a reasonable doubt). In addition, there is no time restriction to pursue a civil denaturalization proceeding.

Figure 3.1: Grounds for Revoking Naturalization

Criminal Naturalization Fraud	INA § 340(e)
Illegal Procurement, Concealment or Willful Misrepresentation, or Refusal to testify before Congress	INA § 340(a)
Member or affiliate of certain political or terrorist organizations	INA § 340(c)
Dishonorable discharge within 5 years of naturalizing	INA § 329(c)

Although the statistics provided in this article may include individuals denaturalized in criminal proceedings or under INA § 329(c), this analysis focuses on denaturalization cases filed in civil proceedings under INA § 340 based on illegal procurement, or concealment of a material fact or willful misrepresentation.

Denaturalization law and procedure. An individual procures naturalization illegally if the applicant did not meet one of the statutory eligibility requirements under INA § 316(a) (*i.e.*, LPR status, good moral character, physical and continuous presence, and attachment to the principles of the U.S. Constitution) at the time of naturalization. The applicant’s failure to meet one of the statutory eligibility requirements does not have to result from deception or misrepresentation; merely failing to satisfy all the requirements at the time of naturalization subjects the applicant to revocation for illegal procurement.¹⁹²

An individual is subject to denaturalization based on concealment of a material fact, or willful misrepresentation committed during the naturalization process, if the concealment or misrepresentation of fact was willful, material, and resulted in the individual obtaining

¹⁸⁷ 12 USCIS Policy Manual, Pt. L, Ch. 1(A); <https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-1> (accessed May 7, 2020). *See* INA 340(e) (If a naturalized person has been convicted by a U.S. District Court judge of obtaining naturalization through fraud, then the judge can also revoke the convicted individual’s citizenship at the end of the criminal proceedings).

¹⁸⁸ INA § 340(a); 8 U.S.C. § 1451(a).

¹⁸⁹ INA § 340(c); 8 U.S.C. § 1451(c).

¹⁹⁰ INA § 329(c); 8 U.S.C. § 1440(c).

¹⁹¹ 12 USCIS Policy Manual, Pt. L, Ch. 1(A); <https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-1> (accessed May 15, 2020).

¹⁹² *See Fedorenko v. United States*, 449 U.S. 490, 506 (1981) (U.S. Supreme Court “cases have also recognized that there must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship. Failure to comply with any of these conditions renders the certificate of citizenship ‘illegally procured,’ and naturalization that is unlawfully procured can be set aside.”). *See also* 12 USCIS Policy Manual, Pt. L, Ch. (2)(A); <https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-2> (accessed May 15, 2020).

naturalization.¹⁹³ Concealment includes failing to disclose on the naturalization application or during the interview a criminal record or commission of a crime.¹⁹⁴ For a fact to be material, its lack of disclosure or misrepresentation by the applicant during the naturalization process, either on the form or during the interview, must have a “natural tendency to influence” the officer’s decision to grant naturalization.¹⁹⁵

If the district court finds that the individual has not presented sufficient evidence to rebut the government’s evidence, then the judge may revoke the individual’s naturalization. Revocation results in an individual being considered to have never been a U.S. citizen and strips them of their certificate of naturalization and any other documents evidencing citizenship.

Since a judge’s denaturalization order does not automatically result in removing the individual from the United States, USCIS would need to file a Form I-862, *Notice to Appear* (NTA) with the EOIR to initiate removal proceedings.¹⁹⁶ According to USCIS, a significant benefit of the denaturalization process is that the U.S. district court record shows the individual’s admissions to support a finding of inadmissibility, thus preventing the individual from relitigating inadmissibility in removal proceedings.¹⁹⁷ However, the individual cannot be charged with a ground of deportability under the INA that would not have applied *after* the person was naturalized.¹⁹⁸

A spouse or child who is naturalized as a result of their relationship to the denaturalized individual may also lose their citizenship depending on the revocation ground. If

the denaturalization order is based on concealment of a material fact or willful misrepresentation, then a spouse or child who became a citizen through the denaturalized individual would also be eligible for denaturalization.¹⁹⁹ However, denaturalization resulting from the person’s membership or affiliation with certain organizations or dishonorable discharge from the military would not result in the spouse and children losing their citizenship if they reside in the United States at the time of the revocation.²⁰⁰ The spouse and children would also not lose their citizenship if the judge denaturalized the individual based on the ground of illegal procurement, which does not require willful deception or misrepresentation, due to statutory ineligibility for naturalization.²⁰¹

Collaboration between DHS and DOJ. When DHS was established, USCIS sent possible denaturalization cases to ICE, which made the final decision on whether to send the case to DOJ.²⁰² USCIS wanted more visibility into the outcomes of these referrals and in 2014 determined it had authority through a DHS delegation of authority to refer cases to DOJ directly.

Currently, both USCIS and ICE directly refer cases to DOJ, with ICE mostly handling cases under consideration for criminal denaturalization. Within USCIS, the new BIO Unit is not the only source of denaturalization proceedings; local field offices can also review potential denaturalization cases for referral to DOJ.²⁰³ The field offices usually refer cases to DOJ through ICE, although on rare occasions they have directly referred cases to DOJ for consideration.²⁰⁴ This article focuses exclusively on cases under BIO’s purview and its review and referral process, but we note the potential for local field offices to follow a denaturalization review process similar to that of BIO.

USCIS’ current denaturalization review and referral process evolved from Operation Janus, where it developed criteria to satisfy DOJ’s legal and evidentiary standards for litigating denaturalization cases in U.S. district court and tracked the process from initiation to completion.²⁰⁵

¹⁹³ 12 USCIS Policy Manual, Pt. L, Ch. 2(B)(1) (citing to *Kungys v. United States*, 485 U.S. 759, 767 (1988)); <https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-2> (accessed May 15, 2020). See also *Maslenjak v. United States*, 137 S. Ct. 1918 (2017) (concealment or misrepresentation in criminal denaturalization proceedings under 18 U.S.C. § 425(a)).

¹⁹⁴ Immigrant Legal Resource Center Practice Advisory, “Denaturalization and Revocation of Naturalization,” at 6 (Feb. 2020); <https://www.ilrc.org/denaturalization-and-revocation-naturalization> (accessed Apr. 14, 2020).

¹⁹⁵ The concealment or misrepresentation can result from failure to provide information as well as stating an untruth. *Kungys v. United States*, 485 U.S. 759, 772 (1988) (reversing the Court of Appeals’ denaturalization order because Kungys’s failure to provide his correct date and place of birth on his naturalization application were not material to the outcome of his application).

¹⁹⁶ Information provided by USCIS (Apr. 22, 2020).

¹⁹⁷ *Id.*

¹⁹⁸ *Costello v. INS*, 376 U.S. 120 (1964) (holding a denaturalized citizen cannot be deported for two crimes involving moral turpitude when the convictions took place while he was a citizen). But see *Matter of Gonzalez-Muro*, 24 I&N Dec. 472 (BIA 2008), distinguishing *Costello*, and finding that the denaturalized citizen could be deported for crimes he committed, and concealed during the naturalization process, while an LPR.

¹⁹⁹ INA 340(d); 12 USCIS Policy Manual, Pt. L, Ch 3(C)(2); <https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-3> (accessed May 15, 2020).

²⁰⁰ 12 USCIS Policy Manual, Pt. L, Ch. 3(C)(3); <https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-3> (accessed May 15, 2020).

²⁰¹ 12 USCIS Policy Manual, Pt. L, Ch. 3(C)(1); <https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-3> (accessed May 15, 2020).

²⁰² Information provided by USCIS (Apr. 22, 2020).

²⁰³ Information provided by USCIS (May 7, 2020).

²⁰⁴ *Id.*

²⁰⁵ Information provided by USCIS (Apr. 22, 2020).

When USCIS created BIO's predecessor, the HFE Unit, it initially reviewed the files of 1,811 naturalized citizens with multiple identities and final deportation orders or criminal records who, at the time of adjudication, either did not or may not have had their full fingerprint records in IDENT or the FBI digital fingerprint repositories, referring those who warranted denaturalization to DOJ.²⁰⁶ These were some of the missing fingerprint cases identified in the 2016 DHS OIG report on Operation Janus. Additional cases arose as more old fingerprint cards were uploaded into IDENT, which were also reviewed by the unit.²⁰⁷ On January 9, 2018, DOJ announced the first denaturalization as a result of Operation Janus and USCIS' intention to refer 1,600 additional cases to DOJ.²⁰⁸

The unit was renamed the BIO in November 2019,²⁰⁹ due to the office's expanded focus on reviewing fraud in all benefit requests.²¹⁰ BIO is now staffed with 64 full-time employees, some of whom worked on the litigation of CUSA denaturalization cases. These employees consist of 54 officers from the FNDS, 9 associate attorneys, and a division chief.²¹¹ Its funding comes from immigration application fees.²¹²

BIO has reviewed slightly more than 87 percent, or 3,121, of its current naturalization workload of 3,569 cases. BIO concluded that 2,563 of the cases it reviewed were potentially subject to denaturalization and that 211 of the reviewed cases were not appropriate for DOJ referral.²¹³ It has so far referred 490 of those cases to DOJ.²¹⁴ DOJ initiated civil court proceedings in 42 of those cases, 22 of which resulted in denaturalization orders.²¹⁵

BIO's portfolio is currently limited to the dual-identity cases discussed above and individuals who did not disclose certain criminal activity when naturalizing. USCIS has pursued these cases as part of its core mission to ensure the

integrity of the immigration system by detecting fraud and national security concerns in naturalization. The dual-identity workload is expected to decrease in significance because the pool of Operation Janus cases is finite, as well as a direct result of USCIS electronically capturing almost all fingerprint records via its ASC locations²¹⁶ and its increased use of biometrics-centered screening and background checks in ELIS.²¹⁷ The eventual shift away from these cases will not diminish the office's function, however, since its role has expanded to look at all USCIS form types.

In a typical dual-identity civil denaturalization case, an individual has been placed in deportation proceedings under one name (for example, Jane Doe) and her fingerprints were captured on a paper card. An A-file was created for Jane Doe and her fingerprint card was placed inside. The card was not shared with the FBI or digitized when INS moved to a digital fingerprint system. A hearing date was set, but Jane Doe did not appear, resulting in an *in absentia* order, authorizing Jane Doe's removal from the United States. Jane, who may or may not know of the removal order, subsequently becomes a lawful permanent resident through marriage to a U.S. citizen under a different name (for example Jane Dear). The second name may be her married name. Her fingerprints were captured electronically and automatically uploaded into IDENT and an A-file was created under the name Jane Dear. As a result, the individual has two A-files with two different names and two sets of matching fingerprint records: one paper and one digital. Eventually, Jane applied for naturalization. If both fingerprint records were not in the digital repository and Jane did not disclose both identities and/or the *in absentia* deportation order during the naturalization process, the officer would not have access to

²⁰⁶ DHS OIG, "Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records," OIG-16-130 (Sep. 2016) at 14; <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf> (accessed Mar. 12, 2020).

²⁰⁷ Information provided by USCIS (May 7, 2020).

²⁰⁸ DOJ Press Release, "Justice Department Secures First Denaturalization As a Result of Operation Janus" (Jan. 9, 2018); <https://www.justice.gov/opa/pr/justice-department-secures-first-denaturalization-result-operation-janus> (accessed March 6, 2020).

²⁰⁹ Information provided by USCIS (May 7, 2020).

²¹⁰ Information provided by USCIS (Apr. 22, 2020).

²¹¹ Information provided by USCIS (Apr. 22, 2020 and May 7, 2020).

²¹² Information provided by USCIS (May 7, 2020).

²¹³ Information provided by USCIS (Apr. 22, 2020).

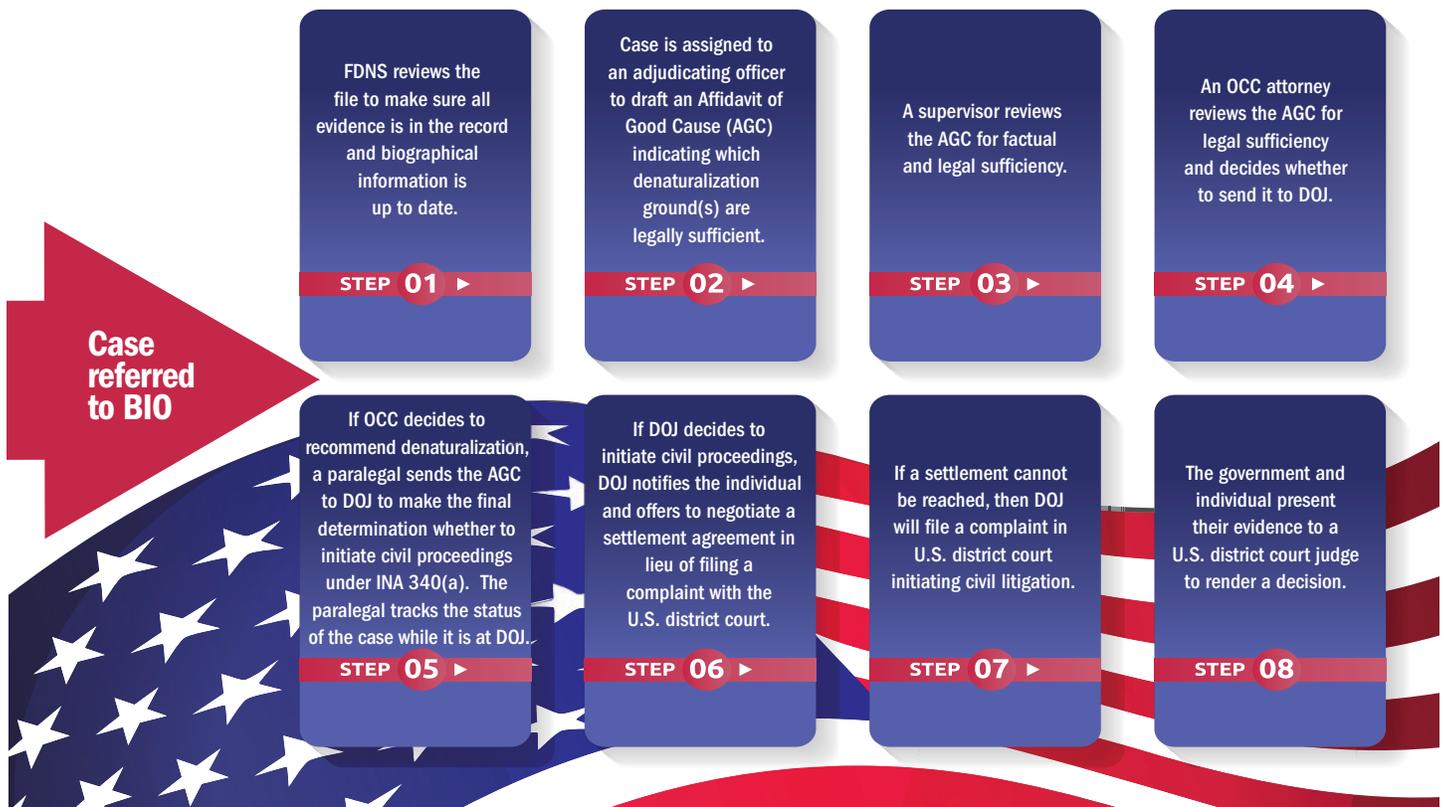
²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ 1 USCIS Policy Manual, Pt. C, Ch. 2(A); <https://www.uscis.gov/policy-manual/volume-1-part-c-chapter-2> (accessed Jun. 1, 2020). USCIS provides mobile biometrics services for certain individuals and does not collect biometrics from incarcerated individuals. Per an agreement with ICE, ICE Enforcement and Removal Operations takes the biometrics of individuals at DHS detention facilities who are applying for benefits with USCIS. See 1 USCIS Policy Manual, Pt. C, Ch. 2(B); <https://www.uscis.gov/policy-manual/volume-1-part-c-chapter-2> (accessed Jun. 1, 2020). Individuals residing abroad must report to a DHS-designated location to have their biometric information collected either electronically or by paper. See 8 C.F.R. § 103.16.

²¹⁷ "USCIS ELIS automatically places the benefit request in an adjudicator work queue after A-Number validation, completion of the biometric collections and background checks, and return of the background and security check results have occurred." DHS Privacy Impact Assessment, "USCIS Electronic Immigration System (USCIS ELIS)" (Dec. 3, 2018) p. 9; <https://www.dhs.gov/sites/default/files/publications/pia-uscis-elis056a-december2018.pdf> (accessed May 4, 2020).

Figure 3.2: Collaboration between BIO and DOJ in Civil Denaturalization Cases



Source: Information provided by USCIS (Apr. 22, 2020).

this information and would not know to explore possible ineligibilities in the adjudication.

In February 2019, BIO established Operation Prison Outlook, which reviewed the naturalization applications of naturalized citizens meeting the following criteria: convicted of certain sex offenses, naturalized more than 10 years ago, and currently in prison.²¹⁸ It reviewed these files because the individuals' criminal history may have rendered them ineligible to naturalize if the charge and conviction dates took place while their naturalization applications were pending. BIO identified 935 naturalized citizens who met these criteria, and thus far, have identified 27 as referrals to DOJ for denaturalization.²¹⁹

In general, BIO reviews the cases it receives on a first-in, first-out basis; however, it may prioritize cases with aggravating circumstances.²²⁰ Determining whether denaturalization is appropriate and will result in a successful prosecution involves a holistic, complex

analysis of facts, laws, and mitigating factors, which may include the individual's age, health, and time spent in the United States; and justifications for the apparent irregularities supporting the grounds for denaturalization.²²¹ The reviewer must have an in-depth understanding of naturalization and immigration benefits law to evaluate anew the individual's immigration history, taking into consideration the rules governing the admission of evidence in courts and the standard of burden of proof. During step two of the review process referenced in Figure 3.2 (*Collaboration between BIO and DOJ in Civil Denaturalization Cases*), an adjudicating officer reviews the individual's known immigration history from the beginning with an eye on the commission of immigration violations to support applicable revocation grounds. Evidence in support of each violation must meet the clear, unequivocal, and convincing standard for civil denaturalization proceedings.

²¹⁸ Information provided by USCIS (Apr. 22, 2020).

²¹⁹ *Id.*

²²⁰ Information provided by USCIS (May 7, 2020).

²²¹ Information provided by USCIS (Apr. 22, 2020) (Mitigating circumstances are rare, but BIO does look at the totality of the case, including whether the citizen is deceased and if one of the names used was a maiden name).

Depending on the revocation ground, state and federal criminal laws and scientific experts may also come into play. To prove the Operation Janus cases, for example, USCIS gathered evidence from ICE’s Homeland Security Investigations (HSI) laboratory and fingerprint experts to confirm the paper card and digital fingerprints belong to the same person.²²²

BIO must construct a legally sufficient Affidavit of Good Cause (AGC) DOJ can then use to secure a denaturalization order. Centralizing denaturalization cases at BIO and encouraging collaboration among adjudication officers, FDNS officers, and Office of the Chief Counsel (OCC) attorneys to share expertise and resources, streamlines the denaturalization review process and develops successful cases.²²³ Since DOJ’s success is partially dependent on the file it receives from USCIS, good communication and the exchange and incorporation of feedback between BIO and DOJ are essential. The case can move back and forth through the various steps, allowing for extensive collaboration.

Except in the Eastern District of New York, Southern District of New York, and for the most part in the Eastern District of Virginia, USAO delegates the responsibility to litigate the civil denaturalization cases to DOJ’s Office of Immigration Litigation (OIL) attorneys.²²⁴

Once the USAO has approved initiating judicial proceedings, the USAO or OIL notifies the impacted individual. Due to the resources expended in each proceeding, the government’s goal is to resolve cases as quickly as possible, either through settlement agreement in lieu of trial or summary judgment.²²⁵ According to USCIS, individuals in denaturalization proceedings often want a concession that DHS will not pursue removal proceedings against them or their spouses and/or children before signing a settlement agreement. Since ICE represents DHS in immigration court proceedings, it must agree in writing to a non-removal agreement.²²⁶ If a settlement cannot be reached, then DOJ will file a complaint with the U.S. district court.

According to USCIS, it is referring cases to DOJ faster than USAO/OIL can review them.²²⁷ Since FY 2017, when staff at the NBC were reviewing the cases referenced in the DHS OIG 2016 report, BIO has referred more cases to DOJ each subsequent year, from 19 referrals in FY 2017 up to 232 referrals in FY 2019 (12 times as many cases as the first year).²²⁸ In February 2020, OIL announced it was setting up a denaturalization section to “litigate the denaturalization of terrorists, war criminals, sex offenders, and other fraudsters,” which would join its District Court and Appellate Sections due to an anticipated increase in referrals from “law enforcement agencies.”²²⁹ USCIS is in communication with OIL in structuring the new section’s process to coordinate efforts, and it expects the new denaturalization section will narrow the gap between referred and court initiated cases.²³⁰

Initial Reactions of Effectiveness: Will Post-Adjudication Corrections Improve Integrity in the Process? As CUSA and Operation Janus have demonstrated, lack of fraud risk management on the front end of a process encourages further fraud. BIO’s review and referral process has potential to mitigate the mistakes that are not caught on the front end. By requiring factually solid, legally sufficient denaturalization cases that are more likely to result in a settlement or judge’s order in favor of the government, the process affords the agency an opportunity to analyze and learn from the files it reviews. This is true not just of the mistakes made that led to Operation Janus and similar cases, but any aspect of the case provides room for improvement to the process. According to USCIS,

USCIS expects it will continuously work to improve upon our processes and learn from the gaps that might be identified as we continue to work through this population of [denaturalization] cases. Ultimately, we expect closing the [biometric] gaps identified above and strengthening our screening and vetting processes will result in a decrease in the overall number of new cases referred for denaturalization.²³¹

USCIS invests a significant amount of time and human resources to denaturalization cases but it does not control

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.* According to the Office of the United States Attorneys website, there are 94 U.S. district courts. OUSA Webpage, “Introduction to the Federal Court System;” <https://www.justice.gov/usao/justice-101/federal-courts> (accessed May 6, 2020).

²²⁵ Information provided by USCIS (Apr. 22, 2020).

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ DOJ Webpage, “The Department of Justice Creates Section Dedicated to Denaturalization Cases” (Feb. 26, 2020); <https://www.justice.gov/opa/pr/department-justice-creates-section-dedicated-denaturalization-cases> (accessed Mar. 6, 2020).

²³⁰ Information provided by USCIS (Apr. 22, 2020).

²³¹ Information provided by USCIS (May 7, 2020).

the outcome and denaturalization may not result in the individual being removed from the United States. However, the agency may achieve improvements in the integrity of the naturalization process by being actively involved on the back end. According to USCIS,

Overall, USCIS is continuing to analyze and learn from the [BIO] population. While we are still early in our review and analysis of this population, we believe the actions USCIS has taken in the following areas will help avoid a repeat of the HFE population and prevent the naturalization of ineligible applicants:

- Increase in biometric collections for identity verification at various points in the immigration lifecycle;
- Enrollment of legacy INS, historical paper-based fingerprint records into the Automated Biometric Identification System (IDENT), a data system that is accessible across all DHS components and works with other federal agencies;
- Electronic collection of USCIS fingerprints as well as digital upload into IDENT; and
- Increased biometric-based screening and background checks to detect multiple identities and additional potentially derogatory information earlier in the adjudicative process.

In addition, USCIS continues efforts to increase access to law enforcement databases. If successful, this will allow USCIS to obtain real-time updates of an applicant's criminal history and ensure USCIS has current and complete criminal history record before completing its adjudication. If successful, this would also mitigate the need to pursue denaturalization on those who did not disclose their full criminal history during the naturalization process.²³²

Every problem faced by USCIS is an opportunity for it to develop efficiencies and revise its process and procedures to ensure the integrity of the immigration system. Denaturalization cases can shed light on how USCIS can get ahead of fraudsters and better identify and analyze an applicant's past actions to separate those considered not significant enough to justify initiating denaturalization.

CUSA and Operation Janus have taught USCIS that it is far easier, and less costly, to avoid mistakes and misunderstandings in the first place.

CONCLUSION AND RECOMMENDATIONS

Not ensuring the identity of individuals seeking immigration benefits, along with naturalizing LPRs before timely and fully completing each step of the adjudication process, has an adverse effect on the integrity of the immigration system and processing of benefits, and diverts resources that could otherwise be applied to more efficient administering of benefits for qualified applicants. BIO's augmented denaturalization review process has potential to identify fraud patterns and develop measures to prevent erroneous approvals, thereby diminishing resource expenditures dedicated to future denaturalization proceedings. At this time, the limited number of referrals that have resulted from BIO's denaturalization process are insufficient to make conclusions about its efficacy, much less its expandability to other adjudication processes. The Ombudsman will continue to monitor USCIS' denaturalization efforts and its impact on the naturalization process and on stakeholders.

The Ombudsman recommends that USCIS consider the following as it continues its review and revamping of the denaturalization review process:

1. **Inform the public of BIO's standards and review process.** If BIO is contributing to the integrity of and confidence in the naturalization process, inform the public about BIO's purpose and findings. Reassurances that BIO's workload is tied to eligibility to be a U.S. citizen and that it is being used to inform the adjudications process would significantly improve public faith in the program and bolster the arguments for continued efforts (and funding).
2. **Inform the public of the results BIO's denaturalization cases are having on fraud prevention, thereby mitigating the need to refer denaturalization cases to DOJ.** The denaturalization process enhances the integrity of the naturalization process. The public wants to know the process is being improved by BIO's efforts. USCIS should identify a way to capture BIO's impact on protecting the integrity of the naturalization process.

²³² *Id.*



The Challenge of Decreasing USCIS' Affirmative Asylum Backlog

Responsible Office: Refugee, Asylum and International Operations Directorate

KEY FACTS AND FINDINGS

- The USCIS Asylum Division oversees the affirmative asylum application process and conducts fear screenings for individuals apprehended at the U.S. border who are subject to expedited removal proceedings.
- Since 2014, fear screenings at the Southern border and affirmative asylum receipts have impacted the USCIS Asylum Division's ability to keep pace with its affirmative asylum backlog.
- USCIS has managed these obligations through staffing adjustments, policy updates and proposed regulations.

- Despite many efforts, the affirmative asylum inventory remains above 350,000 as of the publication of this Report.
- USCIS could publish processing times for long-pending asylum applications and could triage pending applications to determine ineligible cases.

BACKGROUND

Over the past decade, USCIS has attempted to keep pace with an historically high number of affirmative asylum applications, many filed by foreign nationals arriving at

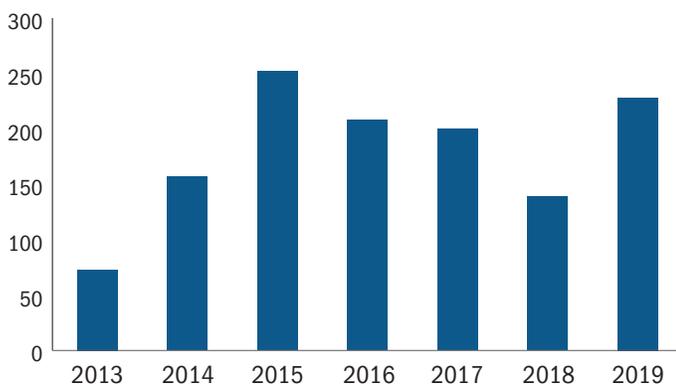
the Southern border of the United States from countries in Northern Central America. Limited available resources have hampered USCIS' ability to address its pending backlog, currently over 350,000.²³³ More recently, USCIS was forced to suspend all in-person asylum interviews due to the COVID-19 pandemic, further inhibiting the ability of the USCIS Asylum Division to keep pace with its inventory.²³⁴

USCIS has taken several steps to address the backlog, from adjusting its scheduling priorities, to reconfiguring regulatory requirements, to developing new operational procedures. These efforts focus on reducing the number of pending cases, along with narrowing the influx of affirmative asylum applications.

OMBUDSMAN WORK WITH AFFIRMATIVE ASYLUM

The Ombudsman's casework and stakeholder engagements have highlighted the need to review USCIS' affirmative asylum backlog. From 2013 to 2019, the Ombudsman's Office saw a 30 percent increase in case assistance requests for affirmative asylum applications. See Figure 4.1 (*Ombudsman Case Assistance Requests, Form I-589, Application for Asylum and for Withholding of Removal*).

Figure 4.1: Ombudsman Case Assistance Requests, Form I-589, Application for Asylum and for Withholding of Removal



Source: Ombudsman's Case Management System (Apr. 1, 2020).

²³³ Information provided by USCIS (Apr. 24, 2020).

²³⁴ USCIS Webpage, "USCIS Response to Coronavirus 2019 (COVID-19)" (Jun. 10, 2020); <https://www.uscis.gov/about-us/uscis-response-coronavirus-2019-covid-19> (accessed Jun. 16, 2020). Beginning June 4, 2020, USCIS field offices and asylum offices started to resume non-emergency face-to-face services to the public. Applications Support Centers (ASC) will resume services at a future date.

Despite USCIS' adoption of a national interview scheduling priority, both legal representatives and individuals have expressed to the Ombudsman that highly variable and unpredictable processing times for pending applications between asylum offices has made it difficult to determine when USCIS might schedule an applicant for an interview and to plan accordingly. Stakeholders have suggested that USCIS resume using national and local engagement and outreach mechanisms to explain agency policies and programmatic changes that could affect processing times.²³⁵

Additionally, the Ombudsman's Office received numerous stakeholder inquiries surrounding USCIS' plans to leverage its skilled workforce in lieu of conducting in-person interviews during the COVID-19 pandemic. The Ombudsman's Office is accordingly reviewing USCIS' affirmative asylum backlog to assess how the agency can reduce the time it takes to address long-pending affirmative asylum applications while supporting the administration of U.S. immigration laws and treaty obligations.

1. A Brief Overview of U.S. Asylum Processing

U.S. immigration law allows a foreign national to seek asylum using three pathways: affirmative filing, defensive filing, and expedited removal/credible and reasonable fear interviews.

Affirmative Asylum. If already in the United States and not in immigration removal proceedings, the foreign national may affirmatively apply for asylum with USCIS.²³⁶ The foreign national files with USCIS the Form I-589, *Application for Asylum or Withholding of Removal*, along with supporting evidence.²³⁷ There is currently no fee for this application.²³⁸ USCIS reviews the application, collects and processes biometrics, and conducts an interview.

Currently, USCIS does not post processing times for scheduling or issuing decisions on affirmative asylum applications.²³⁹ Those wanting to learn the processing time

²³⁵ Various stakeholder meetings with the Ombudsman's Office (May 2020).

²³⁶ 8 C.F.R. § 208.2.

²³⁷ USCIS Webpage, "I-589, Application for Asylum and for Withholding of Removal" (Feb. 14, 2020); <https://www.uscis.gov/i-589> (accessed May 6, 2020).

²³⁸ DHS proposed rule, "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. 62280, 62318–62319 (Nov. 14, 2019) would add a \$50 fee to affirmative asylum applications.

²³⁹ For most form types, USCIS publishes processing times on its website. See USCIS Webpage, "Check Case Processing Times," <https://egov.uscis.gov/processing-times/> (accessed May 15, 2020).

for an affirmative asylum case are directed to a USCIS Affirmative Asylum Interview Scheduling webpage.²⁴⁰

Following the asylum interview and a final background check, if the applicant meets the statutory requirements and is found to be credible, the asylum officer may grant asylum. If the applicant has not met the statutory requirements and is not lawfully in the United States, the asylum officer refers the case to the EOIR at the DOJ for removal or deportation proceedings.²⁴¹ If the case is referred to an immigration judge, the applicant may submit a new asylum application for the judge to review.²⁴²

Defensive Asylum. If the foreign national is apprehended within the United States and placed in removal proceedings, he or she may file an asylum application defensively with the immigration court if not subject to expedited removal as described further below.²⁴³ The same USCIS form and filing process is used, but USCIS has no review of the defensive application. The immigration judge makes the determination on whether the applicant is granted asylum.

Expedited Removal and Credible/Reasonable Fear Screening. If the foreign national is apprehended by CBP or by ICE without proper documentation of admissibility and cannot demonstrate they have been in the United States for at least 2 years, the options are limited to those available in expedited removal proceedings, an administrative process that does not include a hearing before an immigration judge.²⁴⁴ When an apprehended alien says that he or she fears returning to his or her home country, they are given 48 hours to rest, provided an opportunity to contact a legal representative, and otherwise prepare before USCIS conducts either a credible, or reasonable fear screening.²⁴⁵

²⁴⁰ USCIS Webpage, “Affirmative Asylum Interview Scheduling” (Jan. 26, 2018); <https://www.uscis.gov/affirmative-asylum-scheduling> (accessed May 12, 2020).

²⁴¹ 8 C.F.R. § 208.2.

²⁴² 8 C.F.R. § 208.14 and 208.19. If the applicant has valid legal status in the United States but is found ineligible for asylum, USCIS will issue a final denial decision and does not refer the case to EOIR.

²⁴³ 8 C.F.R. § 208.2.

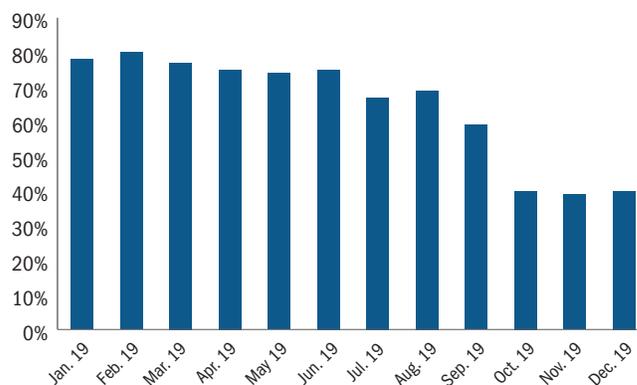
²⁴⁴ See INA § 235; 8 U.S.C. § 1235.3(b). As of July 23, 2019, DHS exercised the “remaining scope of its statutory authority to place in expedited removal with limited exceptions” those apprehended without authorization within U.S. borders, or who have committed fraud or misrepresentation, who have not been admitted or paroled and who are unable to show that they have been physically present for 2 years. “Designating Aliens for Expedited Removal,” 84 Fed. Reg. 35409 (Jul. 22, 2019). This applies to individuals arriving at a port of entry who are inadmissible due to fraud or misrepresentation (INA § 212(a)(6)(C)) or who lack proper entry documents (INA § 212(a)(7)).

²⁴⁵ See 8 C.F.R. § 208.30(f) and (g), 208.31(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 2, 2020).

Both screenings must be conducted in “a non-adversarial manner, separate and apart from the general public.”²⁴⁶

An alien who has never before been removed from the United States who is placed in expedited removal proceedings receives what is referred to as a credible fear screening.²⁴⁷ The asylum officer determines whether there is a “significant possibility” the person will establish eligibility for asylum or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).²⁴⁸ If the asylum officer makes a positive finding, the case is referred to an immigration judge and the individual can apply for asylum in the removal hearing. The average monthly positive rate for credible fear determinations for Calendar Year (CY) 2019 was decreasing from around 80 percent to approximately 40 percent. See Figure 4.2 (*USCIS Credible Fear Positive Findings*).²⁴⁹

Figure 4.2: USCIS Credible Fear Positive Findings



Source: Information provided by USCIS (Apr. 6, 2020).

²⁴⁶ 8 C.F.R. § 208.30(d) and 208.31(c).

²⁴⁷ INA § 235(b)(1)(B)(ii); 8 U.S.C. § 1225(b)(1)(B)(ii).

²⁴⁸ INA § 235(b)(1)(B)(v); 8 U.S.C. § 1225(b)(1)(B)(v); “The term “credible fear of persecution” means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title;” 8 C.F.R. § 208.30(e)(2). See *UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85; <https://www.refworld.org/docid/3ae6b3a94.html> (accessed Jun. 16, 2020).

²⁴⁹ See USCIS Webpages, “Semi-Monthly Credible-Fear and Reasonable Fear Receipts and Decisions” (undated); <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/semi-monthly-credible-fear-and-reasonable-fear-receipts-and-decisions> (accessed May 26, 2020) and “Credible Fear Workload Report Summary: June 2019” (Jan 14, 2020); https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/Credible_Fear_Stats_FY2019_thru_June.pdf (accessed May 26, 2020).

An alien who has been previously removed from the United States or granted voluntary departure and unlawfully reentered the United States receives a reasonable fear screening because they are not eligible to apply for asylum.²⁵⁰ The asylum officer determines whether the person has a “reasonable fear of persecution or torture” if returned to his or her home country. A positive determination allows the person to request relief, such as withholding of removal or, in some cases, relief under the CAT, before an immigration judge.²⁵¹

In both scenarios, if the alien receives a negative decision from the asylum officer, he or she may still request that an immigration judge review the negative credible or reasonable fear determination.²⁵² If the immigration judge concurs in the negative credible fear finding, ICE will move forward with removal from the United States. If the judge makes a positive credible or reasonable fear determination finding, the individual has an opportunity to seek relief before the immigration judge.²⁵³

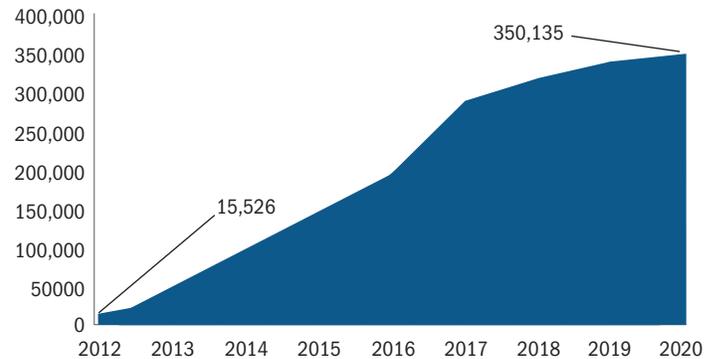
All three pathways to asylum have experienced fluctuation in filing volume and pending backlogs throughout the years. DHS has successfully addressed significant backlogs in the past.²⁵⁴ However, DHS appears to face novel challenges due to filing surges and policy and program changes that have expanded backlogs at USCIS and EOIR.²⁵⁵ Reliable solutions from the past might not solve the many challenges DHS is facing today.

2. The Origins of the Affirmative Asylum Backlog

There are many reasons why USCIS’ affirmative asylum backlog has grown to over 350,000 cases waiting disposition.²⁵⁶ See Figure 4.3 (*USCIS Affirmative Asylum Backlog*). From increased filing receipts to hiring limitations and other operational imperatives, accruing a

large backlog may have been unavoidable.²⁵⁷ While there is no single reason, several factors played a significant role to bring the agency to its current backlog numbers.

Figure 4.3: USCIS Affirmative Asylum Backlog



Source: USCIS Data, Affirmative Asylum Statistics from 2012 to 2019. 2020 information (through April) provided by USCIS (Apr. 24, 2020). As of April 3, 2020, the Asylum Division had 350,135 affirmative asylum cases pending final decision.

