



# Annual Report 2024

Citizenship and Immigration Services  
Ombudsman

June 28, 2024



Homeland  
Security

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# Annual Report 2024

Citizenship and Immigration Services Ombudsman

June 28, 2024



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Security

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**Homeland  
Security**

June 28, 2024

The Honorable Richard Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Jim Jordan  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

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

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

Dear Chairmen and Ranking Members:

The Office of the Citizenship and Immigration Services Ombudsman is pleased to submit, pursuant to section 452(c) of the Homeland Security Act of 2002, its 2024 Annual Report.

I am available to provide additional information upon request.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan Stiefel".

Nathan Stiefel  
(Acting) Citizenship and Immigration Services Ombudsman

[www.dhs.gov/cisombudsman](http://www.dhs.gov/cisombudsman)

# 2024 Acting Ombudsman's Message



I am pleased to present the Office of the Citizenship and Immigration Services Ombudsman's (CIS Ombudsman) 2024 Annual Report to Congress. This Report, submitted annually by June 30, details the "most pervasive and serious problems encountered by individuals and employers" in dealing with U.S. Citizenship and Immigration Services (USCIS) and identifies potential solutions to resolve these problems.<sup>1</sup>

As the Acting CIS Ombudsman and a career official, I am honored to lead a team of approximately 45 professionals who bring tremendous experience and expertise to the office. We perform our mission—assisting individuals and employers who are experiencing problems with USCIS—through casework, public engagement, and policy work.

Applicants and petitioners submit to the CIS Ombudsman requests for case assistance through an online portal. Once received, our immigration law analysts review these requests and USCIS systems; research law, policy, guidance, and other authorities; and then contact USCIS field offices, service centers, and other facilities, as warranted, to resolve the issue.

Our casework, like that of USCIS, has increased significantly in recent years. In Fiscal Year (FY) 2023, USCIS received 10.9 million filings;<sup>2</sup> in FY 2018, that number was 8.5 million.<sup>3</sup> In FY 2023, our office received 23,585 requests for case assistance; in FY 2018, we received just under 12,000. This year, we project we will receive more than 30,000—another record for our office. In real numbers, the volume of requests we receive is small compared to USCIS; however, for our small team the numbers are substantial, and the growth is momentous.

Individuals and employers come to us for a range of issues, from erroneous rejections of filings and denials to typographical errors on secure documents (Green Cards and Employment Authorization Documents) and mailing issues. There is no USCIS application or petition type we do not handle and no USCIS office with which we do not interact. Our work touches all USCIS activities, from workers seeking employment authorization, to families seeking reunification with loved ones, to those seeking the ultimate benefit USCIS bestows, the privilege to be called a U.S. citizen.

Notably, this year we received almost 7,000 requests for case assistance from individuals who are seeking parole for family members under the new processes through which nationals of Cuba, Haiti, Nicaragua, and Venezuela (CHNV) and their immediate family members may request to come to the United States in a safe and orderly way. Many of the requests are heart-wrenching; individuals detail the danger, hunger, and desperation that family members face in their home countries. Their stories are a reminder every day of the importance of the work we do. We have shared messages on social media and updated our website to be as clear as possible about the specific situations where we can help with these CHNV parole cases. In this Report, we discuss the challenges in conveying processing time information for this new program and the importance of transparency so that expectations for applicants and petitioners are properly set and agency resources can be dedicated to adjudicating cases, rather than responding to customer inquiries.

<sup>1</sup> Homeland Security Act of 2002 § 452(c).

<sup>2</sup> USCIS News Release, "Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade" (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed May 23, 2024).

<sup>3</sup> USCIS Annual Statistical Report FY 2022, p. 5 (Apr. 20, 2023); [https://www.uscis.gov/sites/default/files/document/reports/FY2022\\_Annual\\_Statistical\\_Report.pdf](https://www.uscis.gov/sites/default/files/document/reports/FY2022_Annual_Statistical_Report.pdf) (accessed May 23, 2024).

In the past year, we made enormous strides in our public engagement efforts. For the first time since our office's inception in 2002, Congress provided resources to onboard regional representatives (referred to in our authorizing statute as "local ombudsmen"). Our regional representatives cover the northeast, southeast, central, and western regions, mirroring the USCIS field operations regions. With the establishment of these positions, we want the public to see our local engagements not as just a one-time event, but as a means to build a more sustained capacity for soliciting the public's feedback. As we look ahead, these positions will help foster collaboration and understanding between stakeholders and the agency. At the same time, our headquarters public engagement team continues to expand our reach through social media, webinars conducted with USCIS, and national engagements. In 2023, we participated in 132 engagements and met with 207 unique organizations, which allowed us to reach more than 4,800 stakeholders in 48 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

As for our policy work, it is displayed through this Annual Report, but is only part of what we do. In addition to the Report and our formal recommendations, we make informal recommendations to USCIS throughout the year, sharing the trends and challenges we are seeing through our casework and stakeholder engagement and proposing operationally sound suggestions to address or ameliorate these issues. We connect with USCIS at all levels, from regular meetings with the Office of the Director to meetings with program offices and directorates to site visits at USCIS facilities throughout the country. Over the last year, we visited all four of USCIS' regional offices and were very grateful for the opportunity to not only engage with field leadership in each location, but also with other representatives from across the agency. One of the most important aspects of these visits is the ability to meet with USCIS employees, who face daily challenges and yet innovate in so many ways to help the organization work toward meeting its goals.

In the CIS Ombudsman's 2023 Annual Report, our recommendations were designed to help USCIS prepare for the downstream impacts of a growing and critically important humanitarian workload, while also addressing challenges stemming from long-standing processing delays. This year's Report provides recommendations on many of the concrete problems—processing time information, backlogs specifically for provisional waivers for family members of U.S. citizens and lawful permanent residents, and employment authorization card production, among others—that individuals and employers face when applying for

immigration benefits. The recent implementation of a final rule to adjust immigration and naturalization benefit request fees for the first time since 2016, along with technological advancements that enhance the customer experience and expand operational capabilities, are important steps forward to help the agency ensure it has the resources it needs. Our Report seeks to build upon these developments and help USCIS to become nimbler and more efficient. We also begin to explore fundamental issues that impact the agency's ability to respond to new workloads, shifts in priorities, and backlogs.

Preparing this Report would not have been possible without the support of USCIS and its senior leadership, as well as regional, district, and field office directors and heads of other USCIS facilities, as well as the many USCIS employees who welcomed us during site visits throughout the year. I do want to thank Director Ur Jaddou for her continued partnership and engagement with our office. Director Jaddou's leadership has been influential in the agency's ongoing collaboration with the CIS Ombudsman over the last several years, and I am grateful for the work our teams have accomplished together to solve difficult problems.

Unfortunately, for the first time in almost a decade, we are unable to provide in this Report, as required by statute, an inventory of what USCIS has and has not acted on from last year's Annual Report because the agency has not yet issued its response to our 2023 Annual Report.

Finally, I want to thank my colleagues in the CIS Ombudsman's Office. Our work can feel overwhelming at times due to the volume of casework and the breadth and depth of challenges individuals and employers face when navigating the legal immigration system, but our team is resilient and demonstrates a steadfast commitment to our mission of helping people. I salute their work and extend my heartfelt gratitude.



Nathan Stiefel  
(Acting) Citizenship and Immigration Services Ombudsman

# Executive Summary

In this 2024 Annual Report, the Office of the Citizenship and Immigration Services Ombudsman (CIS Ombudsman) reviews the events and issues of Calendar Year (CY) 2023, as well as some of the key developments that occurred in early 2024. The Report contains:

- An overview of the CIS Ombudsman's mission and services;
- A review of U.S. Citizenship and Immigration Services' (USCIS) programmatic and policy challenges during the reporting period; and
- A detailed discussion of the most pervasive and serious problems encountered by individuals and employers, recommendations to the agency for addressing them, and suggestions for best practices in the administration of immigration benefits.

## Year In Review

CY 2023 was, for USCIS as well as the CIS Ombudsman, a time of working to reduce backlogs and corresponding processing times. USCIS succeeded on many fronts, reducing processing times overall and the backlog of pending cases past those processing times by 15 percent. The agency poured efforts into this despite the many competing priorities confronting it. However, although USCIS met its processing time goal in 9 form types and reduced cycle times for all but 1 of the 25 forms it identified in March 2022, 14 form types still remain outside processing time goals. Competing priorities continue to impact its ability to fully achieve its mission to uphold America's promise as a nation of possibility.

This Annual Report examines several of those challenges and makes 31 recommendations to improve operations, assist in fixing processing and policy issues, and address some of the agency's largest challenges.

## Return to Basics

### *No Longer on the Defensive: Recommendations for a Proactive Approach to Collecting Biometrics from Asylum Applicants in Removal Proceedings*

USCIS assists with the processing of defensive asylum applicants through taking their biometrics for background and security checks—an activity for which it does not receive funding but to which it devotes resources. In recent times, this has been a challenging task for the agency, resulting in the development of a frontlog of

applications waiting to be receipted in, impacting immigration courts and proceedings needing results for individual applicants. Although USCIS applied innovations to successfully reduce the frontlog by the end of Fiscal Year 2023, the delays revealed customer service gaps, including recurring barriers for defensive asylum applicants seeking to resolve their scheduling issues.

To enhance customer service for these applicants, USCIS may wish to consider several actions, such as:

- Provide defensive asylum applicants with estimated wait times for when they will receive receipts and biometrics appointment notices;
- Offer defensive asylum applicants additional customer service avenues to resolve recurring issues, including a way of verifying previous biometrics appointments before submitting a duplicate asylum application in frustration or fear that the first is lost;
- Clarify its own internal procedures for resolving biometrics reschedule requests submitted by defensive asylum applicants;
- Improve coordination between USCIS and U.S. Immigration and Customs Enforcement (ICE) to resolve procedural issues, such as how to process dependent applicants that “age-in” to the biometrics requirement;
- In addition, USCIS could assist ICE in becoming more self-reliant on processing biometrics for cases within its jurisdiction by reusing biometrics previously captured by the Department of Homeland Security during previous encounters or when serving the applicant with a Notice to Appear before the immigration court; and
- Alternatively, if USCIS must continue to manage this responsibility, it could allow defensive asylum applicants who need biometrics appointment notices to file online.

### *Reexamining the Administration of the English Portion of the Naturalization Test*

In December 2022, USCIS announced a major naturalization test redesign effort, acknowledging its current approach to assessing whether an applicant meets the educational requirements for naturalization had the potential to create barriers to that goal. However, stakeholders expressed concern that the proposed revisions had the potential for creating more barriers than those they were intended to address. While USCIS has not yet taken any action with regard to the test redesign implementation effort as initially proposed in the Federal Register in December 2022, there are things the agency can consider to improve the testing of English

as it determines the eligibility of applicants for naturalization. Among these:

- Stop the practice of using questions from Part 9 of Form N-400, *Application for Naturalization* (April 1, 2024 edition) to assess an applicant's understanding and speaking of English and use instead the personal information requested in Parts 1 to 8;
- Clarify the USCIS Policy Manual to allow applicants to use translation and interpretation services during the naturalization interview if: 1) the applicant has passed the understanding and speaking English test, and 2) the interviewing officer finds that the applicant does not understand the questions related to unusual and complex eligibility issues (such as criminal offenses, fraud concerns, torture, genocide, etc.) after repeating and rephrasing them or that the concepts either do not exist in the applicant's language or lack cultural context;
- Provide study materials that define legal and technical terms used on Form N-400 to the public to prepare for the naturalization eligibility interview;
- Collect more data about: 1) when an officer stops the interview at a particular question on the Form N-400 after determining the applicant was unable to understand or speak English, and 2) test passage rates by field offices; and
- Finally, increase transparency by posting collected data on the USCIS website.

### ***USCIS' Prioritization Dilemmas: Lessons from the Form I-601A Backlog***

USCIS must always balance workloads and, of necessity, prioritize some workloads at the expense of others for operational, legal, or policy reasons. The current backlog of Forms I-601A, *Application for Provisional Unlawful Presence Waiver*, however, serves as a stark reminder of the consequences of prolonged deprioritization of a workload, regardless of the reason. The CIS Ombudsman has observed the following through the lengthy time the I-601A was given a lesser priority, and has the following thoughts on how the agency might improve future such situations:

**Lesson 1:** Prolonged deprioritization of certain forms can result in disproportionate drawbacks compared to benefits. The overdue review of Form I-601A processing delays that contributed to the creation of the Humanitarian, Adjustment, Removing Conditions, and Travel Documents (HART) Service Center recognized this. USCIS should regularly examine the costs of prioritization decisions and take proactive measures to prevent backlogs from escalating. Establishing internal metrics that prompt these reviews, such as median processing times exceeding a certain threshold, would encourage the agency to evaluate the effects of its decisions and take action to mitigate potential worsening of processing times for certain deprioritized forms.

**Lesson 2:** Forms that are repeatedly deprioritized may ultimately need to be shielded from competing priorities. The limited number of forms currently adjudicated at the HART Service Center reduces the risk of Forms I-601A being sidelined due to higher priorities. Maintaining dedicated resources for Form I-601A processing is essential for backlog reduction of this product line as well as others that are impacted. When combined with periodic reviews of prioritization decisions, this strategy may ensure that certain forms receive the necessary attention needed for meaningful backlog reduction.

**Lesson 3:** Establishing a virtual service center with a remote workforce should facilitate progress towards fully electronic filing and digital processing capabilities. In addition, the HART Service Center has demonstrated the advantage of this approach in attracting and hopefully retaining employees. USCIS should continue offering remote opportunities to address similar backlogs, including those benefit requests where an in-person interview is discretionary. While digitization efforts are necessary to enable this approach, expanding online filing to additional form types, such as the Form I-601A, will optimize the agency's remote resources.

## **Beyond the Basics**

### ***Lost Mail and the Challenges of Delivering USCIS Documents***

Problems with mail delivery during an immigration case are, unfortunately, not uncommon. Delayed or lost notices can lead applicants or petitioners to miss required actions, resulting in delays or denials, the impact of which can range from inconvenient to severe. While USCIS has made significant strides in improving ways to interact without the intermediary of the U.S. Postal Service (USPS) since we first wrote about this almost a decade ago, that interaction is still required and is still subject to delays and diversions.

The CIS Ombudsman believes USCIS can take further steps to improve its mail delivery process, including the following:

- Continue to add forms for online filing and make online notices the default for all individuals;
- Allow the Contact Center to send an electronic copy via email to all eligible individuals who contact them about a missing notice or request for evidence (RFE);
- Revisit a "hold for pickup" program for secure identity documents;
- Provide clear and specific guidance to the public about how and when to submit a change of address request;
- Encourage individuals to use USPS's *Look Up a ZIP Code* tool to verify their mailing address and to use the USPS-verified address on their application form;

- Update guidance to require USCIS lockbox data reviewers, Contact Center representatives, officers, and any other USCIS staff verifying an address to use USPS's *Look Up a ZIP Code* tool to update the address to the appropriate format in USCIS systems;
- Consider issuing digital versions of short-term travel documents, such as those authorizing travel for individuals under Temporary Protected Status (TPS) and Consideration of Deferred Action for Childhood Arrivals (DACA) recipients;
- Send text and email alerts to individuals regarding the delivery of their immigration documents; and
- Renew its working relationship with USPS to allow both agencies to quickly address any issues or delays in the delivery process.

### ***Meeting the Growing Demand for Employment Authorization Documents***

The growth in demand for Employment Authorization Documents (Form I-766/EADs) over the past several years has presented challenges to USCIS, just in terms of sheer numbers. USCIS has taken many steps to strengthen the use of EADs and to mitigate their superfluous production. More, however, will likely need to be explored as the agency continues to see those needing EADs rise. Given the increasing importance of EADs and the growing volume of applications, the CIS Ombudsman recommends that USCIS consider the following actions:

- Increase card production capacity to keep pace with demand;
- Consider options to mitigate the reproduction of cards due to undeliverable mail, data input errors, or photo quality;
- Increase national education campaigns and amplify online information to improve public understanding of acceptable employment eligibility verification documents and mitigate the potential for discrimination against noncitizens with proof of employment authorization other than an unexpired EAD; and
- Explore ways to reduce the number of cards USCIS needs to produce.

### ***Clarifying Processing Times to Improve Inquiries and Manage Expectations***

Limiting case inquiries to those cases that are “outside normal processing times” based on a threshold the agency sets is a necessary protocol for USCIS, allowing the agency to focus on processing cases while still permitting customers whose cases are true outliers to get attention. The agency’s posting and presentation of these concepts and wait times, however, are confusing and frustrating, even to frequent users of USCIS services. Among the options for consideration by USCIS to improve its presentation and use of processing times information:

- Take actions to improve the general processing times tool;
- Take actions to improve the case inquiry date tool;
- Take actions to improve myProgress;
- Take actions to improve information on forms with no processing time;
- Develop new methodologies to support public processing times information, set customer expectations, and reduce unproductive inquiries; and
- Notify customers of case processing transfers.

## **And, Finally, Some Thoughts**

### ***Looking Backward, Looking Forward: Thoughts on the Future of USCIS***

Finally, in this “thinkpiece” from the CIS Ombudsman, we offer some perspective on the challenges USCIS has faced recently, and ideas for consideration as the agency tries to move forward past them. We offer these simply as observations for the consideration of those charged with leading the agency and keeping its many moving parts fully focused on achieving its increasingly complex mission.

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## *The Year in Review:*

### In a World of Many Priorities, Reducing the Backlog Takes Center Stage

#### Reducing Backlogs Moves to the Front of the Agency's Mission

On February 9, 2024, U.S. Citizenship and Immigration Services (USCIS) released an end of year report for Fiscal Year (FY) 2023. Noting that both filings and adjudications were at record-breaking levels, the agency nevertheless was able to reduce the pending net backlog—those cases pending outside its targeted processing times—for the first time in over a decade to 4.3 million cases, representing a reduction of 15 percent from the net backlog of 5 million cases the previous year.<sup>4</sup> This is a substantial achievement for USCIS as it continues to be challenged by both the sheer

number of applications and petitions it adjudicates and the long-term workflows from external forces outside its control.

That USCIS was able to decrease its pending caseloads at all is testament to its commitment to increase operational efficiencies and the dedication of staff to the agency's mission. A renewed focus on its digitization efforts, years in the making, enabled more accessibility of benefit requests, despite some setbacks. A staffing increase helped as new hires onboarded and were trained.

**USCIS Priorities Included Credible Fear Interviews.** Activity resulting from significant migrant influxes at the Southern Border, however, continued to take a toll on USCIS resources. USCIS is responsible for administering credible fear screenings for individuals apprehended or who present themselves at a land, sea, or air port of entry without proper entry documentation, or who try to procure their admission into the United States through fraud or

<sup>4</sup> USCIS News Release, "Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade" (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed May 2, 2024).

misrepresentation and who, when placed in expedited removal proceedings, claim fear of return to their home countries.<sup>5</sup> Such individuals are entitled by statute to an interview to determine if they have a credible fear of persecution or torture if returned to their home country.<sup>6</sup> USCIS asylum officers also conduct reasonable fear screenings for noncitizens who are subject to a reinstated order of removal or final administrative removal order and express a fear of return to the country to which they have been ordered removed.<sup>7</sup>

Because these activities are priorities for USCIS (either by statute, regulation, or policy), the agency diverted increasing numbers of USCIS asylum officers to conduct the growing numbers of screening determination interviews. This in turn reduced asylum officers available to conduct affirmative asylum interviews and complete affirmative asylum adjudications, leading to a substantial growth of pending affirmative asylum applications and corresponding reduction in asylum cases completed.<sup>8</sup>

As the number of interactions at the Southern Border increased, the agency faced increasing need for even more asylum officers to conduct credible fear screenings.<sup>9</sup> In FY 2023, USCIS conducted 146,000 credible fear and reasonable fear interviews of individuals expressing a fear of return after being encountered at the border, another new record.<sup>10</sup> Not only did the agency assign asylum officers to the credible fear and reasonable fear caseloads, it also

recruited and trained former asylum officers and, ultimately, detailed employees from other directorates to this effort.<sup>11</sup>

**Other Activities Stretched USCIS Resources.** The diversion of staff to both credible fear and reasonable fear screenings and other critical humanitarian caseloads has been a continuing challenge, made even more challenging by the fact that USCIS is not regularly appropriated funding for its humanitarian processes, which have also increased in scope.<sup>12</sup> The agency again took on new initiatives, beginning in January 2023, when the Department of Homeland Security (DHS) announced parole processes for Cubans, Haitians, and Nicaraguans, and made changes to the existing parole process for Venezuelans which had begun the previous October.<sup>13</sup> By the end of FY 2023, USCIS had processed nearly 238,000 individuals through this process, on top of the more than 150,000 Ukrainians who continued to seek refuge in the United States through the Uniting for Ukraine process established the year before.<sup>14</sup> In addition to these efforts, the agency developed and implemented new family reunification processes for individuals from Colombia, El Salvador, Guatemala, and Honduras, and enhanced the Central American Minors program.<sup>15</sup>

As more immigrants entered the United States through these pathways, USCIS again assisted with efforts to steer them toward filing necessary applications for which they might be eligible, such as Temporary Protected Status, asylum, and employment authorization. USCIS helped staff clinics in public-private partnerships throughout the country.<sup>16</sup> These clinics were in addition to the ongoing Afghan Support Centers, in which USCIS coordinated a wide range of government and non-governmental resources for

<sup>5</sup> Immigration and Nationality Act (INA) § 235(b)(1). See also USCIS, “Asylum Processing Fiscal Year Report 2023 to Congress,” p. 3 (Nov. 1, 2023); [https://www.dhs.gov/sites/default/files/2024-01/2023\\_1101\\_uscis\\_asylum\\_application\\_processing\\_fy2023.pdf](https://www.dhs.gov/sites/default/files/2024-01/2023_1101_uscis_asylum_application_processing_fy2023.pdf) (accessed May 11, 2024).

<sup>6</sup> INA § 235(b)(1). On June 4, 2024, the Department of Homeland Security (DHS) announced changes to the credible fear process, which are outside the scope of this Annual Report.

<sup>7</sup> USCIS, “Asylum Processing Fiscal Year 2023 Report to Congress,” p. 4 (Nov. 1, 2023); [https://www.dhs.gov/sites/default/files/2024-01/2023\\_1101\\_uscis\\_asylum\\_application\\_processing\\_fy2023.pdf](https://www.dhs.gov/sites/default/files/2024-01/2023_1101_uscis_asylum_application_processing_fy2023.pdf) (accessed May 14, 2024).

<sup>8</sup> Asylum receipts for FY 2023 totaled over 455,000, while case completions were down to 54,211—leaving a backlog of over 1 million filings at the end of FY 2023. USCIS, “All USCIS Application and Petition Form Types, FY 23 Q4” (Dec. 29, 2023); [https://www.uscis.gov/sites/default/files/document/forms/quarterly\\_all\\_forms\\_fy2023\\_q4.pdf](https://www.uscis.gov/sites/default/files/document/forms/quarterly_all_forms_fy2023_q4.pdf) (accessed May 30, 2024). See also Letter from USCIS Director Ur Jaddou to Rep. Andy Barr, Feb. 17, 2023; [https://www.uscis.gov/sites/default/files/document/foia/Asylum\\_backlog-Representative\\_Barr.pdf](https://www.uscis.gov/sites/default/files/document/foia/Asylum_backlog-Representative_Barr.pdf) (accessed June 7, 2024).

<sup>9</sup> The total number of encounters in FY 2023 at the Southern Border was almost 2.5 million. U.S. Customs and Border Protection Web page, “Southwest Land Border Encounters” (May 15, 2024); <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (accessed June 5, 2024). While the number fluctuated monthly, encounters began the year below 250,000 at 232,529 in October 2022 and ended the fiscal year at 269,735. Of that number, not all result in credible fear interviews.

<sup>10</sup> USCIS News Release, “Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade” (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed May 30, 2024). This is comparable to the time period from May 12, 2023 to early June 2024, in which DHS conducted more than 152,000 credible fear interviews. DHS Fact Sheet, “Fact Sheet: DHS Continues to Strengthen Border Security, Reduce Irregular Migration, and Mobilize International Partnerships” (June 4, 2024); <https://www.dhs.gov/news/2024/06/04/fact-sheet-dhs-continues-strengthen-border-security-reduce-irregular-migration-and> (accessed June 4, 2024).

<sup>11</sup> Remarks of Ted Kim, Associate Director, USCIS Refugee, Asylum and International Operations Directorate, “USCIS Open Forum,” American Immigration Lawyers Association Annual Conference, June 14, 2024.

<sup>12</sup> CIS Ombudsman Annual Report 2023, pp. 23–24.

<sup>13</sup> “Implementation of a Parole Process for Cubans,” 88 Fed. Reg. 1266 (Jan. 9, 2023); “Implementation of a Parole Process for Haitians,” 88 Fed. Reg. 1243 (Jan. 9, 2023); “Implementation of a Parole Process for Nicaraguans,” 88 Fed. Reg. 1255 (Jan. 9, 2023); “Implementation of Changes to the Parole Process for Venezuelans,” 88 Fed. Reg. 1279 (Jan. 9, 2023).

<sup>14</sup> USCIS News Release, “Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade” (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed May 30, 2024).

<sup>15</sup> Id.

<sup>16</sup> See, e.g., New York Immigration Coalition, “NYC Legal Clinic Blitz Assists Nearly 2000 Asylum Seekers Obtain Work Permits” (Oct. 13, 2023); <https://www.nycic.org/2023/10/nyc-legal-clinic-blitz-assists-nearly-2000-asylum-seekers-obtain-work-permits/> (accessed June 10, 2024); Mass.Gov, “Healey-Driscoll and Biden-Harris Administrations Team Up to Assist More Than 1,000 Migrants in One Week at Work Authorization Clinic” (Nov. 17, 2023); <https://www.mass.gov/news/healey-driscoll-and-biden-harris-administrations-team-up-to-assist-more-than-1000-migrants-in-one-week-at-work-authorization-clinic> (accessed June 15, 2024); The Resurrection Project, “First Phase of Centralized Immigration Application Workshops Serve Nearly 3,500 Migrants” (Feb. 20, 2024); <https://resurrectionproject.org/first-phase-of-workshops-for-recent-arrivals-ends/> (accessed June 15, 2024).

Afghan nationals in a “one-stop” shop approach to offer a range of legal, housing, and other assistance.<sup>17</sup>

While USCIS received Congressional funding for certain asylum and other humanitarian activities in FY 2022, by which it increased its staffing as directed, it did not see a similar appropriation in FY 2023. The numbers of affirmative asylum completions were certainly lower “as the result of the receipt of historic levels of credible fear referrals and the need to divert staff to protection screenings.”<sup>18</sup>

**USCIS Fee Rule.** Financial resources, particularly for this critical mission, were very much in the forefront for the agency. USCIS introduced a Notice of Proposed Rulemaking (NPRM) on January 4, 2023, seeking to increase fees for the first time since 2016.<sup>19</sup> The agency proposed significant fee increases in many areas, noting that several factors necessitated these increases, including the lingering effects of COVID-19 reducing cash reserves, the impact of a lengthy temporary hiring freeze, and workforce attrition. The agency noted in the NPRM the fee increases were necessary to restore adjudications to previous levels and cope with the growing backlogs.

The agency received 7,973 public comments, addressing them in the final rule issued on January 31, 2024.<sup>20</sup> The new rule, which went into effect on April 1, 2024, raised many fees but reduced others and increased fee exemptions in certain categories, while also expanding a naturalization fee reduction. It also introduced the Asylum Program Fee, determined necessary to contribute toward payment of the asylum program as “an effective way to shift some costs to requests that are generally submitted by petitioners who have more ability to pay, as opposed to shifting those costs to all other fee payers.”<sup>21</sup>

While a significant component of a functional agency, money alone, especially future funding, was not expected to eliminate the substantial backlogs of applications and petitions in most of the categories USCIS adjudicates. The agency acknowledged, however, that it had engaged in a significant backlog reduction effort, and that “as cycle times improve, processing times will follow, and requestors will receive decisions on their cases more quickly.”<sup>22</sup>

## Whittling Away at the Backlog

In March 2022, USCIS announced cycle time goals for processing many of its most voluminous product lines.<sup>23</sup> It noted at the time that it would “increase capacity, improve technology, and expand staffing to achieve these new goals by the end of FY 2023.”<sup>24</sup> The cycle time goals for most of the applications and petitions that were set at that time were 6 months or less, cycle times being roughly equivalent to median processing times.

While millions of cases continue to sit with the agency, many processing times were reduced, some substantially. FY 2023 was notable as the first year that the agency made progress in reducing the backlog in over a decade, in particular after 3 successive years of increases in pending cases.<sup>25</sup> USCIS focused on increasing capacity, improving technology, and expanding staffing to achieve the announced cycle time goals by the end of the fiscal year. By that time, USCIS managed to achieve the cycle time goal for nine of the highlighted form types, including naturalization; moreover, the agency reduced cycle times for all but one of the 25 forms for which a new cycle time goal had been set in March 2022.<sup>26</sup> As always, naturalization applications were a target of note; the agency stated it was “effectively eliminating the net backlog” of naturalization applications and reducing the median processing time from 10.5 months to 6.1 months by the end of the fiscal year.<sup>27</sup>

Backlog reduction has been a whole of agency effort requiring a wide range of innovations. There has been enhanced technology applied at almost every possible opportunity. Some of these innovations and enhancements have proven more successful than others, while others are being tested and improved after implementation.

The agency adopted several measures designed to maximize efficiency. Among these were measures developed to reduce redundant or multiple processes, including lengthening the period of validity of certain Permanent Resident Cards (also known as

<sup>17</sup> Such centers, which ran through 2024, were made possible by a Congressional appropriation provided to DHS. See USCIS Director Ur Jaddou to Representative Jamaal Bowman (Oct. 24, 2023); <https://www.uscis.gov/sites/default/files/document/foia/AfghanSupportCenters-RepresentativeBowman.pdf> (accessed June 17, 2024).

<sup>18</sup> USCIS, Asylum Quarterly Engagement Fiscal Year 2023, Quarter 4 Talking Points (September 19, 2023); <https://www.uscis.gov/sites/default/files/document/outreach-engagements/AsylumQuarterlyEngagement-FY23Quarter4PresentationTalkingPoints.pdf> (accessed June 7, 2024).

<sup>19</sup> “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 88 Fed. Reg. 402 (Jan. 4, 2023). The agency had sought to increase fees in 2020 but was enjoined from implementation.

<sup>20</sup> “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 89 Fed. Reg. 6194, 6240 (Jan. 31, 2024).

<sup>21</sup> “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 89 Fed. Reg. at 6208.

<sup>22</sup> *Id.*

<sup>23</sup> USCIS uses cycle time methodology to gauge progress toward reducing the backlog of cases. USCIS Web page, “Case Processing Times” (undated); <https://egov.uscis.gov/processing-times/more-info> (accessed May 14, 2024). Cycle times are measurements of how many months’ worth of cases are awaiting a decision for a particular form. Processing time, by contrast, is defined as the number of days (or months) that have elapsed between the date USCIS received an application, petition, or request and the date it completed the application, petition, or request (that is, approved or denied it) in a given 6-month period (typically the previous 6 months of available data).

<sup>24</sup> USCIS Web page, “Reducing Processing Backlogs” (undated); <https://egov.uscis.gov/processing-times/reducing-processing-backlogs> (accessed May 14, 2024).

<sup>25</sup> USCIS News Release, “Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade” (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed May 30, 2024).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

Green Cards)<sup>28</sup> and Employment Authorization Documents (EADs).<sup>29</sup> The agency developed mechanisms to mail Alien Documentation, Identification and Telecommunication (ADIT) stamps (also known as an I-551 stamp) to those needing evidence of permanent resident status for employment or travel, avoiding the need for an in-person appointment for at least some of the thousands who previously needed to appear at a field office to obtain a stamp.<sup>30</sup> It also sought to use and reuse biometrics for applicants, including extending the temporary suspension of the biometrics submission requirement for certain applicants filing Form I-539, *Application to Extend/Change Nonimmigrant Status*, requesting an extension of stay in or change of status to H-4, L-2, or E nonimmigrant status.<sup>31</sup>

## Maximizing Technology to Meet the Mission

Technology has loomed large in assisting the agency's backlog reduction efforts. These efforts have recently focused on digitizing applications and petitions to permit maximizing the efficiencies of workforce capacity. Workloads that are digitized are shareable across a wider range of staff, allowing for a more dispersed effort to draw down on long pending cases. For the agency, "streamlined processing" has become synonymous with maximizing efficiencies to the fullest extent possible and finding new efficiencies in case processing.

Streamlined processing also includes the efforts made throughout Calendar Year (CY) 2023 and into 2024 to more centralized servicing (such as increasing file submission to central locations like the lockboxes), using online tools, and more online filing, such as for Form I-589, *Application for Asylum and for Withholding of Removal*, and for Form I-765, *Application for Employment Authorization*, for asylum applicants, both of which were announced in FY 2023.<sup>32</sup> It references streamlining in the end-to-end processing of the case from a lockbox to its adjudication destination. These increased efficiencies for both the customer and

the agency by reducing many of the administrative functions that add time to case movement and processing.<sup>33</sup>

For the most part, USCIS' customers have migrated to using online accounts over the past few years. Nearly 19 million online "myUSCIS" accounts were registered by the close of FY 2023, with almost 5 million (more than 25 percent) opened in just the past fiscal year alone.<sup>34</sup> These figures reflect in part a broad stakeholder adoption of electronic submission of immigration benefit filings.<sup>35</sup> It also reflects USCIS' expanding reliance on the accounts as the means of digital communication, self-help, and providing a more streamlined service to requestors. Less successful was the agency's launch of organizational accounts in early 2024. Despite the substantial effort undertaken by the agency to launch these accounts for the 2024 H-1B filing cap season, there were system issues, and although dedicated USCIS employees worked to correct these issues quickly, many immigration professionals, attorneys, and human resources professionals expressed frustration with the launch and with functional limitations of the organizational accounts.

Technology was heavily relied upon for customer experience enhancements as well. USCIS made many changes to increase and enhance the self-sufficiency of the filing community, with some achieving more success than others. The use of online accounts was greatly expanded and encouraged. New self-service tools were also introduced, including one enabling applicants and petitioners as well as their representatives to reschedule biometric services appointments,<sup>36</sup> and another enabling requestors to schedule certain InfoPass appointments at field offices.<sup>37</sup> Another significant self-help tool was launched in October, enabling petitioners and applicants with pending requests to change their address online, in real time, through their online accounts, eliminating the need for multiple changes and paper AR-11 forms.<sup>38</sup> That tool alone

<sup>28</sup> USCIS News Alert, "USCIS Extends Green Card Validity for Conditional Permanent Residents with a Pending Form I-751 or Form I-829" (Jan. 23, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-extends-green-card-validity-for-conditional-permanent-residents-with-a-pending-form-i-751-or> (accessed June 7, 2024).

<sup>29</sup> USCIS News Alert, "USCIS Increases Employment Authorization Document Validity Period for Certain Categories" (Sept. 27, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-increases-employment-authorization-document-validity-period-for-certain-categories> (accessed June 7, 2024).

<sup>30</sup> USCIS News Alert, "USCIS Announces Additional Mail Delivery Process for Receiving ADIT Stamp" (Mar. 16, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-announces-additional-mail-delivery-process-for-receiving-adit-stamp> (accessed June 6, 2024).

<sup>31</sup> USCIS News Alert, "USCIS Extends Temporary Suspension of Biometrics Submission for Certain Form I-539 Applicants" (Apr. 19, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-extends-temporary-suspension-of-biometrics-submission-for-certain-form-i-539-applicants> (accessed June 6, 2024).

<sup>32</sup> USCIS News Alert, "USCIS Announces Online Filing for Affirmative Asylum Applications" (Nov. 9, 2022); <https://www.uscis.gov/newsroom/alerts/uscis-announces-online-filing-for-affirmative-asylum-applications> (accessed June 5, 2024); USCIS News Alert, "Asylum Applicants Can Now File Form I-765 Online," (Jan. 23, 2023); <https://www.uscis.gov/newsroom/alerts/asylum-applicants-can-now-file-form-i-765-online> (accessed June 5, 2024).

<sup>33</sup> Information provided by USCIS (Jan. 8, 2024).

<sup>34</sup> Information provided by USCIS (Mar. 19, 2024).

<sup>35</sup> The CIS Ombudsman also notes that under the Final Fee Rule that was implemented on April 1, 2024, USCIS is encouraging customers to file online by offering a \$50 discount except in limited circumstances. See, USCIS Web page, "Frequently Asked Question on the USCIS Fee Rule – Online Filing Discounts" (Apr. 29, 2024); <https://www.uscis.gov/forms/filing-fees/frequently-asked-questions-on-the-uscis-fee-rule> (accessed May 7, 2024).

<sup>36</sup> USCIS News Release, "USCIS Launches Online Rescheduling of Biometrics Appointments" (July 6, 2023); <https://www.uscis.gov/newsroom/news-releases/uscis-launches-online-rescheduling-of-biometrics-appointments> (accessed June 5, 2024).

<sup>37</sup> USCIS News Alert, "USCIS Launches Online Appointment Request Form" (Aug. 23, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-launches-online-appointment-request-form> (accessed June 11, 2024).

<sup>38</sup> USCIS News Release, "USCIS Launches New Online Change of Address Tool" (October 12, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-launches-new-online-change-of-address-tool> (accessed June 6, 2024).

was used to submit over 430,000 address changes through December 2023.<sup>39</sup>

USCIS also focused some of its efforts on expanding online filing. In FY 2023, USCIS added five forms to those available for online filing, increasing the forms eligible to eighteen, and expanded online filing for Form I-765 to asylum applicants and parolees.<sup>40</sup> Benefit requestors were encouraged to file online as much as feasible, incentivized with expansion of the myProgress tool (formerly referred to by the agency as “personalized processing times”) to several forms, including Form I-765, Form I-131, *Application for Travel Document*, Form I-485, *Application to Register Permanent Residence or Adjust Status* (for family-based or Afghan special immigrants initially), and Form I-821, *Application for Temporary Protected Status*.<sup>41</sup> And while the Contact Center continued to field millions of inquiries, and the CIS Ombudsman continues to hear of difficulties in reaching the level of service needed, the ability to receive a text for a callback time frame added at least more predictability to telephone exchanges to seek needed services.<sup>42</sup>

Technology was combined with innovative work practices in 2023 when USCIS announced the creation of its sixth service center, the Humanitarian, Adjustment, Removing Conditions, and Travel Documents (HART) Service Center.<sup>43</sup> This “facility,” which focuses on adjudicating benefits requests filed by vulnerable populations, is virtual. USCIS staffed, onboarded, and trained new hires as well as moved existing employees into these activities, to grow the HART Service Center by almost 90 percent in FY 2023.<sup>44</sup>

But despite these dedicated efforts and the visible backlog reduction, challenges remain. Although USCIS met its processing time goal in 9 form types and reduced cycle times for all but 1 of the 25 forms identified in March 2022, 14 form types still remain

outside processing time goals.<sup>45</sup> Other forms not listed remain significantly behind in terms of time, some for valid reasons (such as the unavailability of priority dates) and others without evident reason.<sup>46</sup> Stakeholders continue to report systemic issues with errors of agency origin, difficulty in resolving technological issues, and operational challenges that confirms USCIS still has much ground to cover.