Migration Surge and the Fear Screening Process. Since FY 2012, USCIS resources, along with those of other DHS components, have been substantially taxed due to a surge of foreign nationals attempting to enter the United States at and between ports of entry who, once apprehended, express a fear of returning to their home countries, thereby warranting a fear screening. Total apprehensions of inadmissible aliens at the Southern border, after reaching an all-time high of 1.6 million in FY 2000, rose again from 444,859 in FY 2015 to 977,509 in FY 2019.²⁵⁸

There are various push and pull factors for the surge, from economic opportunities and family connections in the United States, to poor socioeconomic conditions, gang violence and/or persecution in the country of origin. The motives to migrate are often mixed; some claims may

²⁵⁰ 8 C.F.R. § 241.8; 8 U.S.C. § 1231(a)(5).

²⁵¹ 8 C.F.R. § 208.31(e).

²⁵² 8 C.F.R. § 208.30(g) and 208.31(g).

²⁵³ 8 C.F.R. § 208.31(g).

²⁵⁴ See USCIS Webpage, “Backlog Elimination,” which provides reports to Congress on how USCIS addressed its backlogs in 2006; <https://www.uscis.gov/tools/reports-studies/backlog-elimination> (accessed May 6, 2020).

²⁵⁵ As of October 2019, EOIR reported having 986,274 pending cases on its docket; not all are defensive asylum applications but involve all reasons for removal. See “Executive Office for Immigration Review Adjudication Statistics, Pending Cases” (Oct. 7, 2019); <https://www.uscis.gov/tools/reports-studies/backlog-elimination> (accessed May 6, 2020).

²⁵⁶ Information provided by USCIS (Apr. 24, 2020).

²⁵⁷ USCIS has not always defined its backlog in a way that includes its entire inventory. In 2006, USCIS defined the asylum backlog as the number of cases remaining after subtracting an average of 6 months’ production from the total number of cases pending. “USCIS Backlog Elimination Plan Update, FY2006 Third Quarter,” p. 1 (Dec. 11, 2006); https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/backlog_FY06Q3.pdf (accessed May 4, 2020).

²⁵⁸ Audrey Singer and William A. Kandel, Congressional Research Service, “Immigration: Recent Apprehension Trends at the U.S. Southwest Border,” p. 5 (Nov. 19, 2019); <https://fas.org/sgp/crs/homesecc/R46012.pdf> (accessed Jun. 9, 2020). See also Congressional Research Service, “Central American Immigration: Root Causes and U.S. Policy,” p. 1 (Jun. 13, 2019); <https://fas.org/sgp/crs/row/IF11151.pdf> (accessed Jun. 2, 2020).

qualify an alien for asylum, many others do not.²⁵⁹ As the former Acting Secretary testified, smugglers, exploiting “the low credible fear threshold,” have counseled aliens to express a fear of persecution “knowing that they will be processed and released with a court date years in the future.”²⁶⁰ DHS has had to manage staggering increases in fear screening requests at the Southern border, irrespective of the legitimacy of the intent behind the request.

The fear screening exists to ensure that those who may be subject to persecution in their home countries are not refouled or forced to return.²⁶¹ Aliens who express fear but have no intention to file for asylum or do not fear persecution in their home country are not the intended beneficiaries of the law.²⁶² According to DOJ, over the past 11 years (2008–2019), while 81 percent of credible fear screenings have been referred to the immigration court, only 54 percent of those referrals actually file for asylum with the court.²⁶³ Former Acting Secretary McAleenan noted that those who exploit this process “deprive those who actually qualify for asylum the humanitarian protection they deserve.”²⁶⁴ At this time, there is little procedural means of separating “exploitive” versus “legitimate” fear screenings. In expedited removal proceedings, the law requires that in the case of a person

who “indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B),” and USCIS must therefore conduct those screenings.²⁶⁵ All fear screenings at the Southern border, whether legitimate or not, impact USCIS’ available resources and inhibit the agency’s ability to reduce the affirmative asylum backlog.

Exponential Growth in USCIS Affirmative Asylum Receipts. Starting in 2014, USCIS saw a surge in affirmative asylum filings. In 2012, the Asylum Division received approximately 3,000 applications per month. By FY 2014, that number doubled, reaching 6,000 filings per month and steadily grew until the peak in March 2017.²⁶⁶ Following the peak, affirmative asylum filings with USCIS decreased by 25 percent from an estimated 139,800 applications in FY 2017 to 105,500 in 2018.²⁶⁷ See Figure 4.4 (*USCIS Affirmative Asylum Applications Filed*).

During this same timeframe, CBP reported a surge in unaccompanied alien children (UAC) entering the United States.²⁶⁸ UACs are legally eligible to first file for asylum with USCIS, despite being in removal proceedings with DOJ.²⁶⁹ UACs file the majority of affirmative asylum applications from the Northern Central American

²⁵⁹ See Audrey Singer and William A. Kandel, Congressional Research Service, “Immigration: Recent Apprehension Trends at the U.S. Southwest Border,” p. 1 (Nov. 19, 2019); <https://fas.org/sgp/crs/homsec/R46012.pdf> (accessed Jun. 2, 2020).

²⁶⁰ “The Trump Administration’s Child Separation Policy: Substantiated Allegations of Mistreatment” before the U.S. House of Representatives Committee on Oversight and Reform, 116th Cong. 1st Sess. p. 8 (2019) (testimony of Kevin K. McAleenan, Acting Secretary, U.S. Department of Homeland Security); <https://docs.house.gov/meetings/GO/GO00/20190718/109813/HHRG-116-GO00-Wstate-McAleenanK-20190718.pdf> (accessed May 28, 2020).

²⁶¹ INA § 235(b)(1)(A)(ii); 8 U.S.C. § 1225(b)(1)(A)(ii).

²⁶² See INA § 235(b)(1)(A)(ii): “If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).” See also Human Rights First, “Credible Fear: A Screening Mechanism in Expedited Removal,” (Feb. 2018); https://www.humanrightsfirst.org/sites/default/files/Credible_Fear_Feb_2018.pdf (accessed May 29, 2020).

²⁶³ DOJ EOIR, “Credible Fear and Asylum Process: Fiscal Year (FY) 2008-2019 (Oct. 23, 2019); <https://www.justice.gov/eoir/file/1216991/download> (accessed May 28, 2020).

²⁶⁴ “The Trump Administration’s Child Separation Policy: Substantiated Allegations of Mistreatment” before the U.S. House of Representatives Committee on Oversight and Reform. 5 (2019) (testimony of Kevin K. McAleenan, Acting Secretary, U.S. Department of Homeland Security); <https://docs.house.gov/meetings/GO/GO00/20190718/109813/HHRG-116-GO00-Wstate-McAleenanK-20190718.pdf> (accessed May 28, 2020).

²⁶⁵ INA § 235(b)(1)(A)(ii); 8 U.S.C. § 1225(b)(1)(A)(ii).

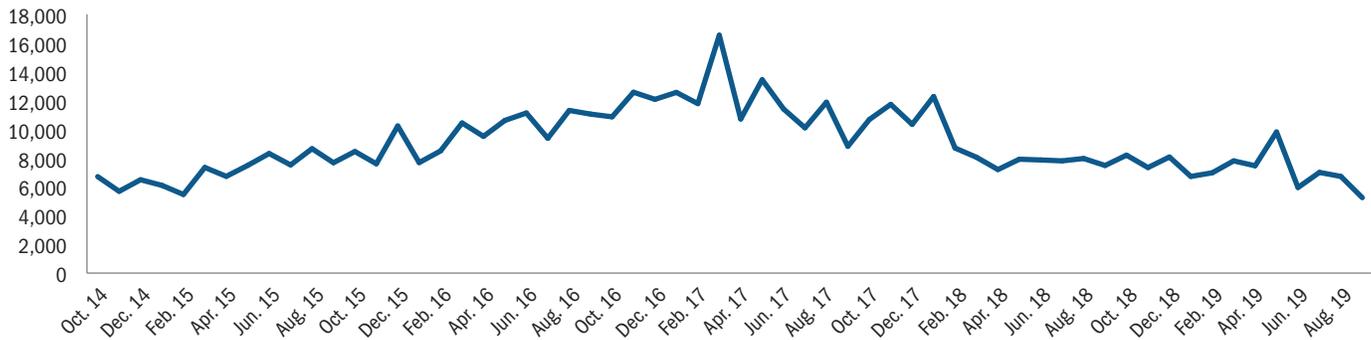
²⁶⁶ USCIS Webpage, “Affirmative Asylum Statistics: July, August and September 2014,” Jun. 30, 2015; https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_Affirmative_Asylum_July_August_September_2014.pdf (accessed Apr. 10, 2020).

²⁶⁷ Nadwa Mossaad, DHS Office of Immigration Statistics, “Refugees and Asylees: 2018,” Annual Flow Report, p. 6 (Oct. 2019); https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/refugees_asylees_2018.pdf (accessed Jun. 2, 2020). Venezuelan applications continued to rise making up a quarter of total applications in 2018, while applications from Chinese nationals decreased sharply by 52 percent. The number of affirmative asylum applications filed by individuals from Northern Central America (El Salvador, Guatemala, and Honduras) fell by 19 percent in 2018 from a record high of 31,100 applications in 2017.

²⁶⁸ CBP Webpage, “U.S. Border Patrol Southwest Border Unaccompanied Alien Children Encounters by Country” (May 7, 2020); <https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions> (accessed May 28, 2020). DOJ EOIR also reported that its UAC docket went from 3,188 cases pending in 2008 to 95,807 pending cases in 2020, Q2. See EOIR Adjudication Statistics “Pending Unaccompanied Alien Child (UAC) Cases” (Apr. 15, 2020); <https://www.justice.gov/eoir/page/file/1060871/download> (accessed May 29, 2020).

²⁶⁹ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, §§ Pub. L. No. 110-457; *U.S. Statutes at Large* 122 (2008): 5044; See also USCIS Policy Update, “Updates on Determining Jurisdiction of Asylum Claims from Unaccompanied Alien Children (UACs)” (May 31, 2019); https://www.uscis.gov/sites/default/files/USCIS/Refugee%2C%20Asylum%2C%20and%20Int%27I%20Ops/Asylum/Webpage_update_UAC_Application.pdf (accessed May 29, 2020).

Figure 4.4: USCIS Affirmative Asylum Applications Filed



Source: USCIS Immigration Data on Affirmative Asylum Filings (Oct. 2014-Aug. 2019).

countries, making up 56 percent in 2016 and 2017 and 60 percent in 2018.²⁷⁰ This factor, along with the general surge in illegal migration on the Southern border, added to the receipts each fiscal year, and caused an exponential growth in pending caseload from 11,000 in 2012 to nearly 350,000 in 2020.²⁷¹ See Figure 4.3 (*Affirmative Asylum Backlog*).

USCIS Asylum Division Staffing Challenges. The USCIS Asylum Division has struggled to maintain a workforce equipped to meet the surge of incoming receipts. To start, like many government agencies, USCIS cannot easily respond to changes in staffing demands. USCIS uses Staffing Allocation Models (SAM),²⁷² or staffing projections, throughout its directorates to determine staffing needed to maintain its processing goals. USCIS Refugee, Asylum and International Operations Directorate’s (RAIO) headquarters works with local asylum offices to coordinate volume projections and the number of staff needed to meet production goals.²⁷³ Each asylum office receives its staffing allocations at the start of the fiscal year and must work within those allocations to try to meet its performance goals. Once the staffing numbers are set for each fiscal year, each asylum office

²⁷⁰ Nadwa Mossaad, DHS Office of Immigration Statistics, “Refugees and Asylees: 2018,” Annual Flow Report, p. 6 (October 2019); https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/refugees_asylees_2018.pdf (accessed Jun. 2, 2020).

²⁷¹ Information provided by USCIS (Apr. 24, 2020).

²⁷² “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration and Benefit Request Requirements” 84 Fed. Reg. 62280, 62286 (Nov. 14, 2019). As mentioned *supra* the Staffing Allocation Model is a Microsoft Excel-based workforce planning tool that estimates the staffing requirements necessary to adjudicate workload receipt (for example, applications and petitions) forecasts at target processing times.

²⁷³ Information provided by USCIS (Apr. 20, 2020).

is free to manage its resources, but the allocations do not deviate.²⁷⁴ If projections do not accurately account for filing surges or new DHS programs, the asylum offices cannot keep up with the work.

Once the resources are distributed, a second challenge arises with onboarding and training a productive workforce. In recent years, USCIS has more than doubled its onboarded staff from 349 asylum officers in FY 2015 to 866 today.²⁷⁵ See Figure 4.5 (*USCIS Asylum Division—Historic Hiring*). However, it takes a minimum of 6 months on the job for an asylum officer to become proficient enough to adjudicate asylum applications at the expected pace.²⁷⁶ Additionally, between FY 2016 to FY 2019, the Asylum Division has needed to temporarily assign on average 475 asylum officers each year in response to other program needs within USCIS, including, among other things, the operational and legal imperative to conduct fear screenings at the border. All these factors have impacted USCIS’ ability to address its affirmative asylum backlog.

Additional DHS Programs Obligating USCIS Asylum Division Resources. To address the migration surge on the Southern border, DHS crafted various strategies that required the participation and assistance of USCIS asylum officers to conduct fear screenings. These obligations resulted in temporary assignments to the border, as well as virtual assignments from local USCIS asylum offices. From FY 2015 to present, USCIS used asylum staff to fill 1,882 temporary assignments (rotations) to the border

²⁷⁴ *Id.*

²⁷⁵ Information provided by USCIS (Apr. 24, 2020).

²⁷⁶ Information provided by USCIS (Apr. 22, 2020).

Figure 4.5: USCIS Asylum Division—Historic Hiring

Staffing Category	2015	2016	2017	2018	2019	2020
Federal Employees (starting)	1,037	1,153	1,449	1,612	1,637	1,710
All Staff Onboard	726	989	1,052	1,122	1,373	1,684
Federal Employees Asylum Officers (starting)	425	533	625	686	686	769
Asylum Officers Onboard	349	500	546	542	552	866
Staff Growth	285	116	296	163	25	73
Staff Growth (Asylum Officers)	52	108	92	61	0	83
USCIS Details to Asylum	45	12	15	81	193	171
Asylum Staff Temporarily Assigned to USCIS (RAD)	0	200 TDYs	42 TDYs	0	0	0
Asylum Staff Temporarily Assigned to the Border	45	444	311	498	406	178

Source: Information provided by USCIS (Apr. 6, 2020).

for credible fear and reasonable fear screenings.²⁷⁷ This resulted in a decline in the number of new affirmative asylum cases being processed by the asylum offices.

Migrant Protection Protocols. In January 2019, DHS initiated the Migrant Protection Protocols (MPP), which allows DHS to return a third-country asylum seeker to Mexico while awaiting expedited removal proceedings. DHS instituted MPP in response to the shifting demographics of the apprehensions of those seeking to unlawfully enter the United States.²⁷⁸ In FY 2009, 91 percent of those apprehended were Mexican nationals; by FY 2019 that number had dropped to 19 percent. At the same time, individuals apprehended from the Northern Central American countries rose to over 70 percent.²⁷⁹

DHS implemented MPP to “help restore a safe and orderly immigration process, decrease the number of those taking advantage of the immigration system, and the ability of smugglers and traffickers to prey on vulnerable populations,

²⁷⁷ Information provided by USCIS (Apr. 24, 2020). The short-term nature of these assignments explains why their number exceeds the number of available staff to fill them.

²⁷⁸ DHS Document, “Assessment of the Migrant Protection Protocols (MPP),” p. 1 (Oct. 28, 2019); https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf (accessed Apr. 9, 2020). See also DHS Press Release, “Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration” (Dec. 20, 2018); <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration> (accessed May 27, 2020). See also DHS Press Release, “Migrant Protection Protocols” (Jan. 24, 2019); <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols> (accessed May 27, 2020). See also INA § 235(b)(2)(C).

²⁷⁹ Information provided by the DHS Office of Information Statistics (Jun. 4, 2020).

and reduce threats to life, national security, and public safety, while ensuring that vulnerable populations receive the protections they need.”²⁸⁰ A CBP officer controls the majority of the MPP review. If the person affirmatively asserts a fear of returning to Mexico, the CBP officer must consider taking the foreign national out of the MPP program.²⁸¹ Once this happens, the CBP officer must refer the person to a USCIS asylum officer for a fear assessment screening. If the asylum officer assesses that the person is “more likely than not” to face persecution or torture in Mexico, the individual may not be processed for MPP.²⁸² CBP officers retain all existing discretion to process the person for any other available disposition, including expedited removal, issuance of Form I-862, *Notice to Appear*, review of waivers, or requests for parole.²⁸³

By October 2019, USCIS had completed over 7,400 MPP fear assessments.²⁸⁴ Of those, approximately 13 percent received positive fear screening determinations, meaning they successfully demonstrated a fear of returning to

²⁸⁰ DHS Press Release, “Migrant Protection Protocols” (Jan. 24, 2019); <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols> (accessed May 27, 2020).

²⁸¹ CBP Document, “MPP Guiding Principles,” p. 1 (Jan. 28, 2019); <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf> (accessed Apr. 9, 2020).

²⁸² *Id.*

²⁸³ *Id.* p. 2.

²⁸⁴ DHS Document, “Assessment of the Migrant Protection Protocols (MPP)” p. 5 (Oct. 28, 2019); https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf (accessed Apr. 9, 2020).

Mexico to await their immigration proceedings.²⁸⁵ During that same timeframe, DHS had returned more than 55,000 persons claiming asylum and others to Mexico to await asylum hearings.²⁸⁶

COVID-19 and the Suspension of In-Person Interviews.

On March 18, 2020, USCIS suspended routine in-person services to help slow the spread of COVID-19. This included USCIS asylum offices and ASCs used for collecting biometrics. On average, USCIS asylum offices conduct between 2,000 to 4,500 interviews a month; these interviews were not taking place during the period the offices remained closed.

As this Report was being finalized, USCIS began reopening its offices on June 4, 2020, as part of a staggered reopening plan.²⁸⁷ At a minimum, USCIS lost the ability to conduct at least 4,000 and perhaps as many as 12,000 asylum interviews. USCIS is reopening its offices in a gradual and measured way, resulting in fewer interviews. USCIS asylum offices face another challenge with COVID-19 on how to address the pending backlog, especially in light of thousands of missed interviews and reduced capacity for the foreseeable future.

Additionally, USCIS recently proposed a request to Congress for a \$1.2 billion appropriation to assist in covering the losses in application filings.²⁸⁸ “Given the unprecedented nature of the global pandemic, there is no historical data that can be used to project the scope and

²⁸⁵ *Id.*

²⁸⁶ DHS Document “Assessment of the Migration Protection Protocols (MPP)” p. 2 (Oct. 28, 2019); https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf (accessed May 5, 2020). The U.S. Supreme Court recently issued a stay of a preliminary injunction granted by the Northern District of California. *Innovation Law Labs, et al v. Nielsen*, 3:19-cv-0087 (N.D. Cal. Feb. 14, 2019). On June 16, 2020, DHS and DOJ announced the postponement of MPP hearings and in-person document service through, and including, July 17, 2020. When conditions are deemed safe, the Departments will provide notice 15 days prior to resumption with additional, location-specific information. Individuals should continue to check on case status in English and Spanish by calling the Automated Case Information Hotline at 1-800-898-7180 or visiting the EOIR Automated Case Information portal. See DHS Webpage, “Joint DHS/EOIR Statement on MPP Rescheduling” (Jun. 16, 2020); <https://www.dhs.gov/news/2020/06/16/joint-dhseoir-statement-mpp-rescheduling> (accessed Jun. 22, 2020).

²⁸⁷ USCIS Webpage, “USCIS Response to COVID-19” (May 7, 2020); <https://www.uscis.gov/about-us/uscis-response-covid-19> (accessed May 6, 2020).

²⁸⁸ Eric Katz, “Employees Concerned After Agency Threatens Furloughs Over Budget Shortfall” (May 22, 2020); <https://www.govexec.com/pay-benefits/2020/05/employees-concerned-after-agency-threatens-furloughs-over-budget-shortfall/165615/> (accessed May 27, 2020). See also USCIS Webpage, “Deputy Director for Policy Statement on USCIS’ Fiscal Outlook” (Jun. 25, 2020); <https://www.uscis.gov/news/news-releases/deputy-director-policy-statement-uscis-fiscal-outlook> (accessed Jun. 28, 2020).

duration of COVID-19’s impact on USCIS’ revenue,” USCIS’ Deputy Director for Policy was reported to have written in an email to employees. “USCIS will exhaust its funding this summer, and without congressional intervention, we risk not being able to make payroll and will have to take drastic actions to keep the agency afloat.”²⁸⁹ How this will impact USCIS’ ability to address the asylum backlog is unclear at this time, but will certainly diminish operations.

Collectively, these events, both predictable and unpredictable, have impacted USCIS’ ability to reduce its pending affirmative asylum backlog.²⁹⁰

3. Measures Taken to Address the Backlog and Reduce Processing Delays

The stress placed on the U.S. immigration system by the surging number of asylum claims is multi-faceted and has accordingly called for a multi-faceted approach to deal with it. Over the last few years, USCIS has taken several measures to address its backlog, which has reduced incoming receipts but not the number of pending cases. See Figures 4.3 and 4.4 above.²⁹¹ From changing how it schedules interviews, to lifting hiring freezes, to amending regulations and processes to mitigate incentives to file a *pro forma* Form I-589, DHS has made substantial efforts to clear the path to reduce its pending affirmative backlog.

LIFO Processing. To “stem the growth of the agency’s asylum backlog” and “deter those who might try to use the existing backlog as a means to obtain employment authorization,” USCIS in January 2018 returned to the “Last-in, First-out” (LIFO) workflow process that had been in place for nearly 20 years from 1995 to 2014.²⁹² The agency explained that LIFO processing would “allow USCIS to identify frivolous, fraudulent or otherwise non-meritorious asylum claims earlier and place those individuals into immigration proceedings.”²⁹³ The now-operative LIFO scheduling methodology (which replaced

²⁸⁹ *Id.*

²⁹⁰ At present, this office lacks sufficient information to report on pilot screening programs instituted in the fall of 2019 and known as “Prompt Asylum Screening Review” (PASR) or “Prompt Asylum Case Review” (PACR) and “Humanitarian Asylum Review Process” (HARP). They may be the topic of future study.

²⁹¹ End of Fiscal Year asylum data posted on USCIS Webpage, “Immigration and Citizenship Data;” <https://www.uscis.gov/tools/reports-studies/immigration-forms-data> (accessed May 6, 2020).

²⁹² USCIS Press Release, “USCIS to Take Action to Address Asylum Backlog” (Jan. 31, 2018); <https://www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog> (accessed Jun. 8, 2020).

²⁹³ *Id.*

the “First-in, First-out” method used from 2014 to 2018, a period in which the backlog increased approximately 450 percent) prioritizes newly-filed applications and maintains the statutory requirement of an interview (in the absence of exceptional circumstances) within 45 days of filing an application.²⁹⁴ With the return to LIFO scheduling, USCIS also started scheduling asylum interviews using the following order of priority for those cases that fall under the jurisdiction of the nine primary asylum office locations:

First Priority: Rescheduled interviews.²⁹⁵ 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.²⁹⁶

Third Priority: All other pending affirmative asylum applications are scheduled for interviews starting with newer filings and working back toward older filings.²⁹⁷

Fourth Priority: All pending affirmative asylum applications that are over 100 days old.²⁹⁸

Cases subject to interviews at “circuit ride” locations (generally a USCIS field office situated closer than the asylum office to an applicant’s residence) do not fall under the Second Priority’s 21-day time frame. Rather, the Asylum Division schedules these cases for interviews as resources permit.²⁹⁹ Additionally, asylum offices accept expedite requests for emergency situations.³⁰⁰

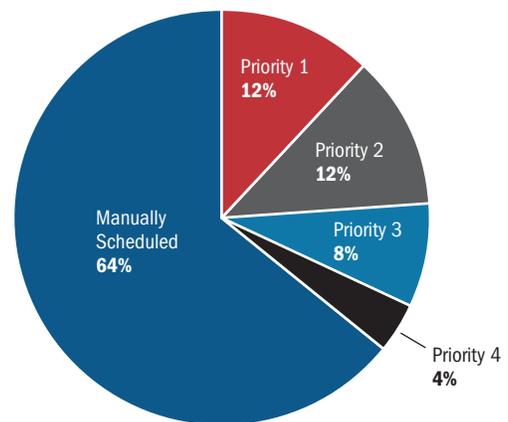
These priorities are automatically calculated in the Asylum Division’s case management system when scheduling affirmative asylum interviews. According to USCIS, most interview slots are taken by the first and second priorities, giving little movement to the Third Priority and older cases.³⁰¹

From FY 2015 to FY 2020, Quarter 2, USCIS reduced the average time it took from the occurrence of an interview

to issuing a decision. In FY 2015, USCIS asylum offices averaged 82 days from conducting an interview to completing an asylum application. In FY 2018, when USCIS instituted the LIFO processing, interview to completion time dropped from 74 days to 46 days. In FY 2020, completions were averaging 18 days.³⁰²

In November 2018, the Asylum Division started using Global, a cloud-based case management system to track priorities for interview assignments. The Asylum Division, however, still manually schedules most of its interviews without tracking the priority category. See Figure 4.6 (*USCIS Affirmative Asylum Interview Scheduling*).³⁰³

Figure 4.6: USCIS Affirmative Asylum Interview Scheduling



Source: Information provided by USCIS (Apr. 6 and May 12, 2020).

Expanded Hiring Opportunities for the USCIS Asylum Division. USCIS has exercised every opportunity to hire new asylum officers. Routinely exempt from agency-wide hiring freezes,³⁰⁴ the Asylum Division has more than doubled its staffing allocations from 2012 to 2020. See Figure 4.5 (*USCIS Asylum Division—Historic Hiring*). USCIS has allowed each asylum office to prioritize its workforce, leverage skillsets and strategize

²⁹⁴ INA § 208(d)(5); 8 U.S.C. § 1158(d)(5)(A)(ii).

²⁹⁵ USCIS Webpage, “Affirmative Asylum Interview Scheduling” (Jan. 26, 2018); <https://www.uscis.gov/affirmative-asylum-scheduling> (accessed Apr. 9, 2020).

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ Information provided by USCIS (Apr. 24, 2020).

²⁹⁹ USCIS Webpage, “Affirmative Asylum Interview Scheduling” (Jan. 26, 2018); <https://www.uscis.gov/affirmative-asylum-scheduling> (accessed Apr. 9, 2020).

³⁰⁰ Information provided by USCIS (Apr. 23, 2020).

³⁰¹ Information provided by USCIS (Apr. 24, 2020).

³⁰² *Id.*

³⁰³ *Id.* For background on Global, See “Privacy Impact Assessment Update for the USCIS Asylum Division DHS/USCIS/PIA-027(d)” (Sept. 27, 2018); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-asylum-september2018.pdf> (accessed Jun. 10, 2020).

³⁰⁴ Eric Katz, “Trump Freezes Hiring for Immigrant Services” (Feb. 24, 2020); <https://www.govexec.com/workforce/2020/02/trump-freezes-hiring-immigrant-services/163282/> (accessed Apr. 9, 2020). USCIS recently implemented an agency-wide hiring freeze that did not exempt the Asylum Division. This announcement was based on a severe deficit in collected fees due to a decline in receipts.

on how best to attend to its workload.³⁰⁵ Nevertheless, these hiring increases have not been sufficient to reduce the number of pending affirmative asylum applications. The overwhelming demand on the Asylum Division from the surge in new asylum cases has swallowed any added benefits USCIS' hiring and strategic workforce management could have made in reducing the backlog.

USCIS Asylum Vetting Center. The Ombudsman's 2019 Annual Report provided a comprehensive review of USCIS' Asylum Vetting Center (AVC).³⁰⁶ The AVC will eventually perform as the receipting center for all affirmative I-589 filings, replacing the Nebraska Service Center (NSC) in that capacity. Its functions will include:

- Responsibility for pre-screening all new asylum filings for public safety and national security threats;
- Support for large-scale national fraud investigations, scanning and using technology to review text analytics data from asylum filings to identify national fraud trends and patterns; and
- Coordination of national backlog reduction efforts, centralizing management of all files for backlogged cases, distribution of cases and review of post-adjudication asylum termination requests and establishing a timely records distribution system to support improved asylum field office adjudication efficiencies.³⁰⁷

The full functioning of the AVC has not been achieved due to construction delays for its physical premises.³⁰⁸ The AVC will lift much of the administrative burden from asylum officers, giving them more time to focus on adjudicating the merits of each application. These advancements are on hold while USCIS awaits the standing up of this center.

DHS Regulatory and Asylum Program Changes.

DHS has proposed or implemented several regulations to address the shift in migrant populations seeking relief at the U.S. border, as well as to eliminate any incentive to file a *pro forma*, frivolous or fraudulent affirmative asylum application to obtain an employment authorization document (EAD).

Modification of Asylum Eligibility and Procedural Requirements. In July 2019, DOJ and DHS implemented

an interim final rule that requires foreign nationals to seek protection in a third country through which they transited *en route* to the United States before being eligible to apply for asylum in the United States.³⁰⁹ The bar applies prospectively to people entering the United States on or after July 16, 2019.³¹⁰ This bar mostly impacts people migrating from the Northern Central American countries of Honduras, Guatemala and El Salvador who transit through Mexico, and other countries, to reach the U.S. Southern border. Asylum officers and immigration judges must now apply the third-country transit bar when conducting fear screenings and determining asylum eligibility. While this bar prevents many foreign nationals from seeking asylum, it does not bar them from filing a request for relief under CAT.

As an interim final rule, the so-called "third-country bar" went into effect the day it was published in the Federal Register. The comment period closed on August 15, 2019. The Departments received 1,847 comments from the public.

Removal of the 30-Day Processing Provision for Asylum Applicant Work Authorizations. In September 2019, USCIS issued a proposed regulation to remove the agency's 30-day processing requirement for asylum-based EADs.³¹¹ DHS proposed the rule "to eliminate the 30-day processing provision at 8 C.F.R. § 208.7(a)(1) because of the increased volume of affirmative asylum applications and accompanying EAD applications, over two decades of intake changes and EAD production, and the need to appropriately vet applicants for fraud and national security concerns."³¹² According to the rule, elimination of the 30-day timeframe would provide flexibility for "DHS to meet its core missions of enforcing and administering our immigration laws and enhancing security."³¹³

The comment period for this proposal closed on November 8, 2019, with USCIS receiving 3,245 public comments. The final rule was published as this Report was being finalized, essentially unchanged, with an effective date of

³⁰⁵ Information provided by USCIS (Apr. 21, 23, and 24, 2020).

³⁰⁶ See Ombudsman's Annual Report 2019, p. 56.

³⁰⁷ Ombudsman's Annual Report 2019, p. 60.

³⁰⁸ Information provided by USCIS (Apr. 24, 2020).

³⁰⁹ "Asylum Eligibility and Procedural Modifications," 84 Fed. Reg. 33829, 33830 (July 16, 2019). Litigation delayed the effective date of the interim rule, but the U.S. Supreme Court lifted a national injunction, reinstating the interim rule on September 11, 2019. See *East Bay Sanctuary Covenant v. Barr*, 588 U.S. ___ (Sept. 11, 2019).

³¹⁰ *Id.*

³¹¹ "Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications," 84 Fed. Reg. 47148 (Sept. 9, 2019).

³¹² "Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications," 84 Fed. Reg. at 47155.

³¹³ *Id.*

August 21, 2020.³¹⁴ It is not yet clear what effect it might have on USCIS processing backlogs.

Adjustments to the Asylum Application, Interview Process, and Employment Authorization. In November 2019, USCIS proposed a regulation to extend the time asylum applicants must wait to apply for an EAD, along with other changes regarding EAD eligibility.³¹⁵ As stated in the rule, “DHS seeks to reduce incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications to obtain employment authorization... or other non-asylum-based forms of relief such as cancellation of removal, and to discourage illegal entry into the United States.”³¹⁶ In the rule, USCIS proposed actions to deter such affirmative asylum applications:

- Extend the waiting period from 150 days to a year before an applicant could apply for employment authorization;
- Eliminate the issuance of recommended approvals for a grant of affirmative asylum;
- Revise eligibility for employment authorization;
- Revise the provisions for EAD termination;
- Change provisions for filing an asylum application;
- Limit EAD validity periods;
- Incorporate biometrics collection requirements into the employment authorization process for asylum seekers; and
- Clarify employment authorization eligibility for those who have been paroled after being found to have a credible or reasonable fear of persecution or torture.

The comment period for this rule closed on January 13, 2020; USCIS received 1,077 public comments. DHS submitted a final rule to the Office of Management and Budget (OMB) on June 3, 2020.³¹⁷ On June 26, DHS

published a final rule, effective August 25, 2020.³¹⁸ It is not known at this time what impact it might have on asylum processing backlogs.

Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear. As this Report was being finalized, DHS and DOJ published a proposed rule, to amend the regulations governing credible and fear determinations.³¹⁹ The rule proposes changes to the procedures for handling asylum, statutory withholding of removal, and withholding and deferral of removal under the CAT regulations, proposes new bars to asylum eligibility, seeks to limit frivolous or otherwise non-meritorious asylum applications and raises the standard for fear screenings.³²⁰ The Notice of Proposed Rulemaking is open for comment until July 15, 2020.³²¹

USCIS' Proposed Fee Rule. In November 2019, DHS published a new fee rule that would establish, for the first time, a \$50 fee to file a Form I-589 with USCIS.³²² DHS cited the continuous, sizeable increase in affirmative asylum filings, and the growing processing backlogs as the primary reason for instituting a fee. USCIS has historically used fees paid from other benefit requestors to cover the costs of processing asylum applications. DHS asserted that the minimal fee of \$50 would alleviate the pressure that the greatly increased asylum workload places on the administration of other immigration benefits and would mitigate the fee increase of other immigration benefit requests.³²³

Implementing Bilateral and Multilateral Asylum Cooperative Agreements. On November 19, 2019, DOJ and DHS issued an interim final rule to provide for the implementation of Asylum Cooperative Agreements (ACAs) between the United States and transit countries.³²⁴ ACAs provide the Department the authority to remove nationals of these countries, who can now be repatriated

³¹⁴ “Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications,” 85 Fed. Reg. 37502 (Jun. 22, 2020).

³¹⁵ “Asylum Application, Interview, and Employment Authorization for Applicants,” 84 Fed. Reg. 62374, 62388 (Nov. 14, 2019).

³¹⁶ “Asylum Application, Interview, and Employment Authorization for Applicants,” 84 Fed. Reg. at 62375.

³¹⁷ Office of Management and Budget Webpage, “Office of Management and Regulatory Affairs (OIRA) Executive Order Submissions Under Review,” (Jun. 3, 2020); <https://www.reginfo.gov/public/do/eoReviewSearch> (accessed Jun. 3, 2020).

³¹⁸ “Asylum Application, Interview, and Employment Authorization for Applicants,” 85 Fed. Reg. 38532 (Jun. 26, 2020).

³¹⁹ “Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review,” 85 Fed. Reg. 36264 (Jun. 15, 2020).

³²⁰ *Id.*

³²¹ *Id.*

³²² “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 84 Fed. Reg. 62280, 62318 (Nov. 14, 2019). An individual files a Form I-589 with EOIR when in removal proceedings. This is a defensive asylum application. The proposed rule does not require a fee for individuals filing before EOIR.

³²³ *Id.*

³²⁴ “Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act,” 84 Fed. Reg. 63994 (Nov. 19, 2019).

to a safe third country in which they can apply for protection. Aliens arriving at the U.S. border to seek asylum can be sent to an ACA partner country (as long as the individuals themselves are not nationals of that country), if that country will provide a “full and fair procedure” for determining their protection claims.³²⁵ In certain circumstances, an ACA, in conjunction with INA § 208(a)(2)(A), bars a foreign national subject to the agreement from applying for asylum in the United States and provides for the person’s removal, pursuant to the agreement, to a country that will provide access to a “full and fair procedure” for determining the protection claim.³²⁶ The rule broadens the procedures to include expedited removal and INA § 240 proceedings for determining whether someone is subject to an ACA or falls within one of the exceptions.³²⁷

Additionally, the rule establishes a credible fear screening mechanism to evaluate whether an alien who would otherwise be removable can establish that it is “more likely than not,” instead of the lower standard of a “significant possibility,” that they would meet the burden of proving their asylum claim. The rule applies to all ACAs in force between the United States and countries other than Canada, including bilateral ACAs recently entered into with El Salvador, Guatemala, and Honduras.³²⁸ The Guatemala ACA was signed by the parties on July 26, 2019.³²⁹ The Honduras ACA was signed by the parties on September 25, 2019, and the El Salvador ACA was signed on September 20, 2019.³³⁰ There is ongoing litigation on the ACA that may interfere with the enforceability of some

of the agreements in prohibiting asylum applications being filed in the United States.³³¹

These proposed rules have the potential to significantly change the inflow of affirmative applications but may not impact the pending caseload with USCIS. These proposed solutions will not play out until the agency can implement the rules.

CBP Officers Conducting Credible Fear Screenings under Delegated Authority from USCIS. Pursuant to a Memorandum of Agreement (MOA) between CBP and USCIS, the asylum office is training CBP officers to conduct credible fear screenings. Under the INA’s expedited removal provisions, credible fear screenings must be conducted by “asylum officers,” which is defined as an “immigration officer who-

- (i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 1158 of this title, and
- (ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.”³³²

The CBP officers are temporarily assigned to work as asylum officers under the direction of the USCIS asylum office.³³³ CBP officers receive two weeks of instruction (80 hours) with up to 120 additional hours of training and eventually, up to 140 hours of direct mentorship.³³⁴ After training, the CBP officer conducts credible fear screenings as if he or she were a USCIS asylum officer. The CBP officers forward their screening assessments to a USCIS Supervisory Asylum Officer (SAO) to review and finalize the screening determination.³³⁵ Due to the CBP officers’ competing law enforcement duties, they are only permitted 180-day temporary assignments as asylum officers.³³⁶ At present, it is not clear what long-term impacts these temporary assignments might have on reducing USCIS resource demands for border support operations.

³²⁵ *Id.* See 84 Fed. Reg. 63996 Footnote 5: “This interim rule leaves in place the regulatory structure specific to the U.S.-Canada Agreement so as to avoid disruption to long-standing processes and expectations concerning implementation of that agreement. This rule will allow for implementation of ACAs that have a broader scope of applicability than the U.S.-Canada Agreement and, consequently, provides for a more robust threshold screening mechanism for evaluating whether an alien is properly removed subject to an ACA other than the U.S.-Canada Agreement, which is narrowly directed to third country nationals seeking to enter the United States at a U.S.-Canada land border port of entry.”

³²⁶ *Id.* See also INA § 208 (a)(2); 8 U.S.C. § 1158 (a)(2).

³²⁷ An immigration judge shall apply the applicable regulations in deciding whether the individual qualifies for any exception under the Agreement that would permit the United States to exercise authority over the individual’s asylum claim. See 8 C.F.R. § 1240.11(g)(3) and (h)(3).

³²⁸ “Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act,” 84 Fed. Reg. 63994 (Nov. 19, 2019).

³²⁹ *Id.*

³³⁰ DHS Fact Sheet, “DHS AGREEMENTS WITH GUATEMALA, HONDURAS, AND EL SALVADOR” (undated), available at https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf.

³³¹ *U.T. v. Barr*, Case 1:20-cv-00116-EGS (D.D.C. filed Jan. 15, 2020).

³³² INA § 235(b)(1)(E); 8 U.S.C. § 1225(b)(1)(E).

³³³ Information provided by USCIS (Apr. 20, 2020).

³³⁴ *Id.*

³³⁵ Memorandum of Agreement Between U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS) p. 3 (Jul. 10, 2017).

³³⁶ Information provided by USCIS (Apr. 20, 2020).

All these programs have some impact on affirmative asylum processing, intended or not. Programs that train CBP officers to conduct credible fear interviews, for example, undeniably free up asylum officers, allowing them to focus instead on pending affirmative asylum applications. Regulations that deter economic migrants from crossing the U.S. border and filing non-meritorious asylum claims to obtain work authorization should reduce the number of officers required to conduct credible fear interviews. While USCIS, along with other DHS entities and DOJ, has adopted new and creative ways to resolve resource demands on the asylum program, there remain significant holes in the process.

KEY ISSUES REGARDING USCIS' AFFIRMATIVE ASYLUM BACKLOG

Starting as early as 2014, the United States experienced a surge of foreign nationals attempting to unlawfully cross its Southern border. At its peak last year, more than 4,800 aliens attempted to cross the border daily—representing an average of more than three apprehensions per minute.³³⁷ While supporting operations to address this surge, and increasing its asylum workforce, USCIS has developed strategies “to reduce and ultimately eliminate the backlog of pending affirmative asylum cases combin[ing] strategic staffing increases with a broad range of efficiency measures for asylum office programs as well as other USCIS programs.”³³⁸ Gains on reducing the affirmative asylum backlog are yet to be seen. Understanding that many of the challenges USCIS faces with its affirmative asylum backlog are outside of the agency’s control, the Ombudsman’s Office believes it remains useful to summarize the outstanding programmatic and policy issues relevant to the backlog and to individuals applying for asylum.

³³⁷ DHS Document, “Assessment of the Migrant Protection Protocols (MPP)” (Oct. 28, 2019); https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf (accessed Apr. 9, 2020).

³³⁸ Information provided by USCIS (Apr. 24, 2020).

RECOMMENDATIONS

1. Provide Estimates of Affirmative Asylum Application Processing Times.

USCIS publishes processing times for most form types on its website.³³⁹ However, it does not publish processing times for its affirmative asylum queue. An applicant wanting to learn the processing time for an affirmative asylum case is referred to USCIS’ Affirmative Asylum Interview Scheduling webpage, which lists only the priorities as described earlier in this article.³⁴⁰ Given the variability in scheduling asylum interviews across the country, and given that the limited available data shows most interviews are still manually scheduled, USCIS should consider collecting scheduling data on these cases³⁴¹ and at minimum posting online what date range of cases it is currently processing at various asylum offices. This would be of particular value to managing the expectations of individuals in queue and in assisting legal service providers in managing caseloads and allocating resources.

2. Make Public USCIS Strategies to Reduce the Affirmative Asylum Backlog, Perhaps as Part of a Request for Congressional Funding.

USCIS strategies to reduce and eliminate the backlog of pending affirmative asylum cases is of concern to individuals and to legal service providers, and of course to Congress; if USCIS is seeking appropriated funding from Congress in the wake of COVID-19, there may be utility in pointing out the reduction efforts being made, as well as potential resource requirements specifically aimed at reduction. Now is the time to act.

In January 2018, USCIS stated its intention to address the asylum backlog.³⁴² As a start, it implemented a scheduling priority to address the growing backlog. That policy change was never intended to address the cases that were currently pending but instead to reduce the incoming receipts.³⁴³ With a reduced flow of cases, USCIS could then focus on the pending backlog. Delays in the

³³⁹ USCIS Webpage, “Check Case Processing Times;” <https://egov.uscis.gov/processing-times/> (accessed May 12, 2020).

³⁴⁰ USCIS Webpage, “Affirmative Asylum Interview Scheduling” (Jan. 26, 2018); <https://www.uscis.gov/affirmative-asylum-scheduling> (accessed May 12, 2020).

³⁴¹ Information provided by USCIS (Apr. 24, 2020).

³⁴² See USCIS Webpage, “Affirmative Asylum Interview Scheduling” (Jan. 26, 2018); <https://www.uscis.gov/affirmative-asylum-scheduling> (accessed Apr. 9, 2020).

³⁴³ Information provided by USCIS and stakeholders (Apr. and May, 2020).

timely processing of affirmative asylum applications are detrimental to those with legitimate claims and serve as inducement to those seeking to file *pro forma* or fraudulent asylum claims to enter and remain in the United States for purposes of securing employment.

USCIS' backlog has continued to grow despite its efforts to reduce it. USCIS has over 350,000 affirmative applications awaiting completion.³⁴⁴ This workload has steadily grown each month since the surge of filings began in 2014. See Figure 4.3 and Figure 4.5 *supra*.

3. Increase National Outreach Efforts.

The USCIS Asylum Division should return to its practice of holding national quarterly stakeholder engagements, where USCIS explained processing data, provided policy updates and responded to public questions. It was an opportunity to inform the community on the current activities of the agency. It was also an opportunity for the agency to hear from the community on issues of concern or growing trends.

Additionally, increasing national engagements may result in more consistent delivery of services between local asylum offices, where stakeholders report a variety of communication between asylum offices.³⁴⁵ Some USCIS asylum offices maintain local email addresses and communication lines for the community to submit questions, requests for expedites and concerns with cases.³⁴⁶ Other USCIS asylum offices rarely hold engagements and are not regularly engaging the public.³⁴⁷ There are numerous objective benefits that ensue from local and national outreach, but especially at a national level. Consistent information regarding particularly substantive issues may result in more coherent and professional filings with fewer questions or issuance of RFES. Operational information disseminated broadly may in turn generate fewer calls to the USCIS Contact Center, fostering greater understanding to inform and reduce unnecessary anxiety. Entrusting public engagements entirely to the local asylum offices, however, may hamper the offices' ability to adjudicate affirmative asylum applications and result in inconsistent services to the public.

³⁴⁴ Information provided by USCIS (Apr. 24, 2020).

³⁴⁵ Information provided by stakeholders (Apr. and May, 2020).

³⁴⁶ Information provided by USCIS (Apr. 24, 2020).

³⁴⁷ Information provided by stakeholders (May 4, 2020).

4. Conduct Triage on Backlogged Cases to Determine Whether They Should Remain in the Backlog.

The challenge of the backlog is not only its size, but the number of meritorious claims that are in the backlog and remain unadjudicated. If reducing the backlog will assist USCIS in prioritizing potentially meritorious claims, there is value in determining what kinds of cases should be removed from the backlog due to an actual or near-term change in status. Such activities would presumably be less resource intensive (requiring system-wide queries of USCIS databases) than opening one case at a time.

Such measures may include the systematic identification of cases that may be dismissed pursuant to 8 C.F.R. § 208.14(g). Given the long pendency of many asylum applications with USCIS, it is likely that numerous applicants for asylum have obtained lawful permanent residence by other means, such as through employment-based adjustment of status or family-based adjustment of status. The regulation provides that, “[i]f an asylum applicant is granted adjustment of status to lawful permanent resident, [USCIS] may provide written notice to the applicant that his or her asylum application will be presumed abandoned and dismissed without prejudice. . . .”³⁴⁸ The asylum seeker is then provided 30 days in which to submit a written request to USCIS for adjudication of the asylum application. If the individual does not respond within 30 days, USCIS “may presume the asylum application abandoned and dismiss it without prejudice.”³⁴⁹ Presumably USCIS would, through its Central Index System, be able to identify in the universe of asylum applicants those who are now lawful permanent residents (LPRs), and provide them the opportunity to abandon their claims, and to dismiss without prejudice those who fail to respond.

Additionally, USCIS can conduct systemic records checks to determine whether aliens in the affirmative asylum backlog are the beneficiaries of approved immigrant visa petitions and who may have current or near current priority dates, USCIS can in good faith conclude such cases are not a priority and suspend asylum processing, thereby reducing its workload. USCIS could also use other DHS systems, such as the CBP data system Arrival and Departure Information System (ADIS), to determine

³⁴⁸ 8 C.F.R. § 208.14(g).

³⁴⁹ *Id.*

asylum applicants' status and the impact that status would have on asylum eligibility.³⁵⁰

5. When Available, Provide Public Information on Impacts of COVID-19 Limitations to Set Expectations and Assist Stakeholders.

As we finalize this Report, USCIS is just commencing its reopenings in the wake of COVID-19 closures and has not yet published a plan on how it will resume interviewing affirmative asylum applicants as the spread of COVID-19 slows. The regulations require an in-person interview for an affirmative asylum application.³⁵¹ For FY 2019, USCIS conducted an average of 5,133 interviews a month.³⁵² Naturally, every month that USCIS is closed to the public adds to USCIS' backlog as it continues to accept Form I-589 applications. USCIS has an opportunity now, in the easing due to COVID-19, to engage stakeholders on the actions that it is undertaking. A series of teleconferences and webinars, with an opportunity for public input and interaction, would enable USCIS to understand and respond to the most pressing issues for its stakeholders. The regulated community, in turn, benefits by receiving that information upon which it can act more confidently. As always, the Ombudsman's Office remains available to assist USCIS in such structured outreach efforts.

6. Improve USCIS Data to Support the Integrity of the Affirmative Asylum Program and Decisions Being Made About Program and Policy Concerns.

Despite the many program and policy changes USCIS has made to address the affirmative asylum backlog, existing data collection and reporting do not appear to measure the impact of such changes. More refined data collection

would allow the agency to better track the outcomes of new policies and program changes. Because the pending backlog continues to grow, USCIS cannot, with certainty, identify which policies are working and which are ineffective. Better metrics and tracking measures would allow the agency to prioritize its resources to policies and measures that achieves its priorities – such as program integrity and national security.³⁵³

7. Prepare for How to Manage Resources if Faced with Another Suspension of In-person Interviews, Such as the One Experienced During the COVID-19 National Emergency.

It is conceivable that USCIS will need to close its offices again in response to COVID-19 or another pandemic. USCIS should review its authorities, workforce capabilities and workload to identify how to maintain continuity if directed to suspend in-person interviews in the future. Implementing a transparent and forward-leaning plan, and sharing those intended efforts, would position USCIS to lead in a time of crisis and maintain continuity, bolstering confidence in the agency with regard to both the public and Congress.

CONCLUSION

Changes in DHS policies and proposed regulations are likely to decrease the in-flow of affirmative asylum applications, but results stemming from these changes will be slow moving. USCIS should consider alternatives to effectively reduce the pending backlog, while carefully monitoring the impact of the recent program changes.

³⁵⁰ See Privacy Impact Assessment, "Arrival and Departure Information System (ADIS) DHS/CBP/PIA-024(c)" (Jan. 3, 2020); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-024c-adis-january2020.pdf> (accessed Jun. 11, 2020).

³⁵¹ INA § 208(d)(5)(A); 8 U.S.C. § 1158(d)(5)(A).

³⁵² USCIS Data, "Affirmative Asylum Statistics: September 2019" (Jan. 14, 2020); <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PEDAffirmativeAsylumStatisticsFY2019.pdf> (accessed Apr. 10, 2020).

³⁵³ See "Spotlight: The DHS Immigration Portal" *infra* for additional information on improving DHS information sharing capabilities.



Spotlight: DHS Immigration Data Integration Initiative

This study was a collaboration with the DHS Office of Immigration Statistics, which kindly donated its time and expertise in providing the content.

The Department of Homeland Security's (DHS) longstanding challenges with collecting, storing, sharing, and analyzing immigration data are evidenced by the independent and piecemeal development of data systems and processes among its component agencies to leverage immigration enforcement and benefits information. External to DHS, partners such as the U.S. Department of Health and Human Services, the U.S. Department of State (DOS), the U.S. Department of Labor (DOL), and the U.S. Department of Justice (DOJ) have their own independent systems and databases to support their work with those aspects of the immigration system over which they have

jurisdiction, namely Unaccompanied Alien Children (UAC), visa issuance, employment-based immigration, and oversight of immigration court cases, respectively. These many stand-alone systems lack connectivity and consistency, and components within DHS and agencies outside it are often unable to access each other's data in a timely manner.

This lack of access impedes an effective administration of the immigration system in numerous ways. Accurate data in real time is essential to the day-to-day administration of programs, to effectively direct operations, and ensure

efficient deployment of resources. It is also critical to developing sound policies that will have a direct impact. More significantly, accurate information feeds into the future—informing administrative and legislative efforts to improve the immigration system.

To address these issues, in September 2016, the Department launched the Immigration Data Integration Initiative (IDII). The IDII was tasked with: (1) establishing Department-wide immigration data standards; (2) giving DHS data stakeholders timely access to relevant data from across the Department; and (3) ensuring that immigration records are fully linkable across DHS data systems for validated, authoritative statistical reporting across the Department. The effort is led by the Office of Immigration Statistics (OIS) and is co-chaired by the DHS Office of the Chief Information Officer (OCIO), with oversight by an Executive Steering Committee (ESC) that includes all of the Department’s operational and headquarters components with immigration responsibilities. As the IDII nears its four-year anniversary, it is working closely with the newly-appointed DHS and Component Chief Data Officers (CDO) to begin implementing immigration data standards, collaborating with U.S. Customs and Border Protection’s (CBP’s) Unified Immigration Portal (UIP) team to improve enterprise-wide access to standardized data, and delivering authoritative statistical Immigration Data as a Service (ImmDaaS) to internal and external stakeholders.

BACKGROUND

The Homeland Security Act of 2002 established DHS out of numerous existing agencies, as well as creating new ones. Several DHS components were tasked with the administration of certain immigration responsibilities. Even though they were unified in a single department, each of DHS’s legacy components retained ownership and management of their own data systems. As a result, the Department and its interagency partners currently maintain over four dozen separate immigration data systems. Each department and their sub-agencies have developed these databases to track the people and processes within their purview. However, the resulting proliferation of systems results in difficulty obtaining unified, uniform, real-time information on individuals progressing through immigration processes, and inhibits consistent records.

The resulting lack of reliable information has created numerous problems for the broad U.S. immigration system, such as:

- Inefficient tracking of individuals through the immigration lifecycle;
- Lack of transparency into immigration processes and data to effectively determine and maintain compliance with applicable laws and regulations;
- Ineffective sharing of data on individuals to effectively support immigration functions;
- Inability to produce timely, consistent, and reliable reports on a full range of immigration processes and outcomes; and
- Inability to evaluate how changes to policy or procedures would impact immigration processes due to lack of access to the valid data to perform necessary analysis.

In addition to these challenges, the compartmentalized approach to data associated with immigration introduces other inefficiencies. Agencies lack direct access and perhaps understanding of each other’s data, requiring a multitude of interagency agreements and cumbersome interfaces. Changes to agreements often require a laborious re-development and review of documents. Additionally, the system-to-system approach for data exchange is inefficient and causes delays in data sharing.

At the same time, DHS also lacks a complete set of common data standards—i.e., shared data codes, definitions, and formats. While OIS manages long-standing Immigration Data Management System (IDMS) tables that include such standards, not all systems follow the IDMS standards. Until recently, DHS had not implemented a policy or designated an oversight body with authority to make and enforce enterprise-wide data standards.

This siloed data ecosystem hinders both operational and statistical missions across the Department as well as across all the agencies with immigration equities. On an operational level, non-standardized data is difficult to share across systems—a particularly burdensome problem with respect to immigration data since almost everyone who applies for or receives an immigration benefit or is subject to an immigration enforcement action touches multiple data systems. Operational personnel are frequently required to re-enter information in multiple databases and/or manually search multiple others, taxing an overburdened system and creating opportunities for data entry errors. Mismatched data formats also cause records

to be dropped, a problem that can lead to burdensome forensic efforts to recreate lost data and lost records that simply never get corrected.

On a statistical level, non-standardized data and siloed systems are major obstacles to timely and accurate reporting and analysis. Reporting offices must clean and validate data from multiple systems that are supposed to provide the same or similar information. The lack of enterprise-wide reporting rules means that different offices and agencies may produce conflicting results based on dissimilar data, or delay reports until differences can be resolved. The inability to reliably match individual-level records across multiple systems without a great deal of work is also an obstacle to end-to-end analysis and reporting, making it difficult and time-consuming to conduct complex program evaluations or conduct other evidence-building activities.

IDI DATA GOVERNANCE

In 2016, the DHS Secretary directed a focus on improved data governance and information technology (IT) systems and practices to address these types of challenges within the Department. In DHS Memorandum 16-3048, “Improving Immigration Data Analysis and Reporting,” the Secretary directed the OIS to work with the OCIO, the Department’s operational components, and other federal immigration partners to develop a more fully-integrated immigration data environment and to strengthen the Department’s systems for analyzing and reporting immigration data.

The goals of the resulting IDII are to:

- Establish uniform Department-wide data standards (including a common data glossary, documentation of data processes, and measures to ensure data quality);
- Develop the necessary policies to prioritize and facilitate the real- or near real-time access to necessary immigration data; and
- Ensure that records are fully linkable across immigration data systems.

IDII’s data governance is managed by the IDII Data Governance Working Group (DGWG). The IDII DGWG worked with subject matter experts across the Department and interagency to develop a list of data elements to prioritize for standardization. These standards were prioritized based on their centrality to operational and

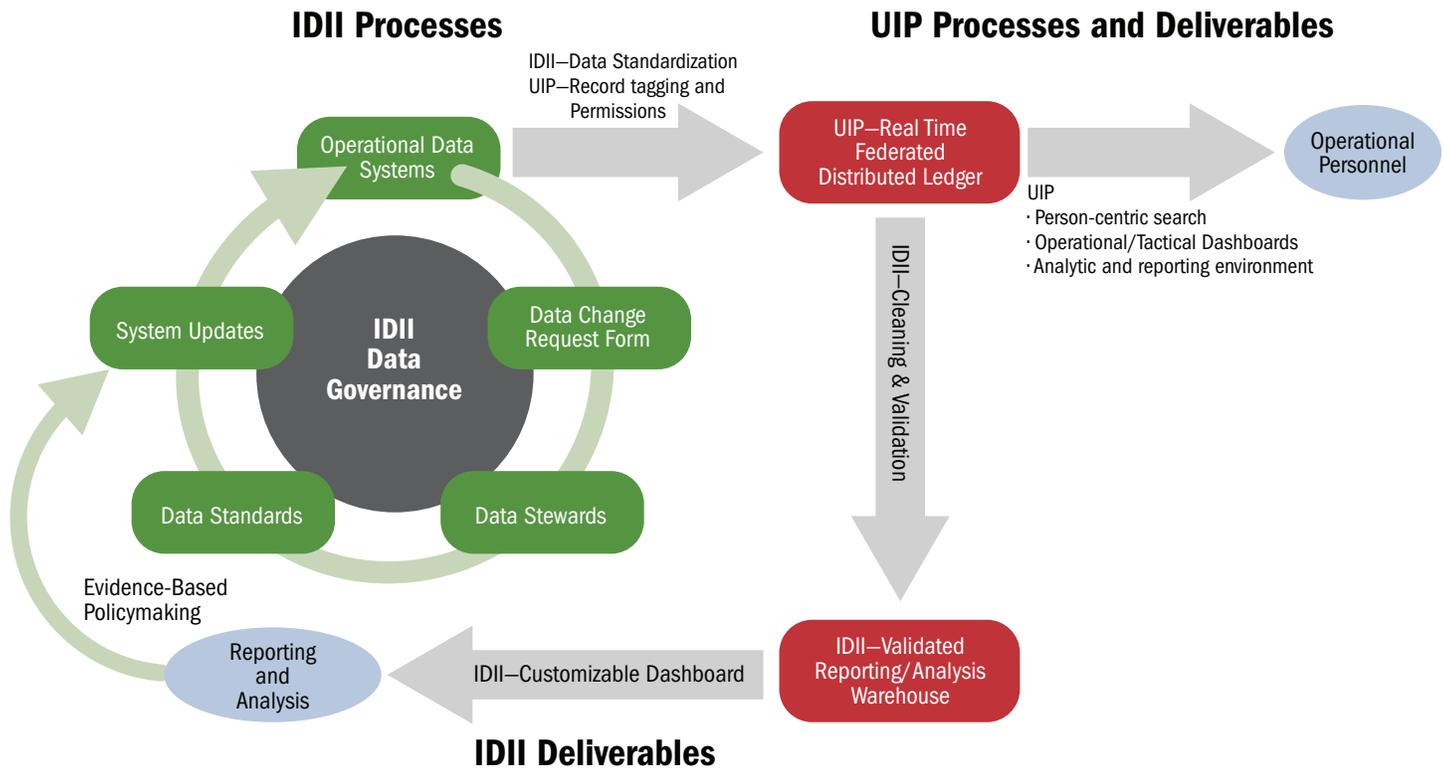
statistical missions and the demand for standards to facilitate information sharing and end-to-end reporting. The ongoing work of the DGWG is focused on continually assessing the prioritization of immigration data elements that require standardization as a need arises among immigration data stakeholders. The IDII DGWG convenes subject matter experts from across the Department and its interagency immigration partners to agree on baseline data standards to publish in a shared reference data repository.

As a data standard is baselined, the DGWG also works with stakeholders to develop the workflow to manage future changes to a published standard. The Data Change Request (DCR) is the online form DHS components use to submit a change request to a published standard. The DGWG also identifies a data steward for each standard who is a subject matter expert on the data being baselined. The data steward is an essential part of change management after a baselined standard is published. The data steward will vet and validate proposed changes to the data standard after a baselined data standard is available within the immigration domain. The DCR goes live for use when a baselined standard is published in the reference data repository and is the tool the data steward uses to manage and validate necessary changes to a data standard.

The IDII’s approach to data governance is forward-leaning within the Department, and as such has partnered with other immigration stakeholders across the Department. For example, the IDII DGWG is working with CBP’s UIP team to have UIP use the available published data standards when developing its dashboards. The UIP is being developed in response to a 2018 U.S. Government Accountability Office (GAO) report, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border*³⁵⁴ that examined the processes for tracking and reunifying separated families. Following the report, the Commissioner of CBP and the other immigration Component heads pledged to prevent future challenges by better connecting immigration databases. In April 2019, then-Acting Secretary Kevin McAleenan directed DHS to develop and establish the UIP as a federated technology platform to better integrate immigration data. The goal of the UIP is to permit agencies across the Federal government to efficiently and effectively manage their collective immigration data from the first to last encounters in the immigration process and

³⁵⁴ *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border*, GAO-19-163 (Oct. 9, 2018); <https://www.gao.gov/products/GAO-19-163> (accessed May 28, 2020).

Figure 5.1: IDII-UIP Joint Processes and Deliverables



Source: Information provided by DHS OIS (May 15, 2020).

across agency boundaries. See Figure 5.1 (*IDII-UIP Joint Processes and Deliverables*).

Shortly after the UIP initiative was announced, the UIP and the IDII began efforts to leverage each other’s work as much as possible as each continues to develop. The IDII will be responsible for implementing enterprise-level immigration data standards and will support UIP by helping to standardize immigration data as it is being absorbed into UIP’s federated distributive ledger. Standardized data will support the UIP’s core deliverables, including real-time, person-centric search tools and the creation of tactical and operational dashboards to support mission functions. The IDII will also leverage the UIP data warehouse to broaden and accelerate its access to operational data, which the IDII will clean, match, and de-duplicate to create a person-level enterprise data warehouse for reporting and analysis.

The UIP effort will support the IDII’s enterprise reporting goals by expediting data aggregation. At the same time, the IDII’s ongoing work to implement enterprise data

standards will facilitate the standardization of data flowing into the UIP’s platform to afford stakeholders easier access to reliable real-time information on the integrated platform. Enabling a single warehoused source of data and permitting access for information sharing across Federal government agencies increases transparency and will lead to better mission outcomes through an accurate, real-time, unified view of immigration data to determine status. By allowing for real-time access to standardized information, the joint IDII and UIP efforts will (1) enable a reduction in manual processes across multiple Component systems; (2) increase the rate at which operators can process foreign nationals; and (3) allow analysts to address reporting in order to improve decision-making and reduce errors when processing data.

IDII DATA PROCESSING AND RECORD MATCHING

In addition to its data governance work, the IDII's Policy and Oversight Working Group (POWG) is working on improving data processing and record matching when OIS links records across the multiple operational datasets it receives to produce Department-level reports on immigration enforcement and processing activities. IDII's data policy work ensures that the OIS/IDII Flow Dataset and ImmDaaS tools adhere to all appropriate privacy and data security protections. The IDII data policy team works with DHS oversight bodies to advance the broader DHS data governance framework.

OIS ingests the operational data from DHS components and interagency partners and then cleans and validates the data to produce reportable records. These are linked records at the person-level to support end-to-end reporting and analysis. Under the IDII, OIS is working to speed and strengthen data processing and record matching to generate a single authoritative dataset (the "Flow Dataset") that can be used for enterprise-wide immigration reporting and analysis.

IMMIGRATION DATA AS A SERVICE

The IDII's long-term vision is to use the standardized immigration data that can be linked at the person-level to build ImmDaaS. ImmDaaS refers to products and user tools IDII makes available to allow DHS leaders, managers and operators to access the authoritative OIS/IDII Dataset for official DHS reporting and analysis. Successful implementation of ImmDaaS will permit stakeholders to utilize these datasets for official DHS reporting and analysis. OIS also produces and supports "downstream" data products that leverage the person-level Flow Dataset. The reporting capabilities will be expanded to provide DHS components and other Federal agencies with immigration equities with customizable data dashboards leveraging standardized person-level datasets to support authoritative analysis and reporting. Eventually, OIS will expand ImmDaaS tools to provide improved access to immigration data to Congress and the public as directed by the Foundations of Evidence-Based Policymaking Act (the "Evidence Act"). In turn, this information will allow Congress to have a clearer understanding of the state of the immigration system and the ability to project first and second-order effects of potential legislative changes to the system.

OVERSIGHT COMPLIANCE

Throughout all the above work, the IDII also considers current policies regarding data sharing to ensure that all the data standards and data products IDII produces adhere to all appropriate privacy and data security protections. IDII continues to work with DHS and interagency partners to draft data sharing agreements, as needed, and works with DHS oversight bodies to advance the broader DHS data governance framework.

TIMELINE

The IDII DGWG estimates that approximately 125 immigration data standards are required to meet the core governance demands within the immigration domain. Current plans call for this full suite of standards to be published to the Department's shared data governance center over the next 2 to 4 years (by the end of FY 2024), depending on available resources. As standards become available, their complete implementation also depends on establishing automated connections between the data governance center and DHS components source systems and data aggregators like the UIP. IDII and UIP are establishing the first of those connections in FY 2020, with planned extensions to core U.S. Immigration and Customs Enforcement (ICE) systems close behind.

With respect to data matching and improved ImmDaaS, OIS will provide an initial set of person-level data dashboards to select DHS users in FY 2020, with plans to expand the scope of coverage (to include all available immigration data) and access (to all DHS and interagency stakeholders) between 2021 and 2023, depending on available resources. Public-facing data tools will be made available between 2022 and 2024.

CHALLENGES

The work of establishing and implementing enterprise data standards and closer to real-time authoritative reporting based on person-level data is inherently difficult due to the scope and complexity of the immigration data eco-system. Each immigration standard requires collaboration of as many as a dozen or more subject matter experts, meaning hundreds of individuals will participate in standards development over the course of the IDII's publication effort, and roughly an equal number will be involved in connecting data systems to the data governance center and ensuring that systems are updated to reflect common standards. The effort is more difficult still because work

within the immigration domain will complement and overlap with similar efforts across other domains (*e.g.*, law enforcement, human resources, emergency preparedness) and other levels of standardization (system-specific standards at the sub-domain level, and DHS- and U.S. government-wide standards at the supra-domain level). The breadth and complexity of the immigration data systems is naturally mirrored in the resulting mission sets: each of the end-state immigration data use cases, from operational missions at the border or benefits processing centers to statistical reporting and analysis missions, connect to a network of data systems that often span multiple DHS and partner agencies, further complicating the end-state implementation challenges.

Overcoming the complexity of the intertwined data systems involves two additional overarching challenges that stem from the fact that these efforts are fundamentally new to DHS. First, the Department lacks a robust and widely accepted set of data policies. In particular, because DHS has never previously implemented data standards on a wide scale, policies to assign responsibility for publishing standards that cross multiple systems remain nascent, and no policy exists to ensure that systems implement policies as they are published. Likewise, policies regarding the division of labor between statistical and operational data providers and between headquarters and DHS components are poorly developed.

Congress has provided statutory direction to resolve these policy challenges by explicitly tasking OIS and the Office of Strategy, Policy, and Plans with providing enterprise immigration standards, with ensuring the accuracy and reliability of DHS statistics and, more generally, by supporting the IDII. The Evidence Act provides additional governance infrastructure through the creation of the DHS Statistical Official (a position assigned to the OIS Deputy Assistant Secretary) and CDO, as well as the creation of the DHS Data Governance Council (DGC). OIS is working with the IDII ESC and the DHS DGC to establish clear DHS policies to support the successful implementation of data standards and of ImmDaaS for both statistical and operational mission sets.

A second overarching challenge, also stemming from the Department's relative inexperience with data standards and

coordinated immigration reporting, is the lack of a robust IT infrastructure to support the IDII effort, including data governance resources and automated connections among diffuse data systems. In its capacity as IDII co-chair, the OCIO has taken on these challenges by selecting the Department's enterprise-wide data governance center and by establishing secure file transfer protocols to begin connecting source data systems to USCIS and OCIO server environments where IDII data may be stored and managed. Both IT efforts remain incomplete.

CONCLUSION

DHS has since its inception suffered not from a lack of immigration data, but instead from an abundance of data that does not lend itself to easy comparison. In taking significant steps to fix its longstanding challenges with immigration data, the Department has taken the lead among its Federal partners to provide a "one-stop shop" for data that meets established levels of standardization, searchability, and linkability. Moreover, by working to facilitate the real- or near real-time access to necessary immigration data, the Department is striving to produce a living repository that can ultimately provide all data stakeholders, with a need to know, access to the information. The capability will improve tracking of individuals through the immigration lifecycle, providing a common operational picture for all stakeholders; provide transparency into immigration processes and data to effectively determine and maintain compliance with laws and regulations; orchestrate sharing of data on individuals in support of immigration functions; and provide analytics capabilities that support operational and administrative decision-making as well as long-range planning. This not only benefits those with immediate decision-making responsibilities when encountering individuals in the system, but also those charged with administering and making recommendations on improving the system.



Foreign Students and the Risks Surrounding Optional Practical Training

Responsible Offices: Student and Exchange Visitor Program, National Security Investigations Division, Immigration and Customs Enforcement (ICE); Service Center Directorate, USCIS

PRESIDENTIAL PROCLAMATION

Pursuant to the Homeland Security Act, the Ombudsman's Office is expected in its annual report to conduct full and substantive analysis of pervasive and serious problems encountered by individuals and employers in the adjudication and processing of immigration benefits, including other information that the Ombudsman deems

advisable. In addition, as a component of the Department of Homeland Security (DHS), the Ombudsman's Office supports the Department's larger mission objectives, core values and guiding principles, which include contributing to the integrity of the immigration system while identifying systemic risks that threaten the security and prosperity of the United States. It was for these reasons that the

Ombudsman’s Office initiated research on the Optional Practical Training (OPT) program in December 2019.

As the Ombudsman’s Office was drafting this study on the OPT program for inclusion in this year’s Annual Report, President Trump on May 29, 2020, issued a *Proclamation on the Suspension of Entry as Nonimmigrants of Certain Students and Researchers from the People’s Republic of China*.³⁵⁵ The Proclamation indicated that authorities from the People’s Republic of China (PRC) were using “some Chinese students, mostly post-graduate students and post-doctorate researchers, to operate as non-traditional collectors of intellectual property,” which represented a threat to the long-term economic vitality of the United States and to the “security of the American people.”³⁵⁶

More specifically, the Proclamation suspended the entry of PRC nationals under F and J visas who are connected to entities that implement or support “the PRC’s ‘military-civil fusion strategy’ . . . mean[ing] actions by or at the behest of the PRC to acquire and divert foreign technologies, specifically critical and emerging technologies, to incorporate into and advance the PRC’s military capabilities.” The suspension does not apply to PRC nationals “seeking to pursue undergraduate study” in the United States.³⁵⁷

Among other things, the Proclamation directs the Secretary of State and the Secretary of Homeland Security to examine nonimmigrant and immigrant programs for potential reform, to take other actions to “mitigate the risk posed by the PRC’s acquisition of sensitive United States technologies and intellectual property,” and report back to the President within 60 days.

The Proclamation aligns with the Administration’s National Security Strategy of December 2017. The Administration indicated in the Strategy that it would review “visa procedures to reduce economic theft by non-traditional intelligence collectors. We will consider restrictions on foreign STEM students from designated countries to ensure that intellectual property is not transferred to our competitors, while acknowledging the importance of recruiting the most advanced technical workforce to the United States.”³⁵⁸

³⁵⁵ Proclamation No. 10043, 85 Fed. Reg. 34353 (Jun. 4, 2020).

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ United States. *The National Security Strategy of the United States of America*, p. 22, [Washington]: President of the U.S., 2017, p. 22; <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf> (accessed Jan. 28, 2020).

While this study may have utility to the 60-day review of nonimmigrant and immigrant programs directed by the Proclamation, it is not intended to function as a response to the Proclamation by the Ombudsman’s Office or by the DHS.

WHAT OPT IS, AND ISN’T

Foreign students in the United States, of which there are over one million annually, arrive here through several different pathways. F visas are for foreign students pursuing full courses of academic study at a college, university, or other accredited academic institution (including secondary institutions), or in an accredited language training program; M visas are for foreign students pursuing full courses of study at an established vocational or other recognized nonacademic institution, including language and flight schools.³⁵⁹ F and M visas are, like all visas, issued by the Department of State (DOS), but most of their maintenance and compliance is administered by the Student and Exchange Visitor Program (SEVP), the arm within the U.S. Immigration and Customs Enforcement (ICE) charged with maintaining data about student entries, maintenance of status, and activities during their studies.³⁶⁰ The DOS manages nonimmigrant exchange visitors in the J visa classification, who may also come to pursue academic post-secondary studies. Each visa category is specific to a group of students arriving to study in a variety of contexts.³⁶¹ The Ombudsman’s study is primarily focused on F-1 students seeking post-secondary education at the bachelor’s, master’s or doctoral

³⁵⁹ F-1 and M-1 visas are reserved for the students themselves; spouses and children may enter in F-2 and M-2 status. INA §§ 101(a)(15)(f), (m); 8 USC §§ 1101(a)(15)(f), (m).

³⁶⁰ DHS ICE Webpage, “Student and Exchange Visitor Program,” Feb. 6, 2020; <https://www.ice.gov/sevis> (accessed Jun. 15, 2020).

³⁶¹ For a succinct discussion of the differences between the F and J student categories, see DOS Webpage, “Studying at U.S. Universities and Colleges: F-1 versus J-1 Visas” (undated); <https://j1visa.state.gov/basics/other-u-s-visas/studying-at-u-s-universities-and-colleges-f-1-versus-j-1-visas/> (accessed May 7, 2020).

level, and after completion of that education seeking a course of practical, on-the-job training.³⁶²

How students arrive at U.S. colleges and universities takes the efforts of several private and governmental actors. All F-1 and M-1 (as well as J-1) students interact to some extent with the SEVP. SEVP certifies schools to be authorized to receive students and oversees both the schools and the students.³⁶³ Students may, in some circumstances, enter under another nonimmigrant visa category and change to student status; others enter after submitting the school- and SEVP-issued documentation and applying for a student visa at a U.S. consulate.

Nonimmigrant students have some options to pursue non-academic learning activities, including employment. OPT is designed to be temporary employment that is directly related to a nonimmigrant student's major area of study.³⁶⁴ A foreign student can engage in OPT during the academic program ("pre-completion OPT"), either while school is in session (including academic breaks), or after completing the academic program ("post-completion OPT"). A student can apply for 12 months of OPT at each education level (e.g., a 12-month OPT period at the bachelor's level and another 12-month period at the master's level, assuming the student engages in both at a U.S. college or university).³⁶⁵ OPT may be granted at almost any time in a student's career after a year of course work has been completed, but must be completed no later than 14 months after graduation, with the sole exception being the science, technology, engineering, and math (STEM) extension (described *infra*).³⁶⁶ For various reasons, including the need to obtain evidence of this authorization from U.S. Citizenship and Immigration

Services (USCIS) in the form of an employment authorization document (EAD), a majority of students prefer to save OPT for post-academic use.

OPT is distinguished from other types of work, fellowships, or internships in which a foreign student may engage. There are limited employment opportunities that may be unrelated to a student's study, including employment in cases of economic hardship.³⁶⁷ There are also on-campus employment opportunities (generally part-time, but can include off-campus sites that are affiliated with the school).³⁶⁸ OPT is categorized as a training opportunity, but there are two such types of training categories for foreign students, distinguishable from each other. The first involves internship or practicum activities, known as curricular practical training (CPT), which can take place on or off campus with sponsoring employers, and is considered "an integral part of an established curriculum."³⁶⁹ The other is OPT, defined as "temporary employment ... directly related to the student's major area of study."³⁷⁰

Those who earn a degree in certain STEM fields are also eligible to apply for a 24-month extension of the original 12-month post-completion OPT.³⁷¹ This extension is available to those students who complete and obtain a STEM degree (as defined by DHS) from a school designated by a recognized accrediting agency, are employed by an employer that is enrolled in and using the E-Verify program, and have already received an initial grant of post-completion OPT based on that STEM degree.³⁷² In order to obtain STEM OPT, an employer must offer a training program, given to the Designated School Official (DSO), demonstrating goals and objectives, how those goals will be reached, and how the student will be supervised and evaluated.³⁷³ It is the only OPT category in which an employer's name must be identified prior to the student's application for employment authorization.³⁷⁴

³⁶² Recent data indicates that the overwhelming majority of students admitted to the United States entered in F-1 status, a total of 1,862,828 in FY 2018. W. Navarro, "Annual Flow Report, U.S. Nonimmigrant Admissions: 2018," DHS Office of Immigration Statistics, Table 1; https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/nonimmigrant_admissions_2018.pdf (accessed Jun. 5, 2020). (Admission "events" are not reflective of total admissions, but instead reflect every admission of an individual in that category. Students entering more than once each year would be counted as multiple admission events.) M-1 students constitute only another one percent (18,838). Exchange visitor admissions represent a significant number of admissions (611,373) but only a percentage of these are post-secondary students. One major distinction between seeking F status and J status is that an F student must demonstrate financial independence to complete their course of study. 8 C.F.R. § 214.2(f)(1)(i)(B).

³⁶³ Government Accountability Office, "Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risk Related to School Recertification and Program Oversight," GAO-19-297, p. 1 (Mar. 2019); <https://www.gao.gov/assets/700/697630.pdf> (accessed Jun. 7, 2020).

³⁶⁴ See generally 8 C.F.R. § 214.2(f)(9)-(10).