## USCIS Backlogs Continue to Take Center Stage with the CIS Ombudsman

The significant USCIS backlogs continue to impact the mission and work of the CIS Ombudsman. One of the office’s statutory missions is to assist individuals and employers experiencing problems with USCIS.<sup>47</sup> While USCIS made progress into its millions of backlogged benefit requests, assisting the requestors continued to be a focus of activity for the CIS Ombudsman. CY 2023 was no different in terms of activity but very different in terms of the intensity and volume; even the kinds of requests experienced a shift reflecting the types of applications pending at the agency.

**Prioritizing the Growing Case Workload.** The demand for individual case assistance requests continued to grow in CY 2023 for the CIS Ombudsman. The office once again saw an increase in requests and hit a new record high of 28,332 requests for case assistance received. This was an almost five percent increase from 2022 and an almost nine percent increase from 2021, each of which was a previous record.

The increase was due in part to pending Forms I-134A, *Online Request to be a Supporter and Declaration of Financial Support*, filed on behalf of prospective Cuban, Haitian, Nicaraguan, and Venezuelan parolees; typographical errors; abandonment denials despite proof of timely filed responses to requests for evidence (RFEs); notices or secure documents that were either misdelivered or not delivered by the U.S. Postal Service or returned to USCIS as undeliverable; EAD, travel document, and Green Card production delays; EAD denials based on asylum clock discrepancies in the Department of Justice’s Executive Office for Immigration Review database; and delays with immigrant petition approval notifications being sent to the Department of State’s National Visa Center for the next step of consular processing. We continued to reevaluate our casework process to identify efficiencies and timeliness while

<sup>39</sup> USCIS News Release, “Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade” (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed June 6, 2024).

<sup>40</sup> USCIS News Release, “Completing an Unprecedented 10 million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade” (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed Apr. 29, 2024).

<sup>41</sup> USCIS News Alerts, “USCIS Expands myProgress to Form I-765 and Form I-131” (July 12, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-expands-myprogress-to-form-i-765-and-form-i-131> (accessed June 6, 2024); “USCIS Expands myProgress to Form I-485 and Form I-821” (Nov. 21, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-expands-myprogress-to-form-i-485-and-form-i-821> (accessed June 6, 2024).

<sup>42</sup> USCIS Web page, “USCIS Contact Center” (Apr. 2, 2024); <https://www.uscis.gov/contactcenter> (accessed June 6, 2024).

<sup>43</sup> USCIS Press Release, “USCIS Opens the Humanitarian, Adjustment, Removing Conditions and Travel Documents (HART) Service Center” (Apr. 12, 2023); [https://www.uscis.gov/sites/default/files/document/notices/USCIS Opensthe HumanitarianAdjustmentRemovingConditionsandTravelDocumentsHARTService Center.pdf](https://www.uscis.gov/sites/default/files/document/notices/USCIS%20Opens%20the%20Humanitarian%20Adjustment%20Removing%20Conditions%20and%20Travel%20Documents%20HART%20Service%20Center.pdf) (accessed June 5, 2024).

<sup>44</sup> USCIS News Release, “Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade” (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed May 30, 2024).

<sup>45</sup> USCIS News Release, “Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade” (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed June 6, 2024).

<sup>46</sup> As this report is being finalized in June 2024, the current processing time for Form I-751 in the field is 32.5 months—almost as long as the 3-year residence requirement for filing a naturalization application based on the underlying marriage from which the applicant is seeking to remove conditions. USCIS, “Check Case Processing Times;” <https://egov.uscis.gov/processing-times/> (accessed June 24, 2024).

<sup>47</sup> Homeland Security Act of 2002 (HSA) § 452(b)(1), 6 U.S.C. § 272(b)(1).

balancing USCIS' own policy and operational priorities as well as their backlog reduction efforts.

In last year's Annual Report, we shared that we implemented a new triage process to identify incoming requests by the issue or difficulty described on the DHS Form 7001, *Request for Case Assistance*. This allowed us to assign requests that fell under one of our priority issues to one of our analysts within 14 business days of receipt. The analyst takes action on an assigned request on the same day of assignment, which meant the requestor would receive correspondence from us if we needed additional documentation, if we were able to reach out to USCIS on their issue, or if we were unable to assist (and why). By continuing to prioritize requests where we knew USCIS would be able to take action, we were able to provide our customers with timely updates or resolution. We halved the time a customer hears from us from 1 month to 2 weeks.

Unfortunately, with 41 percent of our 2023 requests falling under one of our priority issues, we were not able to immediately take action on requests involving USCIS processing delays. Some customers experienced an increased wait time from 2 to 3 months. We are cognizant of the impact that processing delays have on individuals and employers and continually reevaluate our process as well as continue to communicate with USCIS on potential recommendations for systemic improvements.

This work continues as the CIS Ombudsman monitors USCIS' processing times in addition to operational and policy changes. This allows the Office of the CIS Ombudsman to remain agile with its own case load and provide customers and stakeholders with as much information as possible in a timely manner.

**Expanding Our Outreach.** The CIS Ombudsman's public engagement division serves as the eyes and ears of the office. By joining and hosting engagements with immigration stakeholders, our office hears firsthand of common challenges experienced during

the immigration benefits process, which helps us identify trends and pervasive problems that shape the policy recommendations in this Report.

Our public engagement division reached new milestones in CY 2023. We expanded the team to include four new regional representatives, one corresponding to each of the USCIS Field Operations Directorate's regional offices. These new positions will help our office connect with local and regional stakeholders and create a strong immigration benefits-related engagement network.

In 2023, we participated in 132 engagements and met with 207 unique organizations, which allowed us to reach more than 4,800 stakeholders. During these engagements, we were able to listen to and document how stakeholders were experiencing the immigration benefits process. We heard from a variety of stakeholders, including legal groups, nonprofit and casework organizations, large and small employers, universities, foreign embassies, congressional staff, and federal, state, and local government partners.

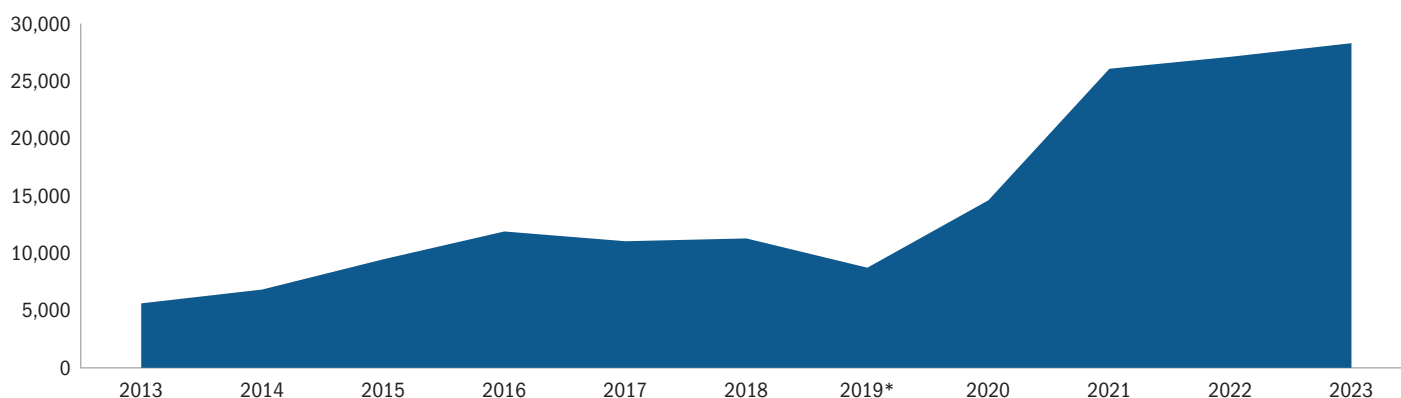
USCIS remained one of our regular collaborators, and we partnered with them to host four joint webinars so stakeholders could directly hear from and interact with the agency on these pressing immigration issues:

- The Afghan re-parole application process
- USCIS' naturalization test redesign initiative
- USCIS' customer experience enhancements
- The EB-5 immigrant investor program

However, we primarily host our own independent sessions to further glean feedback. One of our most active listening sessions highlighted immigration concerns and options for laid-off foreign workers in January 2023, where we captured over 300 questions

**Figure 1.1**

Number of Case Assistance Requests Received by Calendar Year



\* Our office was closed during the FY 2019 shutdown from January 1, 2019 through January 25, 2019. This meant we did not receive new requests for case assistance for 25 days.

and comments from the audience to help USCIS identify what additional information would be helpful.

The public engagement division also creates written communications that we publish on our website and directly disseminate to stakeholders. In 2023, we distributed more than 20 unique stakeholder messages that were delivered to approximately 140,000 subscribers. These communications covered topics such as Form I-134A processing delays for Cuban, Haitian, Nicaraguan, and Venezuelan parole seekers, USCIS' consideration of shipping labels when determining postmark dates, updated filing locations for asylum seekers, and others.

Additionally, we published tip sheets on the Afghan re-parole application process, how F-1 students seeking optional practical training can avoid processing delays, how to avoid getting locked out of one's USCIS online account, and best practices for submitting a case assistance request to our office.

**Continuing the Work to Bring Solutions to USCIS.** The CIS Ombudsman's policy division focuses on analyzing trends spotted by stakeholders, our casework division, and in our public engagements. Meeting with USCIS directorates and program offices on a regular basis enables the office to refine the analysis and discuss trends to determine potential workable solutions.

The CIS Ombudsman submitted informal recommendations to USCIS throughout CY 2023 on a wide variety of topics. USCIS accepted many of our recommendations, beginning 2023 with announcements extending the validity of Form I-751, *Petition to Remove Conditions on Residence*, receipt notices to 2 years; temporarily increasing the cap on daily credit card payments to \$39,000; and ending the year issuing guidance interpreting the EB-5 Reform and Integrity Act for determining whether the sustainment period has been met.<sup>48</sup> In between, the CIS Ombudsman submitted suggestions to USCIS on topics ranging from foreign students (name, image, likeness in the foreign student context and use of Classification of Instructional Programs (CIP) codes for STEM classification), electronic change of addresses, humanitarian parole, and EAD error return processes.

The impact of the CIS Ombudsman with its informal recommendations is not always immediate. One such example came to a partial resolution recently, but only after much work to educate and advocate to the agency and others. Errors, misinformation, and ensuing delays in transferring approved immigrant visa petitions from USCIS to the Department of State's National Visa Center (NVC) for consular processing of the immigrant visa is a recurring issue in the CIS Ombudsman's casework. In the fall of 2021, we submitted

an informal recommendation to USCIS to address these issues, with suggestions on limiting processing errors and associated delays.

At the beginning of 2022, we observed a change in USCIS' Form I-130, *Petition for Alien Relative*, approval routing procedures. Due to poorly worded questions on the Form I-130, petitioners often struggle to clearly indicate the beneficiary's intent to consular process or adjust status. Previously, USCIS officers exercised discretion in determining where to send the approved petition based on additional evidence, such as the beneficiary's physical address. However, the 2022 processing change removed this discretionary component, resulting in USCIS retaining more approved petitions at its National Records Center. The only resolution for these cases was filing Form I-824, *Application for Action on an Approved Application or Petition*. Following this processing change, we submitted another informal recommendation to USCIS, reiterating suggestions included in our 2021 informal recommendation and highlighted our concerns with this processing change. These concerns encompassed the financial burden on petitioners, processing delays, and additional workloads for USCIS. We also worked with the NVC to educate and intervene on the problems the additional step of the Form I-824 was causing. In May 2024, USCIS reverted to its earlier policy of allowing officers to exercise discretion. The CIS Ombudsman will continue, however, to seek clarity for the form and redress for those whose I-824s remain pending or were otherwise impacted by the previous policy.

The CIS Ombudsman's 2023 Annual Report to Congress contained 23 specific recommendations across some of the more pervasive problems facing the agency. The report has been used by Congress and others in myriad ways; it has been cited by the Congressional Research Service,<sup>49</sup> raised in Congressional hearings,<sup>50</sup> and cited by a diverse range of organizations.<sup>51</sup> It is directed, however, to USCIS, to alert them of options for rectifying their most pervasive problems. As we finalize this Report, the USCIS response to the 2023 CIS Ombudsman Annual Report is still pending.

<sup>49</sup> William A. Kandel, Congressional Research Service, "U.S. Citizenship and Immigration Services (USCIS): Operations and Issues for Congress" (Apr. 5, 2024); <https://crsreports.congress.gov/product/pdf/R/R48021> (accessed May 14, 2024).

<sup>50</sup> C-SPAN, "User Clip: Reference to CIS Ombudsman's 2023 Annual Report to Congress in DHS FY 2025 Budget Request Hearing" (Apr. 19, 2024); <https://www.c-span.org/video/?c5117374/user-clip-reference-cis-ombudsmans-2023-annual-report-congress-dhs-fy-2025-budget-request-hearing> (accessed June 4, 2024).

<sup>51</sup> See, e.g., Paul Stern, "One Step Forward, Two Steps Back: Digging into the Ombudsman's Take on the USCIS Backlog," American Immigration Lawyers Assn. Blog, Think: Immigration (Jul. 12, 2023); <https://www.aiala.org/blog/one-step-forward-two-steps-back-digging-into-the-ombudsmans-take-on-the-uscis-backlog/> (accessed May 14, 2024); Elizabeth Jacobs, "USCIS Is Again Temporarily Extending the Validity Periods for Renewable Work Authorization Documents" Center for Immigration Studies (Apr. 23, 2024); <https://cis.org/Jacobs/USCIS-Again-Temporarily-Extending-Validity-Periods-Renewable-Work-Authorization-Documents> (accessed May 14, 2024).

<sup>48</sup> USCIS News Alert, "USCIS Provides Additional Guidance for EB-5 Required Investment Timeframe and Investors Associated with Terminated Regional Centers" (Oct. 11, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-provides-additional-guidance-for-eb-5-required-investment-timeframe-and-investors-associated> (accessed June 3, 2024).

## Conclusion

USCIS is settling into its long-term focus as it tackles its continuing backlogs and substantial competing demands. Keeping the work moving will be its most significant challenge, regardless of what future global events impact potential migration flows and reactions.

At the same time, many of the challenges it faces today are not new. The issues raised in this report are issues that should surprise no one. Mailing issues, production of sensitive documents such as EADs, challenges in confronting and managing inquiries, attempts to streamline application and petition processing through online access, and above all, processing times—have been challenges for USCIS since its inception. While much has changed, much remains the same.

USCIS continues to achieve new milestones, but even more continues to be expected of it. The agency is striving to reach closer to processing goals, as well as continue in its quest for increasing efficiency while still maximizing integrity, but to do more, and continue to do more with less, something must change. The recent hiring initiatives that have added thousands of new employees present a unique opportunity to start afresh and eliminate some of the systemic hindrances preventing the agency from achieving its mission in full and in a timely fashion. The Office of the CIS Ombudsman will continue to observe, provide needed context, and work hold the agency accountable.

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## Return to Basics: Refocus on the Mission

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Over the years, USCIS has acquired workloads that do not directly impact its primary mission of adjudicating immigration benefits. These workloads can drain resources and interfere with the agency's central focus of moving applicants and petitioners through the benefits process, ensuring they are eligible and admissible in the categories in which they seek a benefit as efficiently and effectively as possible. The challenge for USCIS then becomes the classic "doing more with less" scenario, given its finite resources in both people and money. The agency must focus its limited resources by ensuring they are brought into a higher level of efficiency, again without sacrificing needed integrity. This constant balance can become precarious, capable of being adversely impacted by even minor inconveniences.

Another area of potential focus for USCIS as it takes the long view of its future invokes the old adage of "if it ain't broke, don't fix it." There have been occasions in which USCIS will seek to resolve a workload or a minor operational issue but creates more significant problems as a result. Such actions may push work forward into the future, where it is likely to result in less efficiency or additional workloads where none are needed. Or a focus to improve an activity creates more work than intended, when none was perhaps needed, much less desirable. These good intentions can take on dimensions out of proportion to the problem they fix, contributing to inefficiencies in resource management.

USCIS has in recent years been also forced to make difficult operational decisions to conserve its resources and ensure it is maximizing both its efficiencies and its mission, deprioritizing some product lines to meet policy, operational, or other objectives. The resulting delays in the delayed work have in turn created operational and administrative challenges that may loom out of proportion to the original workloads, testing the agency's capacity for innovation. The good news is that the agency has shown it has a high capacity for innovation. The bad news is that capacity can be wasted, or at least used to a better effect in other areas, especially given protracted workloads and shifting needs.

By reexamining where such activities can be re-evaluated and assessed for the potential to be reassigned, reduced, or deprioritized, the agency can regain focus on its core mission and maximize its efficiencies. While this assessment is not always possible, doing so wherever feasible, and consequently taking action, improves agency focus on its mission and on the activities it is uniquely positioned, and required by statute and obligation, to undertake.



## *No Longer on the Defensive:*

### Recommendations for a Proactive Approach to Collecting Biometrics from Asylum Applicants in Removal Proceedings

**Responsible Offices:** Service Center Operations, Immigration Records and Identity Services and External Affairs Directorates

#### Introduction

When the U.S. government wants to remove a noncitizen from the country, it usually places that individual in a court proceeding before an immigration judge from the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR). While in these removal proceedings, the noncitizen can apply for asylum as a defense against being removed from the United States.

Only immigration judges can grant asylum to individuals in removal proceedings.<sup>52</sup>

Before they can grant asylum or any other potential relief, immigration judges must wait for the Department of Homeland Security (DHS) to complete all necessary identity, law enforcement, and security investigations.<sup>53</sup> Since 2005, two DHS components—U.S. Citizenship and Immigration Services (USCIS) and U.S. Immigration and Customs Enforcement (ICE)—have assisted EOIR with scheduling and completing biometrics appointments

<sup>52</sup> USCIS has initial jurisdiction over asylum applications filed by Unaccompanied Alien Children (UAC) in removal proceedings. See Instructions for Form I-589, Application for Asylum and for Withholding of Removal, p.2; <https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf> (accessed May 6, 2024).

<sup>53</sup> 8 C.F.R. § 1003.47.

for principal and dependent applicants.<sup>54</sup> These defensive asylum applications account for the vast majority of this EOIR biometrics workload.<sup>55</sup>

While USCIS does not handle or grant defensive asylum applications, it dedicates considerable resources to this workload.<sup>56</sup> During Fiscal Year (FY) 2023, USCIS was unable to keep up with incoming defensive asylum applications because of competing priorities and contracting issues. As a result, a “frontlog” of approximately 100,000 defensive asylum applications developed.<sup>57</sup> The resulting delays in issuing receipt and biometrics notices taxed the entire asylum processing systems by contributing to the immigration court backlog and requiring USCIS to redirect finite resources to address the delays. For applicants and their legal representatives, these delays—and the inability to meaningfully resolve them through USCIS’ customer service avenues—postponed relief, and heightened anxieties due to the significant consequences associated with failing to obtain biometrics, including denial of the asylum application and ultimately removal.<sup>58</sup>

Although USCIS applied innovations to successfully reduce the frontlog by the end of FY 2023, the prolonged delays revealed customer service gaps, including recurring barriers for defensive asylum applicants seeking to resolve biometrics scheduling issues. The redistribution of USCIS resources to address this workload also raised concerns about the lack of coordination between ICE and USCIS, and the appropriateness of USCIS’ role in this process.

## Recommendations

The CIS Ombudsman recommends that USCIS take immediate actions to improve the quality of customer service provided to defensive asylum applicants experiencing intake and biometrics scheduling issues. In the long term, USCIS should continue to work with ICE to modernize biometrics procedures for defensive asylum applicants. Adopting a more efficient approach will help limit immigration court delays and enable USCIS to direct resources to address other workloads that fall more squarely within its purview.

1. To enhance customer service, USCIS should:
  - a. Provide defensive asylum applicants with estimated wait times for when they will receive both receipt and biometrics appointment notices;
  - b. Offer defensive asylum applicants additional customer service avenues to resolve recurring issues, including a way of verifying previous biometrics appointments before submitting a duplicate asylum application in frustration or fear that the first is lost;
  - c. Clarify its own internal procedures for resolving biometrics reschedule requests submitted by defensive asylum applicants; and
  - d. Improve coordination between USCIS and ICE to resolve procedural issues, such as how to process dependent applicants that “age-in” to the biometrics requirement.
2. To modernize biometrics procedures for defensive asylum applicants, USCIS could assist ICE in becoming more self-reliant on processing biometrics for cases within its jurisdiction by reusing biometrics previously captured by DHS during previous encounters or when serving the applicant with a Notice to Appear (NTA) before the immigration court; and
3. Alternatively, if USCIS must continue to manage this responsibility, it could allow defensive asylum applicants who need biometrics appointment notices to file Form I-589, *Application for Asylum and for Withholding of Removal*, online.

## The Defensive Asylum Application Process

There are two ways to apply for asylum in the United States: the affirmative asylum process (overseen by USCIS, under DHS jurisdiction) and the defensive asylum process (overseen by EOIR, under DOJ’s purview). Noncitizens in removal proceedings may file Form I-589 with the immigration court as a defense against removal. Although USCIS does not adjudicate defensive asylum applications, DHS tasked the agency with initiating certain background checks for applicants in these court proceedings and their dependents, aiming to avoid delays for cases under EOIR’s jurisdiction.<sup>59</sup>

During their initial court hearing, noncitizens seeking defensive asylum receive biometrics instructions from an ICE Office of the Principal Legal Advisor (OPLA) attorney.<sup>60</sup> These instructions direct noncitizens to submit these items to the USCIS Nebraska Service Center:

<sup>54</sup> ICE Web page, “Instructions for Submitting Certain Applications in Immigration Court and for Providing Biometric and Biographic Information to U.S. Citizenship and Immigration Services” (revised Apr. 1, 2024); <https://www.ice.gov/doclib/about/offices/opla/preOrderInstructionsEOIR.pdf> (accessed May 14, 2024).

<sup>55</sup> In FY 2023, there were 465,874 defensive asylum applications filed with EOIR. See EOIR Web page, “Defensive Asylum Applications” (Oct. 12, 2023); [https://www.justice.gov/d9/pages/attachments/2019/05/17/16\\_defensive\\_asylum\\_applications.pdf](https://www.justice.gov/d9/pages/attachments/2019/05/17/16_defensive_asylum_applications.pdf) (accessed Mar. 28, 2024).

<sup>56</sup> As discussed in more detail below, defensive asylum applicants file a partial copy of the Form I-589, among other items, with USCIS to obtain a biometrics appointment.

<sup>57</sup> Information provided by USCIS (Oct. 3, 2023).

<sup>58</sup> 8 C.F.R. § 1003.47(d); See also *Mejia-Velasquez v. Garland*, 26 F.4th 193 (4th Cir. 2022).

<sup>59</sup> “Questions and Answers: DHS Procedures for Implementation of EOIR Background Check Regulations for Aliens Seeking Relief or Protection from Removal” (Aug. 22, 2011), p. 2; [https://www.uscis.gov/sites/default/files/document/questions-and-answers/EOIR\\_Q\\_A%202011\\_FINAL.pdf](https://www.uscis.gov/sites/default/files/document/questions-and-answers/EOIR_Q_A%202011_FINAL.pdf) (accessed Mar. 28, 2024).

<sup>60</sup> 8 C.F.R. § 1003.47(d).

- The first three pages of Form I-589,
- Form G-28, *Notice of Entry of Appearance as Attorney or Accredited Representative*, if applicable, and
- A copy of the ICE-provided filing instructions.<sup>61</sup>

The instructions also explain the consequences of failing to complete biometrics processing, including the potential that the court will dismiss their asylum application.<sup>62</sup>

Upon receiving these items, USCIS enters information from the Form I-589 application into its system, initiates a Federal Bureau of Investigation (FBI) name check, and schedules biometrics appointments for the applicant and any of-age dependents at one of its Application Support Centers (ASCs).<sup>63</sup> The filing instructions also instruct applicants to call the USCIS Contact Center if they do not receive their biometrics appointment notices “withing [sic] weeks” after filing.<sup>64</sup> After collecting biometrics, USCIS submits the applicant’s fingerprints to the FBI for criminal history checks. Once processed by the FBI, ICE OPLA has access to the results, which are required before an immigration judge can grant asylum.<sup>65</sup>

### *Addressing Recurring Customer Service Issues*

In FY 2023, USCIS developed a frontlog of more than 100,000 defensive asylum applications awaiting intake processing.<sup>66</sup> The frontlog was primarily the result of issues with existing contracts at USCIS’ service centers and competing priorities, such as cap-subject H-1B petition filings.<sup>67</sup> The defensive asylum biometrics workload has previously encountered delays. For example, from FY 2006 through FY 2015, 49 percent of all DHS-related continuances

in immigration court involved biometrics processing delays.<sup>68</sup> However, in FY 2023, the CIS Ombudsman received case assistance requests from applicants who experienced wait times of over 7 months to receive their receipt and biometrics appointment notices. Because an immigration judge cannot grant asylum without the biometrics, USCIS intake delays forced EOIR to continue court cases that they could otherwise have completed.

To address these delays, in November 2022, USCIS transferred all pending and newly received defensive asylum applications from its Nebraska Service Center to its California Service Center for intake processing.<sup>69</sup> Around August 2023, USCIS also began using robotic processing automation (RPA) to reduce the need to manually enter certain information from Form I-589 into its systems to generate the required notices.<sup>70</sup> Resolving its contracting issues further enabled USCIS to significantly reduce the frontlog by the end of FY 2023. However, USCIS’ work on these applications does not end once they are removed from the frontlog (i.e., data entered and notices issued). The agency is still responsible for processing in-person biometrics appointments at its ASCs, as well as fielding inquiries about undelivered notices and rescheduling requests.

The delays in FY 2023 exposed several systemic customer service challenges. The CIS Ombudsman received more than 400 DHS Forms 7001, *Request for Case Assistance*, in FY 2023 from customers impacted by the defensive asylum frontlog. In reviewing these requests and discussing the delays with USCIS, the CIS Ombudsman identified pervasive customer service issues. While USCIS is confident that it is better positioned to prevent future frontlogs, the recommendations below seek to address ongoing issues that will otherwise persist regardless of intake delays.

*Increased Transparency and Additional Customer Service Avenues Are Necessary.* USCIS does not provide defensive asylum applicants with realistic timeframes on when they will receive receipt and biometrics notices.<sup>71</sup> Although USCIS has previously notified the public of intake delays for various form types,<sup>72</sup> it did not issue

<sup>61</sup> ICE Web page, “Instructions for Submitting Certain Applications in Immigration Court and for Providing Biometric and Biographic Information to U.S. Citizenship and Immigration Services” (revised Apr. 1, 2024); <https://www.ice.gov/doclib/about/offices/opla/preOrderInstructionsEOIR.pdf> (accessed May 14, 2024).

<sup>62</sup> 8 C.F.R. § 1003.47(d). The immigration judge is also required to specify for the record when the respondent receives the biometrics notice and instructions and the consequences for failing to comply with the requirements.

<sup>63</sup> Biometrics are generally collected from individuals who are age 14 and over. See “Questions and Answers: DHS Procedures for Implementation of EOIR Background Check Regulations for Aliens Seeking Relief or Protection from Removal” (Aug. 22, 2011), p. 8; [https://www.uscis.gov/sites/default/files/document/questions-and-answers/EOIR\\_Q\\_A%202011\\_FINAL.pdf](https://www.uscis.gov/sites/default/files/document/questions-and-answers/EOIR_Q_A%202011_FINAL.pdf) (accessed Mar. 28, 2024). See also 8 C.F.R. § 236.5.

<sup>64</sup> ICE Web page, “Instructions for Submitting Certain Applications in Immigration Court and for Providing Biometric and Biographic Information to U.S. Citizenship and Immigration Services” (revised Apr. 1, 2024); <https://www.ice.gov/doclib/about/offices/opla/preOrderInstructionsEOIR.pdf> (accessed May 14, 2024).

<sup>65</sup> 8 C.F.R. § 1003.47(g). See also DHS, “Privacy Impact Assessment for the Customer Profile Management Service (CPMS)” (Dec. 17, 2015), p. 7; <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-cpms-december2015.pdf> (accessed Mar. 28, 2024).

<sup>66</sup> Information provided by USCIS (Oct. 3, 2023).

<sup>67</sup> Id.

<sup>68</sup> U.S. Government Accountability Office (GAO) Report, “Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges,” GAO-17-438 (June 2017), p. 128; <https://www.gao.gov/assets/d17438.pdf> (accessed May 6, 2024).

<sup>69</sup> Information provided by USCIS in response to requests for case assistance.

<sup>70</sup> Information provided by USCIS (Oct. 3, 2023).

<sup>71</sup> According to USCIS’ instructions, defensive asylum applicants should call the Contact Center if they do not receive a biometrics appointment notice, “withing [sic] weeks of filing.” See ICE Web page, “Instructions for Submitting Certain Applications in Immigration Court and for Providing Biometric and Biographic Information to U.S. Citizenship and Immigration Services” (revised Apr. 1, 2024); <https://www.ice.gov/doclib/about/offices/opla/preOrderInstructionsEOIR.pdf> (accessed May 14, 2024). As noted above, in FY 2023, USCIS was taking over 7 months to issue defensive asylum receipt notices.

<sup>72</sup> See, e.g., USCIS Web pages, “Information on Form I-589 Intake and Processing Delays” (July 28, 2022); <https://www.uscis.gov/archive/information-on-form-i-589-intake-and-processing-delays> (accessed Nov. 6, 2023) and “USCIS Lockbox Updates” (Jan. 8, 2021); <https://www.uscis.gov/news/alerts/uscis-lockbox-updates> (accessed Nov. 6, 2023).

similar public messaging about the defensive asylum frontlog. This lack of communication from USCIS regarding the extent of its delays put applicants at risk of shouldering the blame. If an immigration judge attributes biometrics delays to the applicant, it can result in consequences, including delays in their ability to apply for employment authorization based on the pending asylum application.<sup>73</sup> Applicants and their legal representatives were also unable to get personalized information on the intake delays by contacting USCIS; because USCIS' customer service options require the customer to access their receipt number, these tools were essentially inaccessible to those who had not received a receipt notice.

The absence of clear information and unavailability of customer service options led to additional inefficiencies and wasted resources. Applicants often felt they had no choice but to file a duplicate Form I-589 when they received no communication from USCIS, such as a receipt notice or biometrics appointment notice.<sup>74</sup> Duplicate filings exacerbate frontlog delays by requiring the agency to perform additional, unnecessary intake processing and expend resources on identifying and rejecting duplicates. USCIS does not issue a new receipt or biometrics notice for these duplicate applications and does not notify the applicant or their legal representative that it discarded the duplicate submission.<sup>75</sup>

Discarding duplicate submissions may simplify USCIS processing by limiting the agency's work to one submission per applicant. However, failing to inform the applicant that USCIS has processed a previous filing is counterproductive. This poses a significant challenge for applicants who are unaware of a previously issued receipt notice, such as those who never received their notices due to mailing issues. Without a receipt number or other information from the agency, these individuals may resort to filing yet another duplicate application, which USCIS would again promptly discard. Breaking this cycle typically requires external intervention from the CIS Ombudsman or a Congressional office.

To increase transparency and improve customer service, USCIS should post processing time information on its website to provide defensive asylum applicants with estimated wait times for receipt and biometrics appointment notices. This information will help manage expectations, deter duplicate submissions, and keep the public, EOIR, and ICE aware of the current intake timeframes. At a minimum, USCIS should revise its instructions to provide

applicants with more realistic timeframes on when they will receive a biometrics notice.

USCIS should also notify customers when a duplicate submission is discarded. This notification could also include information related to the initial filing, such as a receipt number, or further information on how to efficiently request a notice that they never received. To achieve this, USCIS should modify its e-Request feature to enable applicants to enter their A-Numbers in connection with their defensive asylum inquiry.<sup>76</sup> All applicants in removal proceedings are assigned an A-Number. Providing this unique identifier in lieu of a receipt number would enable applicants to successfully submit e-Requests for a copy of their receipt notice rather than having to call the Contact Center. It would also allow USCIS to properly research the delay, which may include resolving issues where the notice was not delivered or providing the applicant with further information on how to submit a reschedule request for any missed biometrics appointment.

*Efficiently Rescheduling Biometrics Appointments.* Currently, defensive asylum applicants who miss their biometrics appointment must call the Contact Center to request to reschedule.

The volume of rescheduling requests presents challenges for USCIS, including confusion over which USCIS office is ultimately responsible for processing these requests. This lack of clarity is understandable because USCIS must determine which office is responsible for handling customer service inquiries associated with an application over which it has no jurisdiction. This confusion is often reflected in the CIS Ombudsman's casework as well. In response to inquiries regarding defensive asylum biometrics rescheduling requests, USCIS has directed the CIS Ombudsman on different occasions to its service centers, field offices, and asylum offices—three disparate divisions that handle different USCIS adjudications. While all offices may have the system access needed to process the rescheduling request, it does not mean that they are the appropriate office to handle the request.

USCIS has recently implemented a self-service tool for applicants to reschedule their biometrics appointments, but this technology is not available to all applicants. Those who miss their appointment, even if the biometrics notice was never received, must submit a reschedule request through the Contact Center. USCIS considers these requests to be untimely, and its biometrics appointment policy states that it is up to the agency's discretion whether to accept an "untimely" reschedule request, which requires manual review.<sup>77</sup> However, the immigration judge—not USCIS—has the authority to

<sup>73</sup> USCIS Web page, "The 180-Day Asylum EAD Clock Notice" (revised Feb. 2024); <https://www.uscis.gov/sites/default/files/document/notices/Applicant-Caused-Delays-in-Adjudications-of-Asylum-Applications-and-Impact-on-Employment-Authorization.pdf> (accessed May 14, 2024).

<sup>74</sup> In FY 2023, the CIS Ombudsman's Office received approximately 400 requests for case assistance involving delayed receipt notices for defensive asylum applicants. In approximately 40 percent of these requests, customers confirmed submitting multiple defensive asylum applications. Some legal representatives indicated filing 4 to 5 defensive asylum applications on behalf of their clients to generate a receipt.

<sup>75</sup> Information provided by USCIS in response to requests for case assistance.

<sup>76</sup> An A-Number is a unique seven-, eight-, or nine-digit number assigned to a noncitizen by DHS for identification purposes. USCIS Web page, "USCIS Glossary" (undated); <https://www.uscis.gov/tools/glossary> (accessed Mar. 20, 2024).

<sup>77</sup> 1 USCIS Policy Manual, Pt. C, Ch. 2(A.2); <https://www.uscis.gov/policy-manual/volume-1-part-c-chapter-2> (accessed Mar. 28, 2024).

excuse a defensive asylum applicant's failure to comply with the biometrics requirement by a specified date for good cause.<sup>78</sup>

Applying USCIS' policy on rescheduling when USCIS does not have jurisdiction over a case unnecessarily complicates the process. USCIS should permit defensive asylum applicants who miss their appointment to use the self-service tool to request a rescheduled appointment. Allowing these applicants to access this technology could reduce the number of calls to the Contact Center and minimize confusion about which office is responsible for handling these requests.

*Improving Coordination Between USCIS and ICE on Procedural Issues, such as "Age-Ins."* Improving coordination between USCIS and ICE is essential for addressing defensive asylum-related issues, including how the agencies handle biometrics collection for dependents. Children under the age of 14 are generally not required to provide their biometrics.<sup>79</sup> However, if these children turn 14 while the removal proceedings are pending, they "age-in" to the biometrics requirement. This means they must have their fingerprints captured at a USCIS ASC before the immigration judge may grant asylum.

Within its casework, the CIS Ombudsman identified a recurring issue involving applicants who age-in to the biometrics requirement and are unable to obtain a biometrics appointment notice. USCIS' instructions lack guidance for dependent applicants who age-in. Consequently, affected dependent applicants often submit their own defensive asylum application to trigger the issuance of a biometrics appointment notice. As a result, these dependent applicants are subject to intake delays, postponing relief for the principal applicant and any additional dependents included on the application.

To address this issue, USCIS should both clarify and modify how it processes these dependent applicants. USCIS should establish a direct and reliable communication channel that enables ICE to inform USCIS when a dependent applicant needs a biometrics appointment notice, bypassing the need to file an unnecessary defensive asylum application with USCIS.

A communication channel between the agencies can aid in resolving other recurring or emerging issues. For example, despite an established agreement between USCIS and ICE to ensure that fingerprint results are up to date,<sup>80</sup> stakeholders have identified

several instances where the agencies failed to properly coordinate.<sup>81</sup> Regardless of whether USCIS decides to implement a more efficient approach for age-in cases, it should update its instructions to provide these applicants with clearer guidance on how to request a biometrics appointment notice.

## *Modernizing Biometrics Processing for Defensive Asylum Applicants*

The requirement for DHS to complete the necessary background checks for certain noncitizens in removal proceedings comes from DOJ's Interim Final Rule.<sup>82</sup> In the rule, DOJ understood that, in most cases, DHS would already have the noncitizen's biometrics before filing the NTA.<sup>83</sup> Further, DOJ appeared to anticipate that DHS could often use the existing biometrics to conduct the required background checks without requiring the applicant to attend a biometrics appointment,<sup>84</sup> which is not the current practice. Rather, ICE directs all defensive asylum applicants to USCIS to have their biometrics recaptured.

The financial impact on USCIS (a primarily fee-funded agency) needs to be considered since defensive asylum applicants are exempt from paying the biometrics services fee. It does not appear that USCIS receives reimbursement from ICE or EOIR for performing biometrics processing and background checks for defensive asylum applicants.<sup>85</sup> In FY 2023, EOIR received 456,874 defensive asylum applications<sup>86</sup> resulting in an estimated cost of over \$15 million in FBI-related costs to process defensive asylum applicants' biometrics and perform

<sup>81</sup> "The Chief Principal Legal Advisor for ICE has said on stakeholder calls that [OPLA] is able to conduct this 'refresh' for fingerprints previously taken by USCIS. Nonetheless, OPLA is inconsistent in requesting this 'refresh' and directs respondents to file the request for a new biometrics appointment with USCIS." See Letter from 52 legal services and advocacy organizations to USCIS Director Ur Jaddou, Principal Legal Advisor Kerry E. Doyle, and EOIR Director David Neal (Nov. 17, 2022); <https://www.aila.org/aila-files/12806BDD-FC96-4DE4-9648-6D468B5825F9/22111703.pdf> (accessed Mar. 28, 2024).

<sup>82</sup> "Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals," 70 Fed. Reg. 4743 (Jan. 31, 2005).

<sup>83</sup> "As noted, in many cases, the alien will already have provided biometrics or other biographical information in connection with the removal proceedings prior to the master calendar hearing or other hearing at which the alien indicates an intention to seek immigration relief." *Id.* at 4745.

<sup>84</sup> "...[U]nless DHS informs the immigration judge that new biometrics are not required, DHS will provide the alien with a standard biometrics appointment notice prepared by an appropriate DHS office." *Id.* at 4746-4748.

<sup>85</sup> In its proposed fee rule, USCIS mentioned that the Department of Defense reimburses it for costs related to military naturalization services. These reimbursements influenced USCIS' decision not to increase other fees to subsidize the costs of military naturalization applications. Notably, within its fee rule, USCIS did not reference any reimbursements it receives from ICE or EOIR for performing biometrics processing and background checks for defensive asylum applicants that would prevent it from increasing filing fees for other customers to assist in covering these costs. See "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 88 Fed. Reg. 402, 488 (Jan. 4, 2023).

<sup>86</sup> EOIR Web page, "Defensive Asylum Applications" (Oct. 12, 2023); [https://www.justice.gov/d9/pages/attachments/2019/05/17/16\\_defensive\\_asylum\\_applications.pdf](https://www.justice.gov/d9/pages/attachments/2019/05/17/16_defensive_asylum_applications.pdf) (accessed Mar. 28, 2024).