³⁶⁵ 8 C.F.R. § 214.2(f)(10).

³⁶⁶ 8 C.F.R. § 214.2(f)(10)(ii)(A)(3).

³⁶⁷ 8 C.F.R. § 214.2(f)(9)(ii)(C).

³⁶⁸ 8 C.F.R. § 214.2(f)(9)(ii).

³⁶⁹ 8 C.F.R. § 214.2(f)(10)(i).

³⁷⁰ 8 C.F.R. § 214.2(f)(10)(ii).

³⁷¹ 8 C.F.R. § 214.2(f)(10)(ii)(C).

³⁷² *Id.*

³⁷³ 8 C.F.R. § 214.2(f)(10)(ii)(C)(7).

³⁷⁴ U.S. Government Accountability Office, "Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization," GAO-14-356, p. 2 (Mar. 2014); <https://www.gao.gov/assets/670/661192.pdf> (accessed Jun. 20, 2020).

Figure 6.1: Growth in OPT, STEM OPT and CPT

Students with an Employment Authorization Document (EAD) who were employed by calendar year												
Authorizations with Employment in the Indicated Year												
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
OPT	24,838	45,357	46,198	51,080	56,421	62,628	67,740	77,619	99,323	37,570	152,681	145,564
STEM OPT	2	2,128	5,869	9,356	13,504	15,937	18,782	21,456	27,493	41,782	64,481	69,650
Total SEVIS IDs W/OPT	24,838	47,432	51,985	60,348	69,804	78,364	86,284	98,825	126,509	171,593	204,633	200,162
CPT	57,403	61,171	48,568	57,409	63,911	68,482	76,223	92,528	111,135	122,529	132,380	151,525

Students issued an Employment Authorization Document (EAD) by calendar year												
Issued OPT and STEM Authorizations in the Indicated Calendar Year												
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Total SEVIS IDs W/OPT	81,976	82,525	82,843	91,860	103,393	111,978	120,897	133,098	159,298	190,683	218,998	208,065

Source: DHS ICE Webpage, “2007 to 2018 Annual Growth in OPT, STEM OPT and CPT Authorizations and Employment Authorization Document (EAD) Issuances;” <https://www.ice.gov/doclib/sevis/pdf/data-ApprovedEmploymentAuthorizations2007-2018.pdf> (accessed Jun. 4, 2020).

THE GROWTH OF OPT: A PRIMER

The OPT program has expanded exponentially in size and scope over the past 20 years, proving attractive to students pursuing post-secondary degrees. The percentage of all foreign students in the United States who participated in OPT in 2018, as indicated by ICE records, was more than 20 percent.³⁷⁵ According to the Pew Research Center, nearly 1.5 million international students were approved for OPT between 2004 and 2016.³⁷⁶ The total number of OPT students rose from 24,838 in 2007 to 200,162 in 2018, an increase of over 700 percent. During the same period, the subset of students pursuing extended STEM OPT rose from 2 individuals, when the category first became available, to 69,650 individuals.³⁷⁷

Over the past few years OPT program participation has increased, even where international student growth on U.S. campuses has slowed slightly.³⁷⁸

The OPT program, in particular its STEM subset, has been characterized as a high-tech worker program containing none of the worker protections mandated by the Immigration and Nationality Act (INA) for foreign worker programs, such as the H-1B program.³⁷⁹

OPT is not what many would consider an internship arrangement. There are separate provisions for training opportunities tied to the academic program, such as fellowships and internships, both on and off campus, that are distinguished from OPT.³⁸⁰ DHS regulatory amendments in 2016 required a training plan from the employer, to be approved by the school in advance, as well

³⁷⁵ DHS Immigration and Customs Enforcement, “Student and Exchange Visitor (SEVP) Program: SEVIS By The Numbers 2018” (undated); <https://www.ice.gov/doclib/sevis/pdf/sevisByTheNumbers2018.pdf> (accessed Jun. 11, 2020).

³⁷⁶ Neil G. Ruiz and Abby Budiman, “Number of foreign college graduates staying in U.S. to work climbed again in 2017, but growth has slowed,” Pew Research Center Fact Tank (Jul. 25, 2018); <https://www.pewresearch.org/fact-tank/2018/07/25/number-of-foreign-college-graduates-staying-in-u-s-to-work-climbed-again-in-2017-but-growth-has-slowed/> (accessed Jun 3, 2020).

³⁷⁷ DHS ICE Webpage, “2007 to 2018 Annual Growth in OPT, STEM OPT and CPT Authorizations and Employment Authorization Document (EAD) Issuances” (undated); <https://www.ice.gov/doclib/sevis/pdf/data-ApprovedEmploymentAuthorizations2007-2018.pdf> (accessed Jun. 4, 2020).

³⁷⁸ Institute of International Education, “Leading Places of Origin,” Open Doors: Report on International Educational Exchange (Nov. 2019); <https://www.iie.org/en/Research-and-Insights/Open-Doors/Data/International-Students/Places-of-Origin> (accessed Jun. 7, 2020). “Open Doors®,” supported by a grant from the Bureau of Educational and Cultural Affairs at the U.S. Department of State, is a comprehensive information resource on international students and scholars studying or teaching at higher education institution.” <https://www.iie.org/Research-and-Insights/Open-Doors>.

³⁷⁹ For a discussion of the H-1B program, including several of those protections, see Annual Report 2019, pp. 8–42.

³⁸⁰ See, e.g., 8 C.F.R. § 214.2(f)(10)(i).

as an attestation from the employer that the student was not replacing a full- or part-time, temporary or permanent U.S. employee.³⁸¹

It is alleged (and is the subject of current litigation) that employers are attracted to hiring OPT students by tax incentives aligned to the status of the students.³⁸² We state no position on that litigation, but note that nonresident foreign students are exempt from U.S. Social Security and Medicare taxes on wages paid for services performed within the United States, as long as such services are allowed by USCIS and are performed to carry out the purposes for which such visas were issued.³⁸³ This applies for the duration of F-1 status, although the exemption does not apply to unauthorized employment or to employment unaligned with the program requirements (*e.g.*, not closely related to course of study for which the visa was issued).³⁸⁴ In the case of a STEM OPT recipient, this period of time can last up to 36 months after graduation. In the case of a STEM student who pursues a complete post-secondary education in the United States, that period of time can be, cumulatively, up to 6 years (up to 3 years each after receiving 2 degrees).³⁸⁵

While foreign students arrive in the United States from all over the world, a few countries predominate the program. The top two countries by total number of active Student and Exchange Visitor Information System (SEVIS) records in 2018 were China (478,732) and India (251,290).³⁸⁶ Post-secondary students from China and India represent

more than 50 percent of the total international student population of over 1 million.³⁸⁷

The National Science Foundation (NSF) data on trends in doctorates in Science and Engineering (S&E) fields demonstrates that of the 55,195 doctorate recipients in 2018, 17,124 were given to temporary visa holders.³⁸⁸ Over one-third, 6,182, were from China, which is consistently the top foreign country from which doctoral degree candidates originate in the last decade, followed by India, South Korea, Iran and Taiwan. This aligns with another study undertaken by the NSF, which found that China and India are two of the top three countries from which those coming for doctoral study “intend to stay” after completing that degree; specifically, 88 percent of Indian doctoral recipients and 87 percent of Chinese recipients planned on remaining in the United States after graduation.³⁸⁹ Moreover, students from India and China were more likely to remain in the United States than those from other countries, even 10 years after receiving their doctorates.³⁹⁰

³⁸¹ 8 C.F.R. § 214.2(f)(10)(ii)(C)(10)(ii).

³⁸² See NAFSA, “STEM OPT WashTech Litigation” (Apr. 13, 2020); <https://www.nafsa.org/professional-resources/browse-by-interest/stem-opt-washtech-litigation> (accessed Jun. 17, 2020).

³⁸³ Internal Revenue Service Webpage, “Social Security/Medicare and Self-Employment Tax Liability of Foreign Students, Scholars, Teachers, Researchers, and Trainees” (Dec. 11, 2019); <https://www.irs.gov/individuals/international-taxpayers/foreign-student-liability-for-social-security-and-medicare-taxes> (accessed Jun. 6, 2020).

³⁸⁴ Internal Revenue Service Webpage, “Social Security/Medicare and Self-Employment Tax Liability of Foreign Students, Scholars, Teachers, Researchers, and Trainees” (Dec. 11, 2019); <https://www.irs.gov/individuals/international-taxpayers/foreign-student-liability-for-social-security-and-medicare-taxes> (accessed Jun. 6, 2020).

³⁸⁵ 8 C.F.R. § 214.2(f)(10)(C) (“If a student completes all such course requirements for another qualifying degree at a higher degree level than the first, the student may apply for a second 24-month extension of OPT while in a valid period of post-completion OPT ... In no event may a student be authorized for more than two lifetime STEM OPT extensions.”)

³⁸⁶ DHS ICE Webpage, “2018 All Countries of Citizenship by Total Number of Active SEVIS Records” (undated); https://www.ice.gov/doclib/sevis/pdf/data-CitizenshipActiveStudents_2018.pdf (accessed Jun. 10, 2020).

³⁸⁷ The Institute of International Education posits that there were approximately 1,095,299 foreign students in the United States in the 2018-19 academic year. Institute of International Education, “Leading Places of Origin,” Open Doors: Report on International Educational Exchange (Nov. 2019); <https://www.iie.org/en/Research-and-Insights/Open-Doors/Data/International-Students/Places-of-Origin> (accessed Jun. 7, 2020).

³⁸⁸ National Science Foundation, “Doctorate Recipients from U.S. Universities 2018,” Table 25 (December 2019); <https://nces.nsf.gov/pubs/nsf20301/report> (accessed Jun. 7, 2020).

³⁸⁹ “From 1980 onward, the number of temporary visa holders intending to stay in the United States after earning a doctorate increased at an average annual rate of 5.4%, whereas the growth in number of temporary visa holders intending to leave the United States after graduation has been more modest (2.8% average annual increase). As a result, in 2015, the number of temporary visa holders intending to stay in the United States was nearly three times as great as the number intending to leave (11,508 versus 3,885).” National Science Foundation, “Doctoral Recipients from U.S. Universities 2017,” p. 10 (Jun. 2017); <https://www.nsf.gov/statistics/2017/nsf17306/static/report/nsf17306.pdf> (accessed Jun. 7, 2020).

³⁹⁰ STEM graduates from the PRC (90 percent) and India (83 percent) stayed at higher rates than European students (69 percent). Congressional Research Service, “In Focus: Foreign STEM Students in the United States,” Nov. 1, 2019; <https://crsreports.congress.gov/product/pdf/IF/IF11347> (accessed Jun. 6, 2020)(citing the 2017 NSF study).

Figure 6.2: Top 25 Places of Origin of International Students, 2017/18 & 2018/19

Rank	Place of Origin	2017/18	2018/19	% of Total	% Change
	World TOTAL	1,094,792	1,095,299	100.0	0.05
1	China	363,341	369,548	33.7	1.7
2	India	196,271	202,014	18.4	2.9
3	South Korea	54,555	52,250	4.8	-4.2
4	Saudi Arabia	44,432	37,080	3.4	-16.5
5	Canada	25,909	26,122	2.4	0.8
6	Vietnam	24,325	24,392	2.2	0.3
7	Taiwan	22,454	23,369	2.1	4.1
8	Japan	18,753	18,105	1.7	-3.5
9	Brazil	14,620	16,059	1.5	9.8
10	Mexico	15,468	15,229	1.4	-1.5
11	Nigeria	12,693	13,423	1.2	5.8
12	Nepal	13,270	13,229	1.2	-0.3
13	Iran	12,783	12,142	1.1	-5.0
14	United Kingdom	11,460	11,146	1.0	-2.7
15	Turkey	10,520	10,159	0.9	-3.4
16	Kuwait	10,190	9,195	0.8	-9.8
17	Germany	10,042	9,191	0.8	-8.5
18	France	8,802	8,716	0.8	-1.0
19	Indonesia	8,650	8,356	0.8	-3.4
20	Bangladesh	7,496	8,249	0.8	10.0
21	Colombia	7,976	8,060	0.7	1.1
22	Pakistan	7,537	7,957	0.7	5.6
23	Venezuela	8,371	7,760	0.7	-7.3
24	Malaysia	8,271	7,709	0.7	-6.8
25	Spain	7,489	7,262	0.7	-3.0

Source: Institute of International Education, “Leading Places of Origin,” Open Doors: Report on International Educational Exchange (Nov. 2019); <https://www.iie.org/en/Research-and-Insights/Open-Doors/Data/International-Students/Places-of-Origin> (accessed Jun. 7, 2020).

IDENTIFYING THE VULNERABILITIES IN THE PROGRAM: GENERAL CONCERNS

SEVP has been administered within ICE since DHS’s creation.³⁹¹ SEVP is part of the National Security Investigations Division of ICE, and coordinates information for all of the government organizations that have an interest in such information on nonimmigrant students, including DOS, USCIS, and U.S. Customs and Border Protection (CBP).³⁹² SEVP provides “integrity to the United States immigration system by collecting, maintaining and analyzing information so only legitimate nonimmigrant students or exchange visitors gain entry into the United States.”³⁹³ A school must be certified by ICE through SEVP to accept foreign students in order for those students to obtain F-1 or M-1 visas, which is accomplished through the school submitting Form I-17, *Petition for Approval of School for Attendance by Nonimmigrant Student*, and includes a site visit to the campus.³⁹⁴ SEVP assists in ostensibly tracking and providing oversight of foreign students, both facilitating the flow of legitimate students and preventing exploitation of student pathways by unscrupulous actors.³⁹⁵

SEVP manages SEVIS, the web-based system for monitoring of student records, in partnership with other agencies (including USCIS and DOS, the latter of which oversees documentation for J exchange visitors). SEVP relies on DSOs to provide to ICE, through SEVIS, needed information to ensure the system performs its functions to monitor both the schools and the students, deny terrorists’ acceptance into the U.S. academic system, and ensure enforcement of applicable immigration laws.³⁹⁶ DSOs are school employees who must be U.S. citizens or lawful permanent residents and who are responsible for entering student information and maintaining it in the

³⁹¹ Homeland Security Act Section 442(a)(4) put the administration of the SEVP, which had been developed pursuant to the 1996 Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, into the hands of what became Immigration and Customs Enforcement at DHS.

³⁹² DHS Webpage, “Student and Exchange Visitor Program: SEVP Overview” (Feb. 26, 2020); <https://www.ice.gov/sevis> (accessed Jun. 15, 2020).

³⁹³ DHS Webpage, “Get to Know SEVP: The Student and Exchange Visitor Program” (undated); https://studyinthestates.dhs.gov/assets/Get%20to%20Know%20SEVP_Oct2018.pdf (accessed Jun. 6, 2020).

³⁹⁴ See generally 8 C.F.R. § 214.3.

³⁹⁵ U.S. Government Accountability Office, “Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization,” GAO-14-356, p. 2 (Mar. 2014); <https://www.gao.gov/assets/670/661192.pdf> (accessed Jun. 7, 2020).

³⁹⁶ See generally 8 C.F.R. § 214.3(l)(1).

system, recording any changes as they occur.³⁹⁷ ICE is largely dependent on DSOs to properly maintain student information in SEVIS, even if that means obtaining information from students well after graduation, and to report violations.³⁹⁸

Both SEVP and DSOs are leanly staffed yet have a significant set of responsibilities. SEVP works in the field through its representatives. ICE indicated in January, 2020 that for the approximately 9,000 certified schools (that encompass a wide range from K–12 through universities), divided into approximately 60 regions, there is roughly 1 representative for each region.³⁹⁹ That SEVP representative is responsible for site visits to schools (potentially hundreds, depending on the region) at least once each year, reviewing records and ensuring schools comply with program requirements and regulations.

DSOs (and the Principal DSO, or PDSO) take on a significant array of responsibilities with respect to ensuring information on students is fully and timely entered into SEVIS.⁴⁰⁰ DSOs support the students regarding their status, the school regarding compliance, and the federal government regarding enforcement of immigration laws. They are also responsible for ensuring their continuing intent to comply with all program rules regarding the requirements for nonimmigrant students' admission, maintenance of status, change of status, and requirements for school approval, upon penalty of perjury.⁴⁰¹

In 2019, approximately 10 percent of the Ombudsman's public engagements involved school-related stakeholders, engaging with hundreds of DSOs across the country. DSOs reported significant data problems, including gaps in communication between SEVIS and USCIS' Computer-Linked Application Information Management System (CLAIMS). These gaps can lead to errors that have a ripple effect on students, schools, and employers, especially when the student is seeking OPT, and cause DSOs to spend significant amounts of time correcting

them. DSOs also say they are called upon to explain the intricacies of immigration regulations to SEVIS staff, who may not have worked directly with international students.⁴⁰² Site visits from field representatives, which are to take place every year, do not always occur as required (some more frequently, some less frequently).⁴⁰³ And DSOs experience a relatively high rate of turnover—DHS noted a rate of 37.1 percent in 2012, when fewer foreign students undertook OPT and there were fewer requirements for post-completion STEM OPT.⁴⁰⁴

Several times over the past decade the Government Accountability Office (GAO) has identified substantial deficiencies in SEVIS, including actions relating to OPT reporting and compliance requirements. In 2012, GAO found that ICE had not developed a process for identifying program risk since it assumed responsibility for the SEVIS program, making several recommendations for initiating such a process.⁴⁰⁵ Two years later, GAO reiterated its concerns regarding fraud risk, this time specifically with OPT, recommending that DHS “identify and assess OPT-related risks and require additional employment information from students and schools.”⁴⁰⁶ GAO's recommendation stemmed in part from interviews with ICE enforcement officials, who voiced their concern that the program contained higher levels of fraud and noncompliance because “it enables eligible foreign students to work in the United States for extended periods of time without obtaining a temporary work visa,” and because of the length of the work authorization.⁴⁰⁷ GAO recommended that DHS take specific actions to clarify eligibility rules, determine alignment of job and degree, and add reporting requirements, all to better ensure DSOs' and students' compliance with OPT requirements.⁴⁰⁸

In 2019, GAO returned to SEVP, this time focusing on

⁴⁰² Information provided by stakeholders (Apr. 17 and Jun. 17, 2020).

⁴⁰³ Information provided by stakeholders (Jun. 19, 2020).

⁴⁰⁴ “Adjustments to Limitations on Designated School Official Assignment and Study by F–2 and M–2 Nonimmigrants,” 80 Fed. Reg. 23680, 23686, fnt. 12 (Apr. 29, 2015).

⁴⁰⁵ GAO, “Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight Functions,” GAO-12-572 (Jun. 18, 2012); <https://www.gao.gov/assets/600/591668.pdf> (accessed Jun. 7, 2020).

⁴⁰⁶ GAO, “Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization,” GAO-14-356, p. 31 (Mar. 2014); <https://www.gao.gov/assets/670/661192.pdf> (accessed Jun. 7, 2020).

⁴⁰⁷ *Id.* One relevant observation made at the time was that nonimmigrants are a vulnerable population that can be exploited by illegitimate companies or organizations that lure students to the United States with false promises of high-paying jobs and potential ways to stay in the country.

⁴⁰⁸ *Id.* at 31.

³⁹⁷ For an overview of DSO reporting requirements, see DHS ICE Webpage, “SEVIS Reporting Requirements for Designated School Officials” (Mar. 29, 2019); <https://www.ice.gov/sevis/dso-requirements> (accessed Jun. 17, 2020).

³⁹⁸ Students may be given limited access to SEVP when in post-completion OPT to provide changes to their address and employment; it is discretionary on the school to require students to complete this reporting, but they may not block students from this limited access. DHS ICE Webpage, “SEVIS and the SEVP Portal” (Mar. 22, 2019); <https://studyinthestates.dhs.gov/sevis-help-hub/student-records/fm-student-employment/sevis-and-the-sevp-portal> (accessed Jun. 20, 2020).

³⁹⁹ Information provided by ICE (Jan. 16, 2020).

⁴⁰⁰ See 8 C.F.R. § 214.3(a)(1).

⁴⁰¹ 8 C.F.R. § 214.3(a)(1)(ii).

the certification and re-certification of schools, but also recommending specific fraud training for DSOs.⁴⁰⁹ This report noted several program deficiencies regarding the vetting and training of DSOs, including background checks and verification of eligibility, pointing to yet another weakness in the program—DSOs potentially overwhelmed by program responsibilities and not fully trained.⁴¹⁰ It was noted that “DSOs with multiple job responsibilities may not have time to keep up with SEVP rules and policy updates” and that “DSOs have a high rate of turnover, especially at small schools, and may lack the expertise to effectively follow program requirements.”⁴¹¹ Because DSOs carry significant responsibility for ensuring program compliance of both the school and the student, these observations are concerning.

The introduction of nonimmigrant students into American workplaces, especially in STEM fields, ultimately involves the sharing of technology and/or intellectual property with foreign nationals. In many cases it is innocuous, trivial, or otherwise protected against. But in the case of STEM students, the vulnerability has been largely ignored.

ON THE JOB TRAINING?

Nonacademic training of a nonimmigrant student, both during and subsequent to academic coursework, is not specifically mentioned in the current definition of a student in the INA.⁴¹² However, “practical training” employment authorization for foreign students, growing out of their academic programs, has been in existence since before the McCarren-Walter Act introduced the modern definition

⁴⁰⁹ GAO, “Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Certification and Program Oversight,” GAO-19-297, March 2019; <https://www.gao.gov/assets/700/697630.pdf> (accessed May 5, 2020).

⁴¹⁰ *Id.* at 41.

⁴¹¹ *Id.* at 48.

⁴¹² An F-1 student is generally defined as “an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 1184[m] of this title at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn....” INA § 101(a)(15)(F)(i); 8 U.S.C. § 1101(a)(15)(F)(1).

of a foreign student.⁴¹³ Regulations were promulgated in 1953 to create the modern parameters of a work program. It has survived in varying forms ever since.

Work authorization for students was given a specific legislative life in the Immigration Act of 1990. That statute created a pilot program for off-campus work that was *unrelated* to the student’s course of study.⁴¹⁴ As an attempt to measure impact on the U.S. workforce, it was to be studied and reported on by both the Secretary of the Department of Labor (DOL) and the Commissioner of legacy Immigration and Naturalization Service (INS) evaluating its usefulness.⁴¹⁵ When the evaluation took place, DOL and INS recommended it not be extended.⁴¹⁶ It was not.

The growth of OPT, and the creation of a separate STEM OPT, has brought substantial focus to its controversial nature. STEM students were given the ability to extend their OPT from 12 months to 29 months in 2008.⁴¹⁷ Citing the competitive global market and the recognized shortages in STEM fields, by providing F-1 students with a longer period to remain in the United States, DHS sought to mitigate the “immediate competitive disadvantage faced

⁴¹³ Immigration and Nationality Act of 1952, § 101(a)(15)(f), Pub. L. 82–414, 66 Stat. 163 (Jun. 27, 1952). In 1947 regulations regarding students were finalized, which included the definition of a student based in the statute but also included discretion for practical training: “[8 C.F.R.] § 125.15 Employment ... (b) In cases where employment for practical training is required or recommended by the school, the district director may permit the student to engage in such employment for a six-month period subject to extension for not over two additional six-month periods, but any such extensions shall be granted only upon certification by the school and the training agency that the practical training cannot be accomplished in a shorter period of time.” 12 Fed. Reg. 5355, 5357 (Aug. 7, 1947).

⁴¹⁴ Immigration Act of 1990, § 221(a)(2), Pub. L. 101–649, 104 Stat. 4978 (authorizing the Attorney General to establish a pilot to grant work authorization to a student who has completed at least 1 year of study, to be employed in a position unrelated to the student’s field of study and off-campus, if the employer provided “the educational institution and the Secretary of Labor with an attestation that the employer (A) has recruited for at least 60 days for the position and (B) will provide for payment to the alien and to other similarly situated workers at a rate equal to not less than the actual wage level for the occupation at the place of employment or, if greater, the prevailing wage level for the occupation in the area of employment ...”) It was created as a 3 year pilot and extended to 5 years in 1994. Immigration and Nationality Technical Corrections Act of 1994, § 215, Pub. L. 103–416, 109 Stat. 4305 (Oct. 25, 1995).

⁴¹⁵ *Id.*

⁴¹⁶ D. Costa, “Little-known temporary visas for foreign tech workers depress wages,” TheHill.com, Nov. 11, 2014; <https://thehill.com/blogs/pundits-blog/technology/223607-little-known-temporary-visas-for-foreign-tech-workers-depress> (accessed Jun. 5, 2020).

⁴¹⁷ “Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students with STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students with Pending H-1B Petitions,” 73 Fed. Reg. 18944 (Apr. 8, 2008).

by U.S. high-tech industries.”⁴¹⁸ In 2016, the DHS rules were again modified, allowing for in total a 36-month period of employment, but also requiring certain program modifications when seeking the additional 24 months. These modifications included new requirements on students, employers, and DSOs, such as the requirement of an employer and student to submit a formal training plan to identify and execute learning objectives; the requirement that the student not replace an existing U.S. worker; the requirement that STEM OPT employers be enrolled in and remain in good standing with E-Verify, as determined by USCIS, and that they report changes in the STEM OPT student’s employment; a requirement that the student’s terms and conditions of employment be commensurate with similarly situated U.S. workers; optional site visits to the employer; and additional reporting requirements for DSOs.⁴¹⁹ These provisions have been the subject of protracted litigation that is unresolved at this time.⁴²⁰

The numbers of post-completion OPT holders have continued to grow.⁴²¹ In 2014, GAO noted that 100,000 of the roughly 1 million international students at that time were remaining after completing a course of study to engage in practical training.⁴²² In the past 3 years for which there is data, F-1 students make up the overwhelming majority of the student population admissions, comprising between 1.86 million and 1.89 million from 2016 to 2018.⁴²³ This correlated to the number of actual student records in SEVIS, which in 2018

numbered over 1.55 million.⁴²⁴ Of those students, more than 10 percent are engaged in OPT. In fact, the numbers of students in OPT, and in STEM OPT, have surpassed first-time H-1B workers. In 2016, more than 171,593 were in OPT programs; by 2018, approximately 200,162 were working pursuant to OPT, of which 69,650 were in STEM.⁴²⁵

The concerns expressed by GAO regarding risk are only partially alleviated by the additional reporting and validation requirements for DSOs, employers, and students added to the STEM OPT extension program (and only to that program). Students represent a relatively small portion of the total numbers of nonimmigrants to the United States (only about 2.4 percent in FY 2018),⁴²⁶ yet present a problem due to their relative youth and looser ties to their home countries. In FY 2018, 3.73 percent stayed beyond the authorized window for departure at the end of their program—a total of 68,593 students.⁴²⁷ Broken down, 3.59 percent in the F visa category overstayed their visas, while 10.80 percent of M visa students and 3.86 percent of J visa students overstayed.⁴²⁸ The countries with the largest numbers of overstayers was China, with 12,924 students, India, with 5,716, and Saudi Arabia, with 3,917.⁴²⁹ While the percentage of all foreign students who overstay is relatively small, the cumulative numbers are significant.

HOW FOREIGN STUDENTS ARE CLEARED TO WORK

In the 2019 Annual Report, the Ombudsman’s Office studied “*Challenges Facing Timely Adjudication of Employment Authorization Documents*.”⁴³⁰ Among other things, the Report discussed:

- a) The growth in EAD application filings due in part to the increase in the F-1 student population seeking OPT;

⁴¹⁸ “Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students with STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students with Pending H-1B Petitions,” 73 Fed. Reg. at 18947.

⁴¹⁹ “Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students with STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students,” 81 Fed. Reg. 13040 (Mar. 11, 2016).

⁴²⁰ For a succinct summary of the ongoing Washtech litigation challenging OPT, see NAFSA Webpage, “STEM OPT WashTech Litigation” (Apr. 13, 2020); <https://www.nafsa.org/professional-resources/browse-by-interest/stem-opt-washtech-litigation> (accessed Jun 16, 2020).

⁴²¹ N. Ruiz, “More foreign grads of U.S. colleges are staying in the country to work,” Pew Research Center Fact Tank (May 18, 2017); <https://www.pewresearch.org/fact-tank/2017/05/18/more-foreign-grads-of-u-s-colleges-are-staying-in-the-country-to-work/> (accessed Jun. 5, 2020).

⁴²² GAO, “Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization,” GAO-14-356, p. 1 (Mar. 2014); <https://www.gao.gov/assets/670/661192.pdf> (accessed Jun. 5, 2020).

⁴²³ W. Navarro, “Annual Flow Report, U.S. Nonimmigrant Admissions: 2018,” Table 1, DHS Office of Immigration Statistics (Oct. 2019); https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/nonimmigrant_admissions_2018.pdf (accessed Jun. 5, 2020). Admission “events” are not reflective of total admissions, but instead reflect every admission of an individual in that category. Students entering more than once each year would be counted as multiple admission events.

⁴²⁴ DHS Webpage, “2018 All Countries of Citizenship by Total Number of Active SEVIS Records” (undated); https://www.ice.gov/doclib/sevis/pdf/data-CitizenshipActiveStudents_2018.pdf (accessed Jun. 9, 2020).

⁴²⁵ *Id.*

⁴²⁶ W. Navarro, “Annual Flow Report, U.S. Nonimmigrant Admissions: 2018,” Table 1, DHS Office of Immigration Statistics (Oct. 2019); https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/nonimmigrant_admissions_2018.pdf (accessed Jun. 5, 2020).

⁴²⁷ DHS, “Fiscal Year 2018 Entry/Exit Overstay Report” (undated); https://www.dhs.gov/sites/default/files/publications/cbp_-_fiscal_year_2018_entry_exit_overstay_report.pdf (accessed Jun. 7, 2020).

⁴²⁸ *Id.* at 12.

⁴²⁹ *Id.*

⁴³⁰ See Ombudsman’s Annual Report 2019, pp. 70–84.

- b) The top five EAD categories by receipts in FY18 included 227,000 requests from students, including those seeking OPT; and
- c) When adjudicating a Form I-765, USCIS adjudicators must under standard operating procedure confirm the identity of the applicant, review the current immigration status of record, and perform background and security checks to determine whether there are any criminal, national security, or other issues that must be resolved before reviewing the substantive benefit request.

One of the observations the Ombudsman put forward in the context of the Form I-765, *Application for Employment Authorization*, adjudication delays was the very short amount of time USCIS spends looking at such applications, which was recently reconfirmed by the agency. USCIS has determined the average hours per adjudication of this benefit (meaning the time an employee with adjudicative responsibilities actually handles the case) is two-tenths of an hour, or 12 minutes.⁴³¹ While additional time is spent on administrative duties, including printing an approved card, an average EAD application takes only that amount of time to review, vet, and clear within the agency. And for some students, this may be the first—and possibly only—encounter between the student and USCIS.⁴³²

Most nonimmigrant worker programs are subject to statutory and regulatory norms, either requiring a demonstration of the lack of adverse impact on U.S. workers, or the explicit exemption from those protections (such as those in the context of the L-1 intracompany transfer visa, or O visas for nonimmigrants of extraordinary ability). The single bulwark in the OPT program is the training plan submitted by employers and employees in the STEM extension OPT portion, attesting to the parameters of the training program and demonstrating that it is indeed a training program and

not fully “work.”⁴³³ OPT fails to include many of the customary protections that would have been legislated in (or negotiated out) had it been developed by Congress, rather than created by regulation that did not include analysis of necessary resources to securely administer a program that would eventually dwarf the H-1B program, and tangentially impact U.S. workers working in STEM or other disciplines. Those protections in the STEM OPT extension lie: (1) in the training plan submitted with the extension application, which is a shared responsibility of the employer, employee, and DSO to submit, maintain, and demonstrate progress toward the evaluation process, and (2) in the attestations of the employer that the terms and conditions of a STEM practical training opportunity are commensurate with the terms and conditions of employment for other similarly situated U.S. workers in the area of employment.⁴³⁴ Under the current regulatory regime, it is incumbent on DSOs, not the Federal government, to review and approve the training plan, to ensure amendments to the training plan are entered, and to see evaluations through.⁴³⁵

The demonstration of OPT is the EAD, obtained by the student through USCIS, not through ICE. As a fee-funded agency, USCIS is currently seeking a fee increase to “right-size” the actual costs of its operations.⁴³⁶ The proposed increase for the EAD is 20 percent, or an additional \$80, for a total of \$575, which includes \$85 to capture biometrics.⁴³⁷ Given the time taken currently by USCIS with respect to the EAD, this may seem adequate. It does not, however, account for any of the costs to ICE for managing SEVP, which must be covered by fees

⁴³¹ “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 84 Fed. Reg. 62280, 62291, Table 6 (Nov. 14, 2019).

⁴³² A student who has received an F-1 visa outside the United States and has not needed to travel, or who has travelled and reentered on a valid student visa, may never have come before USCIS in any way, as no updates to status are needed, until the EAD is sought. Students who maintain full-time courses of study and do not violate the terms of their status are considered to be in valid status for the duration of their stay. A student who entered the United States in another status and changed to that of a student would have need to file for such change of status with USCIS.

⁴³³ 8 C.F.R. § 214.2(f)(10)(ii)(C)(7). “The training plan . . . must identify goals for the STEM practical training opportunity, including specific knowledge, skills, or techniques that will be imparted to the student, and explain how those goals will be achieved through the work-based learning opportunity with the employer; describe a performance evaluation process; and describe methods of oversight and supervision. Employers may rely on their otherwise existing training programs or policies to satisfy the requirements relating to performance evaluation and oversight and supervision, as applicable.”

⁴³⁴ 8 C.F.R. § 214.2(f)(10)(ii)(C)(8).

⁴³⁵ However, if USCIS has derogatory information regarding the applicant, school or DSO that raises concerns of non-compliance with any of the program requirements when adjudicating the OPT authorization, it may request a copy of the Training Plan, Form I-983, from the DSO to assist the officer in the adjudication process. Information provided by USCIS (Apr. 25, 2019).

⁴³⁶ See “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 84 Fed. Reg. 62280 (Nov. 14, 2019).

⁴³⁷ “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 84 Fed. Reg. at 62327 (Table 19).

associated with SEVP, nor for any additional vetting or security screening of a student to ensure eligibility for the benefit sought. After a student is vetted prior to the start of the program by DOS in the securing of a visa, and CBP upon admission into the United States, there is minimal oversight of student activities.⁴³⁸ A student may reside in the United States for years—studying and working with OPT without anyone questioning what activities the student might be engaged in, much less what activities they may be involved in related to their home country. Under current regulations, if a student does not travel, triggering the need for a new visa from DOS, generally no security vetting takes place by any U.S. government agency after the student’s admission.

The funding for SEVP activities, including the vetting of schools and students prior to entry, comes from fees paid by schools and foreign students approved for the program.⁴³⁹ These fees are authorized under the INA as part of the costs of the program.⁴⁴⁰ In June 2019, SEVP increased its fees and introduced 2 new fees to adjust for diminishing revenues from FY 2016 through FY 2018, to recover the cost of operations.⁴⁴¹ Under the current cost recovery model, a school pays \$3000 to obtain an initial certification and \$655 for the required site visit.⁴⁴² Recertification is less than half that amount, at \$1250. Students pay differing amounts for documentation certifying their ability to enroll; F-1 students pay \$350 with the Form I-901, *Fee Remittance for Certain F, J and M Nonimmigrants*, to be entered into SEVIS, which

enables the student to obtain the documentation necessary to have a visa or change of status issued.

These SEVP fee increases, the first in 10 years (because, according to ICE, increases were previously rendered unnecessary due to “surplus revenue”), were specifically made “to cover the current deficit between revenue and expenditures plus make necessary service upgrades... ensuring full cost recovery by providing fees for each specific benefit that will more adequately recover the cost associated with administering the benefit.”⁴⁴³ The fees do not reflect increases in vetting and screening, or enhancements to systems to ensure compliance, such as increased costs for additional field representatives to conduct site visits, or more testing of DSOs to ensure understanding of program rules.

One of the more intransigent dilemmas that make up the foreign student program is that the vast majority of the student program—tracking, compliance, and monitoring of student status and completion of milestones—is overseen by ICE, while the OPT portion of the program is primarily handled by USCIS. This bifurcation within DHS allows each entity autonomy but does not foster coordination.

OPT requests for employment authorization are handled in the same general fashion as all EADs.⁴⁴⁴ At this stage, the background checks are the same as for other EAD categories. The eligibility is based on demonstration of program completion as evidenced by the Form I-20, *Certificate of Eligibility for Nonimmigrant Student Status*, and SEVIS.⁴⁴⁵ There is no indication that USCIS performs additional verification of status or additional verification of nonimmigrant intent. There is no ability for USCIS to conduct further evaluation of the school program, DSO compliance with program requirements, or screening of the applicant. In non-STEM OPT, there is not even a requirement to identify an employer; the EAD is obtained in the absence of an offer of employment, with the understanding that the student will work in a field related to the degree.⁴⁴⁶ In STEM OPT, more is done to confirm eligibility, including that the employer participates in the E-Verify program, but the review of the program and the attestation of the DSO is already certified in SEVIS.⁴⁴⁷

⁴³⁸ See *infra* for comments regarding the visa process, as indicated by the Department of State. “Student Visa Integrity: Protecting Educational Opportunity and National Security,” *before the Subcommittee on Border Security and Immigration of the U.S. Senate Judiciary Committee*, 115th Cong. 1st Sess. 2 (2018) (prepared statement of Edward J. Ramotowski, Deputy Assistant Secretary of State, Bureau of Consular Affairs); <https://www.judiciary.senate.gov/imo/media/doc/Ramotowski%20Testimony.pdf> (accessed Jun. 3, 2020).

⁴³⁹ U.S. Government Accountability Office, “Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization,” GAO-14-356 (Feb. 2014); <https://www.gao.gov/assets/670/661192.pdf> (accessed Jun. 5, 2020).

⁴⁴⁰ INA § 286(e)(1), 8 USC § 1372(e)(1).

⁴⁴¹ “Adjusting Program Fees for the Student and Exchange Visitor Program,” 84 Fed. Reg. 23930 (May 23, 2019). “As a consequence of multiple factors, including inflation, costs associated with SEVIS enhancement, complying with a two-year recertification cycle of schools, increased demand for program and investigatory services, and increased litigation related to administrative enforcement and regulatory actions, the surplus is expected to be exhausted in FY 2019 even without any further service upgrades. The projected shortfall poses a risk of degrading operations and services funded by fee revenue.” 84 Fed. Reg. at 23931.

⁴⁴² “Adjusting Program Fees for the Student and Exchange Visitor Program,” 84 Fed. Reg. at 23931.

⁴⁴³ *Id.*

⁴⁴⁴ See generally Annual Report 2019, pp. 70–72.

⁴⁴⁵ Adjudicators are to look to see whether there is “evidence of F-1 status, SEVIS Form I-20, I-20 meets filing requirements, evidence of program completion.” Information provided by USCIS (Apr. 25, 2019).

⁴⁴⁶ 8 C.F.R. § 214.2(f)(10).

⁴⁴⁷ Information provided by USCIS (Apr. 25, 2019).