<sup>78</sup> 8 C.F.R. § 1003.47(c); see also *Matter of D-M-C-P-*, 26 I. & N. Dec. 644, 648-49 (BIA 2015).

<sup>79</sup> See "Questions and Answers: DHS Procedures for Implementation of EOIR Background Check Regulations for Aliens Seeking Relief or Protection from Removal" (Aug. 22, 2011), p. 8; [https://www.uscis.gov/sites/default/files/document/questions-and-answers/EOIR\\_Q\\_A%202011\\_FINAL.pdf](https://www.uscis.gov/sites/default/files/document/questions-and-answers/EOIR_Q_A%202011_FINAL.pdf) (accessed Mar. 28, 2024). See also 8 C.F.R. § 236.5.

<sup>80</sup> USCIS Web page, "Fingerprint Check Update Request: Agreement between USCIS and ICE" (July 27, 2016); <https://www.uscis.gov/forms/fingerprint-check-update-request-agreement-between-uscis-and-ice> (accessed Nov. 6, 2023).

background checks (such as FBI name checks).<sup>87</sup> This workload requires the agency to expend resources across multiple directorates, which seems increasingly inappropriate for a fee-funded agency that is already understaffed and received more than 10 million applications in FY 2023.<sup>88</sup> This steady demand compromises USCIS' ability to fulfill its mission<sup>89</sup> and leaves its customers competing for the limited availability of biometrics appointments.

Moreover, while USCIS used its authority to reuse biometrics where possible and to streamline adjudications,<sup>90</sup> ICE has not yet embraced similar procedures in the defensive asylum process. To modernize biometrics processing for defensive asylum applicants, ICE could leverage existing technology to increase self-sufficiency in processing biometrics for cases within its jurisdiction. Doing so would provide greater autonomy over its own caseload, thus reducing the potential for court processing delays.

Although most respondents have had their biometrics captured prior to or at the time of filing of the Notice to Appear, ICE does not "reuse" biometrics. ICE's seeming reluctance to reuse existing biometrics for defensive asylum applicants is somewhat inconsistent with recent regulatory changes that allow for reusing biometrics captured by ICE and U.S. Customs and Border Protection (CBP) in certain asylum adjudications. Within their joint Asylum Processing Interim Final Rule, DHS and DOJ memorialized the practice of reusing biometrics for applicants scheduled for an asylum merits interview.<sup>91</sup> Notably, DHS can now use biometrics captured during the expedited removal process for the asylum merits interview and any subsequent immigration benefit.<sup>92</sup> This

practical approach eliminates the need to re-collect biometric data that DHS already has.

ICE's continued reliance on USCIS to collect biometrics that already exist within DHS systems is also inconsistent with DOJ regulations and FBI policy. In particular, the FBI permits agencies to reuse fingerprint results for the same purpose as the original fingerprint submission.<sup>93</sup> This reuse would constitute an acceptable interpretation of the regulations and policy. ICE is a law enforcement agency responsible for enforcing immigration laws, and OPLA represents ICE in removal proceedings. Before issuing an NTA, ICE or CBP (also a law enforcement agency) typically capture biometrics for the purpose of immigration enforcement.<sup>94</sup> It therefore appears to be appropriate for ICE to reuse biometrics for individuals in removal proceedings since the purpose of both the initial submission and the reuse is the same—to enforce immigration laws—and is therefore consistent with DOJ regulations.<sup>95</sup> Notably, when exercising prosecutorial discretion for certain noncitizens, ICE OPLA may rely on previously captured biometrics from past immigration enforcement actions to conduct criminal history checks.<sup>96</sup>

Requiring applicants to visit an ASC for biometrics collection, when DHS already has their biometric data, is counterproductive and inefficient. The Asylum Processing Interim Final Rule, which emphasizes the streamlining of asylum adjudications, has rightly

<sup>87</sup> Calculation performed by the CIS Ombudsman using the number of defensive asylum applications EOIR received in FY 2023 and the current FBI fee schedule for criminal justice information services. Specifically, the FBI currently charges noncriminal justice agencies (such as USCIS) \$23.50 per submission for a name check request and \$11.25 per submission for a fingerprint request. It does not charge these fees to criminal justice agencies (such as ICE and CBP). See "FBI's Criminal Justice Information Services Division User Fee Schedule," 87 Fed. Reg. 47794 (Aug. 4, 2022). This calculation does not factor in total costs incurred by USCIS, such as intaking and data entering applications at its service centers, capturing biometrics at its ASCs, and resolving customer service inquiries.

<sup>88</sup> See USCIS Web page, "Immigration and Citizenship Data," <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (accessed Mar. 28, 2024).

<sup>89</sup> In 2023, USCIS projected an average annual deficit of \$1,262.3 million under its previous fee structure. See "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 88 Fed. Reg. 402, 517 (Jan. 4, 2023).

<sup>90</sup> See USCIS 2021 CIS Ombudsman Annual Report Response, p. 8 (Aug. 24, 2022); [https://www.uscis.gov/sites/default/files/document/reports/Response\\_to\\_Ombudsman\\_2021\\_Annual\\_Report.pdf](https://www.uscis.gov/sites/default/files/document/reports/Response_to_Ombudsman_2021_Annual_Report.pdf) (accessed Mar. 28, 2024). See also Letter to Rep. Katie Porter from USCIS Director Ur Jaddou (Nov. 15, 2023); <https://www.uscis.gov/sites/default/files/document/foia/DeferredActionforChildhoodArrivals-RepresentativePorter.pdf> (accessed Mar. 28, 2024) ("The steps USCIS has taken to reduce processing times include allowing for the reuse of biometrics where available...").

<sup>91</sup> "Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers," 87 Fed. Reg. 18078, 18085 (May. 31, 2022); see 8 C.F.R. § 208.3(a)(2).

<sup>92</sup> 8 C.F.R. § 208.3(a)(2).

<sup>93</sup> See 28 C.F.R. § 20.33. See also DOJ FBI Criminal Justice Information Services Division, "Next Generation Identification Audit Noncriminal Justice Access to Criminal History Record Information Policy Reference Guide," Apr. 6, 2020, p. 3; <https://www.fbi.gov/file-repository/ngi-audit-policy-reference-noncriminal-justice-access-chri-040620.pdf/view> (accessed Nov. 6, 2023). See also Illinois State Police Report, "Firearm Owners Identification Card Act Fingerprint Reuse Report," Jan. 1, 2022, p. 5; <https://www.ilga.gov/reports/ReportsSubmitted/3069RS-GAEmail5891RSGAAttachFingerprint%20Reuse%20Policy%20Report%20to%20GA%20FINAL.pdf> (accessed Mar. 28, 2024).

<sup>94</sup> "To carry out its responsibilities, Border Patrol agents apprehend, screen, and process migrants to determine admissibility. The e3 Portal is the primary system Border Patrol uses to record apprehension details. The system collects and transmits vital biographic and biometric (facial photos and fingerprints) information in real-time to identify individuals and verify their identities [and to conduct] real-time record checks using e3 for criminal records, wants and warrants, immigration history, and terrorist watchlist." DHS Office of Inspector General, "U.S. Border Patrol Screened Migrants at the Southwest Border but Could Strengthen Processes," OIG-22-71 (Sept. 19, 2022); <https://www.oig.dhs.gov/sites/default/files/assets/2022-09/OIG-22-71-Sep22.pdf> (accessed Nov. 6, 2023).

<sup>95</sup> Moreover, as a law enforcement agency, ICE may also receive additional background check information from the FBI that USCIS (a noncriminal justice agency) does not receive in response to their requests for criminal history information. See, e.g., FBI's Criminal Justice Information Services (CJIS) Division's "Electronic Biometric Transmission Specification (EBTS)," Nov. 17, 2022, p. c-28; [https://fbibiospecs.fbi.gov/file-repository/ebts-v11-1\\_final\\_508.pdf](https://fbibiospecs.fbi.gov/file-repository/ebts-v11-1_final_508.pdf) (accessed Mar. 28, 2024).

<sup>96</sup> ICE also directs noncitizens who have never had their biometrics collected by DHS or had their fingerprints taken in relation to an immigration enforcement action to submit an FBI fingerprint-based background check with their prosecutorial discretion request. See ICE Web page, "Doyle Memorandum: Frequently Asked Questions and Additional Instructions" (Dec. 21, 2023); <https://www.ice.gov/about-ice/opla/prosecutorial-discretion> (accessed May 13, 2024).

addressed this inefficiency by permitting DHS to reuse biometrics.<sup>97</sup> Since both DHS and EOIR seek to expedite processing for additional caseloads,<sup>98</sup> timely processing of biometrics requests is essential. If necessary, USCIS should provide support to ICE in leveraging current DHS technology to submit existing biometrics to the FBI for reuse.

In the rare instances where biometrics for defensive asylum applicants are not already available in DHS systems or are unavailable for reuse, ICE could seek to utilize its continuously advancing technologies to capture biometrics for these individuals.<sup>99</sup> Assigning this responsibility to ICE—funded through annual appropriations and not charged by the FBI for background checks—rather than USCIS, which operates on a fee-for-service model and incurs these FBI-related costs, may also ensure ICE has adequate resources for processing these requests.<sup>100</sup> It would also give ICE greater control over its own caseload, potentially mitigating court delays stemming from biometrics processing delays.<sup>101</sup>

*Online Filing as an Option.* Alternatively, USCIS could consider establishing an online filing process for defensive asylum applicants. Most affirmative applicants already can file their Form I-589 applications online.<sup>102</sup> As such, USCIS should explore modifying the current online Form I-589 to permit defensive asylum applicants to submit the information needed to automatically trigger

biometrics appointment notices,<sup>103</sup> such as the first three pages of the application.

Furthermore, USCIS could address many of the customer service gaps discussed above through the customer service features that USCIS online accounts offer. For example, applicants who did not receive their receipt or biometric appointment notices in the mail could obtain copies through their online accounts. Enabling online filing would also encourage defensive asylum applicants to create an online account and access additional customer service tools, such as the enterprise change of address tool and secure messaging.

The CIS Ombudsman ultimately believes that the defensive asylum workload unnecessarily burdens USCIS and that ICE is better suited for this role. However, if USCIS must continue to process these applicants, enabling them to file online would streamline the intake process and help to address several recurring customer service issues, as well as reduce the potential for future frontlog issues with receipts.

## Conclusion

EOIR, ICE, and USCIS are grappling with substantial backlogs in their respective workloads. The current biometrics processing arrangement for defensive asylum applicants exacerbates delays in the overall process. While the FY 2023 defensive asylum frontlog was exceptional, it underscored ongoing customer service challenges and operational inefficiencies. Despite lacking jurisdiction over these applications and not appearing to receive compensation, USCIS finds itself dedicating significant resources to process biometrics requests for individuals who have already provided biometrics to DHS. It is also worth considering a long-term solution—such as having ICE reuse previously captured biometrics—to relieve USCIS resource challenges. In the near term, USCIS should take actions to resolve systemic customer service issues for these applicants.

<sup>97</sup> 8 C.F.R. § 208.3(a)(2). See also “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers,” 87 Fed. Reg. 18078, 18085 (May 31, 2022).

<sup>98</sup> DOJ Press Release, “DHS and DOJ Announce Dedicated Docket Process for More Efficient Immigration Hearings” (May 28, 2021); <https://www.justice.gov/opa/pr/dhs-and-doj-announce-dedicated-docket-process-more-efficient-immigration-hearings> (accessed Nov. 6, 2023).

<sup>99</sup> See DHS, “Privacy Impact Assessment Update for the Enforcement Integrated Database (EID) – EAGLE, EDDIE, and DAVID” (May 14, 2019), p. 9; <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-eid-may2019.pdf> (accessed Nov. 6, 2023). “Compliance Assistance Reporting Terminal (CART) System is a custom hardware and software integrated solution and includes the kiosks, Portal, and Services to be used across all ERO offices that perform this duty. The solution includes a self-serve kiosk that includes a fingerprint scanner and camera to collect biometric information.” DEV Technology Group’s Response to “Request for Information on Public and Private Sector Uses of Biometric Technologies” (Jan. 15, 2022), p. 398; <https://ai.gov/wp-content/uploads/2024/03/Biometric-RFI-2022-combined.pdf> (accessed May 6, 2024). Notably, ICE already collects the fingerprints of detained defensive asylum applicants. “Questions and Answers: DHS Procedures for Implementation of EOIR Background Check Regulations for Aliens Seeking Relief or Protection from Removal,” Aug. 22, 2011, p. 8; [https://www.uscis.gov/sites/default/files/document/questions-and-answers/EOIR\\_Q\\_A%202011\\_FINAL.pdf](https://www.uscis.gov/sites/default/files/document/questions-and-answers/EOIR_Q_A%202011_FINAL.pdf) (accessed Nov. 6, 2023).

<sup>100</sup> See “FBI’s Criminal Justice Information Services Division User Fee Schedule,” 87 Fed. Reg. 47794 (Aug. 4, 2022).

<sup>101</sup> See U.S. Government Accountability Office (GAO) Report, “Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges,” GAO-17-438 (June 2017), p. 128; <https://www.gao.gov/assets/gao-17-438.pdf> (accessed Nov. 6, 2023).

<sup>102</sup> See DHS Web page, “Where to Submit Your Form I-589” (Sep. 7, 2023); <https://www.dhs.gov/news/2023/09/07/where-submit-your-form-i-589#:~:text=We%20encourage%20you%20to%20file,%20to%20date%20mailing%20addresses> (accessed Nov. 6, 2023).

<sup>103</sup> See DHS, “Privacy Impact Assessment for the USCIS Electronic Immigration System (USCIS ELIS)” (Dec. 3, 2018), p. 6; <https://www.dhs.gov/sites/default/files/2023-04/privacy-pia-uscis056a-elisappendixupdate-april2023.pdf> (accessed May 6, 2024).

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## *Reexamining the Administration of the English Portion of the Naturalization Test*

**Responsible Offices:** Field Operations and External Affairs Directorates

### Introduction

When an individual applies for U.S. citizenship, they must show they understand English before U.S. Citizenship and Immigration Services (USCIS) can approve their application. How this English proficiency is assessed has changed over time, and the English speaking and understanding test has presented barriers for many lawful permanent residents (LPRs) who would otherwise apply for U.S. citizenship.

In 2022, the agency announced a major naturalization test redesign effort, acknowledging its current approach to assessing whether an applicant meets the educational requirements for naturalization under section 312(a) of the Immigration and Nationality Act (INA) creates barriers—either by making it too difficult to successfully complete the naturalization process or by actively discouraging many of those eligible from applying. However, it soon became apparent that the “fixes” had the potential for more harm than good, as the proposed correction was out of proportion to the risks of the problem. Upon hearing stakeholder feedback, it appeared to the CIS Ombudsman that the proposed redesign had the potential for creating rather than reducing existing barriers faced by some to achieving this milestone.

The feedback revealed there are changes USCIS could make to improve how it conducts the English speaking and understanding test. These changes provide a higher level of integrity and produce a

more accurate assessment of an applicant's ability to communicate in ordinary English and would begin to address the agency's intentions in the naturalization test redesign effort without creating new barriers.

## Recommendations

The CIS Ombudsman recommends that USCIS:

1. Stop the practice of using questions from Part 9 of Form N-400, *Application for Naturalization* (April 1, 2024 edition) to assess an applicant's understanding and speaking of English and use instead the personal information requested in Parts 1 to 8.
2. Clarify the USCIS Policy Manual to allow applicants to use translation and interpretation services during the naturalization interview if: 1) the applicant has passed the understanding and speaking English test, and 2) the interviewing officer finds that the applicant does not understand the questions related to unusual and complex eligibility issues (such as criminal offenses, fraud concerns, torture, genocide, etc.) after repeating and rephrasing them or that the concepts either do not exist in the applicant's language or lack cultural context.
3. Provide study materials that define legal and technical terms used on Form N-400 to the public to prepare for the naturalization eligibility interview.
4. Collect more data about: a) when an officer stops the interview at a particular question on the Form N-400 after determining the applicant was unable to understand or speak English, and b) test passage rates by field offices.
5. Increase transparency by posting collected data on the USCIS website.

## Background

Under the U.S. Constitution, Congress has the power to establish a uniform rule of naturalization, which it first did in the Naturalization Act of 1790.<sup>104</sup> At the birth of the United States, English language proficiency was not a requirement. As the country's population grew, the government started to define what U.S. citizenry should be and added requirements to the naturalization process.<sup>105</sup> Congress removed race and nationality restrictions in 1906 and incrementally added an understanding of English and U.S. history and government

as requirements. These educational requirements became tests, and there have been several versions of the tests since that time.<sup>106</sup>

Although English is not the country's official language, knowing it is essential to the naturalization process and to integration and inclusion in American society. Unless exempt, individuals applying for naturalization must demonstrate to a USCIS officer that they understand English, "including an ability to read, write, and speak words in ordinary usage in the English language."<sup>107</sup> USCIS tests applicants' ability to speak, read, and write in English at the time of the naturalization interview.

Congress introduced exceptions for applicants who cannot comply with the English language requirement for the following reasons:

- A physical or developmental disability or mental impairment.<sup>108</sup>
- Age and amount of time living in the United States as an LPR:
  - Over 50 years of age and living here as an LPR for at least 20 years.
  - Over 55 years of age and living here as an LPR for at least 15 years.
  - Over 65 years of age and living here as an LPR for at least 20 years.<sup>109</sup>

If an applicant fails the English or civics tests during the initial interview, they can test again 60 to 90 days later.<sup>110</sup> If they fail a second time, USCIS denies their application; they must file a new form and fee payment if they wish to try again.

In the past, USCIS has considered ways to standardize the English test and improve the testing experience for applicants. In 1997, the U.S. Commission on Immigration Reform recommended that the former Immigration and Naturalization Service (INS),<sup>111</sup> then under the Department of Justice (DOJ), create a testing process

<sup>106</sup> See National Immigration Forum, "The Relationship Between English Proficiency and Naturalization (Mar. 28, 2023); [https://immigrationforum.org/article/the-relationship-between-english-proficiency-and-naturalization/#\\_ftnref2](https://immigrationforum.org/article/the-relationship-between-english-proficiency-and-naturalization/#_ftnref2) (accessed Apr. 19, 2024) and Miriam 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> (accessed Apr. 19, 2024).

<sup>107</sup> INA § 312.

<sup>108</sup> INA § 312(b)(1). The exceptions to the English language requirement for applicants who were not able to comply due to a physical disability or were over 50 years of age and had been legally residing in the United States for 20 years became exceptions under the Internal Security Act of 1950, Pub. L. 81-831, § 30 (Sep. 23, 1950). Congress expanded the exceptions under the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103, § 108 (Oct. 25, 1994).

<sup>109</sup> INA §§ 312(b)(2), (b)(3).

<sup>110</sup> 12 USCIS Policy Manual, Pt E, Ch. 2(F); <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-2> (accessed Mar. 11, 2024).

<sup>111</sup> The Homeland Security Act of 2002 disbanded the Immigration and Naturalization Service, which was under the Department of Justice, and created U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security and transferred immigration benefits processing to the newly created agency.

<sup>104</sup> The requirement to speak the English language became a requirement under An Act to Establish a Bureau of Immigration and Naturalization, and to Provide for a Uniform Rule for the Naturalization of Aliens Throughout the United States, Ch. 3592, § 8 (June 29, 1906). The ability to understand English became a statutory requirement with the Internal Security Act of 1950, 64 Stat. 987, 1013 (1950).

<sup>105</sup> See Patrick Weil, "the Sovereign Citizen," *passim* (2012); <https://muse.jhu.edu/book/21278> (accessed Apr. 19, 2024).

to determine if applicants have a meaningful knowledge of U.S. history and government and can communicate in English.<sup>112</sup> DOJ also recommended the former INS develop a uniform approach to testing, including standard and meaningful test content, standardized testing instruments and protocols, standard scoring, and standard levels of passing, which it began to do in December 2000.<sup>113</sup> In October 2008, USCIS redesigned the naturalization test to standardize the English reading, writing, and civics tests.<sup>114</sup> USCIS had planned a redesign of the English-speaking test too but did not implement it for several reasons, including the anticipated costs of providing more translation services for naturalization interviews.<sup>115</sup> This 2008 version of the naturalization test is what USCIS officers currently administer.

In late 2022, USCIS announced trial testing of a redesigned naturalization test. The agency held national engagements, invited stakeholder feedback about the redesign and test trial,<sup>116</sup> and participated in the CIS Ombudsman's webinar on the naturalization test redesign initiative in July 2023.<sup>117</sup> Stakeholders submitted comments against using alternative methods to test for English proficiency with the CIS Ombudsman and directly with USCIS through letters, emails, and engagements.<sup>118</sup>

In general, stakeholders have been concerned about the lack of information provided by USCIS about the redesign and trial test, and they wanted USCIS to respond to the comments they had shared.<sup>119</sup> Apart from the redesign, stakeholders were concerned that the required level of English proficiency was higher than required by statute. Specifically, they pointed out that Part 9 of Form

N-400,<sup>120</sup> includes complicated syntax and unfamiliar vocabulary covering questions about terrorism, torture, persecution, and Communism, and asserted that understanding the English in this part of the form requires a higher level of understanding of the English language than what is required by section 312(a)(1) of the INA. Stakeholders were also concerned about guidance to officers that gives them wide discretion in administering the understanding and speaking English portion of the test, resulting in inconsistent outcomes.<sup>121</sup>

The CIS Ombudsman continues to hear from stakeholders concerned with the test redesign and lack of communication from USCIS. On October 27, 2023, the CIS Ombudsman shared summaries of the concerns voiced by stakeholders with USCIS, and also relayed concerns with the revisions, based on analysis of the feedback. Although the CIS Ombudsman knows USCIS is considering this feedback as it is considering input from a variety of stakeholders with respect to the redesign, the office has emphasized the need to relay this level of consideration to the public.

### *The Testing Experience Can Vary Greatly Despite Standardization Efforts*

As test administrators, USCIS officers play a crucial role in ensuring applicants receive a fair and meaningful testing experience. Officers are required to complete an annual one-hour training module that includes a quiz to test their own knowledge.<sup>122</sup> USCIS provides officers with sample rephrased questions from the Form N-400 and scoring guidelines for the naturalization test.

An officer assesses an applicant's English-speaking skills from their ability to answer questions normally asked during the naturalization interview taken from the Form N-400.<sup>123</sup> USCIS requires officers to repeat and rephrase questions until the officer is satisfied the applicant either fully understands the question to provide a meaningful response or does not understand English.<sup>124</sup> An officer assesses an applicant's *understanding* of English by their ability to respond to questions, directions, or prompts during the naturalization interview.<sup>125</sup> Like the speaking assessment, the officer

<sup>112</sup> See "Trial Testing of Redesign Naturalization Test for Naturalization Applications," 87 Fed. Reg. 76634 (Dec. 15, 2022).

<sup>113</sup> *Id.*

<sup>114</sup> 12 USCIS Policy Manual, Pt. E, Ch. 1(B); <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-1> (accessed May 15, 2024). USCIS completed full implementation of the redesign in October 2009. "Trial Testing of Redesign Naturalization Test for Naturalization Applications," 87 Fed. Reg. at 76634.

<sup>115</sup> "Trial Testing of Redesign Naturalization Test for Naturalization Applications," 87 Fed. Reg. at 76635, fn. 3.

<sup>116</sup> USCIS web page, "Naturalization Test Redesign Development 2022 (Sep. 14, 2023)," <https://www.uscis.gov/citizenship-resource-center/naturalization-test-and-study-resources/naturalization-test-redesign-development-2022> (accessed Apr. 19, 2024).

<sup>117</sup> CIS Ombudsman Webinar, "The CIS Ombudsman's Webinar: Engagement with U.S. Citizenship and Immigration Services (USCIS) on the Naturalization Test Redesign Initiative" (July 19, 2023); <https://www.dhs.gov/publication/cis-ombudsmans-webinar-naturalization-test-redesign-initiative> (accessed May 3, 2024).

<sup>118</sup> Information provided by USCIS (Mar. 19, 2024). See, e.g., Memorandum from NALEO Educational Fund to USCIS Dir. Ur Jaddou (Sept. 24, 2021); Letter from Nine Members of Citizenship Test Working Group to Dir. Jaddou (Sept. 17, 2021); and Letter from Boundless Immigration, et al. to USCIS Chief of the Office of Citizenship, Partnership & Engagement (Aug. 23, 2023).

<sup>119</sup> Information provided by stakeholders (July 19, 2023 and Aug. 24 and 30, 2023).

<sup>120</sup> Information provided by stakeholders and USCIS were based on the September 17, 2019 edition of the Form N-400. USCIS issued a new edition of the form on April 1, 2024, with renumbered parts and questions. This article references the numbering in the 2024 edition; Part 9 on the 2024 edition was Part 12 on the previous edition.

<sup>121</sup> Information provided by stakeholders (Aug. 24 and 30, 2023).

<sup>122</sup> Information provided by USCIS (Apr. 19, 2024).

<sup>123</sup> 8 C.F.R. § 312.1(c); 12 USCIS Policy Manual, Pt. E, Ch. 2(D)(1); <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-2> (accessed Mar. 11, 2024).

<sup>124</sup> 12 USCIS Policy Manual, Pt. E, Ch. 2(D); <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-2> (accessed Mar. 11, 2024).

<sup>125</sup> USCIS, "Scoring Guidelines for the U.S. Naturalization Test," [https://www.uscis.gov/sites/default/files/document/guides/Test\\_Scoring\\_Guidelines.pdf](https://www.uscis.gov/sites/default/files/document/guides/Test_Scoring_Guidelines.pdf) (accessed Mar. 8, 2024).



## U.S. Citizenship and Immigration Services

### SCORING GUIDELINES FOR THE U.S. NATURALIZATION TEST

Section 312 of the Immigration and Nationality Act (INA) provides that most applicants for naturalization demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language, as well as a knowledge of U.S. government and history (civics)<sup>1</sup>. This document provides a general description of how the U.S. Naturalization Test is evaluated and scored by Officers of the U.S. Citizenship and Immigration Services (USCIS).

**SPEAKING:** An applicant's verbal skills are determined by the applicant's answers to questions normally asked by USCIS Officers during the naturalization eligibility interview. USCIS Officers are required to repeat and rephrase questions until the Officer is satisfied that the applicant either fully understands the question or does not understand English. If the applicant generally understands and can respond meaningfully to questions relevant to the determination of eligibility, the applicant has demonstrated the ability to speak English.

Source: Information provided by USCIS (Mar. 19, 2024).

is required to repeat and rephrase questions until they are satisfied the applicant either fully understands the question or does not understand English.

Stakeholders are concerned that applicants are apprehensive about going through the naturalization process when they do not know which questions they will be asked during the English test. The USCIS Policy Manual does not instruct officers on how many and which questions from the Form N-400 to ask. This means that officers nationwide, even within the same field office, do not ask applicants the same questions, and some officers ask applicants to define words or phrases found on the Form N-400.<sup>126</sup> The additional clarification of terms and key concepts provided by officers can be inconsistent. This appears to give officers substantial discretion in how they determine an applicant's ability to "speak and understand English" and may lead to inconsistent passing rates among officers and field offices.

Generally, USCIS guidance on the role and use of interpreters during interviews does not apply to naturalization interviews because

<sup>126</sup> Information provided by stakeholders (Mar. 5, 2024).

knowledge of English is an eligibility requirement for naturalization, but there are "cases where the applicant is permitted to use an interpreter" during the naturalization interview.<sup>127</sup> The USCIS Policy Manual lists when an applicant is permitted to use an interpreter to satisfy the civics test requirement but is silent on when an applicant is permitted to use an interpreter outside of the civics test. An applicant is permitted to use an interpreter to satisfy the civics test requirement in the following instances:

- The applicant is exempt from the English literacy requirement because of their age or disability and their "command of spoken English is insufficient to conduct a valid examination in English."<sup>128</sup>
- The applicant is required to meet the English literacy requirement and has done so, but the officer conducting the examination determines that an inaccurate or incomplete record of the examination would result if the examination on technical or complex issues were conducted in English,<sup>129</sup> or
- The applicant obtained permanent residence under section 245A of the INA and has met the requirements under 8 C.F.R. § 312.3.<sup>130</sup>

The regulations authorizing an applicant who has successfully met the English literacy requirement to use an interpreter for technical or complex issues seems logical to apply when the officer is determining whether the applicant has good moral character—another eligibility requirement for naturalization—since an applicant's answers to the questions in Part 9 of Form N-400

<sup>127</sup> 12 USCIS Policy Manual, Pt. B, Ch. 3(A)(3); <https://www.uscis.gov/policy-manual/volume-12-part-b-chapter-3> (accessed Mar. 28, 2024). See USCIS Policy Memorandum, "The Role and Use of Interpreters in Domestic Field Office Interviews" (PM-602-0125.1); <https://www.uscis.gov/sites/default/files/document/memos/2017-17-1-RoleUseInterpreters-PM-602-0125-1.pdf> (accessed Mar. 28, 2024). When naturalization applicants are permitted to use an interpreter, they must bring their own interpreter; however, USCIS field offices may provide an interpreter under specific circumstances and uses the telephonic services of the Foreign Language Support Services by contract, the USCIS Language Services Section, and the national interpretation contractor Ad Astra. Information provided by USCIS (Mar. 19, 2024).

<sup>128</sup> 8 C.F.R. § 312.2(c)(1)(i).

<sup>129</sup> 8 C.F.R. § 312.2(c)(1)(ii).

<sup>130</sup> 8 C.F.R. § 312.2(c)(1)(iii). The Immigration Reform and Control Act of 1986 created a legalization program that authorized temporary resident status and subsequent permanent resident status to individuals who were in the United States without legal status and met specific requirements, including demonstrating that they met the English and civics knowledge requirements of INA § 312 "(relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States) (emphasis added)" or were pursuing a course of study recognized by the Attorney General to achieve this knowledge. The Immigration Reform and Control Act, Pub. L. No. 99-603, 8 U.S.C. § 1255a. Naturalization applicants who obtained lawful permanent resident status pursuant to this legalization program and at that time demonstrated English language proficiency and knowledge of U.S. history and government are not tested on these skills during their naturalization interviews; however, unless otherwise exempt, they must still demonstrate their ability to speak and understand English in accordance with 8 CFR 312.1(c)(1) and establish eligibility for naturalization during their naturalization interview in the English language. 8 C.F.R. § 312.3.

are relevant to the assessment. How broadly the circumstances when an applicant can use an interpreter apply to the naturalization interview is important. The English language assessment does not seem to take into consideration that an applicant can understand a language before they can speak it. The officer can be satisfied that the applicant fully understands the question, but the applicant can still lack the vocabulary and grammar structure to provide a meaningful response in English but may be able to in their native language. An interpreter could bridge the gap.

### *Concerns with Whether the Test Assesses “Ordinary Usage” of the English Language*

With certain exceptions, applicants for naturalization must demonstrate “an understanding of the English language, including an ability to read, write, and speak words in *ordinary usage* in the English language (emphasis added).”<sup>131</sup> “Ordinary usage” is defined as “comprehensible and pertinent communication through simple vocabulary and grammar, which may include noticeable errors in pronouncing, constructing, spelling, and understanding completely certain words, phrases, and sentences.”<sup>132</sup> Stakeholders assert the statute requires only a basic level of English, but USCIS’ testing approach requires a higher level, closer to a college or graduate-level proficiency.<sup>133</sup>

USCIS instructs officers that applicants are only required to have a basic understanding of the English language,<sup>134</sup> but officers may inadvertently require more from applicants as a result of the questions they ask. An applicant’s ability to respond to any of the questions on Form N-400 is relevant to the assessment, but some of the questions require a higher level of understanding of the English language than what is statutorily required. For example, the personal information questions, about the applicant’s name, age, birth date, country of birth, and address in Parts 1 to 8 of the Form N-400 are simple questions and the type of questions and answers that are taught in English as a Second Language (ESL) classes.<sup>135</sup>

In contrast, although the questions in Part 9 mostly require a simple yes or no response, they are complex for the level of language skill required for naturalization. For example:

- Questions 7.a. and 7.b. require the applicant to understand the words “torture” and “genocide,” which are not words typically used in everyday conversation or common words to learn in a second language. Neither the Form N-400 nor its instructions provide a definition for these words.

- Question 8.b. asks, “Have you ever served in, been a member of, assisted (helped), or participated in any armed group (a group that carries weapons), for example: paramilitary unit (a group of people who act like a military group but are not part of the official military), self-defense unit, vigilante unit, rebel group, or guerrilla group?” Definitions for some of the words are provided, but the amount of vocabulary has increased and following a sentence this long from beginning to end can be difficult.
- Question 27—“Have you ever been court-martialed or have you received a discharge characterized as other than honorable, bad conduct, or dishonorable discharge, while in the U.S. armed forces?”—is a complex question because it combines two independent clauses into one sentence and uses the present perfect tense, which may be unfamiliar to some non-native English speakers.<sup>136</sup> Relying on these complex questions can lead to anxiety among applicants and unnecessary failures.

USCIS released a new edition of the Form N-400 and instructions on April 1, 2024, resolving some stakeholder concerns. For example, the question of whether the applicant has ever been a “habitual drunkard” has been removed from the form, and the instructions include a separate section clarifying that an officer considers an applicant’s good moral character based on their answers to questions in Part 9 and defining some of the words in this section of the form.<sup>137</sup> But other barriers remain.

In their feedback to USCIS, stakeholders have stated the questions under Part 9 of Form N-400 are a barrier for applicants trying to demonstrate their ability to understand and speak English. Their perception is based on anecdotes they hear from applicants after their interviews and their analysis of the form. Teachers find that students taking naturalization/ESL classes can become so focused on the legal terms on the form that they do not continue with the application. Since the students do not know which Form N-400 questions they will be asked, they feel the need to learn the entire vocabulary—a task considered more daunting than studying for the civics test.<sup>138</sup> Although applicants’ concerns about passing the English test may be natural to some extent, they can also become significant barriers, particularly for the elderly and applicants with limited formal education in their own language. As soon as teachers explain to students that they are responsible for being able to converse with a USCIS officer about all the information on the Form N-400, some students delay or even abandon the application process.<sup>139</sup>

<sup>131</sup> INA § 312(a)(1).

<sup>132</sup> 12 USCIS Policy Manual, Pt. E, Ch. 2(D); <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-2> (accessed Apr. 2, 2024).

<sup>133</sup> Information provided by stakeholders (Mar. 5, 2024).

<sup>134</sup> Information provided by USCIS (Mar. 19, 2024).

<sup>135</sup> Information provided by stakeholders (Mar. 5, 2024).

<sup>136</sup> *Id.*

<sup>137</sup> See Instructions for Form N-400, *Application for Naturalization*; <https://www.uscis.gov/sites/default/files/document/forms/n-400instr.pdf> (accessed May 7, 2024).

<sup>138</sup> Information provided by stakeholders (Mar. 5, 2024).

<sup>139</sup> *Id.*

USCIS recognizes not all the words on the Form N-400 may be considered “ordinary usage.”<sup>140</sup> However, the agency believes the majority of applicants who fail for lack of understanding English do so before an officer gets to the questions in Part 9 of the Form N-400.<sup>141</sup> The agency has considered limiting the questions officers ask from the Form N-400 but has not tested this option.<sup>142</sup>

If an officer cannot address all the questions on the Form N-400 in the interview, they must indicate on the form where they stopped.<sup>143</sup> Since the form is processed in USCIS’ electronic case management system, ELIS, where on the form the officer stopped the interview would be captured in the agency’s systems. However, for this information to be useful in identifying barriers to passing the English test, the reason *why* the officer stopped the interview would also have to be captured, since the interview could have been stopped for many reasons.

The CIS Ombudsman asked USCIS to provide data on the applicants who were denied exclusively because they could not understand or speak English, segregated by section or question on the Form N-400 where the failure occurred. USCIS responded that “[i]t is not possible to determine, using the information contained in the systems, [from] which section of the application the adjudicator deemed the applicant ‘unable to understand’ or ‘unable to speak’ English,” and provided a report containing an aggregate of the questions on the civics test that applicants who failed the English test got wrong.<sup>144</sup> Without precise data, USCIS’ assumptions of why applicants fail the English test may not be entirely accurate. Collecting and sharing this information with the public would, however, allow stakeholders to rely on data-based evidence to verify their assumptions and help teachers better prepare applicants for the English assessments.

### ***The Need for Additional Test Preparation Resources to Address Complex Vocabulary on the Naturalization Application***

Applicants and teachers can access over 50 resources from USCIS’ website to prepare for the naturalization interview and English and civics tests, including flash cards, interactive practice tests, study booklets, videos, and more.<sup>145</sup> Few of these tools, however, cover the more complex vocabulary found on Form N-400. There are cards and practice exercises on commands, as well as reading and listening activities using words and phrases from the Form N-400 that applicants may hear during the interview, but none

of these resources define or describe terms such as *genocide*, *totalitarian*, *terrorism*, *vigilante*, *human rights*, *communism*, *deferred adjudication*, or *drug paraphernalia*—all words used on the form. The USCIS teacher’s guide to the Self-Test 1 practice test covers questions from Parts 1 to 8 of the form related to the applicant’s name, date of birth, country of birth, current address, previous addresses, employment history, marital status and family, and travel outside the United States.<sup>146</sup> There is no similar self-test for the more advanced vocabulary used in Part 9.

Other barriers persist. Elderly and low-income LPRs, as well as LPRs with disabilities not waived under the INA, face additional barriers to obtaining study materials because they may be unable to attend classes. Additionally, organizations that assist many applicants may not have the financial resources to download and print large quantities of materials from USCIS’ website.<sup>147</sup> As USCIS takes steps to process applications more quickly, applicants are aware they may have less time to prepare for the knowledge tests and learn vocabulary, including the legal terminology related to Part 9 of Form N-400.

USCIS chairs a governmental Naturalization Working Group on promoting naturalization,<sup>148</sup> and its proposed strategies include developing and providing applicants with a glossary defining legal and technical terms used on Form N-400.<sup>149</sup> USCIS has not provided a simple glossary defining the legal terms related to statutory requirements. Instead, USCIS continues to update its Policy Manual with guidance on specific topics from questions on the N-400 and provides officers with a list of optional rephrased questions developed in consultation with ESL experts.<sup>150</sup> The agency encourages officers to use the list to ensure more fairness across all interviews but has not shared this list of rephrased questions with the public. USCIS has also continued to modify the form to use as much plain language as possible to explain the statutory requirements.<sup>151</sup>

<sup>140</sup> Information provided by USCIS (Mar. 19, 2024).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Information provided by USCIS (Apr. 19, 2024).

<sup>145</sup> USCIS Web page, “Study for the Test,” <https://www.uscis.gov/citizenship/find-study-materials-and-resources/study-for-the-test> (accessed Feb. 8, 2024).

<sup>146</sup> USCIS, “Guide to the USCIS Practice Test ‘Vocabulary for the Naturalization Interview: Self-Test 1’,” [https://www.uscis.gov/sites/default/files/document/guides/Teacher\\_Guide\\_Vocabulary\\_Self-Test1.pdf](https://www.uscis.gov/sites/default/files/document/guides/Teacher_Guide_Vocabulary_Self-Test1.pdf) (accessed Feb. 8, 2024).

<sup>147</sup> Information provided by stakeholders (Mar. 6, 2024). One stakeholder observed that USCIS used to provide printed materials free of charge, but with the increasing use of internet resources, they have been informed it will no longer do so.

<sup>148</sup> The Naturalization Working Group is an interagency group created by Executive Order 14012, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans* (Feb. 2, 2021). The group has developed a national strategy to promote naturalization.

<sup>149</sup> USCIS, “Interagency Strategy for Promoting Naturalization” p. 12; [https://www.uscis.gov/sites/default/files/document/reports/Interagency\\_Strategy\\_for\\_Promoting\\_Naturalization\\_Final.pdf](https://www.uscis.gov/sites/default/files/document/reports/Interagency_Strategy_for_Promoting_Naturalization_Final.pdf) (accessed Feb. 9, 2024).

<sup>150</sup> Information provided by USCIS (Mar. 19, 2024).

<sup>151</sup> *Id.*

## Officer Training and Inconsistent Pass Rates

USCIS officers are:

- Required to take a yearly electronic training regarding the naturalization test;
- Instructed that applicants are only required to have a basic understanding of the English language;
- Provided with a list of optional rephrased questions from the Form N-400; and
- Provided with test scoring guidelines for reference, along with other training resources related to the administration of the English test.<sup>152</sup>

Some field offices offer more to their officers. The New York District supplements the electronic training with a live training session and the Los Angeles District has modified the training to be more interactive. The content, however, does not differ from guidance.<sup>153</sup>

Stakeholders believe the guidance and training provided to officers is not specific enough, giving them wide discretion in the way they administer and assess the understanding and speaking English portion of the test. For example, the average fail rate for speaking and understanding English at all field offices was 5.4 and 6.0 percent, respectively, in Fiscal Year (FY) 2023.<sup>154</sup> The fail rate at the following field offices is almost more than double the average or higher:

- Buffalo (10.6 and 12.2 percent)
- Detroit (11 and 11.9 percent)
- Imperial (10.4 and 10.4 percent)
- Indianapolis (11 and 12.7 percent)
- Louisville (19 and 19.6 percent)
- Miami (12.5 and 12.9 percent)
- Oklahoma City (10.8 and 12.1 percent)
- Omaha (10.5 and 11.8 percent)
- Providence (18.6 and 18.6 percent)
- San Juan (25.2 and 25.1 percent)<sup>155</sup>

These field offices represent all areas of the country and different size field offices, and the data alone does not provide insight into why higher or lower failure rates occur.

Differences in passing rates confuse applicants and the lack of publicly available data on passing rates for individual field offices can create a false narrative. Fail rates for the understanding and speaking portions of the English language test are relatively low. Nevertheless, fear among applicants that their English is not good enough remains, and the agency can take steps to increase efficiency preventing an unnecessary second trip to the field office for re-interview. In addition, addressing the barriers that keep eligible LPRs from applying would encourage more of them to take that critical step toward full integration and participation.

## Recommendations

The CIS Ombudsman has expressed its concerns regarding the naturalization test redesign initiative to USCIS and stakeholders. As this report is being finalized, USCIS has not yet taken any action with regard to the test redesign implementation as initially proposed in the Federal Register in December 2022. USCIS has released a new edition of the Form N-400 and instructions that resolves some stakeholders' concerns. Even so, the agency can take other steps to demonstrate its continued commitment to reducing barriers to naturalization.

The CIS Ombudsman recommends USCIS take the following actions to standardize the understanding and speaking assessment:

1. *Stop the practice of using questions from Part 9 of Form N-400, Application for Naturalization (April 1, 2024 edition) to assess an applicant's understanding and speaking of English and use instead the personal information requested in Parts 1 to 8.* After the officer determines the applicant has established they are able to understand and speak English in "ordinary usage," the officer can still ask questions from Part 9 to assess whether the applicant meets all the other eligibility requirements for naturalization. Under this approach, the applicant's ability to respond to the more complex eligibility questions (such as those about good moral character) would not be part of the English assessment.
2. *Clarify the USCIS Policy Manual to allow applicants to use translation and interpretation services during the naturalization interview if:*
  - a. The applicant has passed the understanding and speaking English test; and
  - b. The interviewing officer finds that the applicant does not understand the questions related to unusual and complex eligibility issues (such as criminal offenses, fraud concerns, torture, genocide, etc.) after repeating and rephrasing them or that the concepts either do not exist in the applicant's language or lack cultural context.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

3. *Provide study materials that define legal and technical terms used on Form N-400 to the public to prepare for the naturalization eligibility interview.* Access to these materials would decrease how often and the amount of time officers would need to use USCIS' resources to assist applicants during the interview.

4. *Collect more data about:*

- a. When an officer stops the interview at a particular question on the Form N-400 after determining the applicant was unable to understand or speak English, and
- b. Test passage rates by field offices.

USCIS can use the collected data to identify changes needed in administration of the English test. USCIS can also analyze the data to determine when it needs to update the English test, training and materials provided to officers, as well as study materials for the public. The agency can also use it to train officers when there are wide discrepancies in pass rates. The collected data will also help USCIS explain the need for the changes to stakeholders. In addition, the agency and stakeholders can use this information to identify trends in English test performance.

5. *Increase transparency by posting collected data on the USCIS website.* Managing naturalization applications in ELIS allows USCIS to collect more information about the process than the agency could in prior systems. USCIS should fully employ the information ELIS provides by sharing it with the public who would then become more familiar with the process and the test, reducing anxieties. This increased transparency by the agency would help complete the cycle of integration for eligible applicants.

## Conclusion

The English speaking and understanding test has not yet been revised as part of USCIS' efforts to develop a testing process that is uniform, fair, and meaningful. While the idea behind USCIS' most recent attempt to redesign the test has merit, the execution has not been transparent, especially in articulating why the current testing process is insufficient. By considering the recommendations referenced in this article, USCIS could provide a better standardized English speaking and understanding assessment, respond to stakeholder feedback, and reduce potential barriers to U.S. citizenship.



## USCIS' Prioritization Dilemmas:

### Lessons from the Form I-601A Backlog

**Responsible Office:** Service Center Operations Directorate

#### Introduction

Operating with limited resources and significant existing and new workloads, U.S. Citizenship and Immigration Services (USCIS) continuously grapples with difficult decisions regarding which immigration benefits adjudications to prioritize. These decisions are often influenced by factors outside the agency's immediate control. While some workloads can be streamlined by automating certain tasks, other workloads expose the current limitations of that automation, forcing the agency to reallocate adjudicative resources

accordingly. Although prioritizing certain forms over others may appear inherently unfair, it is an unfortunate reality necessary to navigate competing priorities.

For example, some immigration benefits involve situations that are less urgent by nature, whether for legal or operational reasons. The backlog of Forms I-601A, *Application for Provisional Unlawful Presence Waiver*, however, serves as a stark reminder of the consequences of prolonged deprioritization. Initially intended to streamline certain inadmissibility waiver requests, the Form I-601A's current average wait time for a decision is nearly 4 years.

These processing delays have led to a costly and protracted dilemma, leaving families in limbo, increasing litigation against USCIS, and driving up adjudication expenses. While the agency appears committed to addressing these challenges, the backlog highlights the importance of preventing non-priority backlogs from spiraling out of control.

## The Form I-601A Provisional Waiver Process

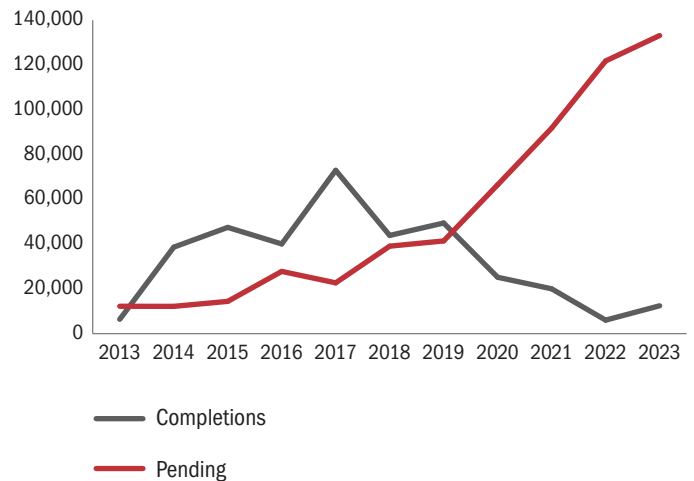
The USCIS provisional waiver process allows certain individuals who are ineligible for adjustment of status in the United States due to unlawful presence to apply for a provisional waiver of this ground of inadmissibility before leaving the country to seek consular processing of their immigrant visa.<sup>156</sup> The purpose of the provisional waiver is to minimize the time individuals are separated from their U.S.-based families while their visa applications are processed abroad,<sup>157</sup> thereby promoting family unity and streamlining immigrant visa processing while reinforcing the narrow criteria for such a waiver.<sup>158</sup> Applicants must demonstrate extreme hardship to spouses or parents who are U.S. citizens or lawful permanent residents (LPRs) and that, given all the facts of their situation, USCIS should approve their case.<sup>159</sup> By addressing the waiver application while the applicant is still in the United States, applicants can depart the country with more predictable timelines for visa processing and more certainty they will be allowed to return after their consular interview. USCIS' Service Center Operations Directorate (SCOPS) is responsible for adjudicating all Forms I-601A.

## The Emergence of a Backlog

Form I-601A processing delays have overshadowed the intended administrative efficiencies created by this process. Figure 4.1 demonstrates a significant decline in the completion of Form I-601A applications since Fiscal Year (FY) 2020. For instance, in the 4 fiscal years preceding FY 2020, USCIS completed an average of approximately 51,300 applications per fiscal year. However, from FY 2020 through FY 2023, only about 16,000 applications were completed per fiscal year on average, with just 6,064 completions in FY 2022.

**Figure 4.1**

**Form I-601A Completions and Pending FY 2013–FY 2023**



Source: USCIS Web page, "Immigration and Citizenship Data;" <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (accessed May 16, 2024).

The decrease in completions has led to increases in processing times. Median processing times for Form I-601A soared from 4.5 months in FY 2018 to 43 months in FY 2023,<sup>160</sup> representing a growth of more than 800 percent, far exceeding all other form types during the same period.

Meanwhile, as demonstrated by Figure 4.2, Form I-601A receipts have steadily declined since peaking in FY 2017, a year in which USCIS completed more Forms I-601A than it received. A rapid increase in processing times when there are fewer new filings implies USCIS shifted its focus to other forms, resulting in a significant backlog for this workload.

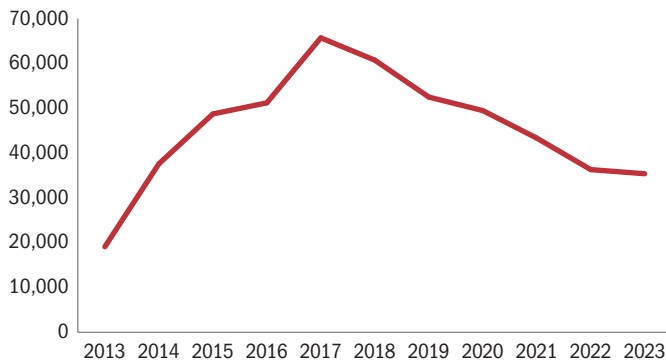
<sup>156</sup> Generally, individuals who are in the U.S. seeking permanent resident status have two options: they can either get an immigrant visa abroad through "consular processing" with the Department of State (DOS) or they can apply to adjust their status to that of a permanent resident with USCIS if they meet certain requirements. Those who are in the U.S. without having been inspected and admitted or paroled are typically ineligible to adjust their status here. Instead, they must leave the country and go through consular processing. However, because these individuals are present in the U.S. without proper authorization, leaving may trigger a ground of inadmissibility based on the accrual of unlawful presence. For further information, see USCIS Web page, "Unlawful Presence and Inadmissibility" (June 24, 2022); <https://www.uscis.gov/laws-and-policy/other-resources/unlawful-presence-and-inadmissibility> (accessed May 6, 2024).

<sup>157</sup> Without the Form I-601A process, individuals would need to file the Form I-601, Application for Waiver of Grounds of Inadmissibility, after leaving the country, attending their interview at a U.S. embassy or consulate, and having the consular officer determine that they are inadmissible. They would then need to stay outside the United States, separated from their family, until USCIS adjudicates their Form I-601 and notifies the consular officer of the decision. As this report is being finalized, the processing time for the Form I-601 is 23.5 months. See USCIS Web page, "Case Processing Times," <https://egov.uscis.gov/processing-times/> (accessed May 6, 2024).

<sup>158</sup> See "Expansion of Provisional Unlawful Presence Waivers of Inadmissibility," 81 Fed. Reg. 50244 (July 29, 2016).

<sup>159</sup> See 8 C.F.R. § 212.7(e)(3)-(4). See also 1 USCIS Policy Manual, Pt. E, Ch. 8; <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-8> (accessed May 6, 2024).

<sup>160</sup> USCIS Web page, "Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year" (Feb. 28, 2024); <https://egov.uscis.gov/processing-times/historic-pt> (accessed May 6, 2024).

**Figure 4.2****Form I-601A Receipts FY 2013-FY 2023**

Source: USCIS Web page, "Immigration and Citizenship Data," <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (accessed May 16, 2024).

### Reprioritizing Form I-601A

In the beginning of FY 2020, USCIS faced severe budget constraints and resource challenges. The fee-funded agency was operating on an outdated fee structure, providing services at below cost. Faced with difficult decisions regarding competing priorities, USCIS is often required to reallocate resources from certain workloads to address other priorities.<sup>161</sup>

The beginning of the COVID-19 pandemic and an enjoined new fee rule worsened USCIS' financial problems.<sup>162</sup> Budget cuts and a hiring freeze severely impacted how many cases USCIS could adjudicate.<sup>163</sup> Employees who left USCIS, including 1,000 contract support staff, could not be replaced during this timeframe.<sup>164</sup>

At the same time, demand for USCIS' services increased, particularly in humanitarian-based programs. For example, in FY 2023, USCIS received approximately 455,000 asylum applications, compared to approximately 61,000 in FY 2021 and 195,000 in FY 2022.<sup>165</sup> Although SCOPS does not handle asylum applications, it

processes employment authorization applications filed by asylum applicants and their dependent family members.<sup>166</sup>

USCIS must constantly consider factors such as statutory or regulatory timeframes,<sup>167</sup> numerical limitations,<sup>168</sup> court mandates,<sup>169</sup> the urgency of certain forms,<sup>170</sup> and each administration's policy goals<sup>171</sup> when determining which forms to prioritize. The fluid nature of these competing priorities often forces the agency to react by reassigning limited resources. Ultimately, USCIS is in the best position to determine how to allocate its resources and give proper weight to the various factors that are within its control. Regardless of justification, however, these decisions have ripple effects and additional human and financial costs that eventually must be addressed.

### Calculating the Costs of Deprioritization

The backlog's ramifications include families in limbo, more litigation against USCIS, and increased adjudication costs. Although waiver applicants may remain in the United States while their Form I-601A applications are pending, the processing delays stall their efforts to become LPRs, along with the stability and pathway to U.S. citizenship this status affords. There are no ancillary benefits associated with this legal process to achieve permanent residency, such as employment authorization. Without some other immigration

<sup>166</sup> Id. In FY 2023, USCIS received approximately 802,800 applications for initial employment authorization based on a pending asylum application. For comparison, USCIS received approximately 263,000 applications for employment authorization based on a pending asylum application in FY 2022 and 214,000 applications in FY 2021.

<sup>167</sup> For example, USCIS must process initial applications for employment authorization based on pending asylum applications within 30 days. See 8 C.F.R. § 208.7(a)(1).

<sup>168</sup> For example, in FY 2022, USCIS collaborated with DOS to prioritize the processing and adjudication of employment-based adjustment of status applications and underlying petitions to use 281,507 employment-based visas, more than double the typical annual total. USCIS Web page, "Employment-Based Adjustment of Status FAQs" (May 20, 2024); <https://www.uscis.gov/green-card/green-card-processes-and-procedures/fiscal-year-2023-employment-based-adjustment-of-status-faqs#:> (accessed June 25, 2024). See also Letter from USCIS Director Ur Jaddou to Sen. Tillis (July 7, 2022); [https://www.uscis.gov/sites/default/files/document/foia/Employment\\_based\\_visas-Senator\\_Tillis.pdf](https://www.uscis.gov/sites/default/files/document/foia/Employment_based_visas-Senator_Tillis.pdf) (accessed May 6, 2024).

<sup>169</sup> See, e.g., USCIS Web page, "USCIS Class Action, Settlement Notices and Agreements" (Mar. 14, 2024); <https://www.uscis.gov/laws-and-policy/other-resources/uscis-class-action-settlement-notices-and-agreements> (accessed May 6, 2024).

<sup>170</sup> For example, the CIS Ombudsman has previously written about USCIS' decision to deprioritize Form I-751 petitions. Conditional permanent residents with pending Form I-751 petitions may obtain evidence of their status while their petitions are pending, and the rights, privileges, responsibilities, and duties that apply to all other lawful permanent residents apply equally to conditional residents. See CIS Ombudsman's Annual Report 2021, p. 24–38.

<sup>171</sup> See, e.g., Department of Homeland Security (DHS) Web page, "Uniting for Ukraine" (Apr. 28, 2023); <https://www.dhs.gov/ukraine> (accessed May 6, 2024), USCIS Web page, "Processes for Cubans, Haitians, Nicaraguans, and Venezuelans" (May 18, 2023); <https://www.uscis.gov/CHNV> (accessed May 6, 2024). See also "Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants," 89 Fed. Reg. 24628, 24637–24638 (Apr. 8, 2024).

<sup>161</sup> See CIS Ombudsman's Annual Report 2022, p. 2.

<sup>162</sup> See *Immigrant Legal Res. Ctr. v. Wolf*, 491 F. Supp. 3d 520, 549 (N.D. Cal. 2020).

<sup>163</sup> See USCIS Web page, "Frequently Asked Questions on the USCIS Fee Rule," <https://www.uscis.gov/forms/filing-fees/frequently-asked-questions-on-the-uscis-fee-rule> (accessed June 6, 2024).

<sup>164</sup> See USCIS, "Fiscal Year 2022 Progress Report," p. 11 (Dec. 2022); [https://www.uscis.gov/sites/default/files/document/reports/OPA\\_ProgressReport.pdf](https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf) (accessed June 6, 2024).

<sup>165</sup> See USCIS Web page, "Immigration and Citizenship Data," <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (accessed May 6, 2024).

status or protection that gives these applicants work authorization, they cannot seek lawful employment in the United States.

Furthermore, the prolonged Form I-601A processing delays, like other such delays, have led to a notable surge in lawsuits. The number of mandamus complaints filed, which seek to compel USCIS to act, have rapidly increased since FY 2021.<sup>172</sup> These legal actions sometimes involve multiple plaintiffs and strain USCIS resources. Mandamus lawsuits generally require USCIS' immediate attention to respond by the court-ordered deadline. This litigation also presents a paradox for USCIS: upon receiving a mandamus, it must prioritize its response and allocate finite resources to justify why the associated applications are not considered priorities.

These lawsuits also add to the overall cost of the Form I-601A workload, which the filing fees do not fully cover. The Form I-601A filing fees remained at \$630 from October 24, 2016, through April 1, 2024. However, the costs of adjudication significantly increased during this same period. In 2023, USCIS initially proposed raising the Form I-601A filing fee to \$1,105, which would have allowed it to recover the full costs of adjudication.<sup>173</sup> Although this proposed fee was not ultimately adopted,<sup>174</sup> it underscores the escalating expenses associated with the backlog. Despite this, USCIS staffing models fail to consider backlog costs, and adjustments to filing fees ultimately do not provide the agency with the resources necessary to eliminate the backlog.<sup>175</sup> Without direct appropriations from Congress, the agency continues to use premium processing fees, a service that requires prioritization and ensuring that non-premium cases are not adversely impacted, to partly pay for its backlog reduction efforts.<sup>176</sup>

Adding to these costs is the complexity of adjudicating Form I-601A. According to USCIS, it takes an immigration officer approximately 3 hours to complete one Form I-601A.<sup>177</sup> While USCIS is leveraging

automation to streamline other workloads,<sup>178</sup> the current technology may not be well-suited for more complex adjudications that require a discretionary analysis. Form I-601A adjudication requires officers to engage in substantial analysis: they must identify additional grounds of inadmissibility, evaluate extreme hardship to a qualifying relative, and determine whether the applicant warrants a favorable exercise of discretion. These decisions require meticulous review of the applicant's entire immigration record, some spanning decades, which is unlikely to lend itself to automation. While USCIS may increase officer efficiency through training, there is no near-term widescale technological solution to streamlining this workload, leading to ongoing cost challenges.

Over time, the substantial expenses this backlog incurs end up challenging how much deprioritizing certain benefit requests actually helps USCIS overall. There is always a juncture where the agency must reassess its priorities, especially those that seem less urgent. A thorough examination of the associated costs, both in terms of financial expenses and broader policy implications, may underscore the need for recalibration.

### *Establishing a New USCIS Service Center to Help Address the Form I-601A Backlog*

After reviewing its processing times, USCIS determined it needed to give greater attention to certain humanitarian-based benefits, notably Form I-601A.<sup>179</sup> This realization contributed to the agency's establishment in early 2023 of the Humanitarian, Adjustment, Removing Conditions, and Travel Documents (HART) Service Center—a virtual facility aimed at improving adjudication of and reducing processing delays for four form types, including Form I-601A.<sup>180</sup> Once fully staffed, the HART Service Center seeks to achieve a 12-month processing time for most Form I-601A applications by the end of FY 2025, with approximately 146 employees dedicated exclusively to this task.<sup>181</sup>

<sup>172</sup> See Transactional Records Access Clearinghouse Report, "Immigration Processing Delays Prompt Record Number of Mandamus Lawsuits in Federal Court," (May 15, 2023); <https://trac.syr.edu/reports/717/> (accessed June 6, 2024).

<sup>173</sup> "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 88 Fed. Reg. 402, 451 (Jan. 4, 2023).

<sup>174</sup> In its final fee rule, USCIS determined that limits were necessary and revised the Form I-601A filing fee to \$795. "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 89 Fed. Reg. 6194, 6324 (Jan. 31, 2024).

<sup>175</sup> CIS Ombudsman Recommendation 63, "The Challenges of the Current USCIS Fee Setting Structure" (June 15, 2022); [https://www.dhs.gov/sites/default/files/2022-06/CIS%20OMBUDSMAN\\_2022\\_FEE\\_FOR\\_SERVICE\\_RECOMMENDATION\\_FINAL.pdf](https://www.dhs.gov/sites/default/files/2022-06/CIS%20OMBUDSMAN_2022_FEE_FOR_SERVICE_RECOMMENDATION_FINAL.pdf) (accessed Apr. 5, 2024).

<sup>176</sup> "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 88 Fed. Reg. at 415. See also Continuing Appropriations Act, 2021 and Other Extensions Act, § 4102, Pub. L. No. 116-159; 8 U.S.C. § 1356 (2020).

<sup>177</sup> "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 88 Fed. Reg. at 448.

<sup>178</sup> "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 88 Fed. Reg. at 530. See also CIS Ombudsman's Annual Report 2022, p. 10.

<sup>179</sup> USCIS News Alert, "USCIS Opens the HART Service Center" (Mar. 30, 2023); <https://www.uscis.gov/sites/default/files/document/notices/USCISOpensTheHumanitarianAdjustmentRemovingConditionsandTravelDocumentsHARTServiceCenter.pdf> (accessed May 6, 2024).

<sup>180</sup> See Letter from USCIS Director Ur Jaddou to Cris Ramón (Oct. 11, 2023); <https://www.uscis.gov/sites/default/files/document/foia/ProvisionalWaiverProgramandCancellationofRemoval-Ram%C3%B3n.pdf> (accessed May 6, 2024).

<sup>181</sup> The HART Service Center will eventually have approximately 480 Federal positions. In its first year (Jan. 2023 to Jan. 2024), the HART Service Center was approximately 86 percent staffed, and is on target to meet its FY 2024 staffing goal of being 95–98 percent staffed. Information provided during USCIS National Engagement, "HART Service Center" (Mar. 27, 2024); <https://www.uscis.gov/sites/default/files/document/outreach-engagements/HumanitarianAdjustmentRemovingConditionsandTravelDocumentsServiceCenterOne-YearAnniversaryEngagement.pdf> (accessed May 6, 2024).

While attaining this ambitious goal will take USCIS time,<sup>182</sup> as new employees must be onboarded and trained,<sup>183</sup> allocating additional resources to the Form I-601A workload has already produced noticeable results. The HART Service Center completed approximately 13,200 cases in the first quarter of FY 2024, more than double the total completions in FY 2022.<sup>184</sup>

The dedicated focus on this workload is poised to enable the agency to identify further efficiencies, thereby enhancing the quality and consistency of adjudications. The permanent transition to remote adjudications, which will help to increase efficiencies through digitization and other procedures,<sup>185</sup> should also aid in attracting and retaining employees.<sup>186</sup> Moreover, insulating the Form I-601A workload from other competing priorities could minimize the risk of it being deprioritized in the future.

### ***Moving Forward: Harnessing the Utility of the HART Service Center Concept***

As USCIS navigates the complexities of prioritization, lessons learned from the Form I-601A backlog and implementation of the HART Service Center underscore the need for more proactive measures to address competing priorities effectively. The following lessons highlight key strategies that USCIS should consider moving forward:

- **Lesson 1:** Prolonged deprioritization of certain forms can result in disproportionate drawbacks compared to benefits. The overdue review of Form I-601A processing delays that contributed to the creation of the HART Service Center recognized this.

**Moving Forward:** USCIS should regularly examine the costs of prioritization decisions and take proactive measures to prevent backlogs from escalating. Establishing internal metrics that prompt these reviews, such as median processing times exceeding a certain threshold, would encourage the agency to evaluate the effects of its decisions and take action to mitigate potential worsening of processing times for certain deprioritized forms.

- **Lesson 2:** Forms that are repeatedly deprioritized may ultimately need to be shielded from competing priorities. The limited number of forms currently adjudicated at the HART Service Center reduces the risk of Forms I-601A being sidelined due to higher priorities.

**Moving Forward:** Maintaining dedicated resources for Form I-601A processing is essential for backlog reduction of this product line as well as others that are impacted. If USCIS can successfully prevent its Form I-601A adjudicators from being diverted to address other pressing priorities until this workload is under better control, the HART Service Center model could offer a valuable framework for addressing similar prolonged processing delays for other forms that have been consistently deemed as low priority and have concrete customer impacts. When combined with periodic reviews of prioritization decisions, this strategy may ensure that certain forms receive the necessary attention needed for meaningful backlog reduction.

- **Lesson 3:** Establishing a virtual service center with a remote workforce should facilitate progress towards fully electronic filing and digital processing capabilities. In addition, the HART Service Center has demonstrated the advantage of this approach in attracting and hopefully retaining employees.<sup>187</sup>

**Moving Forward:** Continue offering remote opportunities to address similar backlogs, including those benefit requests where an in-person interview is discretionary. Even in a hybrid work environment, such opportunities may attract both new and current employees seeking more workplace flexibility. While

<sup>182</sup> For example, despite completing more cases, Form I-601A processing times actually increased during the HART Service Center's first year of operations, from 39.9 months in January 2023 to 43.5 months in January 2024. Information provided by USCIS during USCIS National Engagement, "HART Service Center" (Mar. 27, 2024); <https://www.uscis.gov/sites/default/files/document/outreach-engagements/HumanitarianAdjustmentRemovingConditionsandTravelDocumentsServiceCenterOne-YearAnniversaryEngagement.pdf> (accessed May 6, 2024).

<sup>183</sup> All new adjudicators are required to complete 6 weeks of basic immigration training. As of March 27, 2024, 65 HART Service Center adjudicators have attended this training and 53 were scheduled to attend an upcoming class. *Id.* See also CIS Ombudsman Recommendation 63, "The Challenges of the Current USCIS Fee Setting Structure" (June 15, 2022) p. 12; [https://www.dhs.gov/sites/default/files/2022-06/CIS%20OMBUDSMAN\\_2022\\_FEE\\_FOR\\_SERVICE\\_RECOMMENDATION\\_FINAL.pdf](https://www.dhs.gov/sites/default/files/2022-06/CIS%20OMBUDSMAN_2022_FEE_FOR_SERVICE_RECOMMENDATION_FINAL.pdf) (accessed Apr. 5, 2024).

<sup>184</sup> USCIS Web page, "Immigration and Citizenship Data, All USCIS Application and Petition Form Types (Fiscal Year 2024, Quarter 1" (Mar. 21, 2024); [https://www.uscis.gov/sites/default/files/document/data/quarterly\\_all\\_forms\\_fy2024\\_q1.xlsx](https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q1.xlsx) (accessed May 6, 2024).

<sup>185</sup> For example, SCOPS is currently digitizing the Form I-601A workload to enable greater processing efficiencies and flexibilities. See USCIS Web page, "HART Service Center – Frequently Asked Questions" (Mar. 27, 2024); <https://www.uscis.gov/sites/default/files/document/questions-and-answers/HumanitarianAdjustmentRemovingConditionsandTravelDocumentsHARTServiceCenter-FAQs.pdf> (accessed June 6, 2024).

<sup>186</sup> "Telework and other workplace flexibilities are key tools for recruiting high-quality and geographically dispersed candidates who may not otherwise have access to specific industries or career opportunities. Agencies continue to recognize that telework is an alluring non-monetary incentive for attracting talent to Federal service... Telework can also be a useful tool for retaining high-performing employees." U.S. Office of Personnel Management Report to Congress, "Status of Telework in the Federal Government" (Dec. 2023), p. 26–27; <https://www.opm.gov/telework/documents-for-telework/2023-report-to-congress.pdf> (accessed May 6, 2024).

<sup>187</sup> The HART Service Center is on target to meet its FY 2024 staffing goal of being 95–98 percent staffed roughly 21 months after initiating operations in January 2023. In contrast, despite aggressive recruitment efforts to fill vacancies in FY 2023, the Asylum Division experienced an increase in its vacancy rate for asylum officers. For the HART Service Center staffing numbers, see USCIS National Engagement, "HART Service Center" (Mar. 27, 2024); <https://www.uscis.gov/sites/default/files/document/outreach-engagements/HumanitarianAdjustmentRemovingConditionsandTravelDocumentsServiceCenterOne-YearAnniversaryEngagement.pdf> (accessed May 6, 2024). For the Asylum Division staffing numbers, see USCIS Asylum Division Quarterly Stakeholder Meetings (Dec. 13, 2022, and Sep. 19, 2023); talking points posted to <https://www.uscis.gov/records/electronic-reading-room> (accessed May 6, 2024).

digitization efforts are necessary to enable this approach, expanding online filing to additional form types, such as the Form I-601A, will optimize the agency's remote resources.<sup>188</sup>

Despite its best efforts, USCIS continually faces difficult choices on which forms to prioritize, often contending with a myriad of competing tasks. While some factors that influence these decisions may be beyond its control, USCIS retains the ability to intervene before backlogs reach critical levels. The establishment of the HART Service Center in response to the Form I-601A backlog highlights positive actions the agency can take. By applying lessons learned and demonstrating continued innovation, USCIS can effectively mitigate the most deleterious consequences of deprioritization.

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<sup>188</sup> USCIS has not established a timeline for enabling online filing of Form I-601A. See USCIS Web page, "HART Service Center – Frequently Asked Questions" (Mar. 27, 2024); <https://www.uscis.gov/sites/default/files/document/questions-and-answers/HumanitarianAdjustmentRemovingConditionsandTravelDocumentsHARTServiceCenter-FAQs.pdf> (accessed May 6, 2024).

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## Beyond the Basics: Advancing the Agency to Maximize Efficiency

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In the meantime, USCIS' work continues. As an agency that processes millions of transactions a day, it continually faces operational challenges to ensure the work moves smoothly. At the same time, the agency must at all times recognize that the work in which it engages involves the lives and livelihoods of millions of stakeholders—noncitizens, employers, U.S. citizen sponsors and relatives, academic institutions, and more.

The innovations the agency has fostered in the past few years, from its digital and online tools to help customers become more self-sufficient, to expanding and streamlining its document intake capabilities, to enacting operational and policy changes to enhance efficiency and integrity, demonstrate both the willingness to grow and the necessity of growth to meet demand.

The following studies offer insight into some of the areas where the agency can systemically refocus efforts to ensure it can continue to meet the mission as efficiently as possible while continuing to work through its ongoing caseload challenges. These areas address recurring operational difficulties USCIS has worked hard to decrease, but ones where challenges continue notwithstanding those efforts. Looking at these from different angles presents opportunities to reconsider traditional approaches and potentially improve outcomes.

At its core, the USCIS mission is one of service to the customer and the country, ensuring the right benefit is provided to the right person at the right time and in the right manner. While not easy, it is achieved every day. These reviews of common operational challenges provide insight into that work while examining ways to improve its delivery.



## *Lost Mail and the Challenges of Delivering USCIS Documents*

**Responsible Offices:** Office of Intake and Document Production, Service Center Operations and Field Operations Directorates

### Introduction

While U.S. Citizenship and Immigration Services (USCIS) has made substantial improvements to deliver the right immigration benefit on time to the right individual, the CIS Ombudsman continues to hear from stakeholders about the impact of undelivered, delayed, or missing USCIS mail. Our office receives daily case assistance requests from individuals and employers seeking to locate

secure identity documents<sup>189</sup> (such as employment authorization documents (EADs), Green Cards, and travel documents) or other notices with critical information. Although the CIS Ombudsman is aware that much of this may be outside of USCIS' control, problems with mail delivery during an immigration case are not uncommon—and more compelling because of the challenges that result.

Delayed or lost notices can lead applicants or petitioners to miss required actions and result in USCIS denying their application or

<sup>189</sup> USCIS issues a variety of secure identity documents that establish a person's identity and immigration status in the United States. 11 USCIS Policy Manual, Pt. A, Ch. 2(A); <https://www.uscis.gov/policy-manual/volume-11-part-a-chapter-2> (accessed Mar. 26, 2024).

petition.<sup>190</sup> In the case of secure identity documents, individuals may face significant difficulties obtaining or renewing other benefits, such as Social Security cards and driver's licenses, as well as starting or continuing employment or traveling abroad. In Fiscal Year (FY) 2023, the USCIS Post-Office Non-Deliverables (PONDS) Unit<sup>191</sup> reported 45,762 EADs, 37,339 Green Cards, and 1,542 travel documents as undeliverable.<sup>192</sup> Over 84,600 individuals did not receive their secure documents.

The CIS Ombudsman first made recommendations on USCIS' mailing issues in 2015.<sup>193</sup> USCIS has since improved and advertised its online customer service tools. This has included providing information on how to contact the U.S. Postal Service (USPS) about undelivered secure identity documents, update mailing addresses with both USPS and USCIS, and to track and report missing documents using a self-service online tool.<sup>194</sup> The agency continues to encourage individuals to set up a USCIS online account so they can file forms online when available, track case information, access notices, and communicate with USCIS.<sup>195</sup> In October 2023, USCIS launched a new self-service tool to allow individuals to update their address with USCIS more easily.<sup>196</sup> But even with these new tools, mail still goes astray, and the CIS Ombudsman believes USCIS can take further steps to improve its mail delivery process.

## Recommendations

To mitigate problems related to mail issues, the CIS Ombudsman recommends that USCIS should:

1. Continue to add forms for online filing and make online notices the default for all individuals.
2. Allow the Contact Center to send an electronic copy via email to all eligible individuals who contact them about a missing notice or request for evidence (RFE).

3. Revisit a "hold for pickup" program for secure identity documents.
4. Provide clear and specific guidance to the public about how and when to submit a change of address request.
5. Encourage individuals to use USPS's *Look Up a ZIP Code* tool to verify their mailing address and to use the USPS-verified address on their application form.
6. Update guidance to require USCIS lockbox data reviewers, Contact Center representatives, officers, and any other USCIS staff verifying an address to use USPS's *Look Up a ZIP Code* tool to update the address to the appropriate format in USCIS systems.
7. Consider issuing digital versions of short-term travel documents such as those authorizing travel for individuals under Temporary Protected Status (TPS) and Consideration of Deferred Action for Childhood Arrivals (DACA) recipients.
8. Send text and email alerts to individuals regarding the delivery of their immigration documents.
9. Renew its working relationship with USPS to allow both agencies to quickly address any issues or delays in the delivery process.

## Current USCIS Mailing Processes

*Mailing Notices and RFEs.* These notices are critical to the immigration process, providing information about required next steps. Currently, USCIS uses different variations of Form I-797, *Notice of Action*,<sup>197</sup> to communicate with customers about any actions they may need to take or actions the agency has taken. USCIS generates notices using an automated system that pulls information from the case management system where the case is pending; USCIS' Office of Intake and Document Production (OIDP) then prints and mails most Form I-797 notices through a centralized printing process.<sup>198</sup>

When an officer needs additional evidence to complete an adjudication, USCIS generally issues an RFE or a Notice of Intent to Deny (NOID).<sup>199</sup> The maximum response time for an RFE or

<sup>190</sup> USCIS denies the benefit request as abandoned if the requestor fails to appear for a required interview or biometrics appointment or fails to provide an original document or other evidence when requested to do so. 1 USCIS Policy Manual, Pt. E, Ch. 9(B)(2); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-9> (accessed Mar. 26, 2024).

<sup>191</sup> The management of secure identity documents, including storage, remailing, and destruction is performed by the PONDS Unit at the Lee's Summit Production Facility established by the USCIS Office of Intake and Document Production.

<sup>192</sup> Information provided by USCIS (Mar. 28, 2024).

<sup>193</sup> CIS Ombudsman's Annual Report 2015, pp. 79–83.

<sup>194</sup> USCIS Web page, "How to Track Delivery of Your Notice or Secure Identity Document (or Card)" (Apr. 4, 2024); <https://www.uscis.gov/forms/filing-guidance/how-to-track-delivery-of-your-notice-or-secure-identity-document-or-card> (accessed Apr. 17, 2024).

<sup>195</sup> USCIS Web page, "Benefits of a USCIS Account" (Dec. 10, 2020); <https://www.uscis.gov/file-online/benefits-of-a-uscis-online-account#:~:text=The%20best%20reasons%20to%20get%20a%20USCIS%20online,your%20case%2C%20but%20they%20cannot%20use%20your%20account> (accessed on Apr. 2024).

<sup>196</sup> USCIS News Alert, "USCIS Launches New Online Change of Address Tool" (Oct. 12, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-launches-new-online-change-of-address-tool> (accessed Mar. 26, 2024).

<sup>197</sup> USCIS Web page, "Form I-797: Types and Functions" (July 29, 2022); <https://www.uscis.gov/forms/filing-guidance/form-i-797-types-and-functions> (accessed Mar. 24, 2024).

<sup>198</sup> Service Centers use the Enterprise Correspondence Handling Online (ECHO) system to generate RFEs and NOIDs; RFEs and NOIDs (except those for premium processing cases) are now printed through a centralized printing process, providing significantly more flexibility for routing and mailing. Field offices use the Electronic Immigration System (ELIS) to generate much of the correspondence that is sent to individuals. In the case where *ad hoc* or legacy systems are used in the adjudication process, staff also use the ECHO correspondence system. If a notice needs to be printed locally, it is pushed into production in the appropriate system (CLAIMS3 or ELIS) using the Enterprise Print Manager System (EPMS) which is the overall correspondence generator system. Information provided by USCIS (Mar. 28, 2024).

<sup>199</sup> 1 USCIS Policy Manual, Pt. E, Ch. 6(F); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6> (accessed Mar. 26, 2024).