Absent a fraud indicator, such as information that the school or a STEM employer may be fraudulent (or that the student is not eligible, for example having violated the terms of status), USCIS has little authority to do more.⁴⁴⁸

As the number of foreign nationals employed through OPT and STEM OPT have risen in the past decade, Federal officials in the Departments of Defense, State, Justice and Homeland Security, along with a variety of Congressional committees and subcommittees, have expressed concern at the emergence of OPT as a means for foreign countries to conduct data collection of sensitive technologies through students and researchers. Their concern has particularly focused on the activities of the PRC government, the Chinese Communist Party (CCP), and the People's Liberation Army (PLA).

These concerns have not been ignored. Even before the President's Proclamation last month, in June 2018, DOS announced it would restrict visas for Chinese graduate students studying in sensitive research fields to 1 year, while permitting annual renewals.⁴⁴⁹ DOS has not identified exactly which disciplines are subject to this higher level of scrutiny. But a Chinese national who enters the United States may not need to travel again, and if the student remains in the United States in a full-time course of study, no new visa is needed, and thus no additional scrutiny except that placed by a DSO.

Given that much of the concern over OPT and STEM OPT concerns the integrity of the immigration system, and involves individuals and employers who are obtaining work authorization from USCIS, and is of particular concern to Congress, the Ombudsman finds it advisable to provide an objective analysis of risk surrounding OPT.

ASSESSING RISK AROUND THE OPT PROGRAM

To gain an understanding of potential risks surrounding the OPT program, it is helpful to employ a risk analysis framework. The framework is intended to provide an objective evaluation of risk; to promote understanding and

⁴⁴⁸ "Students are not required to submit the Training Plan, Form I-983, with their STEM OPT extension applications, and officers should consider the endorsement of the DSO sufficient to meet the attestation requirements of the STEM OPT extension program." *Id.*

⁴⁴⁹ A. Yoon-Hendricks, "Visa Restrictions for Chinese Students Alarm Academia," *The New York Times*, Jul. 25, 2018; <https://www.nytimes.com/2018/07/25/us/politics/visa-restrictions-chinese-students.html> (accessed Jan. 29, 2020).

consensus; and to identify actions that government might take to mitigate or eliminate risk in the program.

The framework separately examines threat, vulnerability and consequence to evaluate risk. Threat and vulnerability analysis help us to understand the probability of a danger arising in activities around the program; consequence analysis helps us to understand the nature and magnitude of the danger. These three together help us to determine whether activity around the program manifests low, medium or high levels of risk. This approach is incremental; if at any point in the analysis there is no perceived threat, or vulnerability, or consequence, then little or no risk is manifested and the analysis can conclude. However, if some level of risk exists within the program, it becomes necessary to examine strategies to mitigate or eliminate the risk.

In studying the objective evaluation of risk surrounding the OPT program, the Ombudsman emphasizes Federal Bureau of Investigation (FBI) Director Wray's observation that "[t]his threat is not about the Chinese people as a whole, and certainly not about Chinese-Americans as a group,"⁴⁵⁰ and the view expressed by Deputy Assistant Secretary of State Edward Ramotowski that "foreign students, often with no nefarious intent in their plan to study in the United States, may be co-opted by their home governments to share technical expertise that they acquired while working in the U.S."⁴⁵¹

THREATS SURROUNDING THE OPT PROGRAM

Threat analysis focuses on the government program and those entities or persons who are taking part in the program or making use of it in some way. To conduct threat analysis, we separately examine three items: access, intent and capability, asking, "What level of access do entities or persons have to participating in the program or leveraging it to their advantage? Do those entities or persons intend to engage in actions that are detrimental to the United

⁴⁵⁰ Christopher Wray, Director, FBI, "Responding Effectively to the Chinese Economic Espionage Threat," *at the DOJ China Initiative Conference, hosted by Center for Strategic and International Studies*, February 6, 2020; <https://www.fbi.gov/news/speeches/responding-effectively-to-the-chinese-economic-espionage-threat> (accessed Jun. 10, 2020).

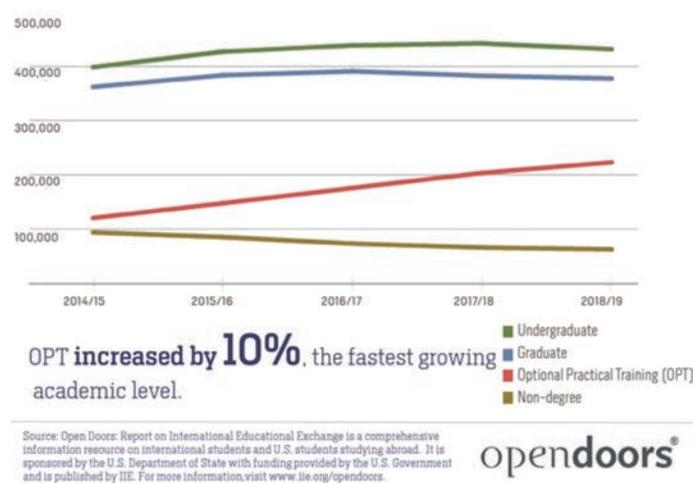
⁴⁵¹ "Student Visa Integrity: Protecting Educational Opportunity and National Security," *before the Subcommittee on Border Security and Immigration of the U.S. Senate Judiciary Committee*, 115th Cong. 1st Sess. 2 (2018) (prepared statement of Edward J. Ramotowski, Deputy Assistant Secretary of State, Bureau of Consular Affairs); <https://www.judiciary.senate.gov/imo/media/doc/Ramotowski%20Testimony.pdf> (accessed Jun. 3, 2020).

States? Do those entities or persons have the technical and organizational capability to exploit vulnerabilities inherent in the program?”

Access

As indicated above, the OPT program has experienced exponential growth, which in turn has increased Access. In the last 5 academic years from 2014 to 2019, OPT averaged a 16 percent annual growth rate; in the 2018–2019 academic year, approximately 223,000 foreign students on nonimmigrant visas were reportedly using the program to obtain employment in academic, research or corporate environments in areas related to their course of study.⁴⁵²

Figure 6.3: Academic Levels of International Students



This potentially gives them access to innovative technologies, trade secrets, experimental processes, unpublished data, cutting-edge software, blueprints, confidential business information and other intellectual property that may be sensitive or proprietary in nature, and which may be funded in whole or in part by U.S. government grants.⁴⁵³

⁴⁵² Institute of International Education (IIE) Open Doors 2019 Fast Facts, <https://www.iie.org/en/Research-and-Insights/Open-Doors/Fact-Sheets-and-Infographics/Infographics/International-Student-Data> (accessed Jun. 10, 2020).

⁴⁵³ “Student Visa Integrity: Protecting Educational Opportunity and National Security,” *before the Subcommittee on Border Security and Immigration of the U.S. Senate Judiciary Committee*, 115th Cong. 2nd Sess. 3 (2018) (statement of E.W. Priestap, former Assistant Director, Counterintelligence Division, FBI); <https://www.judiciary.senate.gov/imo/media/doc/06-06-18%20Priestap%20Testimony.pdf> (accessed Jun. 9, 2020).

A significant number of foreign nationals, most of whom are from the China, access American universities and colleges to obtain doctoral degrees in STEM fields, a trend that has continued over the last 20 years. As noted above, NSF reporting indicates that Chinese nationals (including Hong Kong) obtained nearly 45,000 S&E doctorates in the decade from 2008 to 2018, and represented the majority of foreign nationals awarded doctorates in engineering, math and computer sciences in the United States over the same period.⁴⁵⁴

The duration of time that a foreign national is permitted to remain and work in the United States on a nonimmigrant visa is relevant to the access analysis. As discussed above, OPT allows a student to work for 12 months (either pre- or post-graduation) for each degree earned; optional training for those who studied in STEM disciplines (STEM OPT) permits an additional 24-month work authorization period in addition to the 12-month OPT work authorization, for a total of 3 years of work authorization. Foreign students who obtain a second STEM degree can receive an additional 3 years of work authorization, allowing for a cumulative 6 years of work authorization.⁴⁵⁵

While granting PRC and other foreign nationals access to U.S. schools and workplaces has many benefits, as recognized by U.S. employers and the academic community, and “most do not have access to sensitive information or technology,”⁴⁵⁶ it does contribute to risk. Author Daniel Golden testified in 2018 that, “[g]lobalization has transformed American universities into a front line for espionage. Some small but significant percentage of international students and faculty come to help their countries gain recruits for clandestine operations, insights

⁴⁵⁴ The National Science Foundation, National Center for Science and Engineering Statistics, Directorate for Social, Behavioral and Economic Sciences, Survey of Earned Doctorates, “Doctorate Recipients from U.S. Universities, 2018;” <https://nces.nsf.gov/pubs/nsf20301/report/fields-of-study> and <https://nces.nsf.gov/pubs/nsf20301/report/u-s-doctorate-awards> (accessed Jun. 21, 2020).

⁴⁵⁵ 8 C.F.R. § 214.2(f)(10)(C).

⁴⁵⁶ “Student Visa Integrity: Protecting Educational Opportunity and National Security,” *before the Subcommittee on Border Security and Immigration of the U.S. Senate Judiciary Committee*, 115th Cong. 2nd Sess. 2 (2018) (statement of Joseph Morosco, Assistant Director, Office of the National Intelligence Manager for Counterintelligence, National Counterintelligence and Security Center); <https://www.judiciary.senate.gov/imo/media/doc/06-06-18%20Morosco%20Testimony.pdf> (accessed Jun. 9, 2020).

into U.S. government plans, and access to sensitive military and civilian research.”⁴⁵⁷

In 2019, a Commissioner on the U.S.-China Economic Security Review Commission testified in the Senate that “U.S. advanced technology and technological expertise is transferred to China, through both legal and illegal means [in part through] the tens of thousands of Chinese students and researchers at U.S. universities and research institutes who return to China after completing these programs.”⁴⁵⁸

In a 2018 hearing before the Senate Intelligence Committee, FBI Director Christopher Wray, when asked about “the counterintelligence risk posed to U.S. national security from Chinese students, particularly those in advanced programs in the sciences and mathematics,” testified that the PRC government’s “use of nontraditional collectors, especially in the academic setting, whether it’s professors, scientists, [or] students,” was observed “in almost every field office that the FBI has around the country. It’s not just in major cities. It’s in small ones as well. It’s across basically every discipline.” He added that some PRC nationals were “exploiting the very open research and development environment that we have, which we all revere, but they’re taking advantage of it.”⁴⁵⁹ Director Wray later testified in 2019 that

asymmetric espionage, typically carried out by students, researchers, or businesspeople operating front companies, is prevalent. Foreign intelligence services not only seek our nation’s state and military secrets, but they also target commercial trade secrets, research and

⁴⁵⁷ “Scholars or Spies: Foreign Plots Targeting America’s Research and Development,” *before the Subcommittee on Oversight of the U.S. House of Representatives, Committee on Science, Space and Technology, 115th Cong. 2nd Sess.* (2018) (prepared statement of Daniel Golden); <https://docs.house.gov/meetings/SY/SY21/20180411/108175/HHRG-115-SY21-Wstate-GoldenD-20180411.pdf> (accessed Jun. 10, 2020); *see also* Defense Security Service, “Targeting U.S. Technologies 2016: A Trend Analysis of Cleared Industry Reporting,” (undated) at 18–19; https://www.dcsa.mil/Portals/69/documents/about/err/2016_Trend_Analysis_Report.pdf (accessed Jun. 12, 2020).

⁴⁵⁸ “Winning the Race to 5G and the Next Era of Technology Innovation in the United States,” *of the U.S. House Committee on Commerce, Science, and Transportation, 116th 1st Sess. 2* (2019) (prepared statement of Michael Wessel, American commissioner of the US-China Economic and Security Review Commission); <https://www.commerce.senate.gov/services/files/3B1AD4D5-B73A-4B01-BF93-8E6695095CA8> (accessed May 16, 2020).

⁴⁵⁹ “Open Hearing on Worldwide Threats,” *before the U.S. Senate Select Committee on Intelligence, 115th Cong. 1st Sess.* (2018) (prepared statement of Christopher Wray, Director of the Federal Bureau of Investigation); <https://www.intelligence.senate.gov/hearings/open-hearing-worldwide-threats-0#> (accessed Jan. 28, 2020).

development, and intellectual property, as well as insider information from ... U.S. corporations, and American universities. Foreign intelligence services continue to employ more creative and more sophisticated methods to steal innovative technology, critical research and development data, and intellectual property, in an effort to erode America’s economic leading edge. These illicit activities pose a significant threat to national security.⁴⁶⁰

Students enrolled in U.S. schools who seek to exfiltrate data or knowledge back to their home countries are regarded as non-traditional collectors (NTCs). They are not necessarily trained in intelligence-gathering, but may serve PRC government interests due to their access to U.S. research and technology.⁴⁶¹ A senior State Department official testified before the Senate Judiciary Committee in 2018 that the PRC government’s use of NTCs “is common in academic settings ... such actors have exploited the opportunity to work with renowned U.S. scholars and researchers and have taken advantage of the very open research and development environment prevalent at U.S. colleges and universities.”⁴⁶²

The FBI explained before the Senate Judiciary Committee that foreign intelligence services allow

students and scholars to conduct their U.S.-based academic pursuits, waiting to leverage them once they return to their home countries.... Many of those whom they target are young, inexperienced, and impressionable. Likewise, [such individuals] are also relatively inexpensive, inconspicuous,

⁴⁶⁰ “Oversight of the Federal Bureau of Investigation,” *before the U.S. Senate Judiciary Committee, 116th Cong. 1st Sess. 4* (2019) (prepared statement of Christopher Wray, Director of the Federal Bureau of Investigation); <https://www.judiciary.senate.gov/imo/media/doc/Wray%20Testimony1.pdf> (accessed Jun. 12, 2020).

⁴⁶¹ “China’s Non-Traditional Espionage Against the United States: The Threat and Potential Policy Responses,” *before the Committee on the Judiciary of the U.S. Senate Judiciary Committee, 115th Cong. 1st Sess.* (2018) (prepared statement of John C. Demers, Assistant Attorney General, National Security Division, U.S. Department of Justice); https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/2018/12/18/12-05-2018_john_c_demers_testimony_re_china_non-traditional_espionage_against_the_united_states_the_threat_and_potential_policy_responses.pdf (accessed Jun. 12, 2020).

⁴⁶² “Student Visa Integrity: Protecting Educational Opportunity and National Security,” *before the Subcommittee on Border Security and Immigration of the U.S. Senate Judiciary Committee, 115th Cong. 1st Sess. 2* (2018) (prepared statement of Edward J. Ramotowski, Deputy Assistant Secretary of State, Bureau of Consular Affairs); <https://www.judiciary.senate.gov/imo/media/doc/Ramotowski%20Testimony.pdf> (accessed Jun. 3, 2020).

and expendable, making them attractive options to further the foreign intelligence services' priorities and collection needs.⁴⁶³

The Defense Security Service within the Department of Defense (DOD) reported in 2017 that “[a]lthough East Asia and the Pacific entities engage in traditional forms of collection and espionage, nontraditional collectors who do not serve official intelligence roles continue to make up the majority of collection attempts,” adding that East Asia consistently led the top collector regions seeking sensitive or classified information from U.S. companies, academic and research institutions.⁴⁶⁴

Near East countries used Near East students and professors with science and engineering backgrounds in the United States to collect sensitive academic and scientific research to advance indigenous weapons programs. . . . Academic solicitations will likely remain high as increasing numbers of Near Eastern students continue to target U.S. academic programs that can be directly linked to improving military capabilities.⁴⁶⁵

Apart from NTCs, it is believed that foreign intelligence officers have obtained U.S. student visas to conduct espionage. The U.S.-China Economic and Security Review Commission cited research indicating that the Chinese military has “sponsored more than 2,500 Chinese military scientists and engineers to travel to universities in the United States and elsewhere as students or visiting scholars.”⁴⁶⁶ The FBI’s current Most Wanted list includes a military officer from the PLA who entered the United States on a J-1 visa and studied for approximately 18 months at Boston University’s Department of Physics, Chemistry and Biomedical Engineering while “completing

numerous assignments from PLA officers” to obtain data on U.S. military capabilities.⁴⁶⁷ The FBI believes “that the officer has fled to China.”⁴⁶⁸

Intent

Intent analysis considers whether any entity that has access to a government program has an interest in taking actions that could be detrimental to the interests of the United States. Such actions could be harmful even if driven exclusively by commercial incentives. Intent is of course made evident in public statements and in patterns of behavior.

Discussing the intent of PRC government leadership in 2020, FBI Director Wray explained,

we need to understand . . . the scope of China’s ambitions, which are no secret . . . it is about the Chinese government and the Chinese Communist Party. The Chinese government is fighting a generational fight to surpass our country in economic and technological leadership. But not through legitimate innovation, not through fair and lawful competition, and not by giving their citizens the freedom of thought and speech and creativity we treasure here in the United States. Instead, they’ve shown that they’re willing to steal their way up the economic ladder at our expense . . . to surpass America, they need to make leaps in cutting-edge technologies. Last March, at a Communist Party gathering, Chinese Premier Li made that understanding pretty clear. He said: ‘Our capacity for innovation is not strong, and our weakness in terms of core technologies for key fields remains a salient problem.’ To accomplish the breakthroughs they seek, China is acquiring American intellectual property and innovation, by any means necessary.⁴⁶⁹

⁴⁶³ “Student Visa Integrity: Protecting Educational Opportunity and National Security,” *before the Subcommittee on Border Security and Immigration of the U.S. Senate Judiciary Committee*, 115th Cong. 2nd Sess. 4 (2018) (prepared statement of E.W. Priestap, former Assistant Director, Counterintelligence Division, Federal Bureau of Investigation); <https://www.judiciary.senate.gov/imo/media/doc/06-06-18%20Priestap%20Testimony.pdf> (accessed Jun. 9, 2020).

⁴⁶⁴ Defense Security Service, “Targeting U.S. Technologies 2017: A Trend Analysis of Cleared Industry Reporting,” (undated) at 20; <https://www.hsdl.org/?view&did=816264> (accessed Jun. 3, 2020).

⁴⁶⁵ *Id.* at 20, 23–24.

⁴⁶⁶ Sean O’Conner, U.S.-China Economic and Security Review Commission, Staff Research Report, “How Chinese Companies Facilitate Technology Transfer from the United States” (May 6, 2019) at 9; <https://www.uscc.gov/sites/default/files/Research/How%20Chinese%20Companies%20Facilitate%20Tech%20Transfer%20from%20the%20US.pdf> (accessed Jun. 8, 2020).

⁴⁶⁷ FBI Webpage: “Most Wanted: Yanqing Ye” (undated); <https://www.fbi.gov/wanted/counterintelligence/yanqing-ye> (accessed Jun. 3, 2020).

⁴⁶⁸ Michele McPhee, “The China Spy Scandal That Entangled Harvard Could Hit Yale and MIT Next,” *Newsweek* (Feb. 29, 2020); <https://www.newsweek.com/china-spy-scandal-that-entangled-harvard-could-hit-yale-mit-next-1489806> (accessed May 4, 2020).

⁴⁶⁹ Christopher Wray, Director, Federal Bureau of Investigation, “Responding Effectively to the Chinese Economic Espionage Threat,” *at the DOJ China Initiative Conference, hosted by Center for Strategic and International Studies*, (Feb. 6, 2020); <https://www.fbi.gov/news/speeches/responding-effectively-to-the-chinese-economic-espionage-threat> (accessed Jun. 10, 2020).

The Director also noted, “Even as we speak, the FBI has about 1,000 investigations involving China’s attempted theft of U.S.-based technology, in all 56 of our field offices, spanning almost every industry and sector.”⁴⁷⁰

Intent Expressed Through the ‘Thousand Talents Plan’

A 2019 staff report from the Senate Committee on Homeland Security and Governmental Affairs stated, “Some countries . . . seek to exploit America’s openness to advance their own national interests. The most aggressive of them has been China. China primarily does this through its more than 200 talent recruitment plans—the most prominent of which is the Thousand Talents Plan.”⁴⁷¹

The Thousand Talents Plan (TTP) was initiated by the PRC government in 2008. The TTP “encourages participants to transfer research and other proprietary information from the United States to China.”⁴⁷² The Senate staff report explains that the TTP

incentivizes individuals engaged in research and development in the United States to transmit the knowledge and research they gain here to China in exchange for salaries, research funding, lab space, and other incentives. China unfairly uses the American research and expertise it obtains for its own economic and military gain. In recent years, federal agencies have discovered talent recruitment plan members who downloaded sensitive electronic research files before leaving to return to China, submitted false information when applying for grant funds, and willfully failed to disclose receiving money from the Chinese government on U.S. grant applications.⁴⁷³

⁴⁷⁰ *Id.*

⁴⁷¹ U.S. Senate, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Staff Report, “Threats to the U.S. Research Enterprise: China’s Talent Recruitment Plans” (Nov. 19 2019) p. 1; <https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China%27s%20Talent%20Recruitment%20Plans.pdf> (accessed Jun. 8, 2020).

⁴⁷² Sekar, Kavya, Library of Congress, Congressional Research Service, “Foreign Interference in NIH Research: Policy Implications” (Dec. 19, 2019); <https://crsreports.congress.gov/product/pdf/IN/IN11207> (accessed Jun. 3, 2020).

⁴⁷³ U.S. Senate, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Staff Report, “Threats to the U.S. Research Enterprise: China’s Talent Recruitment Plans” (Nov. 19, 2019), pp. 17–18; <https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China%27s%20Talent%20Recruitment%20Plans.pdf> (accessed Jun. 8, 2020).

A number of eminent professors working in U.S. universities have been criminally charged for activities resulting from their participation in the TTP, often because they concealed their relationships to the PRC government, universities, or corporations. They have included a professor who allegedly performed disease research at a major U.S. university while being employed by two Chinese universities for the same type of research;⁴⁷⁴ another who allegedly received grant monies from NASA for high-temperature electronics packaging and failed to disclose close ties with the PRC government and Chinese companies;⁴⁷⁵ and another who allegedly received significant personal and professional benefits⁴⁷⁶ while collaborating with numerous Chinese scientists on the development of nanotechnologies considered important to U.S. defense agencies for potential military applications such as sensing, munitions, power and energy, structural materials, and coatings.⁴⁷⁷

Recruiting through the TTP is not confined to tenured professors. FBI Director Wray testified in 2019 that

we have seen through lots of investigations of abuse of those talent plans and essentially we have situations where it has created a pipeline in some cases at major universities especially at the graduate level more so than at the undergraduate level of key intellectual properties sometimes that has dual use potential flowing back to China for the advancement of its various strategic plans and

⁴⁷⁴ Department of Justice Press Release, “Former Emory University Professor and Chinese ‘Thousand Talents’ Participant Convicted and Sentenced for Filing a False Tax Return” (May 11, 2020); <https://www.justice.gov/opa/pr/former-emory-university-professor-and-chinese-thousand-talents-participant-convicted-and> (accessed Jun. 3, 2020).

⁴⁷⁵ Department of Justice, U.S. Attorney’s Office, Western District of Arkansas Press Release, “University of Arkansas Professor Arrested for Wire Fraud” (May 11, 2020); <https://www.justice.gov/usao-wdar/pr/university-arkansas-professor-arrested-wire-fraud> (accessed Jun. 3, 2020); see generally NASA Science Mission Directorate, Tech Port Webpage, “500°C Capable, Weather-Resistant Electronic Packaging for Extreme Environment Exploration” (undated); <https://techport.nasa.gov/view/92294> (accessed Jun. 3, 2020).

⁴⁷⁶ Department of Justice Press Release, “Harvard University Professor and Two Chinese Nationals Charged in Three Separate China Related Cases,” (Jan. 28, 2020); <https://www.justice.gov/opa/pr/harvard-university-professor-and-two-chinese-nationals-charged-three-separate-china-related> (accessed on Jun. 19, 2020); see also Robert Plumb, Federal Bureau of Investigation, “Affidavit in Support of Application for Criminal Complaint,” (Jan. 21, 2020) 1–2; <https://www.justice.gov/opa/press-release/file/1239796/download> (accessed Jan. 30, 2020).

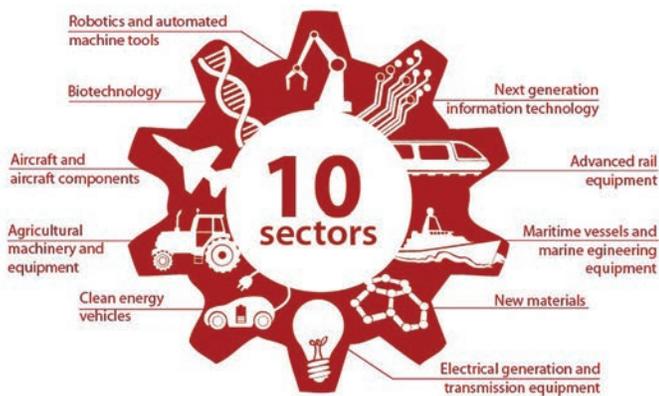
⁴⁷⁷ Douglas Belkin, “Harvard Chemistry Chairman Under Investigation Is a Giant of His Field,” *The Wall Street Journal*, (Jan. 29, 2020); <https://www.wsj.com/articles/harvard-chemistry-chairman-under-investigation-is-giant-of-field-11580345484> (accessed Jan. 30, 2020); U.S. Department of Defense, “Defense Nanotechnology Research and Development Program,” (Dec. 2009) p. ES-1; https://www.nano.gov/sites/default/files/pub_resource/dod-report_to_congress_final_1mar10.pdf (accessed Jan. 30, 2020).

the irony is that the U.S. is essentially funding that economic resurgence through various money that it provides through grants.⁴⁷⁸

Intent Expressed Through ‘Made in China 2025’

In 2015, the PRC government issued a plan to transform “China into a leading manufacturing power by the year 2049,” titled the ‘Made in China 2025’ plan.⁴⁷⁹ Among other things, the plan is intended to promote “breakthroughs in ten key sectors,” including information technology, robotics, aerospace equipment, polymers and other new materials, and bio-medicine.⁴⁸⁰

Figure 6.4: “Made in China 2025” Target 10 Strategic Industries for Development (NSD)



Source: “China’s Non-Traditional Espionage Against the United States: The Threat and Potential Policy Responses,” *before the U.S. Senate Judiciary Committee*, 115th Cong. 1st Sess. (2018) (statement of John C. Demers, Assistant Attorney General, National Security Division); https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/2018/12/18/12-05-2018_john_c_demers_testimony_re_china_non-traditional_espionage_against_the_united_states_the_threat_and_potential_policy_responses.pdf; see also “China’s Non-Traditional Espionage Against the United States: The Threat and Potential Policy Responses,” *before the U.S. Senate Judiciary Committee*, 115th Cong. 1st Sess. (2018); <https://www.judiciary.senate.gov/meetings/chinas-non-traditional-espionage-against-the-united-states-the-threat-and-potential-policy-responses> (accessed Jun. 12, 2020).

⁴⁷⁸ “Oversight of the Fed. Bureau of Investigation,” *before the U.S. Senate Judiciary Committee*, 116th Cong. 1st Sess. (2019) (statement of Christopher Wray, Director of the Federal Investigation Bureau); *cited in* U.S. Senate, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Staff Report, “Threats to the U.S. Research Enterprise: China’s Talent Recruitment Plans” (Nov. 19, 2019), p. 30; <https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China%27s%20Talent%20Recruitment%20Plans.pdf> (accessed Jun. 20, 2020).

⁴⁷⁹ The State Council of the People’s Republic of China Webpage, “Made in China 2025 plan issued,” (May 19, 2015); http://english.www.gov.cn/policies/latest_releases/2015/05/19/content_281475110703534.htm (accessed Jun. 3, 2020). The website “English.gov.cn” is the official English-language site for the State Council of the People’s Republic of China.

⁴⁸⁰ *Id.*

In February 2020, U.S. Attorney General William Barr characterized the plan as “a sustained, highly-coordinated campaign to replace the United States as the dominant technological superpower,” mobilizing “all elements of Chinese society” and massive financing “to dominate the core technologies of the future.”⁴⁸¹ He added, “Unfortunately, it also involves industrial espionage and theft of technology and intellectual property, as well as . . . engaging in cyber intrusions . . . and using non-traditional collectors, such as graduate students participating in university research projects.”⁴⁸² The Attorney General concluded that “[t]he PRC’s economic aggression and theft of intellectual property comes with immense costs. It has been estimated that the annual cost to the U.S. economy could be as high as \$600 billion.”⁴⁸³

Intent Expressed Through Military-Civil Fusion and Dual-Use Technologies

The hazards of losing sensitive technology to strategic competitors such as the PRC are not merely economic. For over a decade, the PRC government has pursued “a policy of ‘military-civil fusion,’ which bind Chinese civilian entities with the PLA in a common goal” of strengthening Chinese military capabilities.⁴⁸⁴ The DOS has asserted that, “military-civil fusion . . . prioritizes the development or acquisition of advanced technology that is useful militarily, either for the modernization of the [PLA] or for other domestic security purposes, such as general surveillance or the particularly egregious repression occurring in Xinjiang” of Muslim ethnic Uyghurs.⁴⁸⁵

⁴⁸¹ Attorney General William P. Barr, U.S. Department of Justice, Federal Bureau of Investigation, “Keynote Address,” *at the DOJ China Initiative Conference, hosted by Center for Strategic and International Studies* (Feb. 6, 2020); <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-keynote-address-department-justices-china> (accessed Apr. 27, 2020).

⁴⁸² *Id.*

⁴⁸³ *Id.* See also “Student Visa Integrity: Protecting Educational Opportunity and National Security,” *before the Subcommittee on Border Security and Immigration of the U.S. Senate Judiciary Committee*, 115th Cong. 2nd Sess. 4 (2018) (statement of E.W. Priestap, former Assistant Director, Counterintelligence Division, Federal Bureau of Investigations); <https://www.judiciary.senate.gov/imo/media/doc/06-06-18%20Priestap%20Testimony.pdf> (accessed Jun. 9, 2020).

⁴⁸⁴ Kate O’Keeffe and Aruna Viswanatha, “U.S. Turns Up the Spotlight on Chinese Universities,” *The Wall Street Journal* (Jan. 21, 2020); <https://www.wsj.com/articles/u-s-turns-up-the-spotlight-on-chinese-universities-11579602787> (accessed May 28, 2020).

⁴⁸⁵ “Securing the U.S. Research Enterprise from China’s Talent Recruitment Plans,” *before the Permanent Subcommittee on Investigations of the U.S. Senate Committee on Homeland Security & Governmental Affairs*, 116th 1st Sess. 3 (2019) (written testimony of Edward J. Ramotowski, Deputy Assistant Secretary of State, Bureau of Consular Affairs); <https://www.hsgac.senate.gov/imo/media/doc/Ramotowski%20Testimony.pdf> (accessed May 28, 2020).

Fusion enables the PRC government “to continue international collaboration with scientists while not disclosing that such collaboration may be for modernizing China’s military,”⁴⁸⁶ even as the PLA operates as “a funding source, research partner and an elite customer”⁴⁸⁷ of “the central players in China’s IT sector.”⁴⁸⁸ In January 2020, U.S. Secretary of State Mike Pompeo emphasized that, “Under Chinese law, Chinese companies and researchers must—I repeat, must—under penalty of law, share technology with the Chinese military.”⁴⁸⁹

The DOD reported in 2009 that “the ‘major specialty items’ to be targeted for research and innovation [by the PRC government] include: core electronic components, high-end universal chips and operating system software, very large-scale integrated circuit manufacturing, broadband wireless mobile communications, high-grade numerically controlled machine tools, large aircraft, high-resolution satellites, manned spaceflight, and lunar exploration.”⁴⁹⁰ More recently, the PRC government has announced growth initiatives to include Strategic Emerging Industries (SEI) catalogs for “next-generation information technology as [a] priority. Such technology includes artificial intelligence, cybersecurity services, integrated circuits and network equipment and software. Other SEI’s include biotechnology, energy efficient and environmental technologies and high-end equipment manufacturing.”⁴⁹¹ The IT catalog is “a state-driven initiative, featuring regulatory scrutiny over foreign investments in the strategic industries, mergers, joint ventures, access to foreign IP, and agreements between

the government and foreign entities for ‘strategic assets to remain in China or under the control of a Chinese company.’”⁴⁹² In 2019, the PRC Ministry of Commerce, following approval by the Chinese Communist Party Central Committee, reportedly identified its key industries for investment to include smart devices, vaccine production and fifth-generation technologies and components, such as drones, mobile phones, optics, sensors and lasers.⁴⁹³

It is noteworthy that many of the research, development, acquisition and manufacturing priorities expressed by the PRC government in its ‘Made in China 2025’ plan and SEI catalogs, are cleared fields of study in STEM OPT. When DHS expanded the duration of STEM OPT in 2016, ICE created a STEM Designated Degree Program List indicating what “fields of study that DHS considers to be [STEM fields] for purposes of the 24-month STEM optional practical training extension.” Leveraging Department of Education classifications, the list includes items such as “Cyber/Electronic Operations and Warfare,” “Combat Engineering,” “Directed Energy Systems” and “Undersea Warfare” as well as others of interest to the PRC government.⁴⁹⁴

Capability

Having examined access and intent, the final element to be considered when examining threat is Capability. Capability is defined as the technical and organizational skill of an adversary or competitor to exploit vulnerabilities or loopholes in a U.S. government program.

As already indicated in this analysis, it is apparent to numerous Federal authorities that the PRC government is capable of exploiting OPT to advance its own agendas. Commenting on PRC government capabilities, the

⁴⁸⁶ U.S. Senate, Staff Report, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, “Threats to the U.S. Research Enterprise: China’s Talent Recruitment Plans” (Nov. 19, 2019) p. 19; <https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China%27s%20Talent%20Recruitment%20Plans.pdf> (accessed Jun. 7, 2020).

⁴⁸⁷ James Mulvenon, Rebecca Samm Tyroler-Cooper, “China’s Defense Industry on the Path of Reform,” The US-China Economic and Security Review Commission (October 2009), p. 39; https://www.uscc.gov/sites/default/files/Research/REPORT_DGI%20Report%20on%20PRC%20Defense%20Industry111009.pdf (accessed May 28, 2020).

⁴⁸⁸ *Id.*

⁴⁸⁹ Secretary of State Michael R. Pompeo, “Remarks to the Silicon Valley Leadership Group: Technology and the China Security Challenge” (Jan. 13, 2020); <https://id.usembassy.gov/remarks-by-secretary-pompeo-on-technology-and-the-china-security-challenge/> (accessed May 28, 2020).

⁴⁹⁰ James Mulvenon, Rebecca Samm Tyroler-Cooper, “China’s Defense Industry on the Path of Reform,” The US-China Economic and Security Review Commission (Oct. 2009), p. 38; https://www.uscc.gov/sites/default/files/Research/REPORT_DGI%20Report%20on%20PRC%20Defense%20Industry111009.pdf (accessed May 28, 2020).

⁴⁹¹ Institute for Security & Development Policy, “Made in China 2025,” Backgrounder (Jun. 2018), p. 3; <https://isdp.eu/content/uploads/2018/06/Made-in-China-Backgrounder.pdf> (accessed May 7, 2020).

⁴⁹² *Id.*

⁴⁹³ Dorcas Wong, “China Releases New Draft List of Encouraged Industries for Foreign Investment,” *China Briefing from Dezan Shira & Associates* (Feb. 19, 2019); <https://www.china-briefing.com/news/china-2019-draft-encouraged-industries-foreign-investment/> (accessed May 28, 2020). Chinese interest in 13 critical areas of technology is discussed in a November 2019 U.S. Senate Staff Report. See U.S. Senate, Staff Report, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, “Threats to the U.S. Research Enterprise: China’s Talent Recruitment Plans” (Nov. 2019), pp. 17–18; <https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China%27s%20Talent%20Recruitment%20Plans.pdf> (accessed May 28, 2020).

⁴⁹⁴ DHS ICE Webpage, “STEM Designated Degree Program List, Effective May 10, 2016,” <https://www.ice.gov/sites/default/files/documents/Document/2016/stem-list.pdf> (accessed Jun. 17, 2020).

former CEO of Quantum and Symantec, Michael Brown, stated before the House Permanent Select Committee on Intelligence in 2018 that the PRC government has the capacity to obtain what he referred to as “the crown jewels of U.S. innovation” through combinations of legal investments and economic espionage. As to the latter capability, the theft or duplication of U.S. military-sponsored technologies was achieved by means of cyber exploits and “using Chinese foreign national students [placed] in sensitive areas of U.S. research.” Concerning PRC government’s legal acquisition of technologies through venture investing in early-stage companies, market knowledge and the use of professional organizations, he asserted, “[v]iewed individually, the legal practices may seem benign but when viewed in combination, and at the scale China is employing them, the composite picture illustrates the intent, design and dedication of a regime focused on technology transfer at a massive scale” in the areas of “artificial intelligence, autonomous vehicles, augmented/virtual reality, robotics, blockchain and genetic engineering,” all of them “critical in advancing U.S. military capability.”⁴⁹⁵

At the same hearing, a witness from the Center for a New American Security stated, “In some cases, students and researchers have leveraged academic research environments in ways that may contravene U.S. law or academic norms. The potential for negative externalities has been clearly illustrated by the case of Liu Ruopeng, a Duke Ph.D. student, who allegedly appropriated sensitive research funded by the U.S. military on metamaterials, and then returned to China to fund a highly successful research institute ... which supports the Chinese military in advanced technological developments.”⁴⁹⁶ There is speculation that Ruopeng, “who came to the U.S. with the express intent of studying” metamaterials

in the Duke lab, “was actually on a mission from the Chinese government.”⁴⁹⁷

Concerned by the PRC government’s access to academic institutions in the United States and its stated intentions to grow its expertise across a constellation of technologies, the DOJ created the “China Initiative” in 2018, led by DOJ’s National Security Division, “which is responsible for countering nation-state threats to the United States.” Among other goals, the Initiative seeks to “[i]dentify priority trade secret theft cases,” advance “an enforcement strategy concerning non-traditional collectors (e.g., researchers in labs, universities, and the defense industrial base) that are being coopted into transferring technology contrary to U.S. interests,” and “[e]ducate colleges and universities about potential threats to academic freedom and open discourse from influence efforts on campus.”⁴⁹⁸

Vulnerability

To evaluate vulnerability, we examine the attributes of a Federal government program that leave it susceptible to exploitation by malign actors or governments. Vulnerabilities often arise from the Federal government’s lack of information, situational awareness, resource allocation or failure to anticipate first, second and third order effects when designing the program.

Vulnerability Due to Exploitation by Foreign Governments

The OPT program as presently designed and administered exhibits a number of significant vulnerabilities. Its principal vulnerability is that it may be exploited by foreign governments with interests adverse to those of the United States. While OPT was created with the benign intention of offering foreign students the opportunity to gain work experience in their area of study, and may help them defray some of the costs of their education in the United States, it is currently being used by government

⁴⁹⁵ “China’s Threat to American Government and Private Sector Research and Innovation Leadership,” *before the* Permanent Select Committee on Intelligence of the U.S. House of Representatives, 115th Cong. 2nd Sess. (prepared statement of Michael A. Brown, Presidential Innovation Fellow), at 2–4; <https://congress.gov/115/meeting/house/108561/witnesses/HHRG-115-IG00-Wstate-BrownM-20180719.pdf> (accessed Jun. 3, 2020).