NOID is 84 days; officers have the discretionary authority to reduce the response timeframe on a case-by-case basis, but they cannot extend the response time.<sup>200</sup> Since USCIS sends RFEs and NOIDs via regular mail, it adds 3 days to the response deadline to account for the time in transit.<sup>201</sup> Typically, the mailing address is pulled from the associated application.<sup>202</sup> Officers may change the mailing address, such as if the applicant submitted a change of address or when the mailing address must comply with safety and sensitivity protections.<sup>203</sup>

**Mailing Secure Documents.** Once an officer approves an application for a secure identity document such as a Green Card or EAD, ODP prints and mails the document from a designated card production facility.<sup>204</sup> In FY 2023 ODP produced approximately 5.3 million Green Cards and EADs.<sup>205</sup> Since USCIS implemented a Secure Mail Initiative (SMI) in 2011, the agency has been using USPS Priority Mail to mail, track, and confirm delivery of cards and certain travel documents.<sup>206</sup> Individuals obtain a USPS tracking number through USCIS' Case Status Online tool,<sup>207</sup> which displays the most recent action taken on a case. When USPS takes action and records it, it creates a Scan Event Code that updates USCIS case management systems and generates a specific message in the Case Status Online tool.<sup>208</sup> For example, when a card is delivered, the tool will display:

*"The USPS reported that your new card was delivered on (Date), directly to the address we had on file. The USPS tracking number assigned was (Number). You can use this number at [USPS Tracking] to view the detailed tracking information recorded by USPS for the mailed card. If you did*

*not receive your card, or have any questions, please call our customer service at 1-800-375-5283."*

If USPS does not update the tracking information to "undelivered" and the document is not returned to USCIS, the applicant may encounter difficulties when attempting to obtain information about the location of their document. Also, USPS tracking numbers expire after 120 days.<sup>209</sup> If an individual cannot resolve the delivery status of their document with USPS or USCIS within this time frame, they may have no other option but to reapply for a new one and pay the application fee. While USPS has developed some new tools such as the Informed Delivery Program,<sup>210</sup> an image preview of incoming mail, as well as status updates for incoming and outbound packages, not all secure documents are delivered on time to the intended recipient.

**Change of Address Request.** Almost all noncitizens are required to report a change of address to USCIS within 10 days.<sup>211</sup> To do so, they submit Form AR-11, *Alien's Change of Address Card*, through their online account or by mail. However, while Form AR-11 satisfies a legal requirement, it does not automatically update the applicant's address in USCIS' case management systems.<sup>212</sup> USCIS recommends that individuals with a pending application or petition update their mailing address by calling the Contact Center or by submitting a service request (referred to as an e-Request or a Service Request Management Tool, or SRMT)<sup>213</sup> for each pending application or petition.

In October 2023, USCIS launched a new Enterprise Change of Address (E-COA) self-service tool to allow most customers with pending applications or petitions to update their address with USCIS more easily. With the E-COA tool, they can update their address in near real time.<sup>214</sup> This new tool is expected to eliminate

<sup>200</sup> 8 CFR § 103.2(b)(8)(iv). Officers may exercise their discretion to consider late responses to RFEs if they determine the circumstances warrant it. See 1 USCIS Policy Manual Pt. E, Ch. 6(F)(3); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6> (accessed Mar. 26, 2024).

<sup>201</sup> This means that USCIS must receive the RFE response no later than 87 days after USCIS mails the RFE. See 1 USCIS Policy Manual Pt. E, Ch. 6(F)(3); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6>.

<sup>202</sup> Information provided by USCIS (Mar. 28, 2024).

<sup>203</sup> USCIS Policy Alert, "Safe Address and Special Procedures for Persons Protected by 8 U.S.C. 1367" (Apr. 11, 2023); <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230411-SafeAddress.pdf> (accessed Mar. 26, 2024).

<sup>204</sup> USCIS Web page, "Office of Intake and Document Production" (June 16, 2023); <https://www.uscis.gov/about-us/organization/directorates-and-program-offices/management-directorate/office-of-intake-and-document-production> (accessed Mar. 26, 2024).

<sup>205</sup> Information provided by USCIS (Mar. 26, 2024).

<sup>206</sup> Certain travel documents, such as a Refugee Travel Document (Form I-571) or Travel Booklet, are secure identity documents USCIS issues to eligible individuals with refugee or asylum status and to lawful permanent residents who obtained their Green Cards based on their refugee or asylee status. USCIS Archive, "USCIS to Begin Using More Secure Mail Delivery Service" (Apr. 27, 2018); <https://www.uscis.gov/archive/uscis-to-begin-using-more-secure-mail-delivery-service> (accessed Mar. 26, 2024).

<sup>207</sup> See USCIS Web page, "Case Status Online;" <https://egov.uscis.gov/> (accessed Apr. 16, 2024).

<sup>208</sup> Information provided by USCIS (Mar. 28, 2024).

<sup>209</sup> Currently, customers using [usps.com](https://usps.com) have limited access to tracking information for non-signature (120 days) and signature items (2 years). USPS News, "Tool provides access to package tracking history" (Feb. 3, 2020); <https://news.usps.com/2020/02/03/for-the-record-3/> (accessed Mar. 26, 2024).

<sup>210</sup> USPS Web page, "Informed Delivery by USPS;" <https://www.usps.com/manage/informed-delivery.htm> (accessed Mar. 26, 2024).

<sup>211</sup> INA § 265(a).

<sup>212</sup> Submitting Form AR-11 by mail remains an alternative for cases where individuals cannot use new tools because of safety and security requirements. USCIS Web page, "Change of Address Procedures for VAWA/T/U Cases and Form I-751 Abuse Waivers" (Apr. 2, 2024); <https://www.uscis.gov/forms/filing-guidance/how-to-change-your-address/change-of-address-procedures-for-vawatu-cases-and-form-i-751-abuse-waivers> (accessed Apr. 16, 2024).

<sup>213</sup> This article uses "SRMT" to refer to these requests. There are two types of SRMTs: 1) If the Contact Center cannot resolve an inquiry during a call, Contact Center staff will create an SRMT and send it to the appropriate USCIS office so the caller can receive a response without having to call again; and 2) An individual can use the USCIS online portal to submit an SRMT regarding a change of address (COA) request; notice, card, or other document that was not received; a case outside normal processing time; request for accommodations; or request for correction of a typographic error. 1 USCIS Policy Manual, Pt. A, Ch. 4(1)(2); <https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-4> (accessed Apr. 30, 2024).

<sup>214</sup> USCIS News Alert, "USCIS Launches New Online Change of Address Tool" (Oct. 12, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-launches-new-online-change-of-address-tool> (accessed Mar. 26, 2024).

the need to update an address in multiple places, fill out an AR-11, or call the Contact Center.<sup>215</sup> Nonetheless, the tool is not currently available to individuals with cases that require a paper-based change of address request<sup>216</sup> or who do not have a pending case with USCIS.

### *Mailing and Delivery Challenges*

*USCIS Notices.* From the initial receipt notice to a decision notice, USCIS notices help individuals understand where they stand in the immigration process and what actions they must take. Even a rejection notice<sup>217</sup> is important because it allows individuals to fix errors and quickly refile their case. Timely receiving USCIS notices allows individuals to respond and prevent unnecessary delays and denials due to abandonment.<sup>218</sup>

Customers with a USCIS online account can download certain copies of receipts, appointment and approval notices, and other official documents related to their immigration cases.<sup>219</sup> However, access to technology, internet connectivity, digital literacy, language barriers, and in some cases confidentiality provisions, can all impact a person's ability to use a USCIS online account. Not all forms can be filed online, and there have been challenges linking paper-filed applications to online accounts. Additionally, an attorney or representative can create their own accounts but cannot access their clients' accounts.<sup>220</sup>

The receipt notice reassures most individuals that their case is underway and establishes the official filing date with USCIS.<sup>221</sup> Despite USCIS' efforts to modernize and enhance accessibility, many individuals depend on conventional paper-based methods and communication through USPS. Submitting their application or petition and receiving a receipt via regular mail is customary for these individuals.<sup>222</sup> Nevertheless, during stakeholder engagements and in response to case assistance requests, the CIS Ombudsman consistently receives feedback from individuals who have not received a receipt notice following their submission to USCIS.

Numerous individuals have encountered difficulties receiving biometrics and interview appointment notifications via mail. Mail delays can result in insufficient time for individuals to make necessary arrangements. Additionally, sometimes individuals do not receive their approval notifications. When they request a duplicate approval notice, USCIS frequently directs them to file Form I-824, *Application for Action on an Approved Application or Petition*.<sup>223</sup> However, Form I-824 presents its own set of operational challenges. In FY 2023, there were 39,957 Form I-824 filings; approximately 4,200 of those filings requested a duplicate approval notice. Not only does this process increase USCIS' workload, requiring a Form I-824 also adds a financial burden on requestors who may not be at fault in not receiving the approval notice.

*RFEs and NOIDs.* The CIS Ombudsman continues to hear from individuals and employers who were issued but did not receive an RFE or NOID. Individuals and their legal representatives who find that USCIS issued an RFE, but who have yet to receive it must call the Contact Center to confirm if an RFE was indeed sent. When Contact Center staff confirms an RFE/NOID was issued, they may be able to email a copy within 24 hours, but they must first escalate the inquiry to a supervisor.<sup>224</sup> If the response is past due but the case is still pending, then the Contact Center staff creates an SRMT as "Non-delivery of RFE/NOID" and forwards it to the office that issued the RFE.<sup>225</sup> Individuals must then wait for the RFE to be re-

<sup>215</sup> USCIS Web page, "How to Change your Address" (Apr. 2, 2024); <https://www.uscis.gov/addresschange> (accessed Apr. 16, 2024).

<sup>216</sup> Submitting Form AR-11 by mail remains an alternative for those specific cases pending with USCIS where newly adapted electronic tools cannot be utilized because of safety and security requirements such as those filed under VAWA/T/U protections. USCIS Web page, "Change of Address Procedures for VAWA/T/U Cases and Form I-751 Abuse Waivers" (Apr. 2, 2024); <https://www.uscis.gov/forms/filing-guidance/how-to-change-your-address/change-of-address-procedures-for-vawatu-cases-and-form-i-751-abuse-waivers> (accessed Apr. 16, 2024).

<sup>217</sup> USCIS will reject applications not properly completed, does not have a valid signature, or does not include the correct fee payment. If the application is rejected, the lockbox facility will send a rejection notice. USCIS Web page, "Lockbox Filing Information" (Nov. 25, 2020); <https://www.uscis.gov/about-us/organization/directorates-and-program-offices/management-directorate/office-of-intake-and-document-production/lockbox-filing-information> (accessed Mar. 26, 2024).

<sup>218</sup> USCIS denies the benefit request as abandoned if the requestor fails to appear for a required interview or biometrics appointment or fails to provide an original document or other evidence when requested to do so. 1 USCIS Policy Manual, Pt. E, Ch. 9(B)(2); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-9> (accessed Mar. 26, 2024).

<sup>219</sup> USCIS Web page, "Benefits of a USCIS Online Account" (Dec. 10, 2020); <https://www.uscis.gov/file-online/benefits-of-a-uscis-online-account> (accessed Mar. 24, 2024).

<sup>220</sup> Id.

<sup>221</sup> The application is not considered properly filed until it has been given a receipt date (stamped to show the actual date of receipt) by the proper location with jurisdiction over the application, including a USCIS Lockbox. 7 USCIS Policy Manual, Pt. A, Ch. 3(B); <https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-3#:~:text=The%20application%20is%20not%20considered%20properly%20filed%20until,the%20applicant%20do%20not%20retain%20a%20filing%20date> (accessed Mar. 24, 2024).

<sup>222</sup> While digital copies are practical, it is not possible for individuals who must present an original document to prove their identity, employment authorization, or immigration status to use them. Because of security features in receipt and approval notices, these are usually required in their original format. The CIS Ombudsman has and will continue to explore with USCIS greater security in digital documents to expand digital use.

<sup>223</sup> Form I-824 is used to request a duplicate approval notice of the application or petition. Instructions for Form I-824, *Application for Action on an Approved Application or Petition*; <https://www.uscis.gov/sites/default/files/document/forms/i-824instr.pdf> (accessed May 15, 2024).

<sup>224</sup> Information provided by USCIS (Mar. 28, 2024).

<sup>225</sup> Id.

mailed and hope the agency will accommodate a late response.<sup>226</sup> When a case is denied due to abandonment for not responding to an RFE/NOID, USCIS often instructs the benefit requestor to file Form I-290B, *Notice of Appeal or Motion*.<sup>227</sup> Having to file an appeal or motion because of a mailing issue creates a barrier that adds significant financial costs and time to the immigration benefit request process.

**EADs and Green Cards.** USCIS mails secure documents to the mailing address listed on the application or petition, unless the applicant requested that USCIS send them to the legal representative on file.<sup>228</sup> One of the most common challenges newly arrived immigrants face is when waiting for USCIS to produce and mail them their Green Card.<sup>229</sup> For many of them, the mailing address on file is often that of a family member, friend, or other temporary housing, so as they wait for their card, these newcomers may move more than once until they find more stable housing. These immigrant visas holders might have to change their mailing address with USCIS often and not be aware of or understand the tools offered by the agency due to unfamiliarity with the processes or language barriers. Similar challenges exist for new arrivals paroled or admitted under other non-immigrant visa categories into the country and who are eligible for employment authorization.<sup>230</sup>

International students studying in the United States also face difficulties receiving their EADs through the postal service. Students frequently change their addresses when moving between dormitories, apartments, or off-campus housing. The need to change their mailing address increases the possibility of a misdelivered or lost EAD, which can delay them from fulfilling their academic

and employment opportunities in the United States.<sup>231</sup> Overall, not receiving a Green Card or EAD in a timely manner impacts an individual's ability to work, access to essential services, and stability due to lack of proof of their newly obtained immigration status.

**Travel Documents.** USCIS issues five types of travel documents that allow individuals with different immigration statuses to travel outside the United States and be eligible for reentry upon their return.<sup>232</sup> The validity periods for TPS holders are short, with one year or until TPS ends; for TPS applicants, it is 90 days or until the end of the designation period.<sup>233</sup> For DACA recipients it is even shorter; USCIS determines the validity period by the specific circumstance for which the requestor is seeking travel authorization.<sup>234</sup>

Individuals cannot track these travel documents because USCIS does not mail them using SMI.<sup>235</sup> When a TPS or DACA travel document goes astray during the mailing process, individuals may lose critical travel authorization time. After USCIS approves one of these forms, the travel authorization details will be updated in the U.S. Customs and Border Protection (CBP) system. Even if an individual's authorized validity period has already commenced in CBP's databases, they must await physical proof of their travel authorization from USCIS before leaving. CBP officers, of course, decide on reentry at the port of entry upon a traveler's return.<sup>236</sup>

<sup>226</sup> While this article focuses on delivery issues regarding USCIS outgoing mail, the CIS Ombudsman also receives case assistance requests from individuals or employers who share proof that their RFE response was delivered before the deadline, but USCIS denies the application or petition for abandonment, stating the individual or employer failed to timely respond to the RFE.

<sup>227</sup> "If the underlying application or petition was denied due to abandonment (for example, failure to respond on time to a request for evidence or a notice of intent to deny), you may file a motion to reopen." USCIS Web page, "Questions and Answers: Appeals and Motions" (May 14, 2024); <https://www.uscis.gov/i-290b> (accessed May 15, 2024).

<sup>228</sup> 11 USCIS Policy Manual, Pt. A, Ch. 2(B); <https://www.uscis.gov/policy-manual/volume-11-part-a-chapter-2> (accessed Mar. 26, 2024).

<sup>229</sup> Individuals that paid the USCIS Immigrant Fee will receive their Green Card in the mail within 90 days after they arrive in the United States. USCIS Web page, "Consular Processing" (July 20, 2023); <https://www.uscis.gov/green-card/green-card-processes-and-procedures/consular-processing#:~:text=Steps%20for%20Consular%20Processing%201%201.%20Determine%20Your,is%20Granted%208%208.%20Receive%20Your%20Green%20Card> (accessed Mar. 26, 2024).

<sup>230</sup> Individuals are likely eligible to apply for an employment authorization document (EAD) to legally work in the United States if: 1) they were recently paroled into the United States and that parole remains valid, or 2) they have applied for asylum and that application has been pending for at least 150 days. USCIS Web page, "I-765, Application for Employment Authorization" (Apr. 4, 2024); <https://www.uscis.gov/i-765#:~:text=ALERT%3A%20You%20are%20likely%20eligible%20to%20apply%20for,has%20been%20pending%20for%20at%20least%20150%20days> (accessed Apr. 16, 2024).

<sup>231</sup> USCIS Web page, "Students and Employment" (Mar. 27, 2024); <https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/students-and-employment> (accessed Apr. 16, 2024).

<sup>232</sup> USCIS Web page, "Travel Documents" (Mar. 21, 2024); <https://www.uscis.gov/green-card/green-card-processes-and-procedures/travel-documents> (accessed Mar. 26, 2024).

<sup>233</sup> Information provided by USCIS (Apr. 6, 2023).

<sup>234</sup> If the advance parole application is approved, the validity dates of the Advance Parole Document will be for the duration of the documented need for travel. Instructions for Form I-131, *Application for Travel Document*; <https://www.uscis.gov/sites/default/files/document/forms/i-131instr.pdf> (accessed Mar. 26, 2024).

<sup>235</sup> USCIS mails Form I-512T, *Authorization for Travel by a Noncitizen to the United States for TPS holders* and Form I-512L, *Authorization for Advance Parole of an Alien into the United States for TPS applicants and DACA recipients*. Information received through CIS Ombudsman case assistance requests (May 14, 2024).

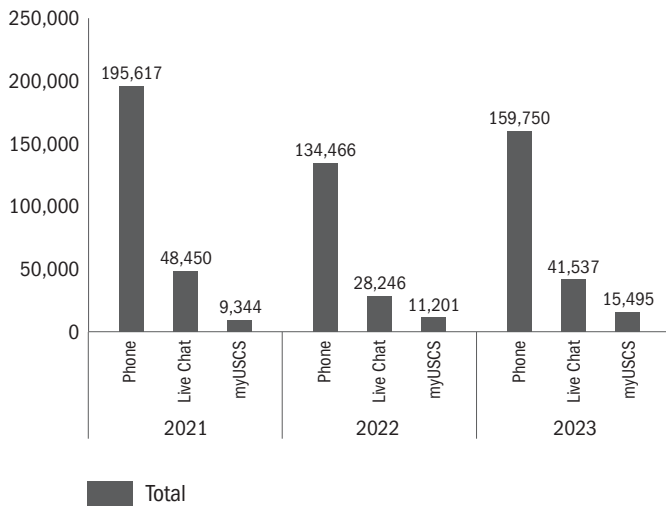
<sup>236</sup> USCIS Web page, "Travel Documents" (Mar. 21, 2024); <https://www.uscis.gov/green-card/green-card-processes-and-procedures/travel-documents> (accessed Mar. 26, 2024). On February 2, 2023, CBP proposed that air carriers participate in its Document Validation Program (DVP). Advance Passenger Information System: Electronic Validation of Travel Documents, 88 Fed. Reg. 7016, 7018 (Feb. 2, 2023). Under the DVP program, CBP cross-references the travel document information provided by the air carrier for a passenger with a valid existing travel authorization in CBP's database, effectively verifying a passenger's status. The DVP enables CBP to use the Advance Passenger Information System to vet the validity of each travel document and provide an electronic response message to participating carriers as a result of that vetting. See CBP Media Release, "CBP Proposes Efforts To Strengthen Aviation Security" (Feb. 2, 2023); <https://www.cbp.gov/newsroom/national-media-release/cbp-proposes-efforts-strengthen-aviation-security> (accessed Mar. 26, 2024).

## Searching for Solutions in the USCIS-USPS Partnership

In FY 2023, USCIS received 216,782 inquiries and created 421,203 SRMTs regarding non-delivery of mail. Additionally, the agency reported 37,339 Green Cards and 45,762 EADs as undeliverable.

**Figure 5.1**

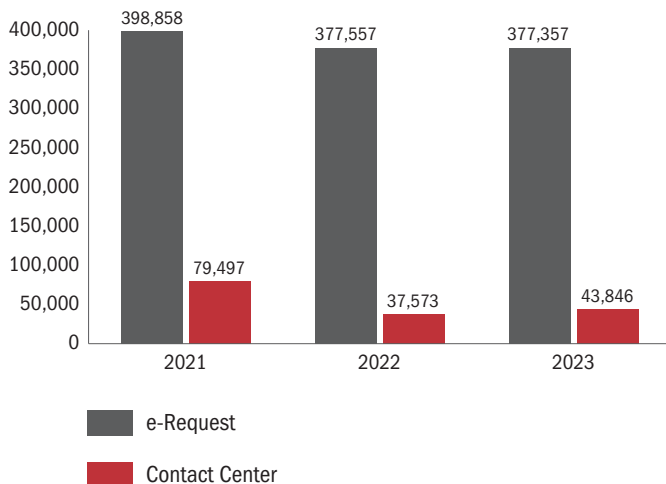
USCIS Non-delivery Inquiries for Fiscal Years 2021–2023



Source: Information provided by USCIS (Mar. 28, 2024).

**Figure 5.2**

USCIS Non-delivery SRMTs for Fiscal Years 2021–2023



Information provided by USCIS (Mar. 28, 2024).

Because USCIS relies on USPS to deliver those documents on time and to the correct address, some delivery issues are outside of USCIS' control. USPS faces its own challenges. A 2021 study conducted by the USPS Office of Inspector General found that increased parcel volume, problems with mail transportation, and staffing shortages affected USPS's ability to process, transport, and deliver mail on time.<sup>237</sup> Although USCIS' delivery issues are not solely a consequence of USPS's challenges, there is still an opportunity for both agencies to work together to address the causes of delayed, lost, or misdelivered documents.

One prime example is mail address validation, which is one of the main reasons USPS returns cards to USCIS as undeliverable.<sup>238</sup> When completing a USCIS form, individuals do not necessarily match their address to USPS's registered database version of that specific address. Something as minor as an additional space or dash may prevent USPS systems from validating a mailing address, which may then prevent delivery. The same goes when individuals enter their address information in the incorrect form fields. While USCIS lockbox facilities manually review possible data entry errors in the address fields, they can only make minor alterations to the information entered by the applicants or petitioners.<sup>239</sup> It is USCIS policy to enter the information "as it is in the form."<sup>240</sup> Therefore, unless applicants and petitioners verify how their mailing address is registered in USPS's *Look Up a ZIP Code* tool,<sup>241</sup> the address on file with USCIS may lead to mailing issues.

When secure identity documents are returned to USCIS as undeliverable, about 80 percent of address issues are resolved by accepting the suggested address shown on USPS's *Look Up a ZIP Code* tool or by confirming a change of address update in USCIS systems.<sup>242</sup> This is a time-consuming manual operation as USCIS' PONDs staff must open, identify, and classify each piece of mail received before starting a verification process.<sup>243</sup> An agreement exists between USPS and USCIS that all undelivered secure identity documents must be returned to PONDs.<sup>244</sup> PONDs staff review all case management systems and change of address data available

<sup>237</sup> USPS Office of Inspector General, "Nationwide Service Performance Report Number 21-120-R21" (Sep. 20, 2021) at 1; <https://www.uspsoig.gov/reports/audit-reports/nationwide-service-performance> (accessed Mar. 26, 2024).

<sup>238</sup> Information provided by USCIS (Apr. 9, 2024).

<sup>239</sup> Lockbox facilities use the Extracting, Modifying, Monitoring, and Architecture (EMMA) system to scan and identify certain form fields that require a human review for confirmation or correction. Information provided by USCIS (Dec. 5, 2023).

<sup>240</sup> Information provided by USCIS (Apr. 9, 2024).

<sup>241</sup> The ZIP Code lookup tool will display the address in USPS standardized format. This may look different than the street address information entered in a form. USPS Web page, "ZIP Code™ — The Basics" (Sep. 28, 2023); <https://faq.usps.com/s/article/ZIP-Code-The-Basics> (accessed on May 8, 2024).

<sup>242</sup> Information provided by USCIS (Apr. 9, 2024).

<sup>243</sup> Id.

<sup>244</sup> PONDs holds undeliverable secure documents for 60 business days. During that time, individuals can request that the document be remailed through USCIS' SMI. Information provided by USCIS (Mar. 28, 2024).

to see if a valid USPS address has been provided or updated. For 60 days, individuals can update their address and cards can be remailed. The PONDS Unit remails between 300 to 600 cards per day.<sup>245</sup>

In 2015, the CIS Ombudsman encouraged USCIS to consider using USPS delivery with signature confirmation.<sup>246</sup> USCIS responded that this practice would have incurred additional costs and did not align with the configuration of the production line. After a card is produced and moves through quality assurance, it is loaded into an automated mail inserter machine. The machine scans the card data, prints the associated address on the USPS Priority Mail envelope, and places the card in the envelope.<sup>247</sup> To affix the signature confirmation request label and complete the signature confirmation form,<sup>248</sup> without changes to the production process, PONDS staff would have to pull the envelopes from the production flow to match

the applicant-provided information, considerably slowing down the processing of all cards.<sup>249</sup>

In 2016, USCIS explored another solution when it planned a “hold for pickup”<sup>250</sup> pilot program for Green Cards based on an approved Form I-90, *Application to Replace Permanent Resident Card (Green Card)*. USCIS was to send an email notifying participating individuals that their cards were available for pickup at a local USPS office.<sup>251</sup> Unfortunately, the pilot program encountered technical and procedural challenges that would have taken a significant amount of time and financial investment.<sup>252</sup> The program also revealed potential customer service issues at local post offices, such as increasing foot traffic with longer waiting lines. While USCIS did not move forward with the program, it has not disregarded the idea of some kind of “hold for pickup” option. As of April 1, 2024, USCIS shared that “if someone applies for an EAD, USCIS will notify them of the decision in writing. If their application is approved, USCIS

<sup>245</sup> Information provided by USCIS (Apr. 9, 2024).

<sup>246</sup> CIS Ombudsman’s Annual Report 2015, p. 83.

<sup>247</sup> Information provided by USCIS (Apr. 9, 2024).

<sup>248</sup> To request a signature to confirm delivery, you must complete USPS’s PS Form 153, attach the barcoded label portion of PS Form 153 to your package, indicate whether you would like to receive a copy of the delivery record (including an image of the recipient’s signature) by fax or by mail, and pay the applicable extra service fee. USPS Web page, “Signature Confirmation” [https://about.usps.com/publications/pub370/pub370\\_v10\\_revision\\_012016\\_tech\\_008.htm](https://about.usps.com/publications/pub370/pub370_v10_revision_012016_tech_008.htm) (accessed Mar. 26, 2024).

<sup>249</sup> This is the same reason why USCIS cannot return the cards to individuals through a courier service such as FedEx or UPS. There is currently no feasible method to match the applicant-provided information or self-addressed courier label to a secure document.

<sup>250</sup> Hold for Pickup is a service that allows mail pieces to be held at a designated post office location for pickup by a specified addressee or designee rather than have a postal carrier attempt delivery. USPS Web page, “Hold for Pickup Service” (Jan. 21, 2024); <https://faq.usps.com/s/article/Hold-for-Pickup-Service> (accessed Mar. 26, 2024).

<sup>251</sup> CIS Ombudsman’s Annual Report 2016, p. 40.

<sup>252</sup> Information provided by USCIS (Dec. 21, 2023).

## COMMON NON-DELIVERY REASONS OFTEN ATTRIBUTED TO USCIS:

- Mismatches between how USCIS entered an address in its systems and the USPS database resulting in a secure identity document returned as undelivered.
- Technical issues with USCIS systems.
- Delays in processing a change of address request resulting in immigration documents being sent to an old address on file.

## COMMON NON-DELIVERY REASONS OFTEN ATTRIBUTED TO APPLICANTS OR PETITIONERS:

- Inconsistencies in the mailing address entered by individuals in their application leading to USCIS sending an immigration document to the wrong address or to USPS being unable to validate the address.
- Not understanding when or how to submit an address change with USCIS or USPS.
- Not updating their contact information or mailing address in a timely manner.

## COMMON NON-DELIVERY REASONS OFTEN ATTRIBUTED TO USPS:

- Mail couriers not finding a proper mailbox for the intended recipient at the provided mailing address.
- USPS not delivering mail to specific locations due to weather, road conditions, or other extenuating circumstances.
- USPS loss or misdelivery of immigration documents during the mailing process.

will either mail their EAD to them or USCIS may require them to visit their local USCIS office to pick it up.”<sup>253</sup> As USCIS continues to explore a “hold for pickup” option, it may be worth considering actions to allow its Application Support Centers (ASCs)<sup>254</sup> to serve as potential pickup locations.

Based on an analysis of CIS Ombudsman case assistance requests and feedback from stakeholders regarding mailing issues, the problems can be attributed to different shortcomings in the process—some by USCIS, some by individuals, and some by USPS.

### *Alternative Mailing and Delivery Solutions for USCIS*

Delays and miscommunication about the delivery of notices and documents can be frustrating and stressful for individuals and lead to additional inquiries and workloads for the agency. Moreover, reprinting notices, redelivering documents, and reproducing cards add costs for USCIS, which are not covered by the initial fee. To address these issues, USCIS should consider implementing alternative delivery methods that can operate more efficiently while remaining secure.

The CIS Ombudsman recommends that USCIS:

1. *Continue to add forms for online filing and make online notices the default for all individuals.* Electronic notices are quicker than traditional mail and can help reduce waiting times for individuals. While some processes still require traditional mail, shifting USCIS closer to a fully digital environment will encourage the public to rely less on paper-based mail delivery for specific documents.
2. *Allow the Contact Center to send an electronic copy via email to all eligible individuals who contact them about a missing notice or RFE.* USCIS Contact Center representatives currently must either: 1) create an SRMT to ask the office that issued the RFE/NOID to reprint and remail the notice, or 2) escalate the inquiry to a supervisor before they can email a copy within 24 hours. USCIS should instead allow Contact Center representatives to promptly verify the caller’s authorization to receive case information and email an electronic copy of the document on the spot. This would significantly reduce the time burden and financial costs associated with having to file a duplicate notice request (Form I-824) or an appeal (Form I-290B, *Notice of Appeal or Motion*) if a case is denied due to a late response or abandonment.
3. *Revisit a “hold for pickup” program for secure identity documents.* Such a program will allow individuals to choose if they want to physically pick up their card from a designated ASC or field office in lieu of USCIS sending it via U.S. mail. The document could be kept at the designated ASC or field office for a limited period, benefitting those who do not have a permanent or reliable mailing address or are otherwise concerned about mail delivery service. It would provide a secure way to track and receive benefits.
4. *Provide clear and specific guidance to the public about how and when to submit a change of address request.* The agency should create and implement a continuing, plain language communications and outreach campaign to help the public understand that delaying submission of a change of address request can lead to mailing issues. The agency must continue to encourage individuals to proactively ensure their mailing address is current and accurate.
5. *Encourage individuals to use USPS’s Look Up a ZIP Code tool to verify their mailing address and use the USPS-verified address on their application form.* The agency should inform online filers and their legal or accredited representatives to defer to the USPS suggested address any time an address check tool pop-up message appears and to paper filers to verify the address format in the Look Up a ZIP Code tool before entering it in the application form. Further, change of address requests should follow the USPS format.
6. *Update guidance to require USCIS lockbox data reviewers, Contact Center representatives, officers, and other USCIS staff verifying an address to use USPS’s Look Up a ZIP Code tool to update the address to the appropriate format in USCIS systems.* Guidance should specify that verifying the mailing address with the USPS Look Up a ZIP Code tool does not constitute a change to the form as submitted by the applicant or petitioner but instead is a quality assurance practice to increase the likelihood that customers will receive their documents in a timely manner.
7. *Consider issuing digital versions of short-term travel documents such as those authorizing travel for individuals under TPS and DACA recipients.* A digital version would allow individuals to access their travel documents online as needed. CBP can validate the status and authorized travel time for each individual arriving in or departing from the United States. A digital alternative would enable USCIS to print travel documents only when individuals request that a physical copy be sent by mail.

<sup>253</sup> USCIS Web page, “Important Information About Working Legally in the United States” (Apr. 1, 2024); <https://www.uscis.gov/working-in-the-united-states/important-information-about-working-legally-in-the-united-states> (accessed Apr. 16, 2024).

<sup>254</sup> USCIS Web page, “USCIS Service and Office Locator: USCIS Application Support Centers,” <https://egov.uscis.gov/office-locator/#/> (accessed Mar. 24, 2024). ASCs are not USCIS field offices but are managed by contracting entities. Engaging activities at an ASC would require USCIS to modify its contract and implement higher security protocols, so it may not be an optimum way to make such changes. However, USCIS could pilot this approach in higher traffic locations in which field offices are overcrowded or unable to meet additional demand.

8. *Send text and email alerts to individuals regarding the delivery of their immigration documents.* Not everyone is familiar with digital platforms, so providing additional plain language text messages and email alerts with estimated delivery dates can be helpful. This way, individuals will know when to expect their documents and what to do if they do not receive them within a specific timeframe. These alerts can improve the overall customer experience, reduce inquiries, and set reliable expectations.
9. *Renew its working relationship with USPS to allow both agencies to quickly address any issues or delays in the delivery process.* Until USCIS moves to a fully digital environment, it will continue to rely heavily on USPS to deliver many immigration documents. The agency should establish regular meetings with USPS to discuss challenges, share data, and identify opportunities for improvement.

## Conclusion

Implementing these measures can significantly enhance the successful delivery of Green Cards, EADs, travel documents, and notices to their intended recipients. The agency will effectively mitigate the risk of lost or misdelivered documents, improving the overall customer service experience. It can minimize inquiries related to mail issues, mitigate additional costs to applicants and petitioners, and reduce the agency's administrative overhead. In a future where USCIS manages more secure documents, these measures, and the optimization of electronic delivery methods to streamline document distribution processes may further enable it to address its delivery challenges effectively.

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## Meeting the Growing Demand for Employment Authorization Documents

**Responsible Office:** Office of Intake and Document Production, Immigration Records and Identity Services and Management Directorates

### Introduction

Despite efforts to reduce workloads, U.S. Citizenship and Immigration Services (USCIS) continues to experience an increasing demand for secure documents, specifically employment authorization documents (EADs). Growth of the Form I-765, *Application for Employment Authorization* workload—and the related need to produce and mail EADs to give individuals proof of their status and authorization to work in the United States—is a

significant challenge for the agency.<sup>255</sup> USCIS typically produces one EAD for each Form I-765 it approves.<sup>256</sup> By the end of the first quarter of Fiscal Year (FY) 2024, USCIS reported that there was a total of 976,764 initial and 567,209 renewal Forms I-765

<sup>255</sup> With EAD demand constituting a greater strain on USCIS' operations, our study focuses on EADs rather than on other identity secured documents (lawful permanent resident cards (Green Cards), refugee travel documents, and similar) as an area where changes could be most impactful. Demand for Green Cards continues to grow, albeit at a slower pace than EADs.

<sup>256</sup> In limited circumstances, the agency may extend EADs it has already produced rather than requiring a new Form I-765 approval. See, e.g., "Extension and Redesignation of Afghanistan for Temporary Protected Status," 88 Fed. Reg. 65728, 65729 (Sept. 25, 2023); see also CIS Ombudsman, "Afghan Re-Parole Process Tip Sheet" (Sept. 29, 2023); [https://www.dhs.gov/sites/default/files/2023-09/23\\_0928\\_ociso\\_TipSheet\\_AfghanReparoleProcess\\_FINAL.pdf](https://www.dhs.gov/sites/default/files/2023-09/23_0928_ociso_TipSheet_AfghanReparoleProcess_FINAL.pdf) (accessed Apr. 29, 2024).

pending.<sup>257</sup> For FY 2025, USCIS projects it will receive 4.6 million Forms I-765 (both initial requests and renewals), potentially doubling the workload only 3 years earlier in FY 2022.<sup>258</sup>

USCIS has implemented various strategies to streamline and prioritize the Form I-765 workload and the related production of EADs. In 2022, the CIS Ombudsman studied how flexibility and improvements in renewing employment authorization can ensure uninterrupted employment.<sup>259</sup> While these efforts should continue, USCIS also must find ways to increase card production capacity, decrease the number of cards to produce, or some combination of the two.

## Recommendations

Given the importance of EADs as evidence of an individual's authorization, and the increasing volume of applications, the CIS Ombudsman recommends that USCIS:

1. Increase card production capacity to keep pace with demand.
2. Consider options to mitigate the reproduction of cards due to undeliverable mail, data input errors, or photo quality.
3. Increase national education campaigns and amplify online information to improve public understanding of acceptable employment eligibility verification documents and mitigate the potential for discrimination against noncitizens with proof of employment authorization other than an unexpired EAD.
4. Explore ways to reduce the number of cards USCIS needs to produce.

## Increased Volume and Pressure on Form I-765 Adjudication and EAD Production

Since the implementation of the Immigration Reform and Control Act of 1986, most eligible noncitizens have needed an EAD to show evidence of their work authorization in the United States.<sup>260</sup> Still, even noncitizens whose authorization to work is incident to their status often apply for an EAD. For example, L-2s and E-2s, who are not required to have an EAD as evidence of work authorization<sup>261</sup> may find it necessary for enrolling in school, obtaining a driver's license, getting medical care, and other essential activities.

## BASIC ANATOMY OF THE EAD

The official name of the EAD, also known as a work permit, is Form I-766, *Employment Authorization Document*. The EAD is a wallet-sized plastic card with substantial security features establishing a person's identity and immigration status in the United States.<sup>262</sup> An EAD identifies the person as authorized to work, the period of work authorization ("Valid From" and "Card Expires" dates), and the basis for which the work authorization was granted ("Category"). The card also includes the person's A-Number ("USCIS#")<sup>263</sup> and the Form I-765 receipt number ("Card#"). The photograph captured during biometrics intake, typically at a USCIS Application Support Center (ASC), appears on the card in black and white.



Source: USCIS Web page, "13.1 List A Documents That Establish Identity and Employment Authorization" (Mar. 7, 2024); <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/130-acceptable-documents-for-verifying-employment-authorization-and-identity/131-list-a-documents-that-establish-identity-and-employment-authorization> (accessed May 6, 2024).

USCIS is aware of the need to adjudicate and produce EADs in a timely manner and has focused substantial effort to do so while facing significant increases in its workload and ongoing pressure to maintain or reduce processing times.<sup>264</sup> In March 2022, USCIS announced a 3-month cycle time goal for Form I-765

<sup>257</sup> USCIS Web page, "Immigration and Citizenship Data. Form I-765, Application for Employment Authorization Counts of Pending Applications by Days Pending and by filing type for All Eligibility Categories and (c)(8) Pending Asylum Category (Fiscal Year 2024, Quarter 1)" (Mar. 21, 2024); [https://www.uscis.gov/sites/default/files/document/data/i765\\_p\\_allcat\\_c08\\_fy2024\\_q1.xlsx](https://www.uscis.gov/sites/default/files/document/data/i765_p_allcat_c08_fy2024_q1.xlsx) (accessed Apr. 19, 2024).

<sup>258</sup> Information provided by USCIS (Mar. 26, 2024).

<sup>259</sup> CIS Ombudsman's Annual Report 2022, p. 13 (accessed Mar. 26, 2024).

<sup>260</sup> See The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 8 U.S.C. § 1324a.

<sup>261</sup> See 7 USCIS Policy Manual, Pt. B, Ch. 6(A)(2); <https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-6> (accessed Mar. 26, 2024).

<sup>262</sup> 11 USCIS Policy Manual, Pt. A, Ch. 2(A); <https://www.uscis.gov/policy-manual/volume-11-part-a-chapter-2> (accessed Mar. 26, 2024).