⁴⁹⁶ “China’s Threat to American Government and Private Sector Research and Innovation Leadership,” “China’s Threat to American Government and Private Sector Research and Innovation Leadership,” *before the* Permanent Select Committee on Intelligence of the U.S. House of Representatives, 115th Cong. 2nd Sess. 8 (prepared statement of Elsa B. Kania, Center for a New American Security), at 8; <https://docs.house.gov/meetings/IG/IG00/20180719/108561/HHRG-115-IG00-Wstate-KaniaE-20180719.pdf> (accessed Jun. 15, 2020).

⁴⁹⁷ Cynthia McFadden, Aliza Nadi and Courtney McGee, NBC News, “Education or espionage? A Chinese student takes his homework home to China,” NBC News (July 24, 2018); <https://www.nbcnews.com/news/china/education-or-espionage-chinese-student-takes-his-homework-home-china-n893881> (accessed Jun. 15, 2020).

⁴⁹⁸ U.S. Department of Justice, “Information about the Department of Justice’s China Initiative and a Compilation of China-Related Prosecutions since 2018;” <https://www.justice.gov/opa/page/file/1223496/download> (accessed Jun. 17, 2020). *See also* G. Kolata, “Vast Dragnet Targets Theft of Biomedical Secrets for China,” *The New York Times* (Nov. 4, 2019); <https://www.nytimes.com/2019/11/04/health/china-nih-scientists.html> (accessed Jun. 25, 2020).

actors from countries such as the PRC as a means of conducting espionage and technology transfer through some portion of the many thousands of foreign nationals who have obtained OPT employment in the United States.

Another key vulnerability to the OPT program is the amount of time that it affords a nonimmigrant student to remain employed in the United States. As explained above, a foreign national who pursues STEM OPT may remain employed in the United States for periods that add up to 6 years. If the student is acting as an NTC for his or her government, the longer the period of employment, perhaps with different employers, increases the amount and variety of information that the student can exfiltrate. It also increases the likelihood that a student NTC can establish and grow trust relationships with U.S. employers, which have proven an important factor in cases like that of Liu Ruopeng, who apparently leveraged “an exact replica” of his professor’s Duke University lab back in China.⁴⁹⁹

Further, as noted above, aside from the vetting and screening that DOS conducts when issuing a visa, and USCIS background checks in issuing an EAD, there is no existing mechanism for continuous vetting of foreign national students, which might indicate whether the student is exhibiting predetermined risk factors that might warrant follow-up inquiries from the Federal government.⁵⁰⁰

Vulnerability Due to Fraud

There are significant indications that the OPT program is vulnerable to fraud because agency compliance resources are not scaled to (or keeping pace with) the size of the program. As previously noted, in 2019 there were “1.2 million foreign students at nearly 9,000 SEVP-certified

⁴⁹⁹ Cynthia McFadden, Aliza Nadi and Courtney McGee, NBC News, “Education or espionage? A Chinese student takes his homework home to China,” NBC News (Jul. 24, 2018); <https://www.nbcnews.com/news/china/education-or-espionage-chinese-student-takes-his-homework-home-china-n893881> (accessed Jun. 15, 2020); Marc S. Reisch, “Acknowledging the spies on campus,” Chemical & Engineering News (Jun. 27, 2018); <https://cen.acs.org/policy/intellectual-property/Acknowledging-spies-campus/96/i27> (accessed Jun. 15, 2020).

⁵⁰⁰ As indicated previously, DOS decided in 2018 to limit Chinese student visas to a duration of 1 year. Such students, if they return home and seek to re-enter the United States, are subject to multiple screenings, including interviews, by DOS.

schools across more than 18,000 campuses.”⁵⁰¹ The total number of SEVP employees at ICE directly administering this very large program is approximately 376 full-time employees.⁵⁰²

Initial and continuing OPT compliance apparently falls in part to SEVIS field representatives.⁵⁰³ The SEVP is divided into 60 territories in the United States,⁵⁰⁴ with a single SEVIS field representative assigned to each territory. According to ICE, “Field representatives serve as liaisons between SEVP and SEVP-certified schools,” and “enhance national security by fostering regulatory adherence and [SEVIS] data integrity.” They meet with school officials “in their territories normally a minimum of once per year” to ensure schools “understand SEVP rules and regulations, to answer questions, provide training to PDSOs and DSOs, and to help “school officials with the SEVP recertification process by conducting scheduled school visits.”⁵⁰⁵ A single SEVP representative can be responsible for as many as 240 schools.⁵⁰⁶ As a program matter, visits to participating schools (unless some problem is manifest) is usually a single visit per year.⁵⁰⁷

The failure of OPT designers to foresee growth in the program and to anticipate the proportionate staff resources that would be required to assure its security

⁵⁰¹ GAO, “Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Recertification and Program Oversight,” GAO-19-297 (Mar. 2019) at 50; <https://www.gao.gov/assets/700/697630.pdf> (accessed Jun. 15, 2020). As previously mentioned, in addition to colleges and universities, participating academic institutions include language training schools, vocational schools, K-12 schools, and flight schools. DHS ICE Webpage, “2018 SEVIS by the Numbers Report” (undated); <https://www.ice.gov/doclib/sevis/pdf/sevisByTheNumbers2018.pdf> (accessed Jun. 17, 2020).

⁵⁰² Department of Homeland Security, U.S. Immigration and Customs Enforcement, Budget Overview, Fiscal Year 2020 Congressional Justification, Student and Exchange Visitor Program, ICE -SEVP -3. https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Immigration-Customs-Enforcement_0.pdf (accessed Jun. 10, 2020).

⁵⁰³ GAO, “Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Recertification and Program Oversight,” GAO-19-297 (Mar. 2019) at 50; <https://www.gao.gov/assets/700/697630.pdf> (accessed Jun. 20, 2020).

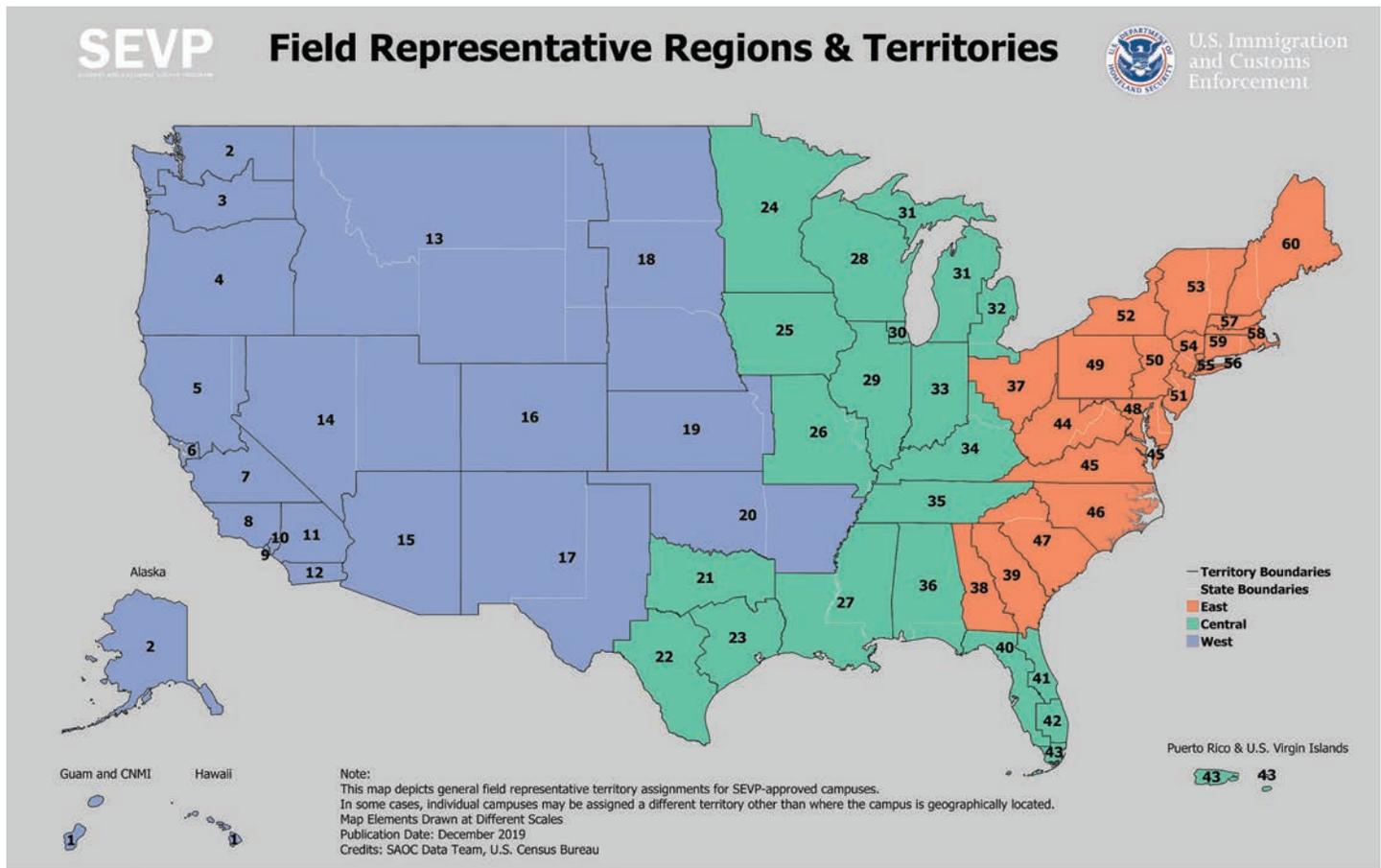
⁵⁰⁴ DHS ICE Webpage, “SEVP Field Representative Regions & Territories” (Dec. 2019); https://studyinthestates.dhs.gov/assets/sevp_fieldrepresentativeunitmap.png (accessed Jun. 11, 2020).

⁵⁰⁵ DHS ICE Webpage, “SEVP Field Representatives” (undated); <https://studyinthestates.dhs.gov/sevp-field-representatives> (accessed Jun. 18, 2020).

⁵⁰⁶ Information received from stakeholders (Jan. 16, 2020).

⁵⁰⁷ Information received from stakeholders (Jun. 19, 2020). See also “Adjusting Program Fees for the Student and Exchange Visitor Program,” 84 Fed. Reg. 23930, 23958 (May 23, 2019) (“SEVP performs 600 site visits annually. Of these 600 visits, 426 will be at schools that apply for initial certification . . . [t]he remaining 174 site visits may include visits when a school adds a new physical location or campus.”).

Figure 6.6



Source: DHS ICE Webpage, "Study in the States" (Dec. 2019); https://studyinthestates.dhs.gov/assets/sevp_fieldrepresentativeunitmap.png (accessed Jun. 15, 2020).

and integrity perhaps accounts in part for the SEVP's inability to detect fraud among some participating students, schools and employers. It was not apparently compliance oversight within the SEVIS program that led to well-publicized discoveries in late 2019 that at least a dozen businesses listed by ICE as among the top employers of OPT students appeared to be fraudulent shell companies.⁵⁰⁸ The revelation that two of those shell companies had fraudulently "employed" not less than 2,685 F-1 student visa holders seeking to extend their

⁵⁰⁸ Stephen Stock, Michael Bott, Sean Myers, Jeremy Carroll, Michael Horn and Molly Forster, NBC Bay Area and NBC News, "Thousands of Foreign Students May Have Overstayed Visas Through Employment at Possible Shell Companies," *NBC Bay Area and NBC News* (Dec. 10, 2019); <https://www.nbcbayarea.com/news/local/thousands-of-foreign-students-may-have-overstayed-visas-through-employment-at-shell-companies/2178507/> (accessed Jun. 16, 2020); Immigration and Customs Enforcement, "2017 Top 200 Employers for Pre- and Post-Completion Optional Practical Training (OPT) Students" (undated); https://www.ice.gov/doclib/sevis/pdf/data_Top200_EmployersPrePostCompletion_OPT_Students2017.pdf. (accessed Jun. 21, 2020).

stay in the United States for years between 2013 and 2019 did not apparently originate from any certification action or site visit conducted by the SEVP; rather, it resulted from an FBI investigation of a foreign student in Chicago who was allegedly performing tasks for a PRC intelligence agency.⁵⁰⁹

As noted above, the GAO has repeatedly studied SEVIS and concluded that the program is vulnerable to fraud. In its most recent report in 2019, the GAO cataloged a variety of weaknesses in the SEVP, including its lack of vetting and verification of DSOs, and its failure to provide mandatory and universal training to DSOs, especially

⁵⁰⁹ Todd Lighty, Chicago Tribune, "How a Chicago college student ended up in the middle of an FBI investigation into Chinese spying," *Chicago Tribune*, (Sept. 26, 2019); <http://www.chicagotribune.com/investigations/ct-chinese-espionage-chicago-20190926-xh74yrhorzakjpsnoyx4aapfm-story.html> (accessed Jun. 15, 2020); U.S. v. Weiyun Huang, 19-CR-275, N.D. IL., at 4; <https://www.justice.gov/usao-ndil/press-release/file/1187726/download> (accessed Jun. 21, 2020).

“about their role to prevent and report fraud.”⁵¹⁰ In 2014, GAO reported that ICE had not assessed potential risks in the OPT program and could not fully ensure that foreign students were maintaining their legal status in the United States.⁵¹¹ And, in 2012, GAO reported that weaknesses in “ICE’s monitoring and oversight of SEVP-certified schools” and its failure to manage and share key information on potentially criminal violations in the SEVP contributed “to security and fraud vulnerabilities”⁵¹² within the program.

CONSEQUENCE

The analysis of consequence examines the nature and magnitude of dangers arising from vulnerabilities in the government program.

Both the Attorney General and the Secretary of State have publicly expressed significant concerns with the adverse economic and military consequences of technology transfer to strategic adversaries.⁵¹³ In addition, the FBI Assistant Secretary for Counterintelligence testified in 2018 that foreign state adversaries illicitly acquiring “U.S. academic research and information to advance their scientific, economic, and military development goals . . . save their countries significant money, time, and resources while achieving generational advances in technology. Through their exploitative efforts, they reduce U.S.

⁵¹⁰ U.S. Government Accountability Office, “Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Recertification and Program Oversight,” GAO-19-297 (Mar. 2019) at 49; <https://www.gao.gov/assets/700/697630.pdf> (accessed Jun. 3, 2020).

⁵¹¹ U.S. Government Accountability Office, “Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization,” GAO-14-356 (Feb. 2014) at 15-30; <https://www.gao.gov/assets/670/661192.pdf> (accessed Jun. 17, 2020).

⁵¹² “‘Student and Exchange Visitor Program: DHS Needs to Take Actions to Strengthen Monitoring of Schools,’ GAO-12-895T (Jul. 24, 2012),” *before the Subcommittee on Immigration, Refugees, and Border Security for the U.S. Senate Committee on the Judiciary*, 113th Cong. 1st Sess. (2013) 2-3 (prepared statement of Rebecca Gambler, Government Accountability Office); <https://www.gao.gov/products/gao-12-895t> (accessed Jun. 17, 2020); U.S. Government Accountability Office, “Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight Functions,” GAO-12-572 (Jun. 18, 2012) at 21–36; <https://www.gao.gov/assets/600/591668.pdf> (accessed Jun. 17, 2020).

⁵¹³ Attorney General William P. Barr, U.S. Department of Justice, Federal Bureau of Investigation, “Keynote Address,” *at the DOJ China Initiative Conference, hosted by Center for Strategic and International Studies*, (Feb. 6, 2020); <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-keynote-address-department-justices-china> (accessed Apr. 27, 2020).; Secretary of State Michael R. Pompeo, “Remarks to the Silicon Valley Leadership Group: Technology and the China Security Challenge,” (Jan. 13, 2020); <https://id.usembassy.gov/remarks-by-secretary-pompeo-on-technology-and-the-china-security-challenge/> (accessed May 28, 2020).

competitiveness and deprive victimized parties of revenue and credit for their work.”⁵¹⁴ The theft or plagiarism of advanced technology, cutting-edge research, classified data, world-class equipment and expertise, he added, is adverse to both government and the private-sector, and can undermine national security. “When these foreign academics unfairly take advantage of the U.S. academic environment, they do so at a cost to the institutions that host them, as well as to the greater U.S. innovation ecosystem in which they play a role. Directly or indirectly, their actions cost money, jobs, expertise, sensitive information, advanced technology, first-mover advantage, and domestic incentive to innovate.”⁵¹⁵

CONCLUSIONS ON RISK SURROUNDING OPT

The risk analysis framework applied in this study indicates that risk is present in the environment surrounding the OPT and STEM OPT programs. These programs allow many nonimmigrant students, including graduate students in STEM, to work in academic, research or corporate environments where they may have access to technologies or other intellectual property that may be sensitive or proprietary in nature. Foreign entities like the PRC government with clearly expressed intentions to achieve economic, technical and military dominance by acquiring intellectual property and cutting-edge innovations, have succeeded in leveraging some portion of its student population to perform as NTCs, while also inserting intelligence operatives into the mix of students working in the United States, often for significant periods of time. OPT, which has not been designed, staffed or administered to systemically counter such threats, is vulnerable to exploitation by foreign governments with interests adverse to those of the United States. Accordingly, there appears to be a high risk that the OPT is being used as a means for strategic adversaries to conduct espionage and technology transfer from the United States.

Consideration of Mitigation Strategies

As we indicated at the outset, this study does not function as a DHS or Ombudsman response to the Presidential

⁵¹⁴ “Student Visa Integrity: Protecting Educational Opportunity and National Security,” *before the Subcommittee on Border Security and Immigration of the U.S. Senate Judiciary Committee*, 115th Cong. 2nd Sess. 2 2 (2018) (prepared statement of E.W. Priestap, former Assistant Director, Counterintelligence Division, Federal Bureau of Investigation); <https://www.judiciary.senate.gov/imo/media/doc/06-06-18%20Priestap%20Testimony.pdf> (accessed Jun. 9, 2020).

⁵¹⁵ *Id.* at 4.

Proclamation of May 29, 2020. The Proclamation directs DOS and DHS, consulting with other appropriate agencies, to recommend within 60 days “any other measures requiring Presidential action that would mitigate the risk posed by the PRC government’s acquisition of sensitive United States technologies and intellectual property.” In deference to this ongoing process, this study does not include any specific recommendations to diminish risk in the OPT. However, based upon previous study and outreach conducted by the Ombudsman’s Office, there are two potential risk mitigation strategies that could be accomplished through operational or administrative actions.⁵¹⁶

Assisting DSOs

The Ombudsman’s Office, which conducts over 100 structured outreach events with immigration stakeholders each year, has met with DSOs and other school representatives on numerous occasions. Our consistent take-away from such meetings is that school officials are very interested in ensuring that they are aligned with SEVP directives. DSOs from small schools to the largest universities carry significant responsibilities in maintaining school and student records in SEVIS, brokering the many problems students encounter in the immigration system, and ensuring databases and substantive requirements are reflective of one another. As discussed *supra*, GAO has noted the difficulties faced by DSOs, especially in being adequately trained, including playing a role in detecting fraud. Because there are potential criminal penalties that could attach to school officials (who like students themselves could be victims of criminal schemes), SEVP should ensure that DSOs are not unwittingly assisting in violations of criminal statutes against false statements or the fraudulent and unlawful use of immigration documents in the United States.

DSOs carry a significant responsibility to interpret student obligations, to interpret school compliance and to ensure both sets of obligations are met. As mentioned above, most DSOs seek to fully perform their duties and ensure their students comply with all program requirements. However, the GAO noted last year that enhanced training for DSOs was necessary to ensure that DSOs “adequately

understand the program’s regulations” and “their own responsibilities within the program,” and that DSOs were lacking uniform training to identify “fraud schemes or trends . . . including student visa exploitation and national security vulnerabilities.”⁵¹⁷ We have learned through our outreach that DSO activities extend well beyond the academic program, ensuring students comply with reporting requirements through the length of what can be a years-long OPT when the student has left the campus, and can be challenging regardless of the size of the program. Because DSOs can assist in combatting threats to national security, and want to avoid unwittingly assisting in potential criminal violations, fulsome training and support for DSOs should be considered an important mitigation strategy.

To meet these obligations, DSOs require additional resources. Agency compliance resources have not kept pace with the growth of foreign student participation in the United States and would benefit from being re-evaluated in light of current participation rates. Certification and recertification of DSOs should include insuring full demonstrated understanding of program requirements, with additional training to assist them well beyond the use of tools such as video tutorials. Site visits need to be annual and should be meaningful opportunities for dialogue to articulate issues and concerns and seek redress. SEVIS support should include ongoing dialogue to fix the data entry and data reconciliation problems that frustrate DSOs and can cause status problems for students. And DSOs should be given the ability to ensure the government is a full partner in detecting and reporting fraud and similar concerns, so they can use the tools that enable them to concentrate on legitimate students.

Securing Issuance of EADs at USCIS

Protections can be added to the process to minimize the potential for illegitimate use of an EAD, and USCIS could have considerably more authority over confirming the eligibility and legitimacy of the employer, the training opportunity, and the student. Among other options, USCIS should be able to verify the existing requirements, which for STEM extension OPT includes the existence of the training program, the identity of the employer, and the good standing and completion of the student of the course of study.

⁵¹⁶ We do not consider potential legislative solutions, such as the “Holding China Accountable Act” recently introduced in the House. See U.S. House of Representatives, Permanent Select Committee on Intelligence, Press Releases, “Ranking Member Nunes introduces the Holding China Accountable Act” (Jun. 11, 2020); <https://republicans-intelligence.house.gov/news/documentsingle.aspx?DocumentID=1107> (accessed Jun. 3, 2020).

⁵¹⁷ GAO, “Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Certification and Program Oversight,” GAO-19-297, pp. 47–49 (Mar. 2019); <https://www.gao.gov/assets/700/697630.pdf> (accessed Jun. 20, 2020).

Other protections might be added. Non-STEM students could be subject to the same requirements STEM students currently undergo. For example, only STEM OPT requires an employer be identified in advance, but this could be extended to encompass all EAD recipients.⁵¹⁸ Verification through SEVIS, requiring the participation of the school in the disclosure, would enable USCIS to verify employer identity using existing tools. Another option is

expanding the mandatory use of E-Verify to encompass all OPT employers. EADs of students who fail to report in to an employer within a reasonable time after EAD issuance with a legitimate employer could be cancelled. As for an EAD that has been cancelled, verification of the authorization of the EAD through a mandatory E-Verify check would assist employers who seek legitimate hires.

⁵¹⁸ If new rules were promulgated to require that all OPT applicants identify employers prior to filing EAD applications, USCIS would need to adjust its EAD processing to ensure students have proof of employment authorization to secure and keep job offers. Most employers cannot wait 3 to 6 months after making an offer to onboard an employee, especially if the EAD processing time is deducted from the 14-month limit on the available duration of work experience.



InfoMod (Year Two): Accomplishments, Lessons Learned, and Current Challenges

Responsible Offices: External Affairs and Field Operations Directorates

KEY FACTS AND FINDINGS

- In implementing its Information Services Modernization Program, USCIS believed it would be able to schedule eligible individuals for InfoPass appointments more quickly and to enhance flexibility in InfoPass appointment scheduling.
- While the initiation of InfoMod was somewhat bumpy, this was due in part to contract issues and reduced staff.
- Both program times and response times have improved since InfoMod expanded nationwide.
- Data from 2019 seems to indicate the program has met its stated goal to free up adjudication resources by steering inquirers to the self-help tools available through a variety of media. It is unclear, however, as to the specific time benefit recouped by adjudications.

- Stakeholders continue to report dissatisfaction with the program, however, citing wait times to speak to a representative and a lack of knowledge among the initial representatives encountered.
- The InfoMod system will continue to be on the front lines as USCIS returns to in-person operations at its field offices in the wake of COVID-19.

INTRODUCTION

In the 2019 Annual Report the Ombudsman initially reported on USCIS’ decision to end its self-scheduled InfoPass appointment system, shifting immigration benefit seekers and their representatives to other channels to obtain information, updates, and services.⁵¹⁹ USCIS refers to this transition as the Information Services Modernization Program or “InfoMod.”⁵²⁰

With InfoMod now in its second full year, this article highlights InfoMod’s early successes and shortfalls, reviews USCIS’ response to Ombudsman recommendations offered in last year’s Report and offers new recommendations to address continued public needs in the wake of the coronavirus (COVID-19) pandemic.

BACKGROUND

In implementing the InfoMod changes, USCIS emphasized the benefits of centralizing “the public’s information service needs via the USCIS Contact Center, while allowing field offices to divert previous InfoPass resources to adjudicating cases.”⁵²¹ Benefit filers can access service tools through the USCIS website, directly initiating an inquiry or service request on matters including: filings pending outside normal processing times, reporting and requesting correction of typographical errors in documents and records, reporting missing correspondence and documents, and similar issues.⁵²² Those who need

or prefer to speak with a USCIS representative may still do so under InfoMod using a toll-free number to dial the Contact Center.⁵²³

By discontinuing the self-scheduled InfoPass option, USCIS was in part responding to on-the-ground realities it was confronting at some of its busiest field offices.⁵²⁴ Officers were dedicating scarce time to in-person appointments where the information sought could be obtained through other USCIS resources. Moreover, because anyone could make an appointment, it became increasingly difficult for individuals with urgent needs to obtain timely in-person appointments.⁵²⁵

The situation grew more acute as USCIS processing times lengthened, particularly for high-volume immigration benefits such as Form N-400, *Application for Naturalization*, Form I-751, *Petition to Remove Conditions on Residence*, and Form I-90, *Application to Replace Permanent Resident Card*, and applicants increasingly found the need for in-person appointments to obtain temporary proof of legal status.⁵²⁶ Requests for emergency advance parole documents due to unanticipated life events (*e.g.*, the sudden death or serious illness of a close family member, or the need to attend an urgent business meeting)⁵²⁷ added to this increased workload.

InfoPass. USCIS launched its InfoPass appointment scheduling system in 2003 to augment its existing customer service inquiry process. Prior to InfoPass, immigration benefit filers (and/or their legal representatives) could visit a USCIS office during business hours on a walk-in basis to speak to an immigration officer about a case matter, obtain forms, or ask a question. This

⁵¹⁹ See Ombudsman’s Annual Report 2019, “From InfoPass to InfoMod: a Crossroads for Applicant Support Services,” pp. 44–55.

⁵²⁰ USCIS Webpage, “Cuccinelli Announces USCIS’ FY 2019 Accomplishments and Efforts to Implement President Trump’s Goals” (Oct. 16, 2019); <https://www.uscis.gov/news/news-releases/cuccinelli-announces-uscis-fy-2019-accomplishments-and-efforts-implement-president-trumps-goals> (accessed May 19, 2020).

⁵²¹ Information provided by USCIS (Apr. 9, 2019). See also USCIS 2019 Annual Report Response, p. 5 (Jan. 24, 2020); https://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/Response_to_Ombudsman_2019_Annual_Report.pdf (accessed May 1, 2020).

⁵²² See USCIS Webpage, “Case Inquiry and Service Request On-Line tools;” <https://egov.uscis.gov/e-request/Intro.do> (accessed Apr. 20, 2020).

⁵²³ The Contact Center phone number is 1-800-375-5283. See USCIS Webpage, “USCIS Contact Center;” <https://www.uscis.gov/contactcenter> (accessed May 1, 2020).

⁵²⁴ Data shows that in Fiscal Year 2018, 65 of 119 USCIS offices (including international locations) were operating at near full capacity for InfoPass appointments, reporting that 95 percent or higher of their available appointment times slots were filled. Additionally, it is noted that of the remaining 54 offices, 11 were operating at 90–94 percent capacity, and an additional 5 had already transitioned to InfoMod as FY 2018 came to a close. Information provided by USCIS (Jun. 1, 2020).

⁵²⁵ USCIS Webpage, “Emergency Travel” (May 10, 2019); <https://www.uscis.gov/green-card/green-card-processes-and-procedures/travel-documents/emergency-travel> (accessed Apr. 20, 2020).

⁵²⁶ See USCIS Policy Manual, Pt. B, Ch. 2.F; <https://www.uscis.gov/policy-manual/volume-11-part-b-chapter-2> (accessed May 3, 2020).

⁵²⁷ Not all foreign nationals require advance permission to depart and to return to the United States, technically referred to as “Advance Parole.” See generally USCIS Webpage, “Emergency Travel” (May 10, 2019); <https://www.uscis.gov/green-card/green-card-processes-and-procedures/travel-documents/emergency-travel> (accessed May 3, 2020).

process was used for years by USCIS, and by legacy INS before that, with applicants and their counsel at busier offices queuing up in physical lines early in the morning, some of those lines extending even outside the agency’s physical office space.⁵²⁸

The InfoMod Pilot. Based upon the agency’s observation that a substantial proportion of limited InfoPass appointments were being reserved by individuals who did not require in-person services, InfoMod began as a pilot in March 2018 at five USCIS field offices.⁵²⁹ The InfoMod pilot was also in part driven by data that showed that, on a nationwide basis, approximately 25 percent of all self-scheduled InfoPass appointment time-slots resulted in a “no-show.” USCIS sought to recapture and channel Immigration Service Officer (ISO) time into more productive uses, including interviewing and adjudicating cases.⁵³⁰

During the InfoMod pilot, individuals who would ordinarily self-schedule an InfoPass appointment did not have the opportunity to do so, and instead were directed to visit USCIS’ website to obtain general information or use online services. Alternatively, USCIS asked that individuals call its Contact Center, where a USCIS representative could determine whether the caller qualified for an in-person appointment.

The InfoMod pilot was conducted for a period of 6 months,⁵³¹ and the results confirmed that approximately 70 to 80 percent of in-person appointments were being used to make case status inquiries.⁵³² According to USCIS, InfoMod allowed the agency to schedule eligible individuals for an InfoPass appointment more quickly and enhanced its ability to accommodate InfoPass

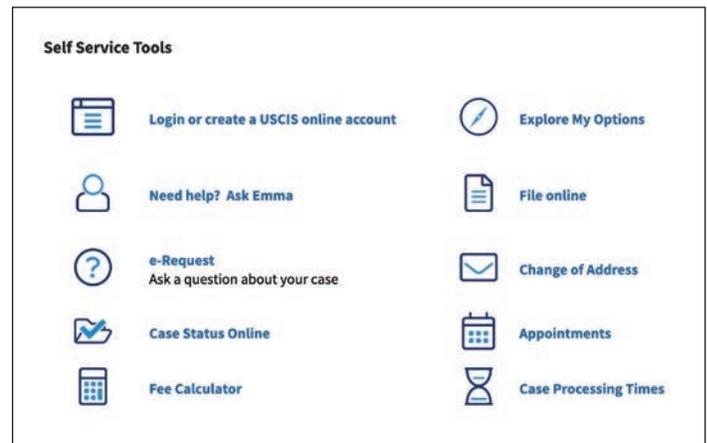
appointment dates and times requested by applicants with more flexibility.⁵³³

Based on these results, USCIS determined that it would implement the program nationwide, completing the transition in all its field offices as of August 2019.⁵³⁴ The principal goal of InfoMod remained the same: to use the Contact Center to distinguish those individuals who required in-person services at a field office from those who could be serviced remotely or could avail themselves of the agency’s online options.

USCIS’ ON-LINE SELF-SERVICE TOOLS

No longer able to self-schedule an appointment at a local USCIS field office, applicants and petitioners (and their representatives) are directed to use the self-service options available on USCIS’ website under InfoMod. The self-service actions may be initiated using one’s own personal computer or mobile device or using public devices such as computer stations at local libraries. The “Self-Service Tools”⁵³⁵ include the following:

Figure 7.1



Source: USCIS Webpage, “Tools;” <https://www.uscis.gov/tools> (accessed May 27, 2020).

⁵²⁸ See Ombudsman’s Annual Report 2005, pp. 13–14. See also Ombudsman Recommendation 11, “USCIS issue national policy guidance on the implementation of InfoPass to ensure equitable access to immigration services” (Nov. 29, 2004); https://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_12_InfoPass_11-29-04.pdf (accessed Apr. 21, 2020).

⁵²⁹ InfoMod was first piloted at the Hartford field office; it was then introduced in the Jacksonville, El Paso, San Francisco and Sacramento field offices in the spring and summer of 2018. Information provided by USCIS (Apr. 12, 2019).

⁵³⁰ Information provided by USCIS (Apr. 9, 2019).

⁵³¹ *Id.*

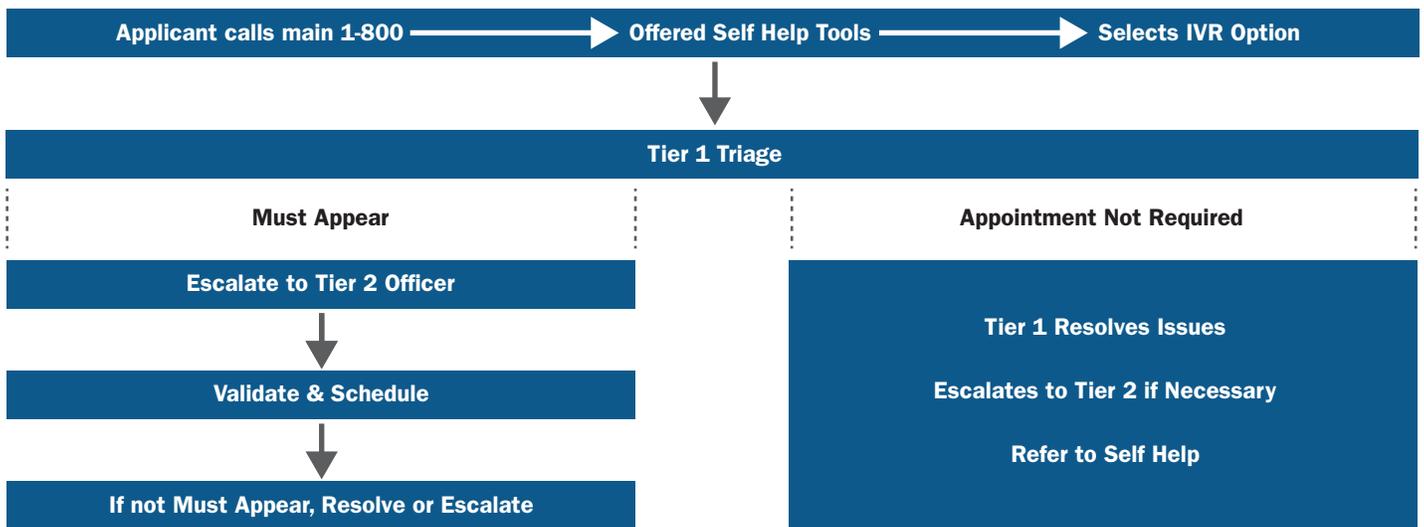
⁵³² USCIS 2019 Annual Report Response, p. 5 (Jan. 24, 2020); https://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/Response_to_Ombudsman_2019_Annual_Report.pdf (accessed May 1, 2020).

⁵³³ Whereas in the previous self-scheduling InfoPass process, applicants may or may not have been able to make their own appointment 14 days in advance, under the new process, applicants seeking in-person services were able to obtain an appointment on average within 24 hours for urgent requests and within 5 days for other requests. Information provided by USCIS (Apr. 9, 2020).

⁵³⁴ USCIS 2019 Annual Report Response, p. 5 (Jan. 24, 2020); https://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/Response_to_Ombudsman_2019_Annual_Report.pdf (accessed May 1, 2020).

⁵³⁵ USCIS Webpage, “Tools;” <https://www.uscis.gov/tools> (accessed Apr. 15, 2020). See also USCIS Webpage, “Case Inquiry/Service Request;” <https://egov.uscis.gov/e-request/Intro.do> (accessed Apr. 15, 2020).

Figure 7.2



Source: Information provided by USCIS (May 15, 2020).

In FY 2019, USCIS saw a 13 percent increase in the number of individuals using its digital tools.⁵³⁶

USCIS' CONTACT CENTER

Those seeking live case assistance must call the USCIS Contact Center using its toll-free number, which is available 24 hours a day, 7 days a week.⁵³⁷ Calls are answered by USCIS' Interactive Voice Response (IVR) system, available in English and Spanish. To speak to a live representative, callers must first navigate a long series of prompts and menu options and listen to at least one substantive (and sometimes complicated) message. Those who call between Monday and Friday from 8:00 AM to 8:00 PM Eastern Time, except for Federal holidays, and navigate through the IVR are connected to a Tier 1 representative. Tier 1 representatives are not USCIS officers but contract employees provided by a vendor supporting the Contact Center. Tier 1 representatives are provided 80 hours of training, including basic elements of immigration law, how to access USCIS systems, how to complete service requests and use applicable systems, and how to navigate "knowledge articles" (information

⁵³⁶ USCIS Webpage, "Cuccinelli Announces USCIS' FY 2019 Accomplishments and Efforts to Implement President Trump's Goals" (Oct. 16, 2019); <https://www.uscis.gov/news/news-releases/cuccinelli-announces-uscis-fy-2019-accomplishments-and-efforts-implement-president-trumps-goals> (accessed May 19, 2020).

⁵³⁷ Ombudsman's Annual Report 2019, p. 50.

documents) to provide responses.⁵³⁸ Tier 1 representatives triage all incoming requests, working to resolve those for which they have authority and information by opening a service request (Service Request Management Tool, or SRMT) using USCIS' ticketing system.⁵³⁹

In 2017, USCIS granted Tier 1 representatives access to the Person-Centric Query Service (PCQS),⁵⁴⁰ and in August 2018, to bolster the Contact Center's representatives' ability to resolve more matters at Tier 1, the agency granted them access to other databases and operating systems, including CLAIMS (Computer-Linked

⁵³⁸ This training is managed by the contract vendor, but the materials are provided by USCIS. In preparing this year's report on InfoMod, the Ombudsman also asked if USCIS tests new hires to determine if they have the basic knowledge and skills to fill Tier 1 representative positions at its Contact Center. USCIS advised that it does not, and that the testing is performed by the vendor. Information provided by USCIS (May 13, 2020).

⁵³⁹ See Ombudsman's Annual Report 2014, pp. 51–53.

⁵⁴⁰ Information provided by USCIS (Apr. 13, 2020). PCQS provides a "consolidated read-only view of an immigrant's past interactions with the U.S. Government as he or she passed through the U.S. immigration system." See DHS Privacy Impact Assessment, "Live Chat," p. 3 (May 19, 2017); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-livechat-may2017.pdf> (accessed Jun. 6, 2020). For additional information about PCQS, see generally DHS Privacy Impact Assessment, "Person Centric Query Service," p. 1 (Mar. 8, 2016); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-pcqs-march2016.pdf> (accessed May 1, 2020).