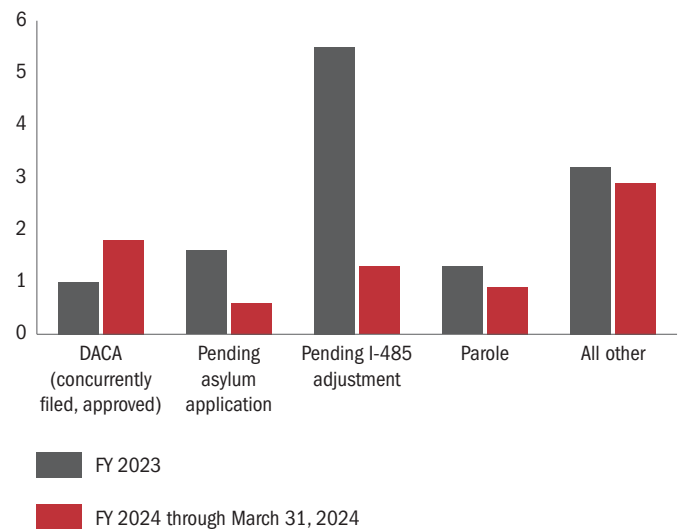
<sup>263</sup> Officially known as the Alien Registration Number or USCIS number, an A-Number is a seven-, eight- or nine-digit number assigned to a noncitizen by the Department of Homeland Security. "USCIS Glossary;" <https://www.uscis.gov/tools/glossary#> (accessed Mar. 26, 2024).

<sup>264</sup> USCIS received over 10.9 million forms, an unprecedented volume, in FY 2023. USCIS attributed roughly one quarter of those 10.9 million to its humanitarian mission, which includes noncitizen populations who apply for EADs. See USCIS News Release, "Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade" (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed Apr. 16, 2024).

adjudication.<sup>265</sup> USCIS also has made certain classifications of Form I-765 eligible for online filing<sup>266</sup> and allowed eligible F-1 students to request premium processing of the form.<sup>267</sup> Although the agency did not meet its goal in FY 2023, it reduced the Form I-765 cycle time (excluding Deferred Action for Childhood Arrivals (DACA) EADs) by 32 percent from the prior fiscal year.<sup>268</sup> USCIS' median processing times for Form I-765 in FY 2023 were close to or under 3 months for all cases except those associated with Form I-485, *Application to Register Permanent Residence or Adjust Status*.<sup>269</sup> The agency further reduced median processing times in the first half of FY 2024 for most Forms I-765; as a result, all median processing times are nearing or under 3 months.

Many EAD applications are still mailed even though online filing is available. The agency leverages technology to convert paper submissions into digital files to enable the agency to manage all Forms I-765 electronically. At USCIS' lockbox facilities, the Extracting, Modifying, Monitoring, and Architecture (EMMA) system translates typed or handwritten data from paper forms into a digitized version. EMMA underlines certain fields for staff review, including: 1) key fields (such as the beneficiary's name) that are always manually reviewed based on established business rules, and 2) other fields where EMMA cannot translate the entry into the digitized version with a high confidence level.<sup>270</sup> After the digitization process is complete, officers can access and adjudicate the EAD request in USCIS' electronic system.

Despite every effort to maximize resources, outside factors and unpredictable demand make it challenging for the agency to allocate resources to or among Form I-765 filings. USCIS' processing times are, in part, a result of targeted efforts or requirements to adjudicate certain EADs quickly. Resource allocation is often dictated by litigation or other priorities that may require USCIS to shift adjudicators between product lines to

**Figure 6.1****Median Processing Times in Months for Form I-765**

Source: USCIS Web page, "Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year;" <https://egov.uscis.gov/processing-times/historic-pt> (accessed May 7, 2024).

achieve certain processing times. For example, in February 2022, a court decision required USCIS to meet the regulatory requirement to process initial asylum-based EAD requests within 30 days.<sup>271</sup> Changes in policy or new programs may also introduce sudden and unanticipated demand for a specific EAD category, complicating resource allocation. For example, in October 2023, the agency began accelerating EAD requests for noncitizens paroled after a CBP One™ Mobile Application (CBP One™ app) appointment or through the parole process for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV) to maintain median processing times at 30 days.<sup>272</sup> Additionally, adjudicators may not be available for a full workday every day due to training, administrative activities, sick leave, or other reasons, which would result in a reduced number of adjudicative hours.

The volume of Form I-765 filings is growing. USCIS projections show an upward trend in EAD requests; in FY 2023, the agency received approximately 1 million more initial EAD requests and nearly 129,000 more renewal requests than the prior fiscal year, a 77 percent and 13 percent increase, respectively.<sup>273</sup> USCIS expects

<sup>265</sup> USCIS News Release, "USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders" (Mar. 29, 2022); <https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work> (accessed Apr. 16, 2024).

<sup>266</sup> USCIS Web page, "Forms Available to File Online" (Mar. 21, 2024); <https://www.uscis.gov/file-online/forms-available-to-file-online> (accessed Apr. 22, 2024).

<sup>267</sup> USCIS News Release, "USCIS Announces Premium Processing; New Online-Filing Procedures for Certain F-1 Students Seeking OPT or STEM OPT Extensions" (Mar. 6, 2023); <https://www.uscis.gov/newsroom/news-releases/uscis-announces-premium-processing-new-online-filing-procedures-for-certain-f-1-students-seeking-opt> (accessed Apr. 22, 2024).

<sup>268</sup> USCIS News Release, "Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade" (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed Apr. 16, 2024). A table in the news release's "Progress on Reducing Backlogs" section shows the Form I-765 cycle time was 6.8 months at the end of FY 2022 and 4.6 months at the end of FY 2023.

<sup>269</sup> USCIS Web page, "Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year;" <https://egov.uscis.gov/processing-times/historic-pt> (accessed May 7, 2024).

<sup>270</sup> Information provided by USCIS (Dec. 5, 2023).

<sup>271</sup> See *Asylumworks v. Mayorkas*, No. 20–CV–3815, 2022 WL 355213 (D.D.C. Feb. 7, 2022); See generally USCIS Web page, "Rosario Class Action" (undated); <https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notice-and-agreements/rosario-class-action> (accessed Apr. 15, 2024).

<sup>272</sup> See USCIS News Release, "Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade" (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed Apr. 16, 2024).

<sup>273</sup> Information provided by USCIS (Mar. 26, 2024).

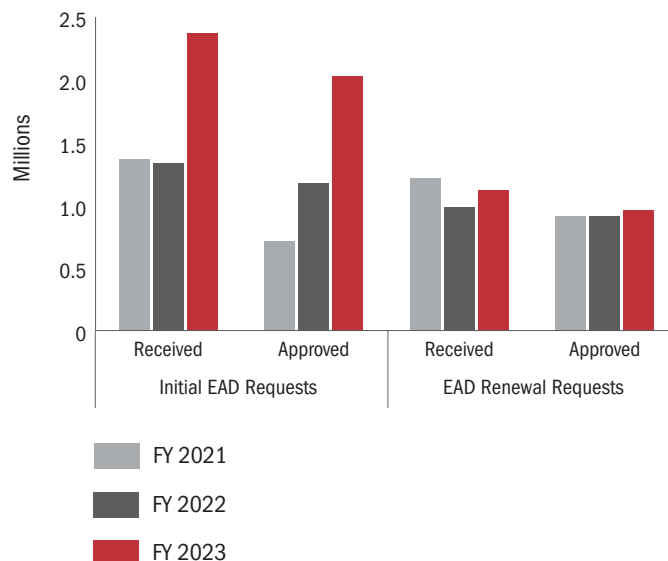
to receive approximately 4.3 million Form I-765 applications in FY 2024 and even more (4.6 million) in FY 2025.<sup>274</sup>

While the renewal request volume has been relatively steady over the past 3 fiscal years, initial EAD requests have risen, along with the pressure to adjudicate and produce initial EAD cards quickly. In response, USCIS has adjusted its EAD auto-extension policy to reduce the urgency of its renewal workload, enabling it to process initial EAD requests, while avoiding unnecessary lapses in renewal applicants' employment authorization. These adjustments began in 2017, when the Department of Homeland Security (DHS) eliminated regulatory provisions requiring USCIS to adjudicate Form I-765 within 90 days of the filing date and instead automatically extend EADs for up to 180 days for certain workers filing renewal requests.<sup>275</sup> In May 2022, in response to recommendations made by many stakeholders (including the CIS Ombudsman), USCIS again reduced pressure by increasing the automatic extension period for certain EAD renewals from 180 days to 540 days.<sup>276</sup> In April 2024, USCIS published another temporary final rule with the automatic extension period of up to 540 days for certain EAD renewal applicants.<sup>277</sup>

USCIS also has taken steps to reduce, where possible, the volume of Form I-765 renewal filings. In September 2023, USCIS updated its policy so it could issue certain EADs for a maximum validity of 5 years, aiming "to significantly reduce the number of new Forms I-765, *Application for Employment Authorization* [it receives] for renewal EADs over the next several years, contributing to [its] efforts to reduce associated processing times and backlogs."<sup>278</sup> The agency's strategy will eventually reduce renewal requests and the need for new EADs for some noncitizens. However, law and regulations limit other EADs to shorter terms.<sup>279</sup> Without broader changes, renewal requests will continue to compete with initial EADs for resources.

**Figure 6.2**

**Forms I-765 Received and Approved for Initial EADs Compared to Renewal EADs (FY 2021 to FY 2023)**



Source: Information provided by USCIS (Mar. 26, 2024).

Despite these efforts, the pressure on the agency to adjudicate and produce initial EAD cards quickly can only be expected to escalate. In 2023, USCIS launched nationwide campaigns to inform noncitizens about their EAD eligibility and the application process.<sup>280</sup> This is expected to increase the volume of new EAD requests and put more pressure on processing times, counterbalancing USCIS' efforts to reduce the volume of this workload. Additional competing priorities would make it more difficult for the agency to maintain 30-day processing goals for initial asylum-based applicants and certain parolees.

### **Card Production Limitations Hamper EAD Goals**

Even when USCIS adjudicates Forms I-765 quickly, the request is only truly completed when the applicant receives the EAD. In FY 2023, the agency's Form I-765 approvals outpaced EAD production, suggesting that current card production may be at maximum capacity.

<sup>274</sup> It is important to note that the agency reports its projections for Form I-765 by eligibility category rather than by initial requests versus renewal applications; however, for large categories such as C8, C9, and Temporary Protected Status (TPS), USCIS reports the renewals separately and anticipates at least 948,000 renewals in FY 2024 and at least 1,359,000 renewals in FY 2025. Information provided by USCIS (Mar. 26, 2024).

<sup>275</sup> "Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers," 81 Fed. Reg. 82398 (Nov. 18, 2016).

<sup>276</sup> "Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants," 87 Fed. Reg. 26614 (May 4, 2022); see also 8 C.F.R. 274a.13(d)(5).

<sup>277</sup> "Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants," 89 Fed. Reg. 24628 (Apr. 8, 2024); see also 8 C.F.R. 274a.13(d).

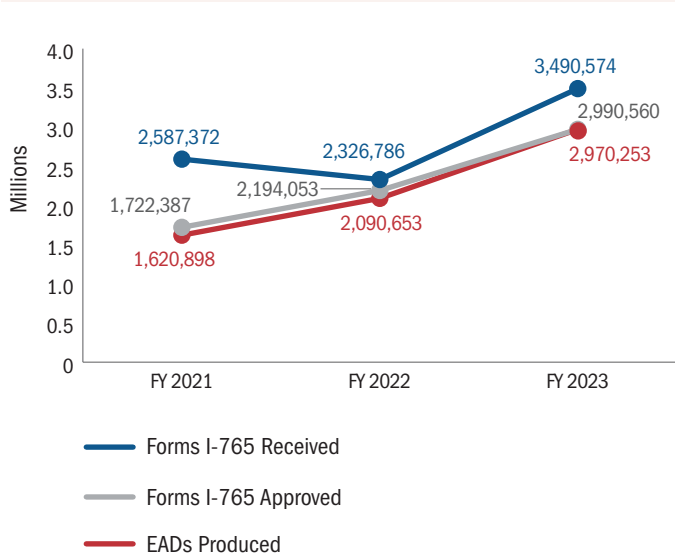
<sup>278</sup> USCIS News Alert, "USCIS Increases Employment Authorization Document Validity Period for Certain Categories" (Sep. 27, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-increases-employment-authorization-document-validity-period-for-certain-categories> (accessed Apr. 19, 2024).

<sup>279</sup> For example, TPS work authorization relies on the length of time for which DHS designates a country as TPS-eligible, which is typically for a period of 18 months.

<sup>280</sup> USCIS News Release, "Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade" (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed Apr. 16, 2024). ("To date, nearly 2 million email and text notifications have been sent in English, Spanish, Haitian Creole, Ukrainian, and Russian, and USCIS is working extensively with cities to educate recently arrived migrants on the immigration system and how to apply for an EAD.")

Figure 6.3

Total Number of Forms I-765 Received/Approved Compared to EADs Produced (FY 2021 to FY 2023)



Source: Information provided by USCIS (Mar. 26, 2024).

After an officer approves a Form I-765 and updates the case management system, USCIS’ electronic system routes the approval to the Office of Intake and Document Production (OIDP) card production queue. Any corrections to the form’s data or mailing address must be made before the electronic system releases the approval to OIDP’s card production queue.<sup>281</sup>

USCIS’ electronic system automatically organizes the approvals in OIDP’s card production queue based on the date and time of each approval. Approvals that USCIS’ guidelines identify as “priority” automatically go to the top of the queue to be produced in the next batch of EADs.<sup>282</sup> The card production facilities pull batches of approvals out of the queue in increments of 500 and start producing cards for those approvals.<sup>283</sup> Each batch pulls the specified number of approvals from the top of the queue.<sup>284</sup>

There are currently two production facilities for EADs: the Lee’s Summit Production Facility in Missouri, and the Corbin Production Facility in Kentucky. Both facilities produce EADs and Green Cards. These facilities typically operate for 10 hours a day, with 8 hours dedicated to card printing.<sup>285</sup> Each card takes approximately 10 minutes to produce. At full capacity and under optimal conditions, the facilities can produce 12,500 EADs each day. In FY 2023, OIDP produced approximately 5.3 million EADs and Green Cards.<sup>286</sup>

<sup>281</sup> Information provided by USCS (Apr. 9, 2024).

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> These facilities do not operate on weekends or Federal holidays.

<sup>286</sup> Information provided by USCIS (Mar. 26, 2024).

Figure 6.4

USCIS EAD and Green Card Production by Facility, FYs 2021 to 2023

| Corbin Production Facility | Green Card | EAD       | Total     |
|----------------------------|------------|-----------|-----------|
| FY 2021                    | 948,978    | 355,378   | 1,304,356 |
| FY 2022                    | 915,279    | 953,635   | 1,868,914 |
| FY 2023                    | 1,317,686  | 1,647,557 | 2,965,243 |

| Lee’s Summit Production Facility | Green Card | EAD       | Total     |
|----------------------------------|------------|-----------|-----------|
| FY 2021                          | 416,840    | 1,367,009 | 1,783,849 |
| FY 2022                          | 613,678    | 1,240,418 | 1,854,096 |
| FY 2023                          | 1,018,615  | 1,322,696 | 2,341,311 |

Source: Information received from USCIS (Mar. 26, 2024).

Typical factors that cause OIDP’s machines to operate below full capacity include preventative maintenance and equipment breakdowns from normal wear and tear.<sup>287</sup> To minimize disruptions due to machine issues, the facilities have maintenance staff on site. New machines with enhanced technology may enable USCIS to produce more cards more quickly; however, transitioning machinery and related processes bring additional challenges.<sup>288</sup>

Below ideal staffing levels have made it challenging to consistently produce cards at optimal levels. The facility in Lee’s Summit, for example, could potentially increase production by adding a second shift using the same machines. However, recruitment efforts have not succeeded in fully staffing the existing single extended shift.<sup>289</sup> Even with automated processing, the production machines still require a human operator.

The secure documents undergo a full quality control process. While USCIS uses advanced printing technologies to maintain consistency and security in card production, it integrates quality control checkpoints throughout the production process (including manual card quality inspections and electronic data verifications). These controls minimize errors by promptly identifying discrepancies and safeguarding the integrity of the cards. Each card is manually checked to ensure it meets production standards and can be used for identity verification. For example, digital photos may look acceptable in color when captured during biometrics intake but not when printed on cards in black-and-white. Problems with the recipient’s photo—the subject’s eyes are not visible, the face is too small to recognize

<sup>287</sup> *Id.*

<sup>288</sup> Information provided by USCIS (Apr. 9, 2024).

<sup>289</sup> *Id.* Staff in this location have been working overtime for the past 1.5 years to keep pace with increasing demand.

features, the face is overexposed, or there is insufficient contrast between the subject and background—are among the most common reasons cards fail to meet production standards.<sup>290</sup> Ultimately, about 10 percent of the cards do not meet production standards and must be destroyed.<sup>291</sup> Capturing a photo that meets card production standards the first time would help lower this number.

Meanwhile, during the electronic data verification process, the agency's protocols require a check between the card's information and the data recorded in USCIS case management systems, but not beyond. The process focuses on making sure the card matches USCIS' digital record rather than trying to fix errors from the original data input.<sup>292</sup> For example, while it may be able to identify a name or date mismatch, the system cannot verify if USCIS records have the correct spelling or date as intended by an applicant. Similarly, it may be able to identify a mailing address mismatch, but it cannot verify if the address has been entered in the U.S. Postal Service's (USPS's) "recommended address" format. Consequently, discrepancies involving names or addresses made during initial data entry often remain undetected and result in cards being returned to USCIS' Post Office Non-Deliverables (PONDS) Unit as undeliverable. By prioritizing data integrity and using USPS's "recommended address," USCIS can minimize errors that often result in misdelivery or the destruction and reproduction of a card.<sup>293</sup>

Despite USCIS' best efforts to increase processing efficiencies and strategically reduce renewal requests without compromising the integrity of its EAD program, the volume of Form I-765 filings threatens to overwhelm the agency's card production capacity and prevent it from completing EAD requests.

### ***Complex Work Authorization Evidence Undermines USCIS' Efforts to Manage the EAD Workload***

USCIS initiatives to manage the EAD workload add complexity to the Form I-9, *Employment Eligibility Verification*, identity and employment authorization verification process that employers and workers must complete, increasing the potential for unintentional employment discrimination.<sup>294</sup> Noncitizens whose EADs appear expired must show—and employers understand and accept as genuine—alternative or supplemental documentation extending an EAD beyond its listed expiration date. In some cases, USCIS may issue various types of supplemental documentation—such as a Form I-797, *Notice of Action*, or Federal Register Notice—and instruct noncitizens to show these to employers as evidence of work

authorization.<sup>295</sup> While the agency has published information about what alternative or supplemental documentation individuals may use as proof of work authorization, noncitizens and their employers may not be able to easily locate the information or may find the updates hard to understand.

The CIS Ombudsman has found in stakeholder engagements that some employers find it challenging to determine whether the supplemental evidence provided is genuine, especially if it purportedly renders a facially expired card "unexpired" or independently provides work authorization.<sup>296</sup> This approach was intended to avoid lapses in employment authorization when the agency needs more time to produce physical cards, but it has also required noncitizens and employers to know how to find and identify the most current USCIS announcements online, navigate between different webpages and regulations, and understand differing USCIS receipt notices.

Unless employers are comfortable assessing alternative or supplemental work authorization documentation—and noncitizens are confident employers will accept it—USCIS will continue to receive requests for initial EADs that are legally unnecessary and experience pressure to produce renewal EADs quickly, despite the agency providing supplemental documentation extending EAD validity.

### ***Minimizing the Impact of EAD Production Limitations***

Until an alternative to card production is feasible or other new technology is available, USCIS' ability to address demand for EADs is limited by the capacity of its card production machines and facilities. Although USCIS has made efforts to reduce the volume and urgency of its renewal EAD workload, these initiatives may delay or reduce, but not completely eliminate, noncitizens' need for multiple sequential EADs. Even if USCIS can meet the demand for EADs within processing time goals, reducing the number of cards to be produced would benefit customers and USCIS by freeing up resources that could be applied to other operations.

The CIS Ombudsman recommends that USCIS:

1. *Increase card production capacity to keep pace with demand.*  
To maintain the current pace of card production—let alone increase production—requires additional resources. Existing card

<sup>290</sup> Information provided by USCIS (Apr. 9, 2024).

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.* For more information, see this year's CIS Ombudsman study on mail challenges, *supra*.

<sup>294</sup> See INA 274A(b), 8 C.F.R. § 274a.2.

<sup>295</sup> USCIS' I-9 Central Web page explains that employment authorization cards "remain valid until the expiration date shown on the card (unless otherwise noted such as through an automatic extension of the validity period of the EAD indicated on a Form I-797, *Notice of Action*, or in a Federal Register Notice)." See USCIS Web page, "Form I-9 Acceptable Documents" (Apr. 17, 2024); <https://www.uscis.gov/i-9-central/form-i-9-acceptable-documents> (accessed Mar. 25, 2024). USCIS also suggests customers visit the Handbook for Employers M-274, such as Section 4.0, *Completing Section 2: Employer Review and Verification* and Section 5.0 *Automatic Extensions of Employment Authorization and/or Employment Authorization Documents (EADs) in Certain Circumstances*. See USCIS Web page, "Handbook for Employers M-274" (Apr. 17, 2024); <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274> (accessed Mar. 25, 2024).

<sup>296</sup> Information provided by stakeholders (Apr. 9, 2024; May 13, 2024).

production machines are reaching the end of their lifecycle, meaning the agency can assess new machinery and technology options so future operations can scale to growing demand. With adequate staff, the agency could add shifts to produce more with the same number of machines, add machines to produce more in a single shift, or add both machines and shifts.

2. *Consider options to mitigate the reproduction of cards due to undeliverable mail, data input errors, or photo quality.* Three common reasons cards must be reproduced are data errors, photo quality, and undeliverable addresses, which are present in the file ODP receives with the Form I-765 approval. To better conserve resources and support maximum production of usable cards, the CIS Ombudsman recommends that USCIS:

- a. *Increase quality control checks of the name, date of birth, country, and gender indicator before Form I-765 approval.* Catching and resolving errors in key data before Form I-765 approvals are routed to ODP for card production would reduce the number of cards returned for correction and reproduction.
- b. *Establish a single set of photo quality standard guidelines for card production.* Currently, photos are taken at a variety of locations, each with site-specific standards.<sup>297</sup> Photographers may take these pictures in color against assorted backgrounds and not realize the photo is not sufficiently exact for EAD standards. Common standards, such as requiring a white background, would improve the likelihood that the photos will pass USCIS' card production standards. Additionally, having the photographer view the photo in black-and-white and check contrast, exposure, and other key points would further improve the usefulness of photos for card production purposes.
- c. *Enhance guidance for customers about the importance of using USPS's recommended format for mailing addresses and update internal guidance to allow—or require—officers to accept USPS's version of the filer's mailing address.* Some customers do not complete all required fields for their mailing address. Meanwhile, others complete all required fields, but USPS's systems may not recognize the address entered. In such cases, a pop-up message appears that suggests accepting USPS's version of the address. If a customer or officer overrides USPS's suggested version—a one-click option—it is more likely that USPS will have difficulty delivering the card and that the card will be returned to POND as undeliverable.<sup>298</sup> As POND will accept USPS's suggested address and resend the card, it would be far more

efficient for the agency—and less frustrating for customers—to encourage use of USPS's suggested version of the mailing address from the outset.

3. *Increase national education campaigns and amplify online information to improve public understanding of acceptable employment eligibility verification documents and mitigate the potential for discrimination against noncitizens with proof of employment authorization other than an unexpired EAD.* By offering clear and comprehensive guidance on acceptable employment authorization documents, USCIS can actively reduce confusion and prevent discrimination against noncitizens who do not have an unexpired EAD but are authorized to work. Educating the public and employers can encourage equitable hiring practices and reduce the likelihood of bias based on the type of employment authorization a noncitizen holds. The agency could increase awareness by improving already-extensive online resources, sharing work authorization-related updates where employers are most likely to see and use them, and conducting outreach initiatives in partnership with key organizations or members of the community. These steps would bridge gaps in understanding noncitizens' employment authorization.
4. *Explore ways to reduce the number of cards USCIS needs to produce.* Current initiatives are not enough to address the long-term issues USCIS faces with the growing number of initial EADs the agency must produce, which will be followed by renewals and replacements. Unless USCIS significantly expands card production capacity soon—and possibly even if it does—the agency should explore additional ways to reduce the number of cards it needs to produce in the long term. We recognize that, for any options it explores, the agency must engage in robust assessment of legal, regulatory, policy, integrity, privacy, and operational considerations. With the suggestions below, we offer potential options for the agency to explore further. In addition, we urge the agency to give weight to the downstream impacts to stakeholders who rely on EADs for employment authorization and other verification purposes, to reduce complexity and simplify verification when a worker chooses to present an EAD to proactively mitigate the potential for employment discrimination. If the primary purpose of an EAD is to enable noncitizens to show—and employers to verify—work authorization, the agency should include the employment verification experience when evaluating options, whether the employer uses E-Verify or not. The CIS Ombudsman suggests that USCIS:
  - a. *Decouple the one-to-one relationship between Form I-765 approvals and EAD production.* Instead, the agency could produce EADs that noncitizens can use for a specified period of time (possibly up to 5 years) across multiple Form I-765

<sup>297</sup> Including USCIS' ASCs and U.S. Customs and Border Protection (CBP) offices. Information provided by USCIS (Apr. 9, 2024).

<sup>298</sup> See this year's CIS Ombudsman study on mail challenges, *supra*.

approvals to maximize the utility of each card produced.<sup>299</sup> Removing Form I-765-specific information (expiration date and employment authorization category) from the face of the EAD could significantly reduce pressure on both OIDP's card production and PONDS' undeliverable mail operations. The reliance would shift from the card alone to the card plus additional qualifying information, such as the secure approval notice.

- b. *Consider exploring a mechanism, such as an online database, that confirms the current employment authorization category and end date for a noncitizen's EAD.* In addition to employing approval notices with the non-specific EAD, USCIS could consider the implementation of new tools on the agency's website and/or an EAD-specific feature available through or separate from the E-Verify website.<sup>300</sup> Even if accessible through E-Verify's website, the new online tool would have to be generally available to all parties with a need to confirm EAD validity, akin to USCIS' existing case status online tool.<sup>301</sup> After entering certain information on the noncitizen, including the noncitizen's "USCIS#" (the A-Number, which is currently on the face of the EAD), the tool could return the validity end date and category of the EAD, based on USCIS' records, confirming the approval or receipt notice. No special equipment would be needed to "read" the expiration date, although a URL or QR code on the Form I-797 approval notices could facilitate usage and increase security (and reduce the potential for misuse). Similarly, a URL or QR code on non-specific EADs could clearly identify those EADs for which validity date information is available in USCIS' online tools. Employers could have greater clarity about the cardholder's employment authorization end date, in real time, reducing the potential for unintentional employment discrimination while enhancing the security of the approval notice and card as the mechanism for employment verification. Such an agency-controlled mechanism could help to prevent people from innocently or intentionally misusing supplemental EAD documentation.

In such a scenario, USCIS would retain control over employment authorization adjudication. Individuals would continue to file Forms I-765 to change or extend their basis for employment authorization, and USCIS would continue to determine whether to grant employment authorization. If approved, USCIS would issue an approval notice but not a new EAD. Instead, the agency would update the EAD category and validity date in the online database.<sup>302</sup> If USCIS denied the application, the online search tool could display the category and expiration date of the last approved Form I-765 or a simple message, such as "not currently valid." Until such time as all EADs could be accounted for in the online tool, if a search did not find the "USCIS#," the tool could display a message directing the individual to I-9 Central for information about verifying the EAD the worker chose to present.

This kind of system would not only benefit the agency by reducing its card production requirements but could also provide certainty to an employer who now must understand the complexities of receipt notices, Federal Register notices, and other documentation to assess employment authorization, reducing the potential for violations of the anti-discrimination prohibitions against asking for more or different documentation. Given the importance of this topic to both USCIS and stakeholders and the novelty of such an approach, a pilot program to fully assess all considerations involved might be a considered approach. EADs for noncitizens in Temporary Protected Status (TPS) could, for example, offer both USCIS and stakeholders benefits as a pilot group, since TPS involves limited validity periods and common usage of supplemental or alternative documentation to show EAD validity beyond the card's expiration. Evaluating the potential for misuse of such a tool in a discriminatory manner would need to be part of any assessment regarding these benefits, which USCIS, in consultation with the Department of Justice's Immigrant and Employee Rights Section, is best placed to do.

## Conclusion

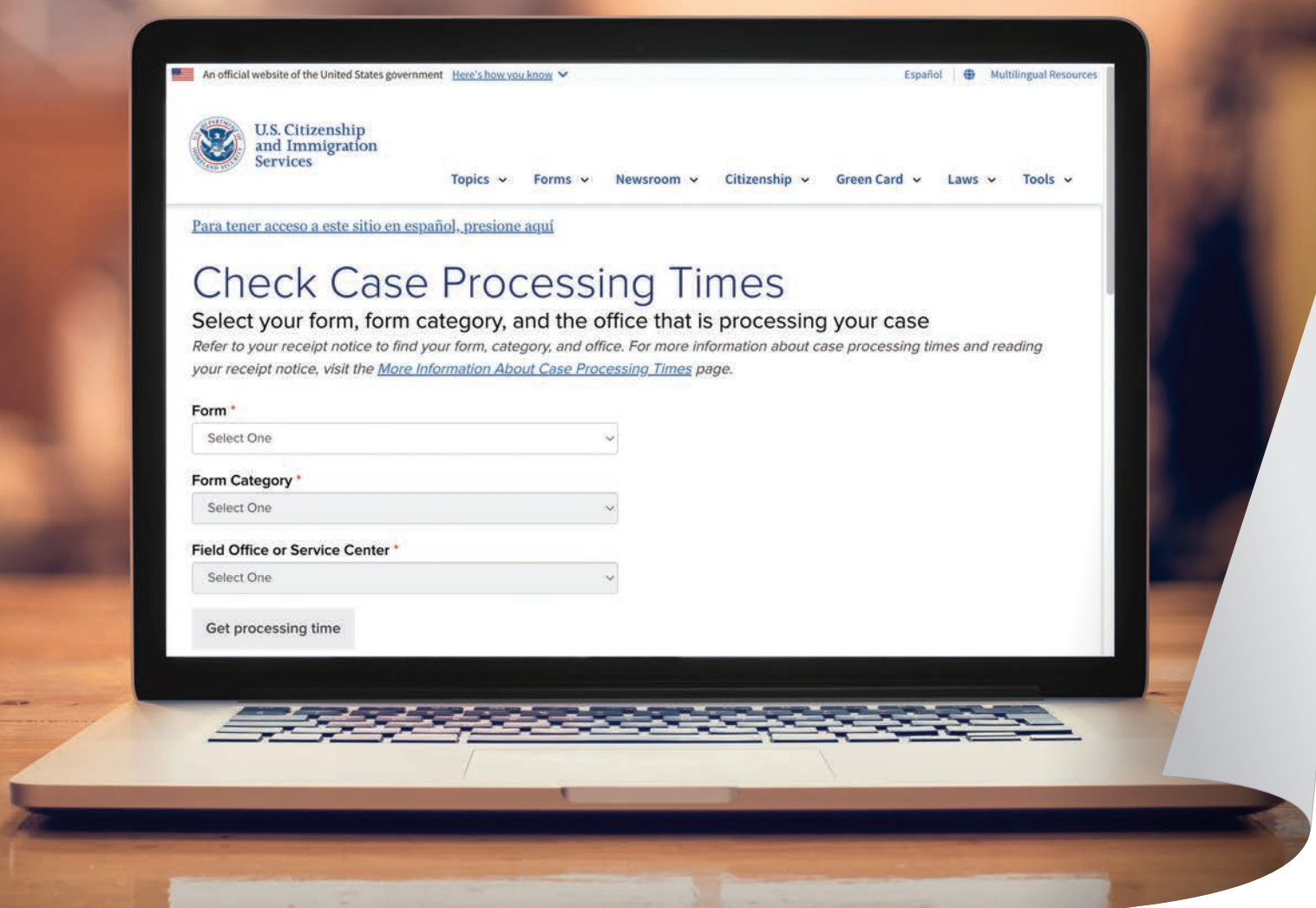
USCIS has successfully managed, and even innovated, to maintain card production to meet the current demand. However, the anticipated future workload presents additional challenges as the number of cards needed will grow beyond current production capacity, and the agency will need even more innovation to keep pace. The CIS Ombudsman's recommendations made herein will help ensure that secure document production can keep up with demand, so customers who are authorized to work may do so without unnecessary limitations.

<sup>299</sup> USCIS' Form I-797D, issued to notify noncitizens of Form I-765 approval, displays the applicable validity dates and employment authorization benefit category. See The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 8 U.S.C. § 1324a (documentation or endorsement of authorization to be employed in the United States must conspicuously state "any limitations with respect to the period or type of employment or employer").

<sup>300</sup> Designed for participating employers, E-Verify permits enrolled employers to enter information from an employee's Form I-9 and electronically check that information against records available to USCIS and the Social Security Administration. See E-Verify Web page, "About E-Verify" (Apr. 10, 2018); <https://www.e-verify.gov/about-e-verify> (accessed Apr. 29, 2024).

<sup>301</sup> Although E-Verify could perform this function for participating employers and noncitizens, not all employers and noncitizens use E-Verify. In addition, other interested parties—parties E-Verify does not serve, like schools, medical care providers, and utilities—rely on EADs for identification and verification purposes.

<sup>302</sup> If it pursues this mechanism, USCIS may wish to consider a way to enable stakeholders to bring potential data errors to the agency's attention for efficient correction.



## Clarifying Processing Times to Improve Inquiries and Manage Expectations

**Responsible Offices:** External Affairs Directorate,  
Office of Performance and Quality

### Introduction

When immigration benefit applications or petitions are pending for a long time, stakeholders naturally seek to inquire about the status of their cases. At the same time, limiting unnecessary inquiries helps U.S. Citizenship and Immigration Services (USCIS) remain focused on its mission—adjudicating benefit requests—something both USCIS and stakeholders want. Accordingly, USCIS limits customer-initiated case status inquiries to cases it deems “outside normal processing times” (ONPT). The agency defines ONPT as cases pending beyond the time it takes to complete 93 percent of

adjudicated cases.<sup>303</sup> Limiting case inquiries this way allows the agency to focus on processing cases while still permitting customers whose cases are outliers to make an inquiry.<sup>304</sup>

The CIS Ombudsman consistently sees stakeholders confused and frustrated by processing times information, resulting in inquiries that are, by USCIS guidelines, premature. Our office regularly receives case assistance requests from customers whose forms are not yet ONPT; an average of 16 percent during the 5-year period from Fiscal Years (FYs) 2019 through 2023 involved status inquiries submitted before the stakeholder’s case was ONPT. Although some requests may result from frustration with long wait times, others may be attributed to a lack of clarity about USCIS’ processing times

<sup>303</sup> USCIS Web page, “Frequently Asked Questions About Processing Times,” <https://egov.uscis.gov/processing-times/processing-times-faqs> (accessed Nov. 24, 2023).

<sup>304</sup> USCIS Web page, “Case Processing Times,” <https://egov.uscis.gov/processing-times/more-info> (accessed Apr. 1, 2024).

information. Clear, current, and consistent information can reassure customers that, despite wait times, their application is in queue to be adjudicated and is not lost. Confusing, outdated, or conflicting information may lead customers to file duplicative benefit requests or premature case status inquiries, adding costs for both customers and the agency.

For USCIS, inquiries related to processing times rank high among customer service requests.<sup>305</sup> For each case status inquiry, the agency must use resources to assess the inquiry and determine how to respond. Yet responses to such inquiries tend to be generic and fail to reassure customers,<sup>306</sup> typically providing little additional information beyond what stakeholders can see using online tools. The agency's efforts to improve customer experience with processing times information is ongoing, including a long-term plan to provide more personalized case status information, but it will be years before these are available to customers across a wide range of immigration benefits.<sup>307</sup> Until then, there are improvements USCIS can make to its processing times information and the ONPT inquiry process to set better expectations for case completion without reducing the efficiency of immigration benefits delivery, compromising necessary background checks, or eroding confidence in a system with significant and continuing backlogs.

## Recommendations

The CIS Ombudsman recommends that USCIS:

1. *Take actions to improve the general processing times tool.*
2. *Take actions to improve the case inquiry date tool.*
3. *Take actions to improve myProgress.*
4. *Take actions to improve information on forms with no processing times.*

5. *Develop new methodologies to support public processing times information, set customer expectations, and reduce unproductive inquiries.*
6. *Notify customers of case processing transfers.*

## Processing Time Information

Processing time information is a critical component of the customer experience. There are currently three ways to find USCIS processing time information:

- The **general processing times information** provided on USCIS' Check Case Processing Times page,<sup>308</sup>
- The **case inquiry date tool** (and link to an online service request page) where a customer enters their receipt date on the Check Case Processing Times page; and
- The **myProgress (personalized processing times) tool** in an online account.

*General processing times use an 80 percent marker.* To calculate general processing times, USCIS looks at the previous 6-month period and then counts the cases completed (approvals and denials) during those 6 months.<sup>309</sup> USCIS then captures the number of days (or months) between the date USCIS received the form and the date USCIS completed processing.<sup>310</sup> Using this information, USCIS determines how long it took to complete 80 percent of those cases;<sup>311</sup> that is what USCIS posts as the general processing time.<sup>312</sup> While USCIS uses the 80 percent marker to determine the

<sup>308</sup> USCIS Web page, "Outside Normal Processing Time;" <https://egov.uscis.gov/e-request/displayONPTForm.do?entryPoint=init&srPageType=onpt> (accessed Nov. 24, 2023) (introducing the "Check Case Processing Times" search tool at <https://egov.uscis.gov/processing-times/>).

<sup>309</sup> See USCIS Web page, "Case Processing Times;" <https://egov.uscis.gov/processing-times/more-info> (accessed Nov. 21, 2023).

<sup>310</sup> See USCIS Web page, "Case Processing Times" (illustrating the methodology, using 1,000 Form N-400 applications completed in the previous 6 months—if 80% (or 800) of those 1,000 applications were completed within 60 days, the processing time would display 2 months); <https://egov.uscis.gov/processing-times/more-info> (accessed Nov. 21, 2023).

<sup>311</sup> USCIS includes all time from receipt to completion, including the time to submit biometrics, the time to respond to requests for more information, and time for rescheduled interviews. However, the agency excludes premium processing cases, revocations, and adjustment applications that are waiting for immigrant visa availability. See USCIS Web page, "Frequently Asked Questions About Processing Times;" <https://egov.uscis.gov/processing-times/processing-times-faqs> (accessed Apr. 3, 2024).

<sup>312</sup> USCIS has used the 80 percent methodology since 2018, when the agency shifted away from using an older methodology known as "cycle times" to present public processing times. USCIS continues to use cycle times mostly as an internal measure of progress toward goals. See USCIS Web page, "Frequently Asked Questions about Processing Times" ("Why do some forms use the cycle time methodology to calculate processing times?"); <https://egov.uscis.gov/processing-times/processing-times-faqs> (accessed Apr. 3, 2024); see also USCIS Web page, "Case Processing Times" (examples of 80 percent methodology and cycle time calculations); <https://egov.uscis.gov/processing-times/more-info> (accessed Nov. 21, 2024).

<sup>305</sup> Information provided by USCIS (May 25, 2023).