Application Information Management System).⁵⁴¹ With this expansion, for the first time Tier 1 representatives were provided access to basic information the Ombudsman has long identified as fundamental to successfully assist callers regarding their specific case matters.⁵⁴²

When a Tier 1 representative is unable to resolve an inquiry, or upon request, the call may be escalated to Tier 2, where a USCIS ISO will review the matter and determine how best to proceed. Tier 1 representatives who determine that a caller's request meets one of the qualifying criteria⁵⁴³ will create an SRMT for a Tier 2 ISO to review, and the caller is advised that USCIS will return a call within 48 to 72 hours to schedule the InfoPass appointment.⁵⁴⁴ The Tier 2 ISO is expected to make two attempts to return the call.⁵⁴⁵

Contact Center Staffing Challenges. USCIS currently operates its Contact Center out of three locations: New York, New York; Overland Park, Kansas, and Los Angeles, California. Prior to InfoMod, the Contact Center's Tier 1 representatives were provided to the agency by two separate vendors under contract with USCIS.⁵⁴⁶ With the Contact Center now expected to serve as the agency's principal contact point with the public, USCIS awarded a staffing contract in which one vendor would supply all Tier 1 staffing requirements. This contract change occurred in October 2018, just 2 months after USCIS committed to expanding InfoMod in all field offices. The implementation of this new contract proved problematic, however, as a sizeable number of trained Tier 1 representatives did not transition to employment with the successful vendor, as anticipated.⁵⁴⁷ As a result, Tier 1 staffing shrunk in late 2018 from approximately its expected level of 750 representatives to as low as 500 in January 2019.⁵⁴⁸ As of March 31, 2020,

⁵⁴¹ See Ombudsman's Annual Report 2019, p. 50. For information about CLAIMS, see DHS Privacy Impact Assessment, "Computer Linked Application Information Management System (CLAIMS) 3 and Associated Systems" (Mar. 12, 2020); <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-claims3c-march2020.pdf> (accessed Jun. 6, 2020).

⁵⁴² See Ombudsman's Annual Report 2008, p. 39.

⁵⁴³ The "Reason for Appointment Guide" was updated on February 5, 2020. Information provided by USCIS (Apr. 15, 2020).

⁵⁴⁴ Information provided by USCIS (Apr. 8, 2020).

⁵⁴⁵ Information provided by USCIS (Apr. 12, 2020).

⁵⁴⁶ Information provided by USCIS (Apr. 15, 2020).

⁵⁴⁷ *Id.*

⁵⁴⁸ During this study the Ombudsman requested daily Tier 1 and Tier 2 staffing numbers for calendar year 2019, but the agency stated that it "does not have exact daily staffing numbers. With leave, training, new hires, retirements, details, and other administrative situations, it would be very difficult to go back and create a day-by-day breakdown." Information provided by USCIS (Apr. 29, 2020).

the USCIS Contact Centers reported approximately 680 employed Tier 1 representatives, still below its pre-InfoMod staffing level.⁵⁴⁹

INFOMOD: KEY DATA POINTS FROM 2018 AND 2019⁵⁵⁰

Overall, calls made to the USCIS Contact Center dropped slightly (3 percent) from 13,447,885 calls in CY 2018 as compared to 13,066,410 calls received in CY 2019.⁵⁵¹ By contrast, the number of calls that proceeded through the IVR to a Tier 1 representative went down 24 percent during the same time, from 6,295,289 in 2018 to 4,802,869 in 2019. At the same time, FY 2019 IVR data shows approximately 23 percent of callers abandon their attempts to reach the Contact Center.⁵⁵² As to InfoPass appointments, counting appointments by individuals from field office districts where the transition to InfoMod had not yet occurred, 404,558 InfoPass appointments were scheduled in FY 2019, as compared to 858,023 in FY 2018, a reduction of more than 50 percent.⁵⁵³ USCIS estimates that appointment volume has decreased by 70 percent since InfoMod was implemented across the field offices.⁵⁵⁴

According to other data provided by USCIS, the top three reasons for a field office appointment remain unchanged year over year, as follows:

- To obtain an Alien Documentation Identification and Telecommunications (ADIT) stamp for evidence of permanent resident status needed for employment or travel (representing nearly 80 percent of all InfoPass appointments);
- To make fee-payments related to matters pending before the EOIR, and processing actions related to an immigration judge's issuance of lawful permanent resident status grants; and

⁵⁴⁹ Information provided by USCIS (Apr. 15, 2020).

⁵⁵⁰ Note that some data displayed in this report captures a standard Calendar Year (CY), while other data captures a Fiscal Year (FY), October 1 through the following September 30.

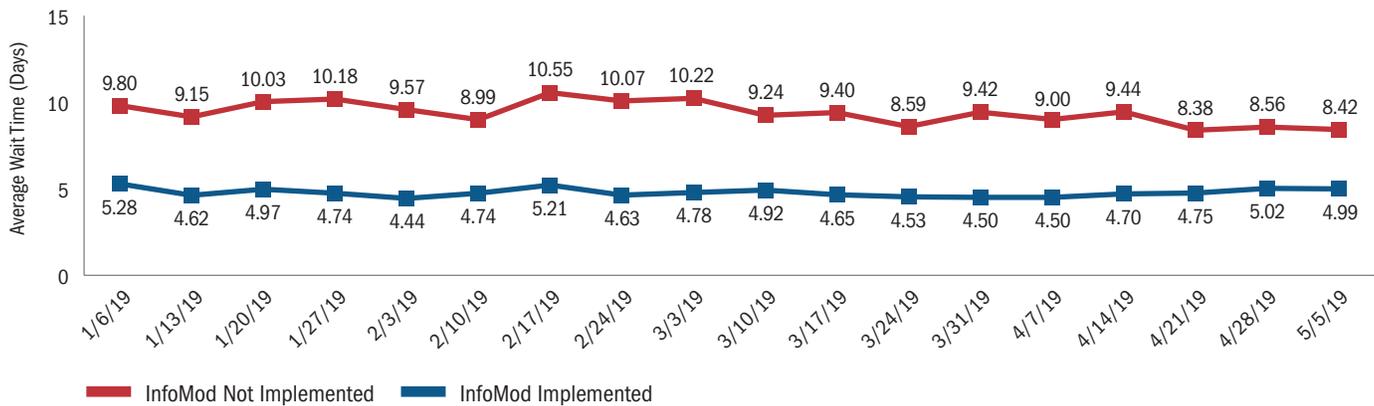
⁵⁵¹ Information provided by USCIS (Apr. 15 and Jun. 2, 2020). As reported previously, 20 percent of customer service inquiries came into the Contact Center through *myUSCIS* in FY 2019.

⁵⁵² Information provided by USCIS (Apr. 15, 2020).

⁵⁵³ Information provided by USCIS (Jun. 1, 2020 and Jun. 12, 2020). InfoPass appointments were reduced through FY 2019 by the conversion to InfoMod as well as by the closure of several international offices. Information provided by USCIS (Jun. 12, 2020).

⁵⁵⁴ Information provided by USCIS (Apr. 8, 2020).

Figure 7.3: Average Appointment Wait Time Analysis

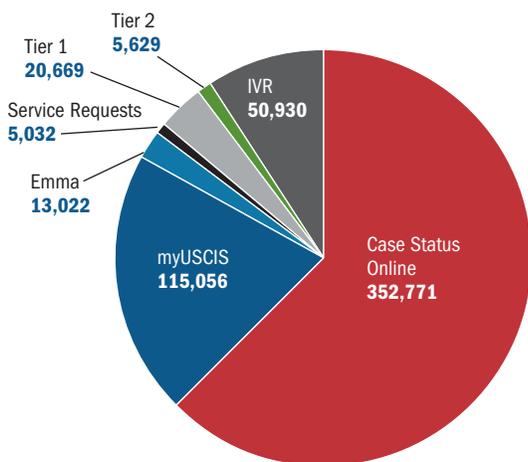


Source: Information provided by USCIS (May 12, 2020).

- To issue Advance Parole documents requested for emergency travel.⁵⁵⁵

The Ombudsman reviewed data provided by USCIS covering a representative 5-day period in 2019 (April 29 through May 3) detailing various characteristics of the 563,109 inquiries received by the agency through all available channels.⁵⁵⁶ See Figure 7.4 (*Average Daily Volume—Live and Self Help Channels*) below.

Figure 7.4: Average Daily Volume—Live and Self Help Channels



Source: Information provided by USCIS (May 12, 2020).

⁵⁵⁵ Information provided by USCIS (Apr. 15, 2020).

⁵⁵⁶ The inquiries reported covered the timespan of April 29 through May 3, 2019, a period during which InfoMod was implemented in 61 percent of USCIS field offices. Information provided by USCIS to the Ombudsman (May 12, 2020). The agency could not provide us with data to enable an accurate before-and-after comparison of wait times for scheduling an appointment due to local and regional office variations.

The data shows that under InfoMod, 95 percent of all customer service inquiries received by USCIS were submitted or resolved without Tier 1 or Tier 2 involvement.⁵⁵⁷ The remaining five percent were resolved through live Contact Center assistance, either at Tier 1 or Tier 2.⁵⁵⁸ Urgent InfoPass appointments were either made by a USCIS Tier 2 ISO in a “call back” the same day or the next day.⁵⁵⁹ The average wait time for all InfoPass appointments in FY 2019 was 7.67 days.⁵⁶⁰

During this same 5-day period, 31 percent of all individuals seeking an InfoPass appointment with a field office were found to meet one of the criteria warranting such an appointment, with an average wait time of 5 days.⁵⁶¹ Comparing the wait time data from the 59 locations where InfoMod was implemented (including some of the largest Metropolitan Statistical Areas in the United States)⁵⁶² with the remaining 37 offices where the transition had not yet occurred, reveals on average individuals could visit their local field office 3 days faster under InfoMod—5.0 days versus 8.4 days.⁵⁶³

Notably, USCIS data also shows that although online filing of SRMTs were low, representing only half of one percent

⁵⁵⁷ Ombudsman’s calculation based on information provided by USCIS (May 12, 2020).

⁵⁵⁸ Ombudsman’s calculation based on information provided by USCIS (May 12, 2020).

⁵⁵⁹ Information provided by USCIS (May 12, 2020).

⁵⁶⁰ *Id.*

⁵⁶¹ *Id.*

⁵⁶² Information provided by stakeholders at various engagements throughout FY 2019 and FY 2020.

⁵⁶³ This is the average wait time for an InfoPass appointment across all USCIS facilities that had transitioned to InfoMod as of May 5, 2019. Information provided by USCIS (May 12, 2020).

of all inquiries, it also revealed that 20 percent were initiated through a petitioner’s or applicant’s *myUSCIS* account.⁵⁶⁴ This latter statistic is otherwise encouraging as it validates that a sizeable number of immigration benefit filers are utilizing this new digital channel.⁵⁶⁵

VARYING PERSPECTIVES ON THE IMPLEMENTATION AND CURRENT STATE OF INFOMOD

Stakeholder Perspective. As reported in the Ombudsman’s 2019 Annual Report, early feedback on InfoMod fell into the following categories:⁵⁶⁶

- Concerns Related to Wait Time to Speak with a Representative
 - Long wait times (initially measured in hours in some cases).
 - Calls involuntarily disconnected during Tier 1 conversations and during transfers from Tier 1 to Tier 2 (necessitating repeating the process from the beginning).
- Concerns Related to Inadequate Representative Training
 - Lack of understanding of the circumstances that may warrant an in-person appointment including paying filing fees for USCIS services related to matters pending before the immigration courts.
 - Erroneous requests for Form G-28 or requesting a receipt number, in matters where one would not usually exist.⁵⁶⁷
- Concerns Related to Call Backs
 - Not occurring within 24 hours as was represented.
 - Occurring in the early morning, late afternoon, or on weekends.

⁵⁶⁴ Information provided by USCIS (May 12, 2020).

⁵⁶⁵ See Ombudsman’s Annual Report 2019, “Transitioning from Transformation to eProcessing,” pp. 62–69.

⁵⁶⁶ See Ombudsman’s Annual Report 2019, “From InfoPass to InfoMod: a Crossroads for Applicant Support Services,” pp. 44–55. This includes outreach events and meetings with stakeholders, review of online reports and stories, meetings with USCIS. Information provided by stakeholders on Feb. 13, 2019, Feb. 14, 2019, Mar. 6, 2019, Mar. 9, 2019, Mar. 11–12, 2019, Apr. 17, 2019, May 15–18, 2019, and Jun. 21, 2019, Apr. 15, 2019, and from the Ombudsman’s Contact Center and Public Engagement Teleconference (Feb. 14, 2019).

⁵⁶⁷ For example, when an attorney is seeking to fee-in an EOIR motion, or when an individual is requesting an I-94 after being granted asylum as a defense against removal.

- Call returned to benefit filer, and not the attorney of record who made the inquiry.
- USCIS call showing “ID-blocked” leading to inadvertent rejections as robot-calls.

The Ombudsman probed these concerns in outreach meetings with stakeholders and determined that some were more troublesome than others—more specifically, missed “call backs.” Missed “call backs” can have very real consequences.⁵⁶⁸ As previously noted, when USCIS twice tries and fails to connect on a call back, the entire process to speak to a live USCIS representative must be repeated. When a matter is truly of an emergency nature, a missed call could well constitute the determining factor. For individuals and employers represented by legal counsel, missed calls can directly lead to increased legal fees when attorneys find themselves again dialing the Contact Center, navigating the IVR, and possibly, enduring another long wait to speak to someone. Some representatives asserted that they found it necessary to carry their clients’ files with them wherever they went so as not to miss the limited opportunity when a call did come.

In addition to the various inputs provided by stakeholders, the Ombudsman conducted a survey in May 2020 seeking a sampling of stakeholder opinions concerning InfoMod.⁵⁶⁹ While the Ombudsman has not had a chance to fully analyze the results of the survey before finalizing this Report, a majority of the stakeholders who responded to the survey expressed negative opinions about their Contact Center experience, citing long wait times holding for a representative and a lack of understanding among Tier 1 operators. When completed, the Ombudsman will share its survey-derived analysis with USCIS on potential improvements.

USCIS’ Perspective. During this study, the Ombudsman requested USCIS provide its own assessment of InfoMod. In response USCIS stated: “InfoMod [was] a tremendous success for applicants [and that it] received positive feedback from the full spectrum of public stakeholders (applicants, attorneys, congressional staff, media stories) as

⁵⁶⁸ This sentiment was echoed by stakeholders the Ombudsman met with including individual benefit seekers, attorneys, representatives of accredited immigration benefit assistance preparers, and staff representatives of several Congressional House and Senate officials. Information provided by stakeholders (Feb. 27, 2020).

⁵⁶⁹ The survey was open for a 7 day period beginning on May 15 and ending May 22, 2020. The survey captured 1275 responses.

[it] was implemented.”⁵⁷⁰ The Ombudsman is cognizant, however, of the agency’s prior acknowledgement that at the end of 2018, wait times were long, often exceeding 30 minutes, and were sometimes up to 3 hours.⁵⁷¹ Even as it conceded that this was not ideal,⁵⁷² USCIS characterized this as a temporary problem attributable to the vendor change, and not directly related to its implementation of InfoMod.⁵⁷³ The Ombudsman’s review of 2019 data indicates that Contact Center wait times were consistently shorter, ranging between 9.9 and 19.8 minutes; the average speed of calls in February 2020 was reported as 7.1 minutes, and down to 3.5 minutes in late March.⁵⁷⁴ USCIS otherwise posits that the public and its field offices both benefited from the reassignment of ISOs previously performing InfoPass duty to adjudication work.⁵⁷⁵

Based on a review of information available to the Ombudsman, there is insufficient data to quantify how InfoMod’s shift in resources impacted field office adjudications. Despite the absence of empirical evidence, the Ombudsman nevertheless believes that InfoMod will have a positive impact on field office adjudications and plans to continue studying the impact of InfoMod.

⁵⁷⁰ USCIS Response to the Citizenship and Immigration Services Ombudsman’s 2019 Annual Report to Congress, January 24, 2019; https://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/Response_to_Ombudsman_2019_Annual_Report.pdf (accessed Apr. 18, 2020); *see also* information provided by USCIS (Apr. 15, 2020).

⁵⁷¹ USCIS Response to the Citizenship and Immigration Services Ombudsman’s 2019 Annual Report to Congress, January 24, 2019, https://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/Response_to_Ombudsman_2019_Annual_Report.pdf (accessed Apr. 18, 2020); *see also* information provided by USCIS (Apr. 15, 2020).

⁵⁷² *See generally* USCIS Webpage, “New Online Tools Reduce Wait Times for Callers” (Feb. 25, 2019); <https://www.uscis.gov/news/alerts/new-online-tools-reduce-wait-times-callers> (accessed Apr. 18, 2020).

⁵⁷³ USCIS Response to the Citizenship and Immigration Services Ombudsman’s 2019 Annual Report to Congress, January 24, 2019, https://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/Response_to_Ombudsman_2019_Annual_Report.pdf (accessed Apr. 18, 2020); *see also* information provided by USCIS (Apr. 15, 2020).

⁵⁷⁴ Information provided by USCIS (Apr. 15, 2020).

⁵⁷⁵ USCIS estimated that the transition to InfoMod would allow it “to redirect an estimated 116 Full Time Equivalents (\$12.4M per annum in personnel resources) toward conducting interviews and other adjudicative activities, leading to a reduction in processing times and enhancing the capabilities and effectiveness of USCIS employees.” Information provided by USCIS (Apr. 8, 2020).

USCIS’ 2020 INFOMOD GOALS

The Ombudsman requested USCIS to detail InfoMod’s operational goals for FY 2020. In response,⁵⁷⁶ the agency provided the following general objectives:

- Dedicate a team of employees to focus solely on information services;
- Provide efficiencies for the public by reducing wait times for information and reducing the need for travel to a field office;
- Reduce the amount of USCIS employee and contractor time and resources spent on information inquiries that can be answered online or should be directed to other agencies;
- Provide advance notice of requests for adjudication services such as advance parole and proof of status documentation, enabling field offices and ISOs to organize their workdays more efficiently; and
- Reduce the number of officers needed to address in-person information requests and reallocate those resources to interviewing and adjudicating applications.

Apart from the above, USCIS advanced a goal to seek out and deploy new technologies to connect with applicants,⁵⁷⁷ including a “text-ahead” capability that would help coordinate a specific call back timeslot.⁵⁷⁸

NEAR-TERM AND LONG-TERM INFOMOD CHALLENGES

While USCIS is currently committed to this new model to meet the public’s information and service needs, and to enable the agency to operate more efficiently, there are challenges that the Ombudsman recommends the agency address. The Ombudsman understands that the reduction in fee intake is likely to significantly impact USCIS staffing models for the foreseeable future, and that these suggestions may be unachievable in the near term, we offer them for consideration as USCIS prioritizes its efforts.

⁵⁷⁶ Information provided by USCIS (Apr. 15, 2020).

⁵⁷⁷ *Id.*

⁵⁷⁸ *Id.* USCIS underscored that it is at the earliest exploration stage and has not yet committed to using this technology. The Ombudsman encourages USCIS to quickly determine its feasibility, and to further explore how it may utilize currently existing email capabilities that would not incur new or additional cost burdens on the agency.

In the Near Term:

- 1. Address the expected surge in demand for information and assistance by thousands of applicants and petitioners affected by the closure of USCIS field and asylum offices, Application Support Centers, and reduced operations caused by the COVID-19 outbreak.** As offices resume operations, interviews and naturalization ceremonies are being rescheduled in altered settings and reduced availability; substantial backlogs will continue for the foreseeable future as delayed adjudications are addressed. There will be many foreign nationals with complicated maintenance of status and departure circumstances that require in-person discussions and potentially local field office resolution.
- 2. Augment the Contact Center’s current “call back” routine by using email and/or phone texting to negotiate a narrow time window when the caller will be ready to take the return call.** In making this recommendation, the Ombudsman notes that with such arrangements in place, “call backs” could take place after normal business hours since the time window will have been arranged in advance. USCIS could adapt its capabilities to shift the work where the staff can best use this, taking into account workplace flexibilities and the presence of staff on the West Coast.
- 3. Explore ways to reduce caller-initiated disconnects, which may serve as an indicator of caller frustration with navigating the IVR system.** Fiscal Year 2019 IVR data shows approximately 23 percent of callers abandon attempts to reach the Contact Center. Given the elevated role that the Contact Center now plays as the primary avenue to discuss a case matter with a live USCIS representative, this is an area deserving further examination and improvement. The Ombudsman has heard from at least one high-profile organizational stakeholder that the limited language options now available are a problem for USCIS’ diverse community.⁵⁷⁹ USCIS may want to explore reducing

the number of prompts and choices, and increase use of plain language.⁵⁸⁰

- 4. Assign a unique identifier that would allow callers to bypass the IVR to reach a Tier 2 representative under certain conditions (e.g., when an USCIS “call back” cycle did not result in a connection).** Requiring a caller to begin the entire process over from the beginning is both unnecessary and inefficient, and the Contact Center could maintain a record of the number of attempts callers make to resolve an issue.

In the longer term:

- 1. Adapt its Contact Center’s Tier 1 staffing to meet the anticipated demand.** USCIS could consider expanding live representative assistance hours to accommodate individuals and employers from the Western states needing to obtain information.⁵⁸¹ The Ombudsman recognizes that this may require the agency to revisit and adjust its current vendor contract requirements, and that it may be difficult in light of both the pandemic aftermath and the agency’s recently announced fiscal issues.
- 2. Through modification of its vendor contract requirements, impose more rigorous competency training and testing of individuals hired to fill Tier 1 representative positions.** This may include, for example, lengthening its training period, including “nesting”—the period when they are answering calls under the direct supervision of a USCIS employee.
- 3. Beyond its current offering of communications in English and Spanish, record Contact Center instructions and messaging in multiple foreign languages.** This recommendation aligns with USCIS’ stated Language Access Plan’s commitment to “incorporate language access considerations in its

⁵⁸⁰ As this report is being finalized, USCIS advised it was implementing a new IVR telephone system (again only in English and Spanish) providing callers the ability to speak to the system rather than selecting keypad options, to receive links for forms and information by email or text, and complete an optional, real-time customer service survey. The new IVR, to be rolled out in stages, is designed to provide callers “a greater range of self-service options.” USCIS Webpage, “USCIS Begins Implementing New Interactive Voice Response Telephone System;” <https://www.uscis.gov/news/alerts/uscis-begins-implementing-new-interactive-voice-response-telephone-system> (accessed May 18, 2020).

⁵⁸¹ In setting this as a goal, the Ombudsman notes that live assistance is available at the Department of State National Visa Center from 7:00 AM to 12:00 AM (EST), Monday through Friday. See DOS Webpage, “NVC Contact Information;” <https://travel.state.gov/content/travel/en/us-visas/immigrate/national-visa-center/nvc-contact-information.html> (accessed May 8, 2020).

⁵⁷⁹ Information received from stakeholders (Mar. 12, 2019).

routine strategic and business planning, identify and translate materials into the most frequently encountered languages, provide interpretive support or guidance where appropriate, and educate its personnel about language access responsibilities and how to use available language access resources.”⁵⁸²

4. Consider providing limited live foreign language capacity beyond Spanish to individuals who call the Contact Center for information or services.

Like other federal agencies, this may be accomplished through the contracting of a GSA-approved interpreter services provider. The Ombudsman suggests that

USCIS explore this as a pilot that imposes specific time periods or days when interpreter services are offered.

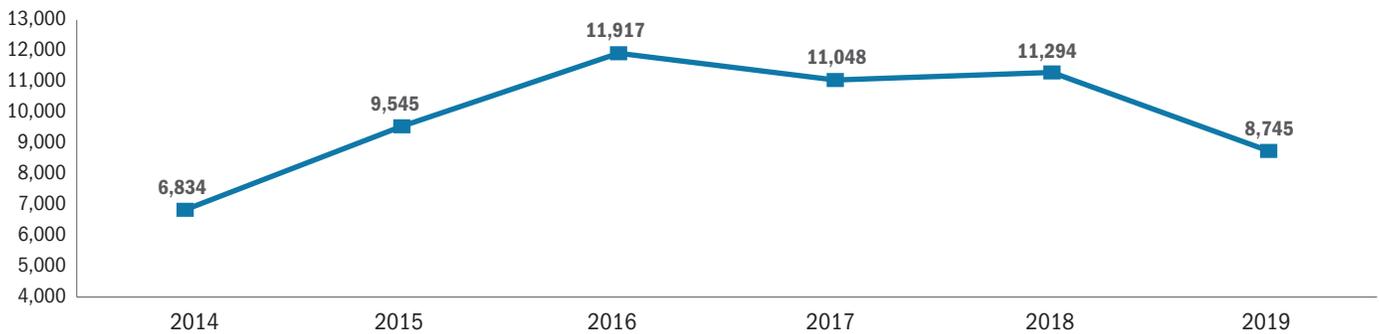
- 5. USCIS could commission an independent research company to create and manage a new Contact Center user-satisfaction survey.** To ensure that the agency is providing the best possible fee-for-service support to the public it serves, USCIS could conduct periodic surveys with the public to evaluate InfoMod’s effectiveness and identify areas where the process could be improved.

⁵⁸² Department of Homeland Security, “USCIS Language Access Plan,” pp. 2, 6 (Dec. 2019); <https://www.dhs.gov/sites/default/files/publications/uscisc-updated-language-access-plan-2020.pdf> (accessed May 18, 2020). In making this long-term recommendation, the Ombudsman acknowledges that USCIS’ current implementation of its Language Access Plan is compliant with Executive Order 13166, and that the cost associated with such recordings will have to be weighed against more pressing requirements in a time of fiscal issues for the agency. More information on this subject may be found on USCIS’ website. See USCIS Webpage, “USCIS Language Access Plan;” <https://www.uscis.gov/tools/multilingual-resource-center/uscis-language-access-plan> (accessed May 27, 2020).

Appendices

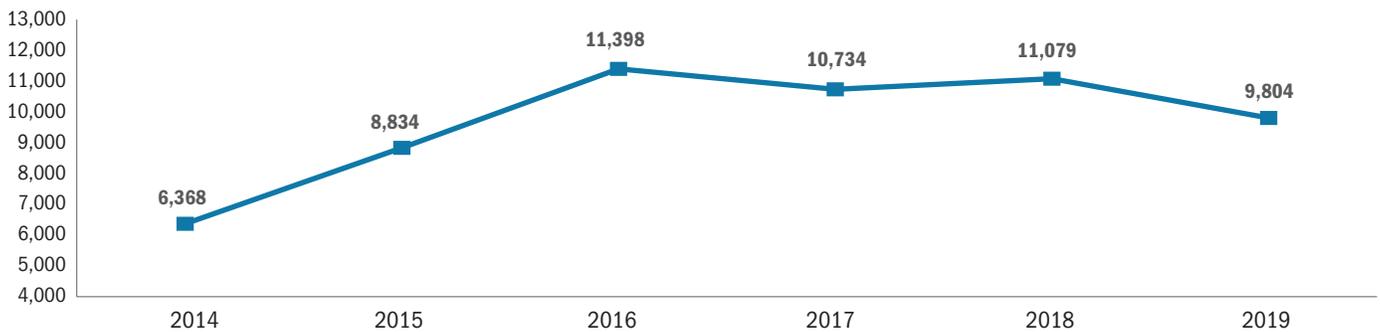
The Ombudsman by the Numbers

Ombudsman Requests for Case Assistance Received by Calendar Year



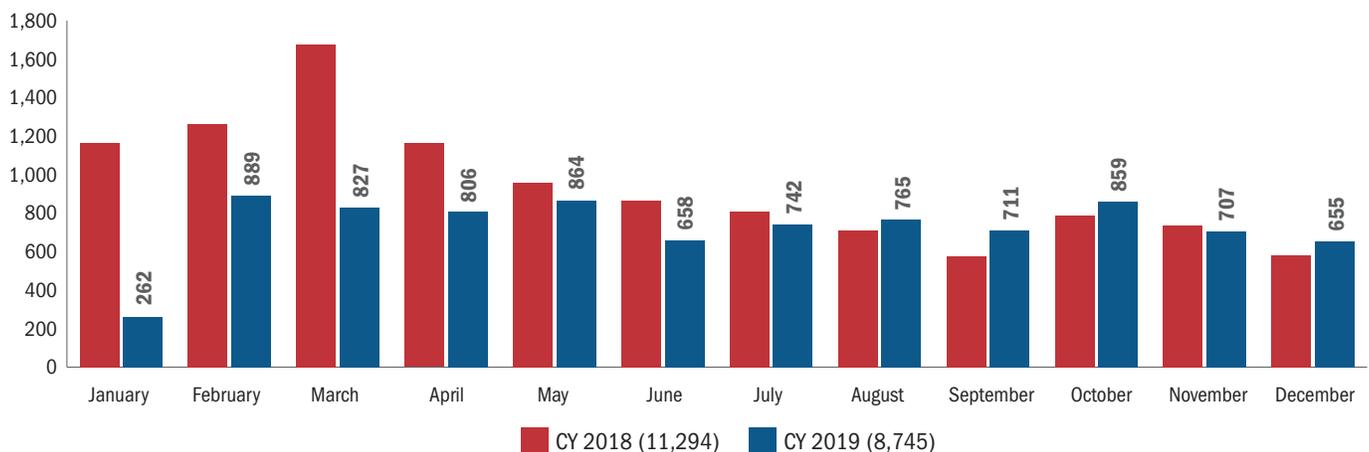
*In CY 2019 the Ombudsman's Office did not accept incoming requests for assistance during the 35-day funding lapse.

Ombudsman Requests for Case Assistance Resolved by Calendar Year



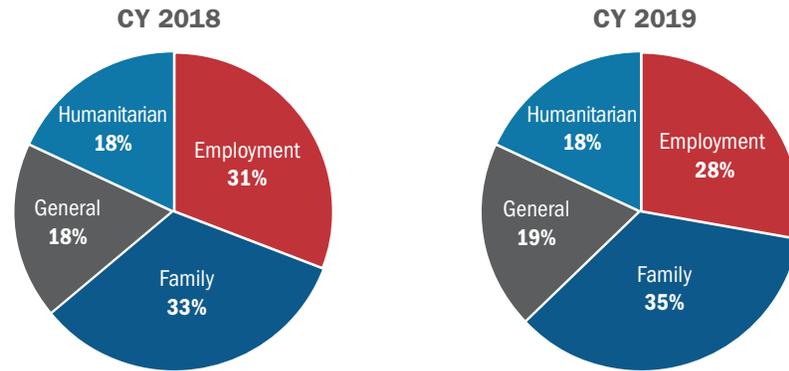
*In CY 2019 the Ombudsman's Office did not accept incoming requests for assistance during the 35-day funding lapse.

Ombudsman Requests for Case Assistance Received by Month for Calendar Years 2018 and 2019



*In CY 2019 the Ombudsman's Office did not accept incoming requests for case assistance during the 35-day funding lapse.

Ombudsman Requests for Case Assistance—Submission by Category



Ombudsman Top Forms Requesting Case Assistance, 2019

Requests for Case Assistance Top Form Types CY 2019	# Received	% of Total Requests
I-765, Application for Employment Authorization	2,280	26%
I-485, Application to Register Permanent Residence or Adjust Status	1,788	20%
I-130, Petition for Alien Relative	1,047	12%
N-400, Application for Naturalization	733	8%
I-751, Petition to Remove the Conditions of Residence	275	3%
I-589, Application for Asylum and Withholding of Removal	228	3%
I-131, Application for Travel Document	226	3%
I-140, Immigration Petition for Alien Worker	206	2%
I-539, Application to Extend/Change Nonimmigrant Status	160	2%
I-290B, Notice of Appeal or Motion	133	2%

Requests for Case Assistance Top Form Types CY 2018	# Received	% of Total Requests
I-765, Application for Employment Authorization	4,064	36%
I-485, Application to Register Permanent Residence or Adjust Status	1,893	17%
N-400, Application for Naturalization	1,084	10%
I-130, Petition for Alien Relative	982	9%
I-131, Application for Travel Document	264	2%
I-751, Petition to Remove Conditions on Residence	235	2%
I-140, Immigrant Petition for Alien Workers	198	2%
I-589, Application for Asylum and for Withholding of Removal	190	2%
I-821D, Consideration of Deferred Action for Childhood Arrivals	189	2%
I-90, Application to Replace Permanent Resident Card	176	2%

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

California			
Requests Received: 1,314			
Top Primary Form Types:	Count	% of Total	
I-765, Application for Employment Authorization	411	31%	
I-485, Application to Register Permanent Residence or Adjust Status	255	19%	
I-130, Petition for Alien Relative	107	8%	
N-400, Application for Naturalization	102	8%	
I-589, Application for Asylum and Withholding of Removal	45	3%	

New York			
Requests Received: 943			
Top Primary Form Types:	Count	% of Total	
I-765, Application for Employment Authorization	251	27%	
I-485, Application to Register Permanent Residence or Adjust Status	235	25%	
N-400, Application for Naturalization	109	12%	
I-130, Petition for Alien Relative	105	11%	
I-751, Petition to Remove the Conditions of Residence	34	4%	

Maryland			
Requests Received: 400			
Top Primary Form Types:	Count	% of Total	
I-485, Application to Register Permanent Residence or Adjust Status	129	32%	
I-765, Application for Employment Authorization	82	21%	
I-130, Petition for Alien Relative	53	13%	
N-400, Application for Naturalization	36	9%	
I-360 (Juvenile), Petition for Amerasian, Widow(er), or Special Immigrant	21	5%	

Texas			
Requests Received: 1,027			
Top Primary Form Types:	Count	% of Total	
I-765, Application for Employment Authorization	283	28%	
I-485, Application to Register Permanent Residence or Adjust Status	178	17%	
I-130, Petition for Alien Relative	153	15%	
N-400, Application for Naturalization	107	10%	
I-131, Application for Travel Document	32	3%	

Florida			
Requests Received: 786			
Top Primary Form Types:	Count	% of Total	
I-485, Application to Register Permanent Residence or Adjust Status	222	28%	
I-765, Application for Employment Authorization	168	21%	
I-130, Petition for Alien Relative	120	15%	
N-400, Application for Naturalization	68	9%	
I-140, Immigration Petition for Alien Worker	30	4%	

Illinois			
Requests Received: 397			
Top Primary Form Types:	Count	% of Total	
I-485, Application to Register Permanent Residence or Adjust Status	90	23%	
I-765, Application for Employment Authorization	85	21%	
I-130, Petition for Alien Relative	66	17%	
N-400, Application for Naturalization	49	12%	
I-751, Petition to Remove the Conditions of Residence	21	5%	

New Jersey
Requests Received: 386



Top Primary Form Types:	Count	% of Total
I-765, Application for Employment Authorization	126	33%
I-485, Application to Register Permanent Residence or Adjust Status	73	19%
I-130, Petition for Alien Relative	38	10%
I-360 (Juvenile), Petition for Amerasian, Widow(er), or Special Immigrant	23	6%
N-400, Application for Naturalization	20	5%

Georgia
Requests Received: 298



Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	86	29%
I-765, Application for Employment Authorization	54	18%
I-130, Petition for Alien Relative	37	12%
N-400, Application for Naturalization	28	9%
I-751, Petition to Remove the Conditions of Residence	17	6%

Virginia
Requests Received: 338



Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	80	24%
I-765, Application for Employment Authorization	77	23%
N-400, Application for Naturalization	45	13%
I-130, Petition for Alien Relative	40	12%
I-589, Application for Asylum and Withholding of Removal	14	4%

Washington
Requests Received: 205



Top Primary Form Types:	Count	% of Total
I-765, Application for Employment Authorization	75	37%
I-485, Application to Register Permanent Residence or Adjust Status	41	20%
I-130, Petition for Alien Relative	16	8%
I-751, Petition to Remove the Conditions of Residence	14	7%
I-131, Application for Travel Document	9	4%

Updates on the 2019 Citizenship and Immigration Services Ombudsman Annual Report Recommendations

In the 2019 Annual Report to Congress, the Ombudsman made several recommendations to USCIS on how to improve delivery of immigration services, in keeping with Section 452(c)(1)(F) of the Homeland Security Act of 2002.⁵⁸³

On January 24, 2020, USCIS issued its response, concurring with many of the recommendations. The Ombudsman issues the following updates to these recommendations and USCIS' actions taken to implement them, as well as those not taken, in accordance with Section 452(c)(1)(C)-(E).

THE H-1B PROGRAM: WAGES AND SPECIALTY OCCUPATIONS

The Ombudsman's 2019 Recommendations:

1. Define “Highly Specialized Knowledge” and Incorporate Wages as a Factor. The law defines “specialty occupation” as an occupation that requires a theoretical or practical application of a body of *highly specialized knowledge*. In addition to requiring an application of a body of highly specialized knowledge, the occupation must also require a bachelor’s degree or higher in a specific specialty, or its equivalent. Although these are separate requirements, the regulation that defines the qualifying criteria for specialty occupations does not define the term “highly specialized knowledge.” Rather, the four different standards contained within the regulation pertain to meeting the educational requirement of the definition. This leaves half the statutory definition undefined in establishing eligibility. In order to ensure that the position requires a theoretical or practical application of a body of highly specialized knowledge, USCIS should consider defining the term “highly specialized knowledge” in the H-1B context.

Wages proffered to the beneficiary could be a factor in the consideration of whether or not a position requires a body of highly specialized knowledge. Incorporating proffered wages within the regulatory

criteria for specialty occupations appears to be consistent with the intent of the program and could promote higher wages among H-1B beneficiaries overall. Specifically, a substantial salary offered for the proffered position generally decreases the likelihood that the position will have an adverse impact on similarly situated U.S. workers. Furthermore, a higher than average wage could evidence that the proffered position is typically one that requires a body of highly specialized knowledge.

USCIS Response: Under the Unified Agenda, there is a proposed regulation titled “Strengthening the H-1B Nonimmigrant Visa Classification Program.” DHS will propose to revise the definition of “specialty occupation” to increase focus on obtaining the best and brightest foreign nationals via the H-1B program and define “employer-employee relationship.” DHS/USCIS states that these proposed changes will better protect U.S. workers and wages. In addition, DHS will propose additional requirements designed to ensure employers pay appropriate wages to H-1B visa holders.

Ombudsman Update: As we finalize this Report, USCIS has not yet published a proposed rule in the Federal Register. In order to ensure that the position requires a theoretical or practical application of a body of highly specialized knowledge, USCIS should consider defining the term “highly specialized knowledge” in its rulemaking. Ambiguity will only prolong confusion and waste government and stakeholder resources while the industry attempts to understand the agency’s intentions and comply with shifting standards. The Ombudsman’s Office continues to support the incorporation of proffered wages within the regulatory criteria for specialty occupations to promote higher wages among H-1B beneficiaries and U.S. workers overall, especially during this period of unstable employment due to COVID-19.

2. Prioritize Wages and Skill Level in the H-1B Lottery. Currently, the H-1B program contains significant numbers of potential beneficiaries with a U.S. master’s degree or higher. The number of cap-subject petitions filed under the advanced degree exemption has been steadily increasing. The continued

⁵⁸³ For a full review of the Ombudsman’s recommendations, see Ombudsman’s Annual Report 2019, *passim*.

increase of prospective beneficiaries with at least a U.S. master's degree demonstrates a pool of potential foreign workers with a higher level of academic knowledge.