<sup>306</sup> Information provided by stakeholders (Feb. 22, 2024). USCIS may be unable to respond with detailed information when interagency checks, investigations, etc. are involved and make processing times unpredictable. Information provided by USCIS (Apr. 16, 2024).

<sup>307</sup> See, e.g., "Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services," 86 Fed. Reg. 20398 (Apr. 19, 2021) (seeking public opinion on reducing barriers and burdens that impede access to immigration benefits); see also, USCIS News Release, "USCIS Simplifying, Improving Communication of Case Processing Data" (May 5, 2022); <https://www.uscis.gov/newsroom/om/news-releases/uscis-simplifying-improving-communication-of-case-processing-data> (accessed Apr. 3, 2024); see also USCIS News Alert, "USCIS Expands myProgress to Form I-485 and Form I-821" (Nov. 21, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-expands-myprogress-to-form-i-485-and-form-i-821> (accessed Apr. 3, 2024). Also, USCIS issued an email inviting applicants to participate in two listening sessions in March 2024 to share their experiences checking their case's progress using USCIS' online tools. See USCIS email, "Help Us Shape the USCIS Case Processing Times Experience!" (Mar. 14, 2024).

posted general processing times, it does not use this marker to identify cases that it considers ONPT.

The general processing times tool is useful because it requires no case number; anyone can select three filters—form type, form category, and the field office or service center processing the form—to see the length of time USCIS recently took to complete 80 percent of cases of that type.<sup>313</sup>

**Figure 7.1**

**General Processing Time Example**

The screenshot shows the USCIS Case Processing Times tool interface. It has three dropdown menus for filtering: 'Form' (selected: I-765 | Application for Employment Authorization), 'Form Category' (selected: Based on a pending asylum application [(c)(8)] – Initial Application), and 'Field Office or Service Center' (selected: All Service Centers). Below the filters is a blue button labeled 'Get processing time'. The results section is titled 'Processing time for Application for Employment Authorization (I-765) at All Service Centers' and features a large blue box stating '80% of cases are completed within 1 Month'.

Source: USCIS Web page, “Check Case Processing Times;” <https://egov.uscis.gov/processing-times/> (accessed Mar. 12, 2024). Search results inform the public that, of the initial asylum-related employment authorization applications that USCIS approved or denied during the last 6 months, 80 percent were pending with USCIS for 1 month or less, while 20 percent took longer to process.

For some forms, including the example listed, USCIS provides a single processing time for “All Field Offices” or “All Service Centers.” For other forms, USCIS provides office-specific processing time information, instructing customers to look at their receipt notices or other recent agency correspondence to find the office processing

their case.<sup>314</sup> Stakeholders value office-specific processing time information when processing times differ among locations and each location manages its own queue of cases.<sup>315</sup> However, they may not know which location to monitor if the agency transfers workloads among offices or moves a particular case from one office to another without informing the applicant or petitioner. For cases at the National Benefits Center, for example, which processes and coordinates adjudication of certain forms for the Field Operations Directorate (FOD), the agency instructs stakeholders to “check processing times for your local field office.”<sup>316</sup>

USCIS does not post general processing times on the Check Case Processing Times page for all forms.<sup>317</sup> The agency also may not provide processing times for all offices where a form may be processed. For forms not found in the general processing times search tool, the agency asks customers to wait at least 6 months before inquiring, unless a different form-specific wait time applies.<sup>318</sup>

*Case inquiry date tool uses a 93 percent threshold.* In the case inquiry date tool, USCIS identifies how long it took to adjudicate 93 percent of cases of a particular type.<sup>319</sup> To determine the 93 percent threshold, the agency uses the same methodology it uses to identify the 80 percent marker.<sup>320</sup> The agency considers cases pending less time than that 93 percent threshold to be processing normally, while cases pending longer are ONPT.<sup>321</sup> The 93 percent and related ONPT label are designed to limit inquiries to the longest pending cases so USCIS can focus limited resources on adjudications.<sup>322</sup> USCIS

<sup>314</sup> See USCIS Web page, “Case Processing Times” (“Finding Your Case Information”); <https://egov.uscis.gov/processing-times/more-info> (accessed Nov. 21, 2023). For larger workload transfers between offices, USCIS expects stakeholders to subscribe to USCIS’ Alerts GovDelivery distribution list to receive an email notice of case transfer public announcements. Information provided by USCIS (Apr. 16, 2024).

<sup>315</sup> Information provided by USCIS (Apr. 16, 2024); information provided by stakeholders (Feb. 28, 2024).

<sup>316</sup> See USCIS Web page, “Case Processing Times” (“Finding Your Case Information”); <https://egov.uscis.gov/processing-times/more-info> (accessed Apr. 18, 2023).

<sup>317</sup> Information provided by USCIS (Apr. 16, 2024) (Forms without posted processing times include small-volume form types, such as legalization, as processing time calculations are unable to be accurately made, or because of factors such as litigation which prevent a standard processing time calculation.)

<sup>318</sup> For example, USCIS provides specific wait times for Forms I-129, *Petition for Nonimmigrant Worker*, for H-2A temporary agricultural workers (15 days), Forms I-821D, *Consideration of Deferred Action for Childhood Arrivals*, (105 days), and initial Forms I-765, *Application for Employment Authorization based on a pending asylum application for a member of the class action litigation Rosario v. USCIS*, Case No. C15-0813JLR (30 days). USCIS Web page, “Outside Normal Processing Time;” <https://egov.uscis.gov/e-request/displayONPTForm.do?entryPoint=init&sroPageType=onpt> (accessed Nov. 24, 2023).

<sup>319</sup> Where USCIS still uses the cycle time methodology for a form, the agency identifies 130 percent of the cycle time instead. USCIS Web page, “Case Processing Times;” <https://egov.uscis.gov/processing-times/more-info> (accessed Nov. 24, 2023).

<sup>320</sup> Information provided by USCIS (Apr. 16, 2024).

<sup>321</sup> USCIS Web page, “Case Processing Times;” <https://egov.uscis.gov/processing-times/more-info> (accessed Jan. 17, 2024).

<sup>322</sup> Id.

<sup>313</sup> USCIS Web page, “Check Case Processing Times;” <https://egov.uscis.gov/processing-times/> (accessed Mar. 12, 2024).

does not publicly explain why it chose the 93 percent marker or the methodology used to determine the data point itself.<sup>323</sup>

If a customer thinks their case is ONPT and wants to submit an inquiry, USCIS' website first directs them to the general processing times information even though these times do not identify ONPT cases that are eligible for a customer inquiry. The case inquiry date tool appears only after the customer views the general processing time for their type of case. The customer may then enter their receipt date to check if they can submit an ONPT case inquiry. If their receipt date is over the 93 percent threshold, the web page does not directly label the case as ONPT. Instead, the customer is presented with a link to submit an inquiry to USCIS, as in Figure 7.2, Example 1.<sup>324</sup> If the case is not ONPT, as shown in Example 2, the web page tells the customer that the case is "processing normally" and provides "the earliest" date on which they may be able to submit questions about their case.<sup>325</sup>

Because the case inquiry date tool flows from the general processing times search tool, customers will see ONPT information relevant to their form only if USCIS includes that form and location in the dropdown list used to populate the general processing times tool, and they know which service center or field office has their form. If USCIS reassigns or transfers cases from one processing location to another without making the customer aware, customers may be monitoring the case inquiry date for the wrong location.<sup>326</sup>

For forms and locations not listed, USCIS permits inquiries after 6 months (or other specified timeframe); however, the options for inquiry may be limited.<sup>327</sup> In addition, even when an inquiry is permitted, USCIS may not consider the form ONPT based on the 93 percent threshold applicable at the time the agency reviews the inquiry.

*myProgress*. A tool called "myProgress" is currently available in applicants' USCIS online accounts for certain form types. This tool provides "personalized estimates of their wait time for major milestones and actions on their case, including their final case

## Figure 7.2

### Examples of Case Inquiry Date Processing

#### Example 1: ONPT

Enter your receipt date below to find out if you can contact us with questions.

When is your receipt date?

12/15/2021

Get Inquiry Date

You can send us questions about your case by submitting a [Service Request online](#).

Note: If you submitted a VAWA, T, or U filing, you must follow the instructions for asking questions on our [Contact Us webpage](#).

#### Example 2: Processing Normally

Enter your receipt date below to find out if you can contact us with questions.

When is your receipt date?

01/15/2022

Get Inquiry Date

✓ Your case is processing normally.

The earliest you can submit questions is April 16, 2024. Please do not contact us before this date.

Source: USCIS Web page, "Check Case Processing Times;" <https://egov.uscis.gov/processing-times/> (accessed Mar. 12, 2024).

decision."<sup>328</sup> myProgress displays a checkmark beside processing stages (such as receipt, applicable pre-processing and adjudicative steps, final decision) as those stages are completed so the customer can see their case move through processing. It also provides an estimated time to final decision, which the agency updates each time it takes action on the customer's form.<sup>329</sup> USCIS

<sup>323</sup> *Id.*

<sup>324</sup> Alternatively, a customer with a USCIS online account may submit a secure message to inquire about the status of an ONPT case.

<sup>325</sup> When the case inquiry date tool displays a future date for inquiry, it does not explicitly identify the date as an estimate, although it does note "processing times may change" and suggests the customer may "return to this page regularly for updates." However, USCIS does directly state on a different page that the case inquiry date is an "estimated date." See USCIS Web page, "Case Processing Times" ("When and How Can I Ask a Question About the Status of My Case?" and "How Is the Case Inquiry Date Calculated?"); <https://egov.uscis.gov/processing-times/more-info> (accessed Jan. 17, 2024).

<sup>326</sup> Information provided by stakeholders (Feb. 28, 2024).

<sup>327</sup> USCIS wants customers to call its Contact Center or use their USCIS online account to send an inquiry. See USCIS Web page, "Outside Normal Processing Time;" <https://egov.uscis.gov/e-request/displayONPTForm.do?entryPoint=init&sroPageType=onpt> (accessed Apr. 5, 2024).

<sup>328</sup> USCIS News Alert, "USCIS Expands myProgress to Form I-485 and Form I-821" (Nov. 21, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-expands-myprogress-to-form-i-485-and-form-i-821> (accessed Apr. 3, 2024). myProgress is currently available for applicants with a USCIS online account for the following forms: Form I-90, Application to Replace Permanent Resident Card; Form I-130, Petition for Alien Relative; Form I-131, Application for Travel Document; Form I-485, Application to Register Permanent Residence or Adjust Status (only for family-based or Afghan special immigrant I-485 applicants); Form I-765, Application for Employment Authorization; Form I-821, Application for Temporary Protected Status; and Form N-400, Application for Naturalization.

<sup>329</sup> Information provided by USCIS (Apr. 16, 2024).

anticipates that myProgress will reduce customers' concerns about the status of their case by increasing transparency in tracking the adjudication process.

Like all customers, those with myProgress access may submit a case status inquiry only if their receipt date is considered ONPT. However, myProgress currently does not allow customers to check their case inquiry date or to inquire about cases they think may be ONPT. Customers still need to visit USCIS' Check Case Processing Times web page and use the general processing time tool before they can use the case inquiry date tool to see if USCIS considers their case to be ONPT.

*USCIS' responses are not always helpful.* Even when USCIS permits stakeholders to submit status inquiries, the inquiries add to USCIS' workload often without resulting in responses that benefit the customer. According to stakeholders, inquiries rarely result in new or substantive information. Rather, the agency's responses generally provide information similar to the self-service tools and often suggest the applicant or petitioner wait longer before inquiring again.<sup>330</sup> For USCIS, inquiries for cases subject to routine delays divert attention from cases that are true outliers and need attention, contrary to USCIS' goals for the inquiry process.

### ***USCIS Processing Time Information Confuses Customers***

*Past data is not always predictive.* USCIS "update[s] case processing times on the website monthly with the latest available data."<sup>331</sup> The agency explains that processing times may vary due to factors such as workload volume, staffing allocations, and operational and policy considerations.<sup>332</sup> As a backward-looking snapshot of case adjudication during a particular 6-month period, the processing times are relevant to current pending cases only to the extent that priorities and resources remain consistent for the volume and variety of forms competing for USCIS' attention. Similarly, the personalized wait time estimates in myProgress come with significant caveats: "While estimates are based on case type and historical patterns, they are not a guarantee of timing, and cannot take into consideration all possible unique application processing factors."<sup>333</sup> In addition, USCIS may request additional

information or require applicants to complete biometrics or appear for interviews—and the time to complete these steps varies. As a result, the posted information conveys general processing time trends but does not necessarily indicate how long USCIS will take to process a customer's pending case. Moreover, the processing times pages do not indicate when the underlying data was last updated or what 6-month window it covers, which undermines the helpfulness of the information provided, regardless of how often USCIS updates the general processing times tool.<sup>334</sup>

*Unclear and conflicting information.* Many customers believe the posted processing times—in the general processing times tool or myProgress—represent what is "normal" and use it to determine when they can inquire about their case.<sup>335</sup> USCIS' current messaging about the general processing times tool contributes to the confusion among stakeholders. Some messaging accurately characterizes the general processing times as an "estimate" or "reference point" and reminds customers that many factors impact processing times, but other messaging implies the tool shows what is "normal" from the agency's perspective.<sup>336</sup> While customers may perceive myProgress to be more credible than other publicly available processing times information, legal representatives and others who help noncitizens navigate the immigration process may not have visibility into myProgress' estimate and, therefore, are less equipped to mitigate confusion and ensure inquiries are made at the appropriate time.<sup>337</sup> General processing times and myProgress do not determine—and are potentially not relevant to—whether a customer may submit an inquiry.<sup>338</sup>

When customers file multiple related forms, differences in program requirements and search options further complicate processing times information. In some programs, USCIS must adjudicate forms sequentially; adjudicators cannot process the second form

<sup>334</sup> When processing times are relatively steady, customers may not see any change for long periods, leading them to believe the information is outdated even if it is updated regularly. Customers may also view processing times that change frequently and are therefore unsettling.

<sup>335</sup> Information provided by stakeholders (Jan. 10, 2024; Feb. 22, 2024).

<sup>336</sup> See, e.g., USCIS Web page, "Case Processing Times," <https://egov.uscis.gov/processing-times/more-info> (accessed Jan. 17, 2024). See also USCIS Web page, "Outside Normal Processing Time" ("Do you have a case pending with USCIS that is outside the normal processing time? You can get an idea of how long it will take to process your case on our website [at] Check Processing Times. For most applications and petitions, you can send us an inquiry if your case has been pending longer than the processing time posted"); <https://egov.uscis.gov/e-request/displayONPTForm.do?entryPoint=init&sroPageType=onpt> (accessed Jan. 17, 2024).

<sup>337</sup> Information provided by stakeholders (Jan. 10, 2024). USCIS confirmed attorneys and authorized representatives do not have access to the myProgress information provided to applicants or petitioners in their USCIS online accounts. (Information provided by USCIS, Mar. 21, 2024).

<sup>338</sup> If a customer clicks on the "Learn more about the Case Inquiry Date" link, the resulting webpage explains that the controlling data points for determining general processing times and the case inquiry date are different and that the case inquiry date data point determines when a case is eligible for inquiry. See USCIS Web page, "Case Processing Times," <https://egov.uscis.gov/processing-times/more-info> (accessed Jan. 17, 2024).

<sup>330</sup> Information provided by stakeholders (Jan. 10, 2024; Feb. 22, 2024; Feb. 28, 2024) and USCIS (Apr. 16, 2024).

<sup>331</sup> USCIS Web page, "Case Processing Times," <https://egov.uscis.gov/processing-times/more-info> (accessed Nov. 21, 2023). The agency updates the general processing times tool and inquiry date tool monthly and myProgress at the time USCIS takes action on the customer's case. Information provided by USCIS (Apr. 16, 2024).

<sup>332</sup> Id. See also USCIS Web page, "Frequently Asked Questions About Processing Times," <https://egov.uscis.gov/processing-times/processing-times-faqs> (accessed Nov. 6, 2023).

<sup>333</sup> USCIS News Alert, "USCIS Expands myProgress to Form I-485 and Form I-821" (Nov. 21, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-expands-myprogress-to-form-i-485-and-form-i-821> (accessed Apr. 3, 2024).

until the first is approved. Applicants or petitioners check two processing times and add them together to get an idea of how long they may wait for a decision on the second benefit.<sup>339</sup> In other programs, USCIS can simultaneously process two forms, so that the processing times for the first and second forms overlap, and customers need only monitor the processing time for the second form for an idea of how long they may wait for the benefit they seek.<sup>340</sup> In addition, the general processing times tool provides a variety of dropdown options for forms applicants may file together or separately. For some forms (for example, an H-4 spouse filing Forms I-539, *Application to Extend/Change Nonimmigrant Status*, and I-765, *Application for Employment Authorization*), between field offices and service centers, there could be as many as six different combinations to search for the processing time.<sup>341</sup> This approach requires customers with multiple pending, interdependent forms to know which processing time(s) to use to determine whether their case is ONPT.<sup>342</sup>

In certain complex situations, USCIS includes notes beneath the general processing times search results and FAQs to explain the processing times information. Expanding the explanatory notes

could improve customers' real-time experience navigating the processing time tools.<sup>343</sup>

USCIS' website structure may inadvertently reinforce misperceptions of general processing times. To "find out if [they] can contact [USCIS] with questions" or if their case is "processing normally," customers must use the case inquiry date tool.<sup>344</sup> However, as discussed above, customers must first use the general processing times tool before they can access the case inquiry date tool. In addition, the general processing times search result has priority placement on the results page—highlighted using large font and a bright blue box—while the case inquiry date tool does not have a central placement and is not highlighted.<sup>345</sup> Although this tool is essential for determining whether the case is ONPT, its location and presentation suggest otherwise.

In addition, differences between the future inquiry date and the customer's own calculations, based on the general processing times or myProgress, may make customers even more concerned about their case status.<sup>346</sup> In Figure 7.3 below, the general processing time posted for Form I-90 was 11 months, according to search results on March 15, 2024. According to the case inquiry date tool, however, a Form I-90 filed on April 13, 2022 (almost 2 years prior, and 1 year prior to the date representing the 80<sup>th</sup> percentile) was "processing normally." April 11, 2024—nearly 24 months after filing and 13 months beyond the general processing time posted—was the earliest date USCIS estimated the customer could inquire about the case.<sup>347</sup> That 13 months represents the difference between the 80<sup>th</sup> and 93<sup>rd</sup> percentiles. This is not clearly explained, adding to the fear of customers who perceive their case to be off track or lost.

<sup>339</sup> For example, someone applying for an EAD based on a Deferred Action for Childhood Arrivals (DACA) application (Form I-765, category (c)(33), filed with Form I-821D) must wait for USCIS to adjudicate the DACA request before the EAD request will be reviewed. See USCIS Web page, "Important Information About Form I-765, Application for Employment Authorization;" <https://egov.uscis.gov/processing-times/i765> (accessed Dec. 11, 2023).

<sup>340</sup> For example, if a customer files a Form I-130, *Petition for Alien Relative*, and Form I-485, *Application to Register Permanent Residence or Adjust Status* simultaneously, they may use the Form I-485 processing time to estimate when their immigrant status may be approved. See USCIS Web page, "Frequently Asked Questions About Processing Times;" <https://egov.uscis.gov/processing-times/processing-times-faqs> (accessed Dec. 11, 2023).

<sup>341</sup> The general processing times tool first requires customers to search for one of the two forms involved: Form I-765, *Application for Employment Authorization*, or Form I-539, *Application to Extend/Change Nonimmigrant Status*. If they select Form I-765, they then have two form category options to search: "filed with Form I-539 H4 [(c)(26)]" or "Standalone, not filed with Form I-539 H4 status [(c)(26)]." If instead they select Form I-539, they then have four form category options: "Change of status to H4 dependent with I-765;" "Change of status to H4 dependents" without I-765; "Extension of stay for H4 dependents with I-765;" or "Extension of stay for H4 dependents" without I-765. Notably, the four options are not grouped together in the dropdown list of options, potentially increasing confusion.

<sup>342</sup> On December 15, 2023, for example, a general processing times search for the Texas Service Center included these results: Form I-539 extension of H-4 status filed together with Form I-765, estimated at 3 months, and Form I-765 for an H-4 spouse filed together with the Form I-539, estimated at 7 months. A customer who filed these forms together might be confused about whether to use 3 months, 7 months, or 10 months (3+7 months) as an anticipated timeframe for when USCIS will adjudicate Form I-765.

<sup>343</sup> For example, USCIS' Check Case Processing Times page does not inform customers checking Form I-140 processing times that if they filed their Form I-140 together with Form I-485, they should refer to the processing time for Form I-485 and consider whether their priority date is current. The customer has to find that information in an FAQ posted on another page and notes that appear under the search results for Form I-485. See USCIS Web page, "Frequently Asked Questions About Processing Times" ("If you filed Form I-485 together with Form I-130, Form I-140, or Form I-360, please refer to the processing time for Form I-485"); <https://egov.uscis.gov/processing-times/processing-times-faqs> (accessed Dec. 15, 2023).

<sup>344</sup> These phrases appear below search results in the Check Case Processing Times search tool.

<sup>345</sup> The case inquiry date tool appears in smaller font, inside a subtle grey box, and further down on the page, potentially visible only after scrolling down.

<sup>346</sup> Information provided by stakeholders (Jan. 10, 2024; Feb. 22, 2024; Feb. 28, 2024).

<sup>347</sup> USCIS Web page, "Check Case Processing Times;" <https://egov.uscis.gov/processing-times/> (accessed Mar. 15, 2024).

**Figure 7.3****Example of Processing Time and Case Inquiry Date (Form I-90)****Processing time for Application to Replace Permanent Resident Card (I-90) at Potomac Service Center**

When is your receipt date?

04/13/2022

Get Inquiry Date

✓ Your case is processing normally.

The earliest you can submit questions is April 11, 2024. Please do not contact us before this date.

We will notify you if we need any additional information. We appreciate your patience while we review your case. Processing times may change – return to this page regularly for updates.

Source: USCIS Web page, “Check Case Processing Times;” <https://egov.uscis.gov/processing-times/> (accessed Mar. 15, 2024).

Employers, legal representatives, and organizations that help noncitizens navigate immigration benefit requests have created their own strategies for explaining USCIS’ processing times information to employees or clients who think the general processing time estimate or myProgress estimates govern when a case is “processing normally,” rather than the case inquiry date, especially when the two diverge.<sup>348</sup> Their strategies generally involve emphasizing that all processing time information—including the case inquiry date—is a projection based on past performance and subject to change, and giving noncitizens a range that is higher than USCIS’ estimates.<sup>349</sup> They anticipate processing times may increase and try to lower expectations preemptively.

*Transfer notices are critical.* During processing, USCIS may reassign the form type—or specific cases—to a different service center or field office with different processing times. Unless USCIS informs customers of the location change, they would likely continue to rely on processing time information for the location on their receipt notice. Providing customers with real-time access to the current location of their case would improve customers’ experience with processing time information and reduce unproductive case status inquiries. Unfortunately, the case status information USCIS provides to customers after they enter their receipt number does not include the service center or field office handling the case.<sup>350</sup>

<sup>348</sup> Information provided by stakeholders (Feb. 22, 2024; Feb. 28, 2024).

<sup>349</sup> *Id.*

<sup>350</sup> USCIS Web page, “Case Status Online – Case Status Search;” <https://egov.uscis.gov/> (accessed Apr. 5, 2024).

**Figure 7.4****Examples of Case Status Search Results****Image 1:****Case Is Being Actively Reviewed By USCIS**

As of November 24, 2023, we are actively reviewing your Form [REDACTED]. Receipt Number [REDACTED]. Our records show nothing is outstanding at this time. We will let you know if we need anything from you. If you move, go to [www.uscis.gov/addresschange](https://www.uscis.gov/addresschange) to give us your new mailing address.

**Image 2:****Case Was Transferred And A New Office Has Jurisdiction**

On January 9, 2024, we transferred your Form [REDACTED], Receipt Number [REDACTED], to another USCIS office. That office now has jurisdiction over your case. We sent you a notice that explains why we moved your case. Please follow the instructions in the notice. If you do not receive your notice by February 8, 2024, please go to [www.uscis.gov/e-request](https://www.uscis.gov/e-request) to request a copy of the notice. If you move, go to [www.uscis.gov/addresschange](https://www.uscis.gov/addresschange) to give us your new mailing address.

Source: USCIS Web page, “Case Status Online – Case Status Search;” <https://egov.uscis.gov/> (accessed Apr. 5, 2024).

*Default inquiry timeframes unrelated to processing times.* USCIS does not provide general processing times for all forms. For some, it provides a specific inquiry wait time; for example, it asks Deferred Action for Childhood Arrivals (DACA) renewal applicants to wait 105 days before inquiring.<sup>351</sup> For forms without a posted processing time or specified wait time, USCIS asks customers to wait a “default timeframe for inquiring” of 6 months.<sup>352</sup> In FAQs explaining processing times information, USCIS acknowledges that the 6-month default timeframe does not represent actual processing times and states that USCIS is working “to develop processing times for all forms, benefit categories, and offices” and will add them to processing times information as they become available.<sup>353</sup>

Without any other information about processing times for their case, however, this static timeframe—even with the explanatory FAQ—may give customers the false perception their case will be completed in 6 months. Although customers may find some relief in submitting inquiries, USCIS often responds with little new information because the 6-month timeframe does not reflect actual processing times. Moreover, handling and responding to these inquiries can become its own caseload for USCIS, which could further delay adjudication of benefit requests.

A consequential example of the impacts of using a default timeframe for inquiry for an extended period of time is Form I-134A, *Online Request to be a Supporter and Declaration of Financial Support*. USCIS implemented the parole process for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV) in January 2023.<sup>354</sup> As a new process, USCIS would not have had sufficient adjudication data to generate even a general processing time estimate for Form I-134A until June 2023 at the earliest. In the absence of data-derived processing time information, USCIS applied the 6-month inquiry timeframe to the form.

Significant interest in the parole processes for CHNV soon overwhelmed the 30,000 monthly travel authorizations available. Shortly before CHNV’s 6-month anniversary, in May 2023, USCIS announced a unique approach for processing these requests:

- Half of the monthly allocation in “First-in, First-Out” order that prioritizes the oldest cases first, and

- The other half using a random selection of cases, meaning all cases have an equal chance of getting processed without regard to receipt date.<sup>355</sup>

USCIS explained the processing approach “is intended to maintain a meaningful and equitable opportunity for all beneficiaries of a Form I-134A to move forward through the process and seek advance travel authorization.”<sup>356</sup> An inevitable result has been variable processing times that cannot be estimated with precision.<sup>357</sup>

By the end of September 2023, USCIS had received 1,960,000 Form I-134A filings.<sup>358</sup> Customers with pending Forms I-134A have submitted and continue to submit inquiries, with many referring to the 6-month default timeframe and at least some appearing to think it is an estimated processing time.

USCIS has tried to discourage customers from contacting the agency about Forms I-134A, noting that it is “currently receiving a high number of inquiries related to Form I-134A case status updates and corrections. Because of this, it may take the USCIS Contact Center longer than normal to process and respond to your inquiry.”<sup>359</sup> The agency has been forthright that “the Contact Center cannot provide any additional information on the status of your case.”<sup>360</sup> Rather, the agency encourages customers to monitor the status of a Form I-134A in their USCIS online account or by checking the agency’s Case Status Online tool.

In 2023, the CIS Ombudsman received almost 7,000 case assistance requests for Form I-134A—over 4,000 of those in the last quarter of the calendar year alone (which was, not coincidentally, more than 6 months beyond the initiation of most filings). These inquiries comprised 25 percent of the case

<sup>355</sup> USCIS News Alert, “USCIS Updates Review Process for the Processes for Cubans, Haitians, Nicaraguans, and Venezuelans” (May 18, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-updates-review-process-for-the-processes-for-cubans-haitians-nicaraguans-and-venezuelans> (accessed Apr. 5, 2024).

<sup>356</sup> *Id.*

<sup>357</sup> USCIS Web page, “Frequently Asked Questions About the Processes for Cubans, Haitians, Nicaraguans, and Venezuelans,” undated alert for “Case Inquiries and Corrections” (Oct. 11, 2023) (“We cannot currently estimate the processing time for Form I-134A, and we do not currently list the processing time on uscis.gov”); <https://www.uscis.gov/humanitarian/frequently-asked-questions-about-the-processes-for-cubans-haitians-nicaraguans-and-venezuelans> (accessed Apr. 5, 2024).

<sup>358</sup> USCIS News Release, “Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade” (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed May 10, 2024).

<sup>359</sup> USCIS Web page, “Frequently Asked Questions About the Processes for Cubans, Haitians, Nicaraguans, and Venezuelans,” undated alert for “Case Inquiries and Corrections” (Oct. 11, 2023); <https://www.uscis.gov/humanitarian/frequently-asked-questions-about-the-processes-for-cubans-haitians-nicaraguans-and-venezuelans> (accessed Apr. 5, 2024).

<sup>360</sup> *Id.*

<sup>351</sup> USCIS Web page, “Outside Normal Processing Time,” <https://egov.uscis.gov/e-request/displayONPTForm.do?sroPageType=onpt> (accessed Apr. 5, 2024).

<sup>352</sup> *Id.*

<sup>353</sup> USCIS Web page, “Frequently Asked Questions About Processing Times,” <https://egov.uscis.gov/processing-times/processing-times-faqs> (accessed Nov. 24, 2023).

<sup>354</sup> See USCIS News Alert, “DHS Implements New Processes for Cubans, Haitians, and Nicaraguans and Eliminates Cap for Venezuelans” (Jan. 6, 2023); <https://www.uscis.gov/newsroom/alerts/dhs-implements-new-processes-for-cubans-haitians-and-nicaraguans-and-eliminates-cap-for-venezuelans> (accessed Apr. 5, 2024).

assistance requests received in 2023 and 45 percent of those received in October, November, and December.<sup>361</sup>

## ***Recommendations to Achieve a Better Understanding of Displayed Processing Times***

With continuing high demand for the benefits USCIS administers and continuing resource constraints, it is in USCIS' best interest to provide public information that customers can easily find and understand, set appropriate expectations, and focus case status inquiries on truly problematic cases.

USCIS could consolidate processing times information and existing tools into a comprehensive, customer-friendly informational web page.<sup>362</sup> Alternatively, reasonable changes to the website and public messaging about existing processing times tools could make a big difference in building confidence in the information provided and increasing transparency. Accordingly, the CIS Ombudsman makes the following recommendations to guide future discussions on improving information presentation and increasing users' understanding.

### **1. Actions for improving the general processing times tool**

- a. *More accurately characterize the tool—and the results it generates—as a recent historical snapshot of processing times for similar cases.* For example, the web page states, “[s]ee an estimate of how much time USCIS is taking to process your application or petition at its offices” but could be rephrased as “[s]ee how much time USCIS took recently to process cases like yours.”<sup>363</sup> USCIS should clarify that these processing times do not necessarily predict future processing times, given that resources may shift, inventory may fluctuate, or other changes may transpire that will affect processing times.
- b. *Add the date the general processing times were last updated.* Currently, the general processing times web page does not indicate when USCIS last updated the data. Using a “Last updated: XX/XX/XXXX” message could provide some reassurance that the information is current and being updated, even if the posted processing times remain the same for long periods.
- c. *Provide the date range of the underlying data used.* Identifying the 6-month period used for the posted information on the general processing times web page (for example, “Based on data for August 2023 to January 2024”)

<sup>361</sup> Information received through requests for case assistance.

<sup>362</sup> The USCIS Web page, “Five Steps to File at the USCIS Lockbox,” provides a model for updated, customer-friendly information; <https://www.uscis.gov/5stepstofile> (accessed Apr. 5, 2024).

<sup>363</sup> USCIS Web page, “Case Status Online;” <https://egov.uscis.gov/> (accessed Apr. 5, 2024).

would increase transparency. It would also provide context, particularly for representatives who are aware of major policies, filing cycles, or other events that have or could impact processing.

- d. *Revisit and expand notes or other online guidance to explain to customers how they should search for and understand processing times when they have filed multiple interdependent forms.* USCIS could expand the FAQs that cover processing time situations for certain common complex situations and incorporate them into the notes that explain the general processing times displayed.

### **2. Actions for improving the case inquiry date tool**

- a. *More clearly explain how the tool differs from the general processing times and myProgress information and when customers should use this tool.* USCIS could do so by replacing “outside normal” with “outside estimated” processing times to communicate the tool's purpose and function.
- b. *Include explanatory text within the tool (rather than only in separate FAQs).* When providing a future case inquiry date, USCIS could explain that USCIS limits inquiries to outlier cases to focus on adjudicating cases.
- c. *Provide more context about the methodology used to identify the case inquiry date, which will help immigration professionals better understand the tool.* When explaining the 93 percent threshold, USCIS could match the level of detail it uses to explain the 80 percent general processing times marker.
- d. *Separate the case inquiry date tool from the general processing times tool and provide direct access to the case inquiry date tool.* Uncoupling the general processing times tool from the case inquiry date tool could better convey that the two tools serve independent informational purposes and only the case inquiry date tool will indicate when USCIS will permit inquiries.

### **3. Actions for improving myProgress**

- a. *Provide links to the general processing times tool and case inquiry date tool alongside myProgress' information.* These additional links, along with brief explanatory information about the different functions of each tool, could reinforce that all processing times information is a projection, not a prediction. The additional information can also clarify that each tool may generate different results, given their different purposes and methodologies.
- b. *Explore how to make personalized processing times visible for authorized representatives.* Currently, only USCIS account

users can see myProgress personalized processing times in their accounts, which creates a disconnect between information available to customers and that available to their authorized representatives. USCIS could add a receipt number field to the general processing times tool to provide myProgress information. With such an approach, both authorized representatives and noncitizens who use USCIS online accounts could view myProgress information.

#### 4. *Actions for improving information on forms with no processing times*

- a. *Identify forms with no processing times alongside the general processing times tool.* For forms with no processing times, USCIS could provide the inquiry wait time—6 months—unless a different fixed timeframe applies. Providing this information on the same web page would both alert customers not to search for general processing times and clarify inquiry timeframes. Alternatively, USCIS could include all forms in the dropdown list and, until processing times can be generated for the form, provide a message along the lines of, “No processing times are available for this form. Please wait at least 6 months before inquiring about your case.”
- b. *Include all locations that process a form in the general processing times tool, even when processing times are not available at a location.* Until USCIS has sufficient data to provide processing times for a location, customers could receive a message such as “No processing times are available for this location. Please wait at least 6 months before inquiring about your case.” USCIS could include “Notes” similar to those now provided to customers whose Form I-821D, *Consideration of Deferred Action for Childhood Arrivals*, is pending at the Vermont Service Center.<sup>364</sup>

#### 5. *Develop new methodologies to support public processing times information, set customer expectations, and reduce unproductive inquiries*

- a. *Offer processing time information to set expectations for inquiries about benefit types that do not lend themselves to traditional methodologies, such as Form I-134A.* The processing approach adopted in May 2023 for Form I-134A does not lend itself to existing methodological approaches; however, some type of information to provide realistic expectations about wait times would benefit both USCIS and customers. For example, the agency could consider providing

a “default” inquiry timeframe more relevant to the form than 6 months.

- b. *Provide a plain language explanation for processing approaches that generate varying processing times for a particular form.* USCIS could explain that some Form I-134A adjudications will take a certain amount of time while others will be faster due to random selection.

6. *Notify customers of case processing transfers.* USCIS should notify customers when it processes office transfers by identifying the form’s location in the Case Status Online tool and myProgress. Adding form location to self-service case status information would enable customers to find relevant estimated processing times and case inquiry dates in real time.

## Conclusion

Enhanced public information would improve the customer experience and would reduce government resources expended on responding to inquiries. In most cases, the best the agency can do is reassure customers that processing times, although long, do not indicate a problem with their case. Reducing unproductive case status inquiries would benefit both customers and USCIS by focusing inquiries on outliers and supporting USCIS’ efforts to direct its limited resources to adjudications, which would ultimately reduce processing times.

<sup>364</sup> These notes state, “All Form I-821D renewal requests are currently processed at the Nebraska Service Center, except for a small number of remaining requests pending at the Vermont Service Center (VSC) from when certain Forms I-821D were routed there. There are not enough Form I-821Ds pending at VSC to calculate an accurate processing time. For those whose cases are still pending at VSC who seek case specific information, please go to the Case Status Online Tool (<https://egov.uscis.gov/>).” USCIS Web page, “Check Case Processing Times;” <https://egov.uscis.gov/processing-times/> (accessed May. 2, 2024).

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## And, Finally, Some Thoughts

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**T**he CIS Ombudsman is tasked by Congress, among other things, in this Annual Report to propose changes in the administrative practices of USCIS to mitigate the problems faced by individuals and employers seeking immigration benefits. This makes the CIS Ombudsman an observer of USCIS' activities, initiatives, and challenges. We engage at many levels with both stakeholders and the agency itself, seeking to offer understanding on both sides of these life-altering transactions.

This office strives to propose changes to USCIS programs and practices through observation and careful analysis of agency actions. We seek to offer solutions that are operationally feasible for the agency to undertake, while attempting to ensure they will also make a visible difference in the lives of those who must place their lives in the hands of the agency. We ground these as much as possible in evidence, data, statistics, and facts. At the same time, we see a tremendous amount that moves past facts and data into truisms. Nowhere is this more apparent than with respect to the overwhelming tasks the agency confronts daily.

Since 2003, the CIS Ombudsman has written extensively about the impacts of backlogs on the agency's work, and in doing so it has become self-evident that *something* must change within USCIS for it to move beyond numbing acceptance of lengthy processing times and residual workstreams that stem from longstanding delays. Too many challenges and competing priorities prevent USCIS from making needed progress in transforming its work. While the agency made significant strides in reducing its backlog in 2023, the backlog remains.

We offer the following thoughts on the need for some elements of reform within USCIS to better ensure the agency can quickly respond to challenges while providing more services with fewer resources and while continuing to operate as a united whole. These thoughts are no more than observations; they provide no specific recommendations to which the agency must respond. There is no analysis of data, no evidentiary conclusions from which the agency must defend its practices or accept alternatives for improvement. We simply offer an open discussion of our observations, hoping the agency takes some of them under consideration as it contemplates the obstacles that are in its future, obstructions it cannot even see or know but which will inevitably lie in its path forward.



## *Looking Backward, Looking Forward:*

### Thoughts on the Future of USCIS

#### Introduction

Over the past decade, U.S. Citizenship and Immigration Services (USCIS) has faced unprecedented challenges to meet its mission to administer the nation's legal immigration system. As a result of the workloads and backlogs that have grown out of these challenges, the agency would benefit from considering options for some structural and resource realignment. The following is an analysis not of the decisions that have led to the present point, but of the current state and, more importantly, a discussion of potential reform of USCIS' structure and staffing to try to ensure the agency can quickly respond to new challenges as well as its significant, ongoing workload.

The Congressional Research Service recently noted that one of the key issues facing the agency includes “whether USCIS’s management of its personnel and resources adequately addresses sudden demands for processing and adjudication of some benefits while maintaining processing times and adequate levels of service for all others.”<sup>365</sup> This is perhaps the biggest single issue confronting USCIS today: how it positions itself for the future, knowing already some of its future challenges lie in the persistence of backlogs, and not knowing what other challenges are to come that may add to those pressures.

<sup>365</sup> William A. Kandel, Congressional Research Service, “U.S. Citizenship and Immigration Services (USCIS): Operations and Issues for Congress” (Apr. 5, 2024); <https://crsreports.congress.gov/product/pdf/R/R48021> (accessed May 14, 2024).