Reforming the H-1B lottery process is one way to ensure that H-1B visas are awarded to the most-skilled beneficiaries. Apart from a separate, smaller lottery conducted for petitions filed on behalf of beneficiaries with at least a U.S. advanced degree, the selection process does not consider the beneficiary's skill level. The number of unselected petitions filed under the advanced degree exemption has increased markedly in prior years. Congress has previously considered legislation that would, among other reforms, eliminate the random selection system in favor of prioritization based on other factors (*e.g.*, wage offered, education level attained, etc.). Without Congressional action, the inherently random nature of the current H-1B lottery system will continue to disserve the most-skilled beneficiaries and the organizations seeking to employ them.

USCIS Response: On January 31, 2019, DHS published a final rule amending regulations governing H-1B cap-subject petitions, including those that may be eligible for the advanced degree exemption. This final rule reverses the order in which USCIS selects H-1B petitions under the H-1B regular cap and the advanced degree exemption and introduces an electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions. Changing the order in which USCIS counts these allocations increased the number of petitions for beneficiaries with a master's or higher degree from a U.S. institution of higher education selected under the H-1B numerical allocations. Specifically, the change will result in an estimated increase of up to 16 percent (or 5,340 workers) in selected petitions for those beneficiaries.

Ombudsman Response: The Ombudsman's Office recognizes that a statutory amendment may be the only way to directly address the issue of prioritization based on wages and skill levels. We are currently reviewing the results of the changes to the H-1B registration process, which was conducted for the first time in March 2020.

3. Revise Degree Equivalency Criteria. With respect to regulatory changes, USCIS could consider refining its degree equivalency criteria as an additional reform. The statute permits awarding H-1B visas to beneficiaries who lack a U.S. bachelor's degree. Specifically, the petitioner may demonstrate that

the beneficiary meets the requirements based on experience in the specialty that is equivalent to the completion of the required degree. The beneficiary must also have recognition of expertise in the specialty through progressively responsible positions. The regulations allow for a combination of experience, education, and/or training to be considered in the equivalency determination. When showing a beneficiary's qualifications through experience, 3 years of increasingly responsible professional experience equates to 1 year of college-level training (*i.e.*, a bachelor's degree equates to 12 years of experience). For equivalence to a master's degree, the beneficiary must have a bachelor's degree followed by at least 5 years of increasingly responsible experience in the specialty; a doctorate must be in the form of a U.S. doctorate or its foreign equivalent.

To ensure that H-1B visas are awarded to the most-skilled beneficiaries, USCIS could modify its regulations to increase the level of experience that may be substituted for each year of college-level training. Similarly, as it has done for positions that require a doctorate degree, USCIS could remove the experience equivalency allowed for a master's degree. These reforms would increase the experience skill level required for beneficiaries who do not possess at least a U.S. bachelor's degree or a foreign degree determined to be its equivalent, as well as for those who possess a degree in an unrelated field.

USCIS Response: USCIS has not published any recent rules or updates to its Policy Manual on this topic and does not anticipate doing so in the near future.

Ombudsman Update: The Ombudsman's Office continues to support its recommendation that USCIS reevaluate its experience-to-degree equivalency formula to determine if it captures the realities of highly skilled experience. Given COVID-19's adverse effects on the economy, it is more important than ever to protect the jobs of U.S. workers. The highly skilled business environment has evolved over the last decade with the introduction of new industries, advancement in technologies and shifts in global demands. In coordination with the DOL, USCIS should reevaluate its current experience-to-degree equivalency formula to determine whether it needs improvement in light of the current business environment.

FROM INFOPASS TO INFOMOD: A CROSSROADS FOR APPLICANT SUPPORT SERVICES

1. Enhance quality assurance monitoring standards to include a higher level of substantive review to inform InfoMod enhancements. USCIS has the capability to review its interactions with the regulated public, and already engages in a robust quality control through review of the actual interactions. It can review recorded calls of those who communicated with the Contact Center to request an appointment but were not transferred to Tier 2. This kind of review could result in additional changes to the criteria for in-person appointments.

USCIS Response: USCIS agrees and is reviewing escalated InfoPass calls between Tiers 1 and 2 to streamline the work between the Tiers and make this a more efficient process for callers.

Ombudsman Update: Stakeholders continue to report challenges in accessing Tier 2 representatives and resolving requests effectively using the Contact Center. Recently, the Ombudsman's Office posted a public survey on USCIS' updated public inquiry process, and will conduct follow-on study and engagements on InfoMod, given its importance to individuals, employers and their representatives. The Ombudsman's Office will report any new findings or recommendations to USCIS and the stakeholder community.

2. Work toward a convenient window of time to call back individuals to limit missed calls. In the current process, the Contact Center returns calls at a time of its own selection (including after ordinary working hours), meaning that applicants, petitioners and representatives cannot adjust their schedules to ensure they are available (and prepared for) the call. When a return call is missed, it leads to more work for the agency and frustration for the individual or employer. Providing a narrower window than 24 to 48 hours, as is currently the case, would likely ensure a higher rate of successful returned calls, especially across time zones.

USCIS Response: USCIS acknowledges this need, but emphasizes that addressing it requires substantial technological modifications to agency systems. USCIS is reviewing options for new technology and expects to have it in place in FY 2020.

Ombudsman Update: The Ombudsman's Office looks forward to these modifications; however, adding a note to the record provided to the Tier 2 representatives as to suitable times to respond to the inquiry might reduce the number of complaints relating to this issue. This is particularly important as USCIS continues to depend more and more on the USCIS Contact Center to respond to public inquiries.

3. Educate potential users on the continued improvements to *myUSCIS*, especially its multiple benefits, such as communicating with the Contact Center through electronic messages. As eProcessing expands, USCIS will rely more on its electronic portal to communicate with the affected public. Educating the public on *myUSCIS* and its benefits will help applicants and petitioners and USCIS communicate more efficiently and effectively. Moreover, providing an opportunity for feedback will also help USCIS identify needed improvements.

USCIS Response: USCIS has updated its Interactive Voice Response (IVR) system to provide more information to callers, its hold messaging in which callers are reminded they can use self-service options, and its landing pages where users navigate USCIS' website to find self-service tools.

Ombudsman Update: USCIS did not respond directly to the Ombudsman's recommendation to include stakeholders in its development of eProcessing expansions. The Ombudsman's Office continues to encourage USCIS to engage with stakeholders when developing and rolling out new functions and form types for eProcessing to ensure their perspective is considered, and that adequate training is provided to improve outcomes.

4. Allow attorneys and accredited representatives in the same law firm or organization to engage with the agency. Attorneys and accredited representatives bound by ethical obligations to a state bar as well as under the ethical structures of EOIR can be held responsible for their actions before the agency. Allowing other attorneys and legal representatives to be able to discuss with USCIS administrative issues such as requesting appointments, seeking rescheduling, and reporting issues would increase efficiency for both the agency and the applicant. This would also increase the responsiveness of return calls, if a fellow attorney can be called upon when the attorney of record is not available.

USCIS Response: USCIS disagreed with this recommendation, stating that the agency will only communicate with the benefit requestor and the attorney or accredited representative of record, as established through a properly completed and filed Form G-28, *Notice of Appearance as Attorney or Accredited Representative*.

Ombudsman Update: Additional public guidance would help explain how a law firm could add legal representatives to the G-28 for the sole purpose of making Contact Center inquiries and not to replace the attorney of record for the pending application or petition with USCIS. A frequent complaint to the Ombudsman is that the Contact Center will not speak with an attorney, even if that attorney has already entered a G-28, when that representation is not reflected (for whatever reason) in the system. USCIS could designate a clear path for submission and confirmation of the G-28 for the limited purpose of Contact Center communication.

5. Update InfoPass appointment guidance for the Contact Center to include procedures for escalating calls that require immediate attention due to exigent circumstances. While USCIS cannot anticipate all situations, certain exigent circumstances could receive a higher level of attention, including the possibility of a same-day appointment. These might include obtaining an ADIT stamp to show an employer as proof of status and employment eligibility so the individual can begin a job or not lose one, or an emergency advance parole document to meet an applicant’s urgent travel need. The updated guidance would provide timely services to applicants with needs that can only be addressed through in-person appointments.

USCIS Response: The USCIS Field Office Directorate and Operations Office Directorate meet weekly to coordinate, address specific inquiries, and update protocols as needed. The appointment guidance, updated as needed, identifies ways to note those circumstances that require immediate attention, which are escalated directly to the field office with jurisdiction over the request via a “hotline” staffed by officers who can quickly assist in scheduling an emergency appointment. Further, Contact Center personnel meet regularly with agency partners in the Field Office Directorate to manage both the urgent and non-urgent appointment requests.

Ombudsman Update: The Ombudsman’s Office continues to receive requests for case assistance and concerns from stakeholders that emergency requests

are not handled properly at the USCIS Contact Center. Stakeholders report they are often denied the opportunity to demonstrate eligibility for an emergency appointment. Additional public engagement may inform both the public on how USCIS is updating its responses to better to address these types of cases, as well as provide USCIS with valuable feedback from the public on the situations that require assistance.

6. Conduct a strategic evaluation of support services every 3 years to make sure the methods continue to be efficient and effective, and that new technology is incorporated. While USCIS engages in frequent review of its processes to ensure effectiveness and integrity, regular evaluations of its communication and interaction methods would help ensure technology upgrades and strategic improvements are made.

USCIS Response: USCIS agreed, stating that the agency consistently seeks user feedback and conducts user group studies to ensure it is in touch with its user audience. USCIS will use an “omni-channel survey tool” that should help it gain quick and efficient feedback.

Ombudsman Update: The Ombudsman’s Office continues to receive concerns from stakeholders on their difficulties in making inquiries to the agency. We recommend that USCIS provide more information to the public regarding the survey tool and its results to ensure that stakeholders are aware of this option to provide input and the results of the feedback received.

TRANSITIONING FROM TRANSFORMATION TO EPROCESSING

1. Conduct public-user feedback sessions and publish summaries on a rolling basis as each new benefit product is released. Obtaining feedback from the public will help problems uncovered to be reported back quickly for resolution; feedback loops will inform the development and rollout of future eProcessing initiatives.

USCIS Response: USCIS frequently conducts early stage user research through in-person and virtual interviews. These interviews inform USCIS design and technical decisions. Additionally, the agency aims to conduct usability sessions to obtain public user feedback approximately every 6 weeks. USCIS also receives feedback on current production issues through the agency’s

public email addresses and outreach sessions. USCIS technical teams review each reported issue and prioritize the bugs to be resolved in a timely manner.

Ombudsman Update: Stakeholder feedback in response to this issue indicates that more USCIS engagement with stakeholders including employers, not-for-profit organizations, and educational institutions, is necessary.

2. Expand and fully staff an IT support office that external users can access specifically for technical assistance. USCIS currently has an IT support desk for filers. IT support representatives take tickets on technology problems received by Tier 1 and Tier 2 representatives at the Contact Center. However, to appropriately handle the increased volume of inquiries that will accompany eProcessing when it is fully functional, investment and planning for IT support will need to begin now.

USCIS Response: The USCIS Office of Information Technology has a fully functioning Enterprise Operations Center (EOC) that is staffed 24/7. USCIS personnel and the contract technicians at the EOC are prepared to handle increases in work volume. The helpdesk vendor is recruiting and hiring staff in anticipation of increased demand. USCIS renewed the contract with the vendor in July 2019 and will continue to work closely with the vendor as new forms are made available to file online.

Ombudsman Update: As USCIS expands public access to eProcessing, additional user support and information is imperative to ensure the public has the necessary resources to timely and effectively file petitions and applications with USCIS.

3. Clearly identify, track, and measure system disruptions and their impact on productivity to determine steps necessary to mitigate them.

USCIS Response: “USCIS is maturing its proactive monitoring environment to provide continuous monitoring of application performance and infrastructure stability. USCIS will integrate alerts and monitoring with the existing Critical Infrastructure Response process to provide targeted root-cause analysis of errors, alerts, and downtime. USCIS performance monitoring teams will work with development teams to ensure development markers are used across the enterprise to enable more rapid troubleshooting of system disruptions, allowing for automated and continuous deployment.”

Ombudsman Update: The Ombudsman’s Office continues to support this recommendation and recognizes USCIS’ efforts to improve the process. USCIS needs to be able to quickly identify and track issues as they arise in eProcessing. The Ombudsman’s Office received complaints during the H-1B registration process in March 2020, for example, which were forwarded to USCIS for response. Prior to the lottery selection, the Ombudsman’s Office surveyed its stakeholders on their experience with the H-1B registration process; while 60 percent experienced technical difficulties, they were resolved 80 percent of the time. Better information sharing would inform the public of these resources and prepare the public for eProcessing as USCIS continues to introduce new forms to file online.

4. Accelerate engagement with immigration forms/case management vendors whose systems are used by immigration service providers. For individuals who seek legal representation when applying for immigration benefits, those services are often supported by vendors that create forms and case management systems. As described above, vendors have for several years expressed concern that they have not been included in the planning process. Engaging them in the eProcessing development process sooner will offer legal providers and their clients a smoother transition to eProcessing.

USCIS Response: USCIS is creating an outreach plan to consult immigration-law service providers, and will increase outreach to these audiences as more of its technical approach and early attempts are available for demonstration.

Ombudsman Update: USCIS has so far consulted a limited number of immigration-law service providers. While the Ombudsman does not in this or any other recommendation intend to directly support any business, including immigration forms/case management vendors, the fact remains that a significant number of individuals, employers and representatives rely upon such case management systems when interacting with USCIS, making their inputs potentially valuable to both USCIS and the public. Meeting with additional providers, and specifically with immigration forms/case management vendors, would assist in the integration and adoption of new eProcessing forms. Publishing the findings from these meetings would allow the public to comment on the results and refine any programmatic or policy recommendations.

It would also eliminate any benefit given to the private businesses that meet with USCIS.

CHALLENGES FACING TIMELY ADJUDICATION OF EMPLOYMENT AUTHORIZATION DOCUMENTS

1. Augment USCIS' staffing resources to enable the National Benefits Center and Service Centers to devote more production hours to Employment Authorization Document (EAD) processing.

USCIS Response: "USCIS actively recruits and hires to maintain the highest possible levels of staffing and implements alternative work schedules and telework programs to boost the capacity of its offices. The agency consistently seeks to expand its technological capabilities and implement business process efficiencies and allocates adjudicators to workloads in a manner consistent with USCIS and departmental priorities. Due to these efforts, the growth rate of the backlog slowed between FY 2018 and FY 2019 to less than one percent. USCIS has also proposed new fees and a reduction in fee waivers so that USCIS has the resources it requires for additional staff and overtime."

Ombudsman Update: USCIS is facing a production crisis on multiple fronts: fees are not meeting processing costs, the COVID-19 pandemic suspended normal in-person appointments, and filing trends are erratic and unpredictable. USCIS concurred with the Ombudsman's recommendation but did not address the employment authorization processing specifically. Understanding that USCIS is facing unprecedented challenges, the Ombudsman's Office continues to recommend that USCIS review its approach to EAD adjudications and ensure applicants have adequate information to timely file.

2. Accelerate the incorporation of the Form I-765, *Application for Employment Authorization*, into eProcessing, which could reduce the number of steps in EAD adjudication, reducing processing times and improving overall efficiency. While this may be a formidable task given the number of EAD types adjudicated and the sheer volume of EAD filings, even selecting only one type for eProcessing (such as adjustment of status related applications) could accelerate the adjudication of these forms and pave the way to testing the eProcessing system across the agency.

USCIS Response: None.

Ombudsman Update: USCIS has not incorporated Form I-765 into eProcessing. Incorporating a large-volume application like the Form I-765 into eProcessing would empower the agency to support its goal of protecting its workforce during the COVID-19 pandemic, as well as improve processing efficiency and integrity.

3. Implement a public education campaign to encourage applicants to file Form I-765 renewal applications up to 180 days before the expiration of their current EAD to reduce the impact of longer processing times.

USCIS Response: USCIS concurred with this recommendation, and stated that the agency can raise awareness by using existing communication resources such as social media messages and Internet content, as well as web alerts and stakeholder messages via electronic communication platforms. USCIS can also incorporate this campaign within its national and local outreach.

Ombudsman Update: The USCIS webpages, "I-765, Application for Employment Authorization" and "Automatic Employment Authorization Document (EAD) Extension" have no information on filing up to 180 days before expiration. USCIS filing checklists also do not provide guidance on when an individual may file to renew an employment authorization document. The Ombudsman's Office was able to find guidance using the USCIS' "Ask Emma," warning that a person cannot file for a renewal of the EAD more than 180 days before the original EAD expires. This information is helpful to those who access "Ask Emma," but additional guidance is warranted, especially on the Form I-765 webpage, to ensure the public understands when to file an application to renew employment authorization and how to try to avoid a lapse.

4. In tandem with this public education recommendation, emphasize that petitioners and applicants verify the addresses provided (for all forms filed with USCIS) by USPS's "Look Up a Zip Code" checker; doing so confirms the address is correctly formatted and serviced by USPS.

USCIS Response: USCIS agrees, and stated that this is one of the agency's top messages in many of its communications and outreach efforts. USCIS will keep reminding applicants of the importance of verifying and

updating their address in all forms filed with the agency. The agency has made it possible for individuals filing online to select the U.S. Postal Service (USPS) version of their address. For some filings, applicants can review and update this information in their account profile. USCIS hopes to make that capability available to more applicants over the coming year.

Ombudsman Update: While USCIS may include this information in its messaging, additional methods of communication are available to improve public awareness. For example, the USCIS “Change of Address” webpage could include a notice for individuals (such as victims of domestic violence, trafficking and other crimes), who are unable to file online to use the USPS’s “Look Up a Zip Code” checker before filing their paper Form AR-11, *Alien’s Change of Address Card*. This vulnerable population especially needs to ensure the agency always has a current address on file since USCIS only communicates via the safe address provided. Adding information to the USCIS webpage would support the agency’s messaging goals and the Ombudsman’s recommendation.

5. Consider establishing a uniform process to identify and expedite processing of Form I-765 resubmissions filed due to “service error,” and operationalize the use of express mail courier service (e.g., USPS Express Mail, UPS, Federal Express, etc.) to speed up the delivery of corrected or replacement documents in such situations.

USCIS Response: The instructions for Form I-765, *Application for Employment Authorization*, outline the process for requesting replacement or correction of an EAD under the heading “Replacement for Card Error.” These instructions make it clear that applicants should not be resubmitting a Form I-765 when alleging a service error, but instead must “submit a letter explaining the error, along with the card containing the error to the service center or National Benefits Center that approved the Form I-765.” The only instance in which an applicant is required to resubmit a Form I-765 is when an error is not attributable to USCIS.

USCIS further stated that once the agency receives a letter explaining the error, it reviews the initial application. In the current processing environment, USCIS is unable to flag Forms I-765 that are being reviewed due to allegations that the EAD either contains incorrect information or was not properly delivered due to a “service error.” However, as USCIS expands eProcessing of applications in USCIS ELIS to include Form I-765, the agency will improve the response to those types of requests and to resolve systemic issues that may cause errors in the future.

USCIS is not considering implementing a process that will expedite these kinds of submissions. In an effort to provide consistency in expected processing times, USCIS generally adjudicates cases on a first-in, first-out basis; however, USCIS provides for and considers requests for expeditious processing in accordance with USCIS Expedite Criteria posted on the USCIS website. “Service error” is one basis to request expedited processing according to the USCIS Expedite Criteria.

USCIS cannot use FedEx or UPS since they do not deliver to P.O. Boxes. USCIS could possibly use USPS Priority Mail Express overnight delivery, but it would cost four times as much as the Priority Mail service, which the agency currently uses.

Ombudsman Update: Individuals and employers continue to need timely and efficient employment authorization processing, with clear avenues to expeditiously correct service errors, and the Ombudsman continues to receive concerns of this nature. Ensuring individuals receive their employment authorization documents in a timely and efficient matter will support this goal.

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.

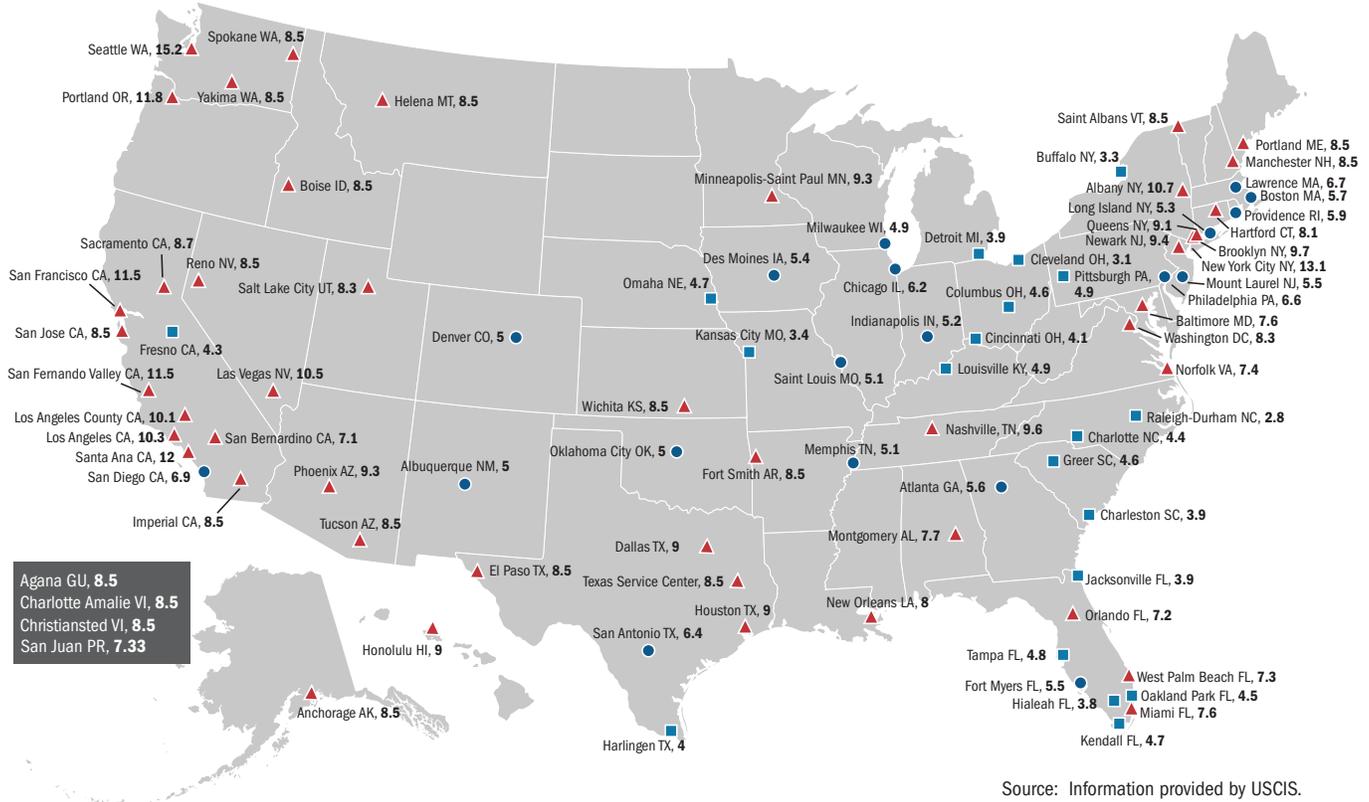
(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

USCIS Naturalization and Adjustment of Status Processing Times

Processing Times for USCIS Field Offices for Form N-400, Application for Naturalization

December 2019 (FY 2020 1st Quarter)

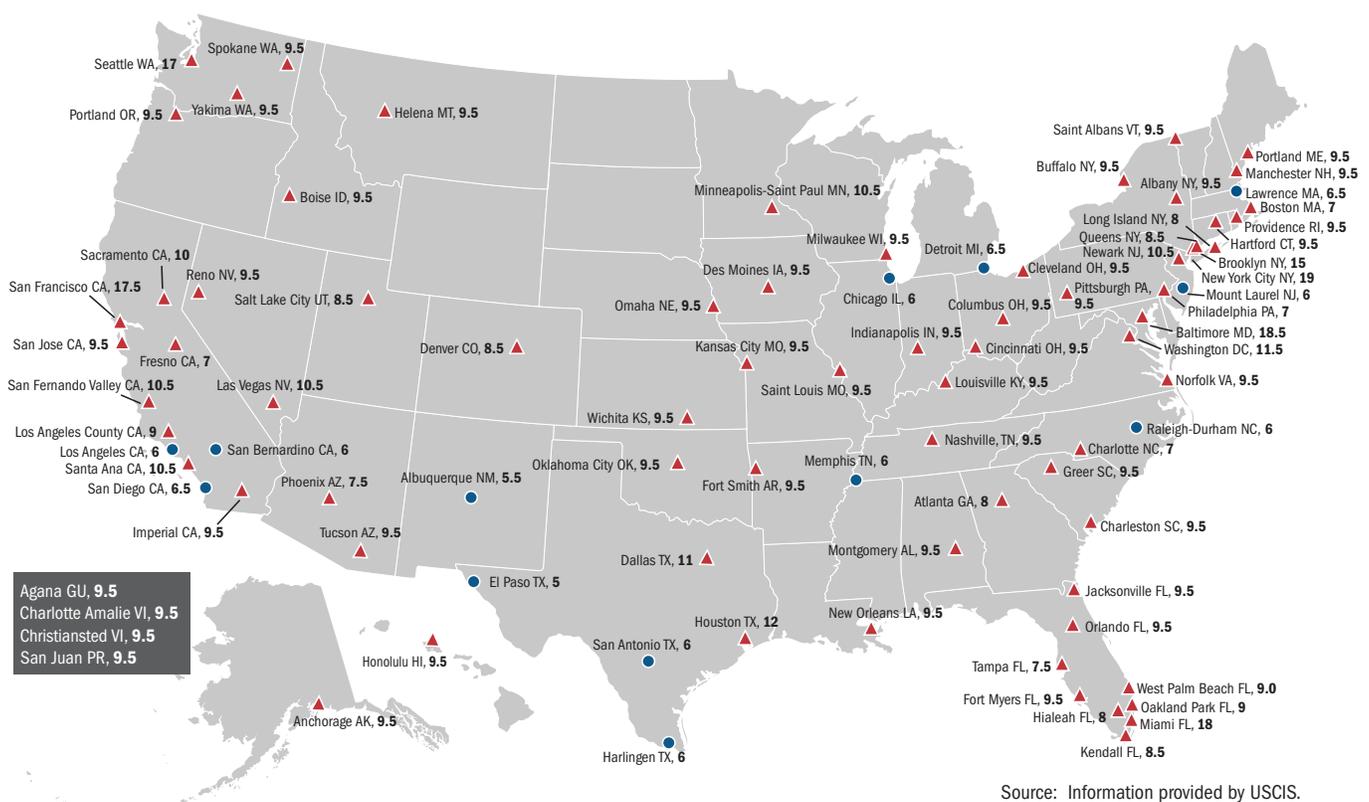
■ = 0-5 Months ● = 15-7 Months ▲ = 7+ Months



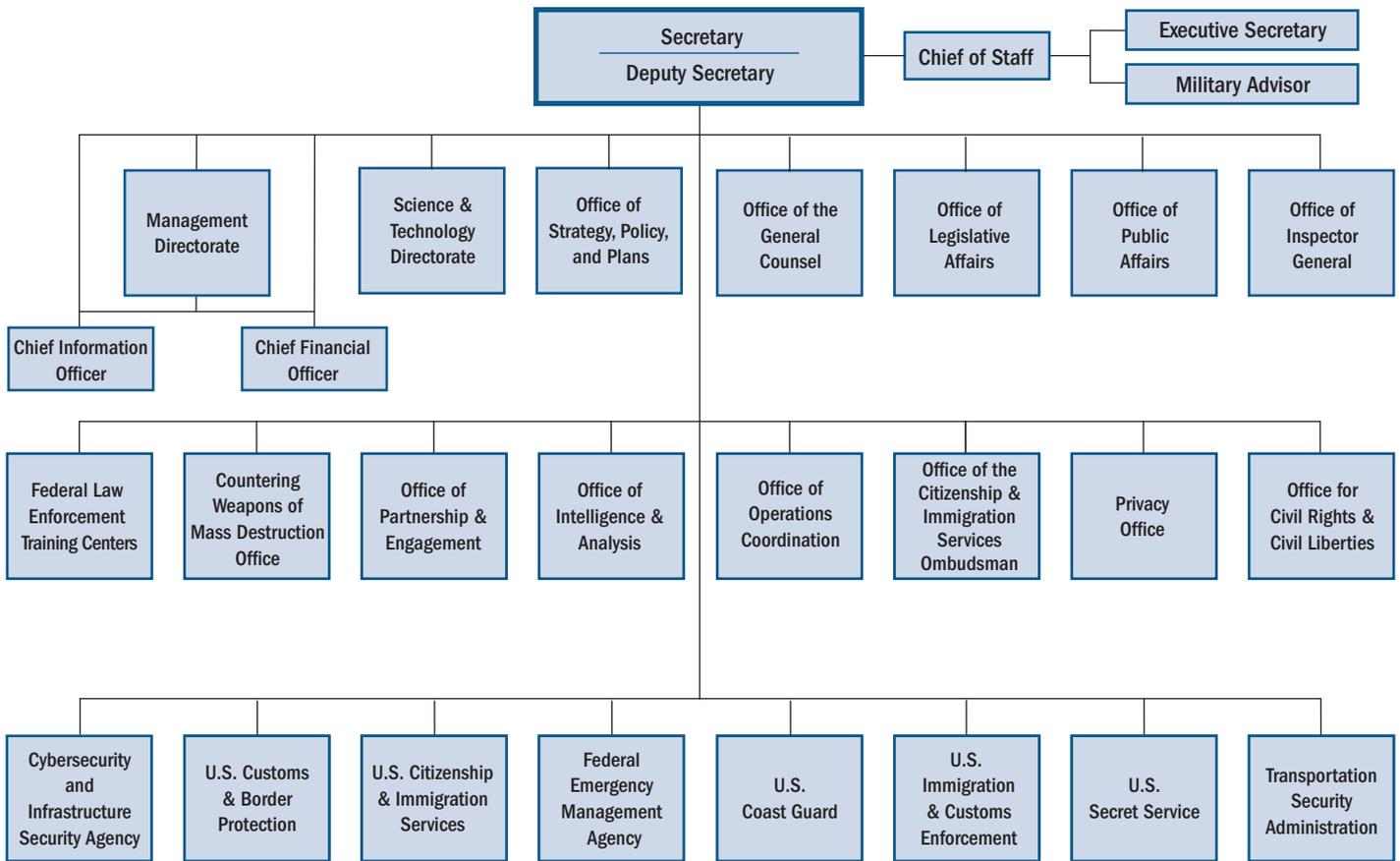
Processing Times for USCIS Field Offices for Form I-485, Application to Register Permanent Residence or Adjust Status

December 2019 (FY 2020 1st Quarter)

■ = 0-5 months ● = 5-7 months ▲ = 7+ months



U.S. Department of Homeland Security Organization Chart

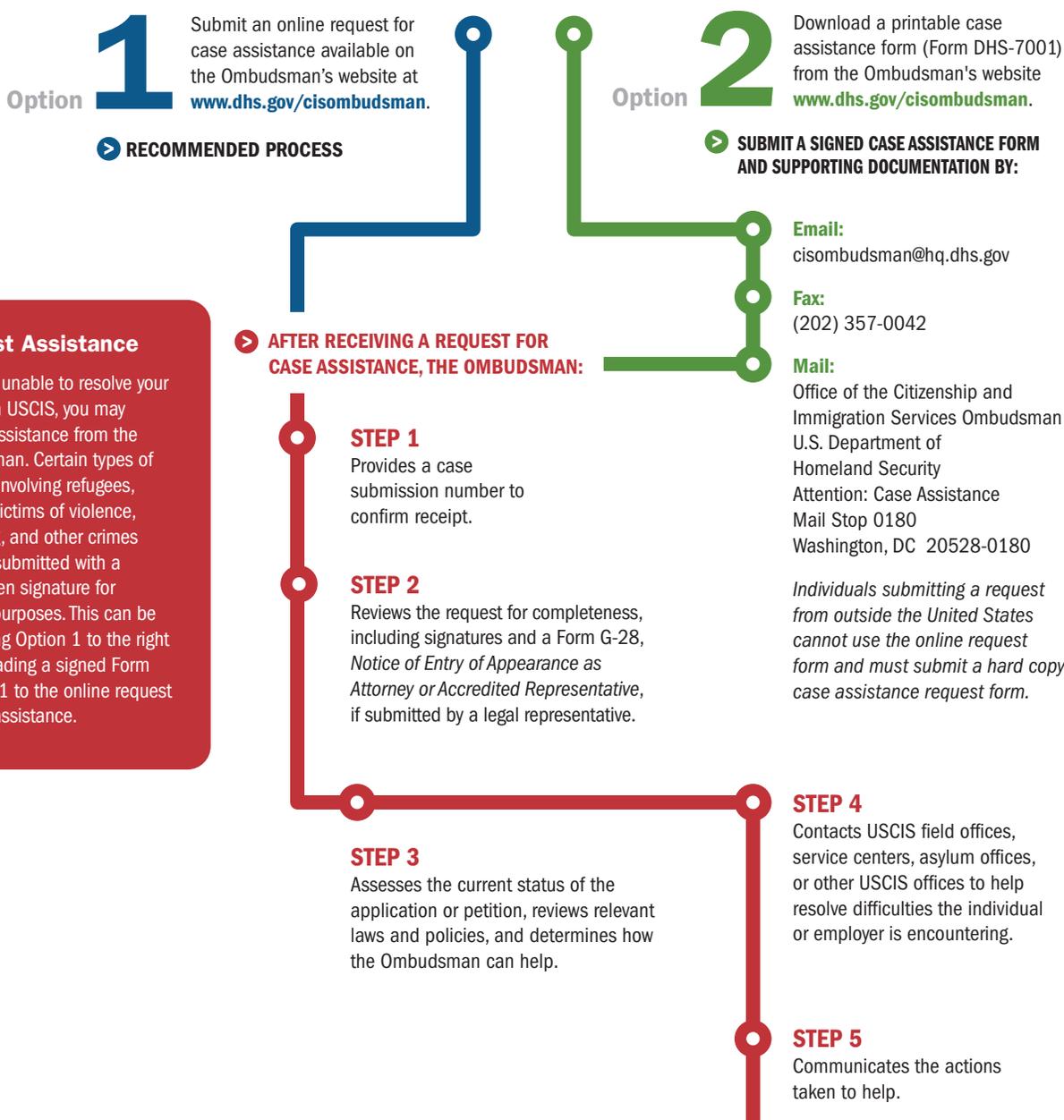


How to Request Case Assistance from the Ombudsman: Scope of Assistance Provided

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:

- Submitting a request through your *myUSCIS* account;
- Submitting an e-Request with USCIS online at <https://egov.uscis.gov/e-Request>; or
- Contacting USCIS for assistance at **1-800-375-5283**.



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 right and uploading a signed Form DHS-7001 to the online request for case assistance.

Acronyms

AAO	Administrative Appeals Office	ELIS	Electronic Immigration System
ACA	Asylum Cooperative Agreement	EOC	Enterprise Operations Center
ADIS	Arrival and Departure Information System	EOIR	Executive Office for Immigration Review
ADIT	Alien Documentation Identification and Telecommunications	ESC	Executive Steering Committee
AGC	Affidavit of Good Cause	FBI	Federal Bureau of Investigation
AO	Asylum Officer	FCI	Formalized Check-In
ASC	Applications Support Center	FDNS	Fraud Detection and National Security Directorate
AVC	Asylum Vetting Center	FY	Fiscal Year
BIA	Board of Immigration Appeals	GAO	U.S. Government Accountability Office
BIO	Benefits Integrity Office	GSA	General Services Administration
CAT	U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	HARP	Humanitarian Asylum Review Process
CBP	U.S. Customs and Border Protection	HFE	Historical Fingerprint Enrollment
CCP	Chinese Communist Party	HSA	Homeland Security Act
CDC	Centers for Disease Control and Prevention	HSI	(ICE's) Homeland Security Investigations
CDO	Chief Data Officer	IAFIS	Integrated Automated Fingerprint Identification System
CLAIMS	Computer Linked Application Information Management System	ICE	U.S. Immigration and Customs Enforcement
COVID-19	Coronavirus Disease 2019	IDENT	Automated Biometric Identification System
CPT	Curricular Practical Training	IDII	Immigration Data Integration Initiative
CRS	Congressional Research Service	IDMS	Immigration Data Management System
CUSA	Citizenship USA	ImmDaaS	Immigration Data as a Service
CY	Calendar Year	INA	Immigration and Nationality Act
DCR	Data Change Request	InfoMod	Information Services Modernization Program
DGC	Data Governance Council	INS	Immigration and Naturalization Service
DGWG	Data Governance Working Group	IPO	Investor Program Office
DHS	U.S. Department of Homeland Security	IRCA	Immigration Reform and Control Act of 1986
DOD	Department of Defense	ISO	Immigration Services Officer
DOL	U.S. Department of Labor	IT	Information Technology
DOJ	U.S. Department of Justice	IVT	IDENTity Verification Tool
DOS	U.S. Department of State	IVR	Interactive Voice Response
DSO	Designated School Official	LIFO	Last-In, First-Out
EAD	Employment Authorization Document	LPR	Lawful Permanent Resident
		MOA	Memorandum of Agreement

MPP	Migrant Protection Protocols	RFI	Request for Information
NBC	National Benefits Center	SAM	Staffing Allocation Model
NGI	Next Generation Identification	SAO	Supervisory Asylum Officer
NSC	Nebraska Service Center	SAW	Special Agricultural Worker
NSF	National Science Foundation	SEI	Strategic Emerging Industries
NTA	Notice to Appear	SEVIS	Student and Exchange Visitor Information System
NTC	Non-Traditional Collector	SEVP	Student and Exchange Visitor Program
NVC	National Visa Center	SRMT	Service Request Management Tool
OCC	Office of the Chief Counsel	STEM	Science, Technology, Engineering, and Mathematics
OCIO	Office of the Chief Information Officer	TTP	Thousand Talents Program
OIG	Office of Inspector General	UAC	Unaccompanied Alien Children
OIL	Office of Immigration Litigation	UIP	Unified Immigration Portal
OIS	Office of Immigration Statistics	USAO	U.S. Attorney's Office
OMB	Office of Management and Budget	USCIS	U.S. Citizenship and Immigration Services
OPT	Optional Practical Training	USPS	U.S. Postal Service
OUASA	Office of United States Attorneys	VPC	Volume Projection Committee
PACR	Prompt Asylum Case Review	VTC	Video Conferencing
PASR	Prompt Asylum Screening Review		
PCQS	Person Centric Query Service		
PDSO	Priority Designated School		
PIMS	Petition Information Management Service		
PLA	People's Liberation Army		
POWG	Policy and Oversight Working Group		
PRC	People's Republic of China		
RAIO	Refugee, Asylum, and International Operations		
RAD	Refugee and Asylum Division		
RFE	Request for Evidence		



Homeland
Security

**Citizenship and Immigration Services Ombudsman
U.S. Department of Homeland Security**

Mail Stop 0180
Washington, DC 20528
Telephone: (202) 357-8100
Toll-free: 1-855-882-8100

<http://www.dhs.gov/cisombudsman>

Send your comments to: cisombudsman@hq.dhs.gov