## USCIS and its Current Challenges

***“At its core, USCIS has the responsibility to deliver decisions about immigration service requests to individuals while ensuring the security of our nation.”***

—Ur Jaddou, Director, U.S. Citizenship and Immigration Services, Fiscal Years 2023–2026 Strategic Plan

USCIS has confronted significant operational pressures dating back to the establishment of the Department of Homeland Security (DHS) and the general separation of the administration of immigration benefits from immigration enforcement. These operational pressures have continued to detract from other agency activities. They consist chiefly of challenges in increased operations brought on by global and humanitarian issues, the differing responses to these issues, and a lack of resources—both human and financial—to adequately handle them.

The needs of the executive branch to respond to certain outside forces—regardless of source—has fallen on USCIS without adequate resourcing. The agency has taken on work over the last decade that has varied considerably, whether it is increased vetting or humanitarian parole, but typically without corresponding funding and which it has not previously fully accounted for in its fee modeling. It is simply work that has not been adequately resourced, and the agency was not established with a funding model allowing for that.<sup>366</sup>

The activities for which it receives no appropriated funds and no fees or fees set at a level that is far below the cost of the adjudication have reduced an already funding-strapped operation. Recent budget challenges, inflationary pressures, and the growth of unfunded or underfunded humanitarian workloads have put tremendous stress on the current USCIS business model and continue to have significant and growing impacts on traditional USCIS workloads. The decline in fee revenue caused by the COVID-19 pandemic and associated mitigation costs, as well as delays in implementation of a new fee structure and ongoing staffing challenges, have intensified the impacts of these pressures, forcing the agency into increasingly improvised strategies. Furthermore, fees being collected now are being used to pay not for the applicants who have paid those fees, but for applications filed months or even years ago.<sup>367</sup>

The agency is also facing—and generally rising to—the workforce challenges presented in a post-pandemic world. The transition of the workforce to one working remotely or partially remotely and partially on-site has changed, perhaps forever, the methods with which the

workforce responds to its activities. The movement to a digitized work environment for many of the adjudications and ancillary functions, while not without its trials, has enabled much of the work to take place remotely, adding to the need to recognize and respond to the functionality of more complex workforce capacity planning and execution. At the same time, as much of the integrity of the adjudication function is linked to in-person actions and events, a fully remote work environment is not an option. Managing this duality presents further challenges to the agency.

Meanwhile, it must plan for challenges it can only at this time approximate. Rising populations, inflation, and ongoing geopolitical crises will continue to result in potential surges in irregular migration and the potential for increasing work and expenditures for the agency. USCIS must continually plan and prepare for the unknown, particularly in the resourcing of underfunded humanitarian programs. The fee-funded structure of immigration services and the unlikelihood of receiving additional appropriated funds in a highly politicized environment calls for the agency to consider creative options to be responsive to future unexpected workflows, large or small.

The CIS Ombudsman holds a unique position with regard to USCIS. This office is a comparatively small external agent for change, tasked by Congress with observing, identifying, and analyzing USCIS’ most pervasive challenges and making recommendations to improve the administration of immigration benefits. These suggestions for the agency’s consideration provide opportunities for it to explore alternatives as it considers the long-term impacts of its current challenges and how to confront them for future success.

### *Options to empower a more flexible workforce*

***“I do think we have a super resilient workforce and we may not be giving them enough credit to be more versatile.”*** —Current USCIS senior leader

USCIS’ strongest asset has always been its workforce. Composed of more than 20,000 federal employees at approximately 285 offices across the country and around the world, these employees are charged to administer the legal immigration programs that provide noncitizens with the ability to live, work, study, and otherwise remain in the United States, eventually seeking the ultimate goal of U.S. citizenship.<sup>368</sup> In Fiscal Year (FY) 2023, USCIS officers and others handled, on average, more than 40,500 requests for various immigration benefits each business day.<sup>369</sup> The agency is staffed at 21,267 employees as of April 2024, but authorized for 24,563, with

<sup>366</sup> For a full discussion of the current USCIS fee-for-service funding model, please see CIS Ombudsman Recommendation 63, *The Challenges of the Current USCIS Fee-Setting Structure* (June 15, 2022); [https://www.dhs.gov/sites/default/files/2022-06/CIS%20OMBUDSMAN\\_2022\\_FEE\\_FOR\\_SERVICE\\_RECOMMENDATION\\_FINAL.pdf](https://www.dhs.gov/sites/default/files/2022-06/CIS%20OMBUDSMAN_2022_FEE_FOR_SERVICE_RECOMMENDATION_FINAL.pdf) (accessed June 17, 2024).

<sup>367</sup> *Id.*

<sup>368</sup> USCIS, “FY 2023–2026 Strategic Plan,” p. 7 (Jan. 23, 2023); <https://www.uscis.gov/sites/default/files/document/reports/StrategicPlanFY23.pdf> (accessed June 18, 2024). As of April, 2024, the agency had 21,267 employees. Information provided by USCIS (May 7, 2024).

<sup>369</sup> USCIS Web page, “A Day in the Life of USCIS” (Dec. 11, 2022); <https://www.uscis.gov/about-us/a-day-in-the-life-of-uscis> (accessed Apr. 1, 2024).

the majority of those employees (over 17,000) either performing a direct adjudicatory function or directly supporting one.<sup>370</sup>

The current separation of functions among each operational directorate, especially as the work has divided into “in-person” vs. “remote” activities has contributed to the difficulties in the hiring and retention of officers and others. This is in part tied to the relative ability to work offsite, or remotely, for at least some of the time. Remote work allows employees to move to these roles without having to physically relocate families or uproot themselves. Remote positions also can offer advancement not necessarily tied to field positions, including higher-level non-supervisory positions or opportunities with USCIS Headquarters. In addition, remote positions can offer a less stressful work atmosphere with no commute. Those positions allowing for fully remote work attract those who, all other issues being equal, need or desire that workstyle. This results in employee movement within the agency.

In addition to these specific challenges, hiring has been and continues to be a substantial challenge for USCIS. The agency has struggled to recover to its prior staffing level percentages after the lifting of the lengthy agency-wide hiring freeze in 2021. USCIS has said it continues its aggressive hiring to reduce the number of outstanding vacancies due to attrition and staff onboarding with other directorates and increase the overall number of personnel, especially those dedicated to the adjudication of immigration benefits and the concurrent screening efforts. However, the agency is still at only 87.5 percent of its authorized capacity.<sup>371</sup>

The agency and its workforce continue to be impacted by the difficulties caused by the COVID-19 pandemic and the potential furlough of 2020. Ongoing high-volume, high-priority detail requests to address critical agency priorities, including recent credible fear interview details, have strained available resources and transferred the work of detailed employees to the staff remaining in the office. Details have continued across multiple years and created a permanent emergency throughout parts of the agency; such ongoing transfers deplete resources across offices and disadvantage all employees involved. By contrast, those not sought out for high-priority details are prevented from expanding their own skills through voluntary details given the need for them to remain to fill gaps

where others have been deployed. Although there have been positive impacts for some, the negative impacts are felt throughout.<sup>372</sup>

The work of immigration adjudicators is primarily channeled into three separate operational directorates: Field Operations (FOD), Service Center Operations (SCOPS), and Refugee, Asylum and International Operations (RAIO). Workload shifts from one directorate to another have formed a major component of USCIS’ efforts to address recent challenges.<sup>373</sup> Notably, the inability to nimbly reassign workloads and efficiently shift adjudications personnel to meet those challenges are increasing.

USCIS might wish to consider making its workforce, especially those centered on the core function of adjudicating immigration benefits, more flexible and more agile to better serve its customers. There are several ways this could be instituted. One is to initiate—in a pilot, in a detail, or in a cohort—a single adjudicating officer position broadly trained to handle most or all of the workloads USCIS completes. This position would, with supplemental training, have the ability to ultimately adjudicate a wide variety of benefit types.

Creating a generalized position to cover more types of USCIS work would allow the agency to shift work and staff to address emergent needs with minimal but specialized hiring and training. This could be approached as is currently done with the asylum adjudications officers, creating a higher-level officer for promotion potential as officers completed the lower levels, or by starting within the adjudications function a more universal, broad adjudications function from the lowest levels of adjudications, adding more responsibility as the officer grows in their career.

Transitioning to a more versatile adjudications officer position addressing most major workloads would facilitate agile resource management to adjust to changes in workloads on a faster basis, allowing the agency to respond more quickly to shifts in priorities. Transforming at least some adjudicating officers into a “universal officer” in some form, ensuring that these adjudicating officers are trained in more areas of responsibility, involving either a written record or an in-person adjudication component, would address many of the current problems in hiring and retention. We recognize that any such cohort would need robust training to ensure maximizing efficiency and consistency of adjudication, but well-planned training, as well as thoughtful application of this

<sup>370</sup> Information provided by USCIS (May 7, 2024). More precisely, as of April 2024, USCIS has “onboarded 9,970 out of the 11,272 authorized positions assigned to operational directorates whose primary duties are dedicated towards adjudicating immigration benefits or screenings. Moreover, 1,591 of these filled positions are supervisors who approximately average 15 to 20 percent of their time towards adjudication or screenings due to administrative functions or training.”

<sup>371</sup> *Id.*

<sup>372</sup> The feedback from varying positions of the agency on the Southern Border details has been, unsurprisingly, varied. This office has heard from impacted offices of the challenges resulting from the extensive details. It has also however been informed that by allowing other officers new opportunities, interest in other areas and in filling critical positions has been kindled. For example, details to RAIO have increased interest in asylum officer positions, a critical need for the agency for the foreseeable future. Information provided by USCIS (May 23, 2024).

<sup>373</sup> Remarks of Ted Kim, Associate Director, USCIS Refugee, Asylum and International Operations Directorate; Connie Nolan, Associate Director, Service Center Operations Directorate; and Michael Valverde, Associate Director, Field Operations Directorate, “USCIS Open Forum,” American Immigration Lawyers Association Annual Conference, June 14, 2024.

workforce, would greatly enhance the agency's capacity to respond to its priorities.

A variation on this is to create a "surge" force—those explicitly trained in being universal adjudications officers—to facilitate expedient movement of the workers to the work when and where needed. These officers would be trained in many types of adjudications and serve the same purpose as a universal officer, allowing the agency greater flexibility in assigning them to benefit types and locations that best service the agency as a whole, rather than an individual adjudicating unit or form type. A surge force would also allow USCIS to respond quickly to new priorities and unanticipated workloads, giving it ready resources to rapidly deploy when required.

Training some cadre of adjudicating officers and others in broader areas of responsibility and ensuring this training is sufficient to enable them to move through a wide range of applications and petitions is a significant investment of time—possibly years—and resources. But doing so would provide the agency with a workforce that can be deployed to all types of adjudications at any time, when needed. Ensuring officers can handle a broader range of immigration benefits, and ensuring they are trained as well as committed to handle that range, provides the agency with far more deployment options than it has at present.

It is not just adjudicators, however, that are needed to surge or handle widening responsibilities. Adjudicators can process benefit requests, but without support, the work cannot be completed. Records support, technical assistance, legal and policy support, supervisors—these are essential elements that need to be considered during any shift in responsibilities. The support provided by the many complementary functions, from ensuring the benefit requests are properly receipted in, to ensuring the decision is correct and the right benefit is bestowed, reaching its intended recipient, should be incorporated into any successful shift to a priority.

Keeping a wider range of employees at the ready—whether as a surge force, or permanently as a universal force—in broader areas of responsibility will also result in a wider variety of work assignment options, more equitable access to all forms of a hybrid work environment, and more advancement opportunities. Employees will have more opportunities available, rather than fewer, and more employees will have the opportunity to benefit from the remote workloads while taking their turn with conducting in-person activities.<sup>374</sup> A more responsive adjudications workforce will not only help the agency have more strategic agility, but it will reduce officer

burnout that occurs all too often from working on a limited set of forms or performing a limited set of activities. It also broadens the officers' own experiences, giving them a more complete perspective of the agency's work. It may also reduce turnover since it disincentivizes employees from making lateral moves across the organization for advancement or work-life balance.

The idea of maintaining some form of a broader, more universal officer is not without precedent—this is the very activity that the agency has been engaged in for the last few years as officers detailed into and out of work at the Southern Border as credible fear interviews were surging. The effort has drawn from all corners of the agency as details, including from those with the asylum corps and, as those resources were exhausted, from other directorates<sup>375</sup>—leading to a need to train officers in the complexities of credible fear, reasonable fear, asylum, etc.—in an intensified time period. Overcoming this challenge demonstrated not only that the agency could successfully manage the rigorous training requirements and deploy the staff, but the staff were also capable of being trained and deployable.

It has also already shown that training of adjudications officers, and others, needs to be more agile. Recent hiring surges have led to significant delays in attendance at the USCIS Immigration Services Officer BASIC training program (BASIC), the required generally offsite training course that all immigration services officers must undergo. As a result, new hires are often spending a longer time in their officer positions before getting the "basics." This delay is one factor that has led the agency to undertake a review of the BASIC curriculum.

In addition to expanding what is covered in an officer's training, the idea that a trained officer corps is given more than just what is covered at BASIC or asylum training but is in learning mode for several years—from the first day on the job—carries the potential for creating a more adaptable staff. This is certainly the case across all SCOPS and FOD adjudicators. Training is constant and can be a highly useful tool to go well beyond a form type or product line. Moreover, educating all staff, not just adjudicators, in what is the agency's core mission provides even more options when needed.

Because USCIS runs almost exclusively on a fee-funded model, however, the challenge of creating and maintaining a surge force requires the tasking of those already accounted for. Moving a surge force *into* a workload means moving them *out* of work they are already performing, straining existing resources and those left to perform them, or allowing the work left behind to be deprioritized—further contributing to the backlogs the agency currently continues to be burdened by. The challenge is to ensure the adequacy of those who take over for those surged—no small task, requiring a

<sup>374</sup> The benefits of telework to the Federal workforce have been well documented by this point. See, e.g., U.S. Office of Personnel Management Report to Congress, "Status of Telework in the Federal Government" (Dec. 2023), p. 26-27; <https://www.opm.gov/telework/documents-for-telework/2023-report-to-congress.pdf> (accessed May 6, 2024).

<sup>375</sup> Remarks of Ted Kim, Associate Director, USCIS Refugee, Asylum and International Operations Directorate, "USCIS Open Forum," American Immigration Lawyers Association Annual Conference, June 14, 2024.

model in which the offices and workforce “left behind” are given the autonomy and flexibility to ensure the workload that remains is spread sufficiently so as to not unduly burden the rest of the office or function. Cross-training is only one aspect of the surge. The ability to reallocate remaining resources in a uniform fashion at the local level is equally essential.

### *Options for maximizing the tools needed to accomplish a complex mission*

**“Don’t underestimate the legal, policy, and political challenges as technology usage increases.”** —Current USCIS senior leader

No amount of hiring, however, will provide the agency with enough personnel to eradicate the backlogs, maintain excellent customer service, and balance integrity with needed efficiency. The only way USCIS will achieve its goals of backlog management involves maximizing its use of technology.

Technology will continue to serve as a critical facilitator of USCIS’ efforts to align work with resources and increase the ability of the agency to respond to new and unexpected challenges. Technology can be leveraged to do this through three key functions. First, it facilitates the movement of non-interview work to allow for the creation of flexible resources and reserve capacity. Second, it creates additional budgetary resources through the elimination of unnecessary expenses such as printing and shipping of documents that can be submitted, processed, and issued digitally. Third, it enables innovative approaches to perform even the most mundane of tasks, providing a needed boost to both employee morale and uniformity of service provision.

Much attention and many resources, including many pages of this Annual Report, have been devoted to the need to move to a paperless agency. That need has only increased with the rise in applications and petitions and the need to serve a more widespread community. A fully digital adjudications process not only frees up technical resources, but also enables most processing to take place anywhere, avoiding the cost and time of file transfers. While there will always be a statutory, regulatory, or policy need for product lines or even individual applications or petitions to have human intervention and an in-person interview, many of the benefits the agency processes can be handled remotely, guaranteeing work flexibility as well as increased workforce capacity. This is a concept long embraced by USCIS. Improving and finalizing a fully digital experience continues to need to be a high priority for the agency’s resources. It improves the experience for the filing community, but more importantly adds protections to the processing of applications and petitions and exponentially improves capacity throughout the agency.

The adjudication of immigration benefits is an inherently legal process, ultimately in the hands of a trained adjudications officer versed in the law, policy, fraud detection, and customer service. However, much has already been done—and more can be done—to automate some aspects of the adjudications activity through the use of streamlined processing (both technological processes and other, non-technological automations that can be undertaken).<sup>376</sup> Maximizing these efficiencies is the only way to streamline some of the more repetitive functions of the millions of applications USCIS is currently processing. Moreover, it reserves officer time to be more effectively used in the aspects in which their analysis—the critical analysis and thinking brought to bear on every application for every benefit sought—is essential.

USCIS should also fully embrace machine learning and artificial intelligence, where suitable, to facilitate pattern recognition and fraud detection across the full range of immigration benefits.<sup>377</sup> These tools can be used just as much to recognize fraud as they can to facilitate efficiencies in processing. Key identifiers such as the use of canned, boilerplate language in applications for asylum, identical addresses for hundreds of individuals in applications for adjustment of status, boilerplate language from medical doctors fraudulently completing waiver requests for naturalization, and others are regularly used by officers to detect immigration fraud schemes. The ability of these schemes to succeed undermines the integrity of the immigration system and allows bad actors to exploit the immigration benefits system, applicants for benefits, and the goodwill of the American public.

There is no single technology that USCIS is leaning on or should lean on. Because all parties involved (inter-agency and externally) are at different places with technology and are using a variety of technologies, USCIS needs to forge connections through multiple technologies to streamline its processing efforts. The goal is to use technology, with all available processes and procedures, to achieve a streamlined processing outcome.

USCIS needs to explore and fully exploit every automation it can without, however, losing the integrity of the adjudications process. Supplying digital credentials to those applicants fully vetted and cleared and whose eligibility is approved, for example, especially for repetitive documents such as employment authorization documents, has the capacity to eliminate millions of hours of what are essentially administrative activities. This also frees up human capital—USCIS’ most precious resource—to enable the human factor

<sup>376</sup> Information received from USCIS (Jan. 8, 2024).

<sup>377</sup> USCIS is, in fact, applying AI to improve immigration officer training. See, e.g., DHS, “FACT SHEET: DHS Facilitates the Safe and Responsible Deployment and Use of Artificial Intelligence in Federal Government, Critical Infrastructure, and U.S. Economy” (Apr. 29, 2024); <https://www.dhs.gov/news/2024/04/29/fact-sheet-dhs-facilitates-safe-and-responsible-deployment-and-use-artificial> (accessed June 20, 2024).

to concentrate on those activities best handled manually in the adjudicative process.

### *Options for a more unified culture*

Finally, no agency as diverse as USCIS can achieve its goals without a firm focus on a unified mission. USCIS' purpose is to apply its considerable talents to ensure the administration of immigration benefits is as efficient and effective as it can be, achieved with the highest professional standards but focused on the fact that the agency is making thousands of decisions every day that impact every aspect of people's lives. This is obvious from the core values of the agency, in which "championing people" in "service to the public" comes first, followed by upholding that necessary corollary, integrity.<sup>378</sup>

Within its directorate structure, the agency seems to work best when it cuts across those lines and functions as a cohesive unit. From the Contact Center working with field offices to improve the securing of emergency appointments to the agency-wide efforts to staff the Southern Border credible fear interview process, common goals seem to engender significant efforts to achieve them. This takes, however, a common understanding of both the specific goals and the underlying justification by which they are achieved—in short, a common "culture" within the agency of its commitment to both the customer and the American public.

The question of the agency's "culture" is one that has plagued leadership since its inception. There is a distinct recognition at all levels that more can be done to assist in making the culture of the agency more cohesive, more focused on the mission of providing the right benefit to the right applicant at the right time and in the right manner, balancing both integrity and efficiency across all activities.

Under its current structure, the evolution of separation among the directorates has had its benefits and detriments. Adjudicators and support personnel have become more specialized, allowing for a more refined application of law to facts in determining benefit eligibility. But it has also created isolated factions in which different approaches to adjudication have festered, confounding both the public and employees alike. Consequently, these different approaches have at times led to, disparate treatment of applications at some levels and drastically different processing times. It has also led to some lack of a coherent culture, creating further challenges for those who work across the directorates (such as those within the External Affairs Directorate) who must coordinate activities on behalf of the entire agency.

Striving toward a more common understanding of the need to service customers fairly and efficiently is something the agency

needs to consider as it moves forward. A common focus also transitions away from the silos of "FOD," "SCOPS," and "RAIO" and permits the agency to advance as a unified USCIS. An agency can produce immigration benefits and provide humanitarian protection according to exact legal standards and policies, but to do so with an understanding of the mission and the reasons behind it ensures that everyone, from the Director to the newest intern, encapsulates that mission in their daily activities.

### **Conclusion**

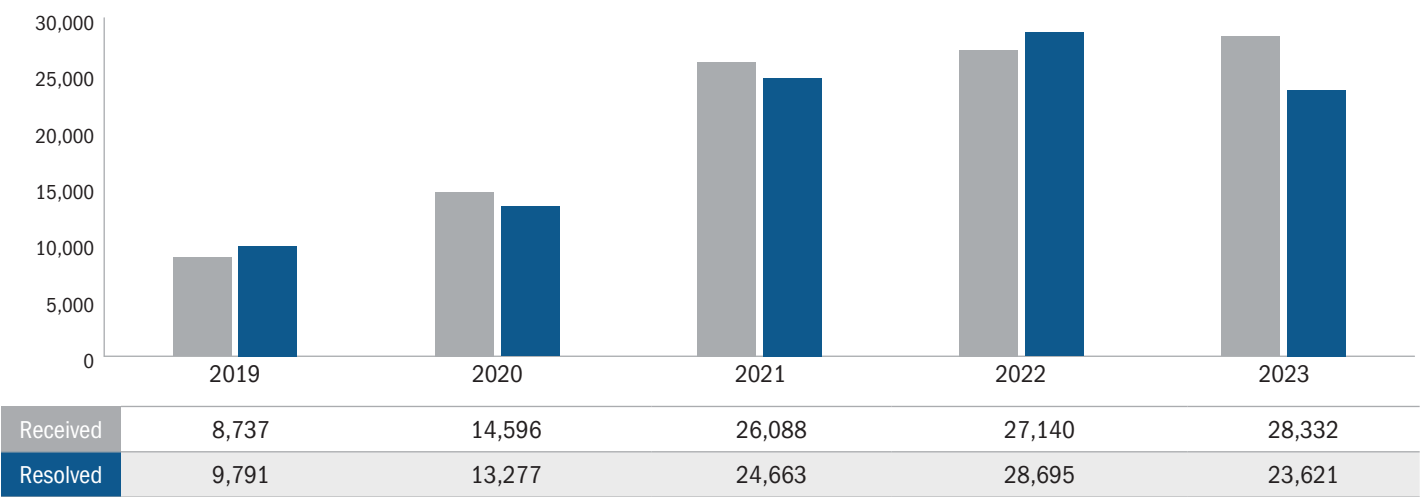
USCIS is at a crossroads, needing to consider all viable options to adapt to its already considerable backlog reduction efforts but more essentially, to the unknown. To an extent it shares this dilemma with every federal agency; it needs to become more flexible to deal with what is ahead without depleting recent gains and set itself up for success to deal with rapidly changing workloads. Refocusing on the mission means refocusing on its most precious resource—its workforce—wherein is contained all the knowledge to meet that mission. Investing in the future means investing in that workforce by supporting it the most effective way possible. At the same time, the mission of the agency is to provide a fair adjudicative process to its customers, which means removing as many barriers as possible. Both can be done with some careful realignment of purpose and the ways to get there.

<sup>378</sup> USCIS Web page, "USCIS Mission and Core Values" (Feb. 25, 2024); <https://www.uscis.gov/about-us/mission-and-core-values> (accessed May 28, 2024).

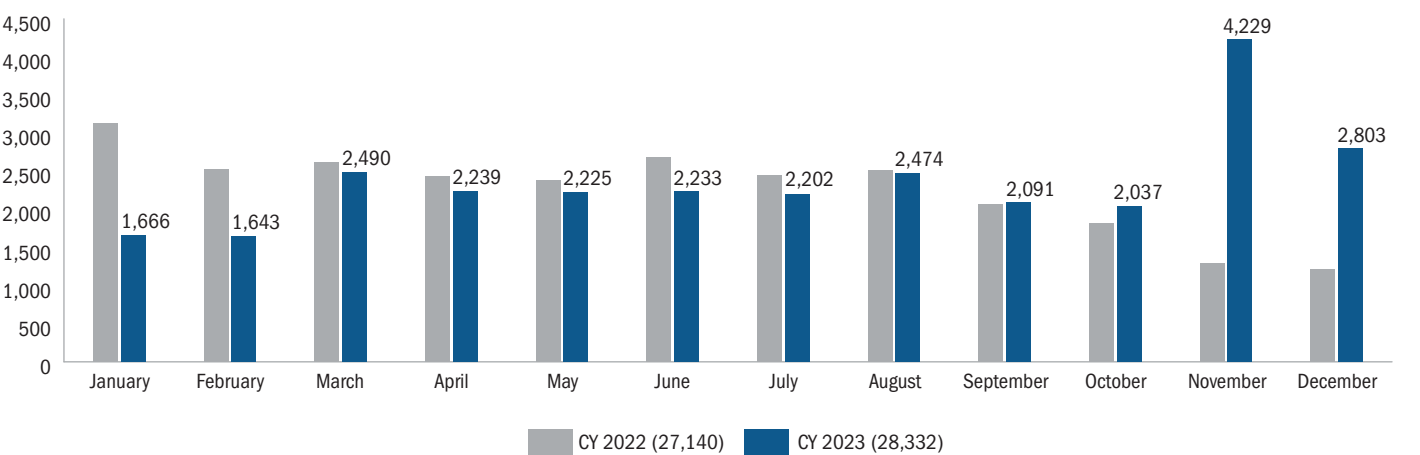
Appendices

CIS Ombudsman: By The Numbers\*

Requests for Case Assistance Received and Resolved, Calendar Years 2022 and 2023

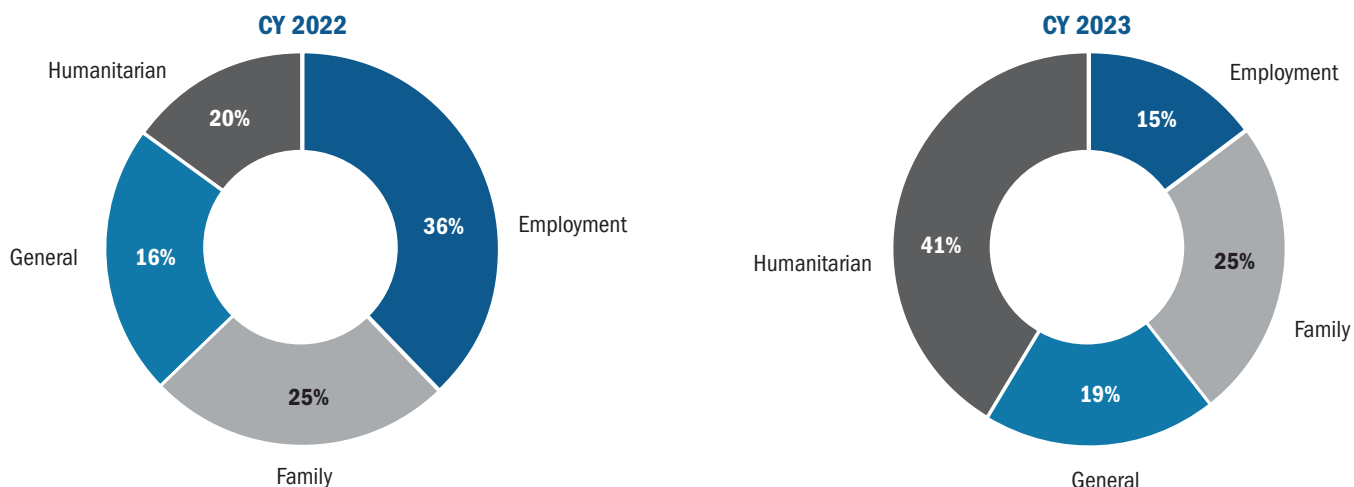


CIS Ombudsman Requests for Case Assistance Received by Month for Calendar Years 2022 and 2023



\* The CIS Ombudsman has recently updated the methods by which it calculates case resolution; we believe the methodology more closely comports to the actual closures within each calendar year. As a result, however, the numbers in previous Annual Reports will not match the numbers contained in this Report.

## CIS Ombudsman Requests for Case Assistance—Submission by Category



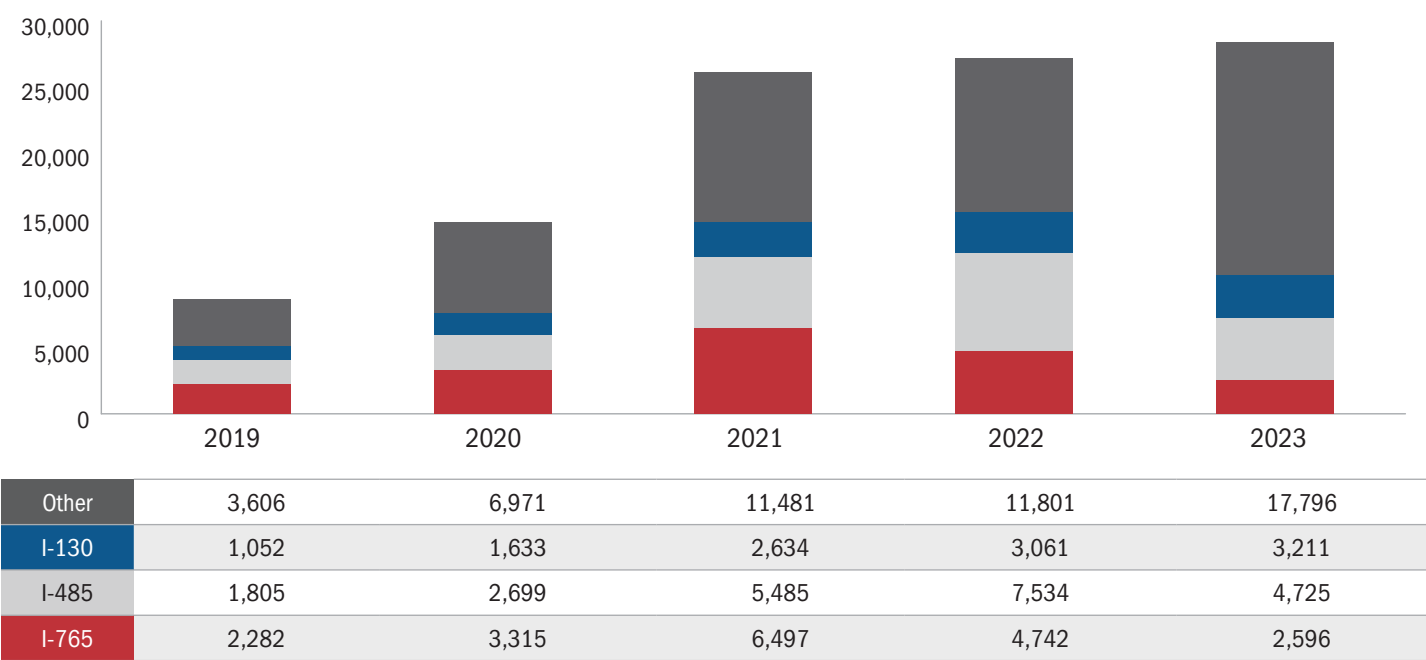
### CIS Ombudsman Top 10 Forms Requesting Case Assistance, 2023

| Form                                                                          | Count of Cases |
|-------------------------------------------------------------------------------|----------------|
| I-134A, Online Request to be a Supporter and Declaration of Financial Support | 6,928          |
| I-485, Application to Register Permanent Residence or Adjust Status (All)     | 4,661          |
| I-130, Petition for Alien Relative                                            | 3,191          |
| I-765, Application for Employment Authorization                               | 2,566          |
| I-589, Application for Asylum and for Withholding of Removal                  | 1,359          |
| N-400, Application for Naturalization                                         | 1,195          |
| I-131, Application for Travel Document                                        | 937            |
| I-90, Application to Replace Permanent Resident Card                          | 657            |
| I-140, Immigrant Petition for Alien Workers                                   | 628            |
| I-129, Petition for a Nonimmigrant Worker                                     | 575            |

### CIS Ombudsman Top 10 Forms Requesting Case Assistance, 2022

| Form                                                                                   | Count of Cases |
|----------------------------------------------------------------------------------------|----------------|
| I-765, Application for Employment Authorization                                        | 4,742          |
| I-485, Application to Register Permanent Residence or Adjust Status (Employment-Based) | 4,215          |
| I-130, Petition for Alien Relative                                                     | 3,060          |
| N-400, Application for Naturalization                                                  | 1,763          |
| I-485, Application to Register Permanent Residence or Adjust Status (Family-Based)     | 1,597          |
| I-821, Application for Temporary Protected Status                                      | 1,129          |
| I-140, Immigrant Petition for Alien Workers                                            | 1,011          |
| I-131, Application for Travel Document                                                 | 908            |
| I-589, Application for Asylum and for Withholding of Removal                           | 873            |
| I-485, Application to Register Permanent Residence or Adjust Status (Other)            | 759            |

Requests for Case Assistance by Common Form Types



I-130 = Petition for Alien Relative; I-485 = Application to Register Permanent Residence or Adjust Status; I-765 = Application for Employment Authorization

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

| FLORIDA                                                                       |                                                                                   |            |
|-------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|------------|
| Total Requests Received: 5,730                                                |                                                                                   |            |
|                                                                               |  |            |
| Top Primary Form Types                                                        | Count                                                                             | % of Total |
| I-134A, Online Request to be a Supporter and Declaration of Financial Support | 3,306                                                                             | 58%        |
| I-485, Application to Register Permanent Residence or Adjust Status           | 598                                                                               | 10%        |
| I-130, Petition for Alien Relative                                            | 379                                                                               | 7%         |
| I-765, Application for Employment Authorization                               | 331                                                                               | 6%         |
| N-400, Application for Naturalization                                         | 173                                                                               | 3%         |

| CALIFORNIA                                                          |                                                                                     |            |
|---------------------------------------------------------------------|-------------------------------------------------------------------------------------|------------|
| Total Requests Received: 3,047                                      |                                                                                     |            |
|                                                                     |  |            |
| Top Primary Form Types                                              | Count                                                                               | % of Total |
| I-485, Application to Register Permanent Residence or Adjust Status | 807                                                                                 | 26%        |
| I-765, Application for Employment Authorization                     | 420                                                                                 | 14%        |
| I-130, Petition for Alien Relative                                  | 389                                                                                 | 13%        |
| N-400, Application for Naturalization                               | 198                                                                                 | 6%         |
| I-90, Application to Replace Permanent Resident Card                | 129                                                                                 | 4%         |

| NEW YORK                                                                      |                                                                                   |            |
|-------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|------------|
| Total Requests Received: 2,757                                                |                                                                                   |            |
|                                                                               |  |            |
| Top Primary Form Types                                                        | Count                                                                             | % of Total |
| I-134A, Online Request to be a Supporter and Declaration of Financial Support | 982                                                                               | 36%        |
| I-485, Application to Register Permanent Residence or Adjust Status           | 433                                                                               | 16%        |
| I-130, Petition for Alien Relative                                            | 337                                                                               | 12%        |
| I-765, Application for Employment Authorization                               | 260                                                                               | 9%         |
| N-400, Application for Naturalization                                         | 105                                                                               | 4%         |

| TEXAS                                                               |                                                                                     |            |
|---------------------------------------------------------------------|-------------------------------------------------------------------------------------|------------|
| Total Requests Received: 2,607                                      |                                                                                     |            |
|                                                                     |  |            |
| Top Primary Form Types                                              | Count                                                                               | % of Total |
| I-485, Application to Register Permanent Residence or Adjust Status | 597                                                                                 | 23%        |
| I-130, Petition for Alien Relative                                  | 465                                                                                 | 18%        |
| I-765, Application for Employment Authorization                     | 312                                                                                 | 12%        |
| N-400, Application for Naturalization                               | 179                                                                                 | 7%         |
| I-129 (H-1B Classification), Petition for Nonimmigrant Worker       | 152                                                                                 | 6%         |

| NEW JERSEY                                                                    |                                                                                     |            |
|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|------------|
| Total Requests Received: 1,188                                                |                                                                                     |            |
|                                                                               |  |            |
| Top Primary Form Types                                                        | Count                                                                               | % of Total |
| I-134A, Online Request to be a Supporter and Declaration of Financial Support | 438                                                                                 | 37%        |
| I-485, Application to Register Permanent Residence or Adjust Status           | 187                                                                                 | 16%        |
| I-130, Petition for Alien Relative                                            | 126                                                                                 | 11%        |
| I-765, Application for Employment Authorization                               | 110                                                                                 | 9%         |
| N-400, Application for Naturalization                                         | 53                                                                                  | 4%         |

| MASSACHUSETTS                                                                 |                                                                                       |            |
|-------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|------------|
| Total Requests Received: 1,092                                                |                                                                                       |            |
|                                                                               |  |            |
| Top Primary Form Types                                                        | Count                                                                                 | % of Total |
| I-134A, Online Request to be a Supporter and Declaration of Financial Support | 611                                                                                   | 56%        |
| I-485, Application to Register Permanent Residence or Adjust Status           | 109                                                                                   | 10%        |
| I-130, Petition for Alien Relative                                            | 83                                                                                    | 8%         |
| I-765, Application for Employment Authorization                               | 82                                                                                    | 8%         |
| I-140, Immigrant Petition for Alien Workers                                   | 28                                                                                    | 3%         |

**ILLINOIS****Total Requests Received: 845**

| Top Primary Form Types                                                        | Count | % of Total |
|-------------------------------------------------------------------------------|-------|------------|
| I-485, Application to Register Permanent Residence or Adjust Status           | 210   | 25%        |
| I-765, Application for Employment Authorization                               | 136   | 16%        |
| I-130, Petition for Alien Relative                                            | 126   | 15%        |
| I-134A, Online Request to be a Supporter and Declaration of Financial Support | 61    | 7%         |
| N-400, Application for Naturalization                                         | 51    | 6%         |

**GEORGIA****Total Requests Received: 822**

| Top Primary Form Types                                                        | Count | % of Total |
|-------------------------------------------------------------------------------|-------|------------|
| I-134A, Online Request to be a Supporter and Declaration of Financial Support | 212   | 26%        |
| I-485, Application to Register Permanent Residence or Adjust Status           | 156   | 19%        |
| I-130, Petition for Alien Relative                                            | 129   | 16%        |
| I-765, Application for Employment Authorization                               | 79    | 10%        |
| I-290B, Notice of Appeal or Motion                                            | 35    | 4%         |

**VIRGINIA****Total Requests Received: 719**

| Top Primary Form Types                                                        | Count | % of Total |
|-------------------------------------------------------------------------------|-------|------------|
| I-485, Application to Register Permanent Residence or Adjust Status           | 183   | 25%        |
| I-130, Petition for Alien Relative                                            | 110   | 15%        |
| I-765, Application for Employment Authorization                               | 108   | 15%        |
| I-134A, Online Request to be a Supporter and Declaration of Financial Support | 52    | 7%         |
| N-400, Application for Naturalization                                         | 51    | 7%         |

**MARYLAND****Total Requests Received: 656**

| Top Primary Form Types                                                        | Count | % of Total |
|-------------------------------------------------------------------------------|-------|------------|
| I-485, Application to Register Permanent Residence or Adjust Status           | 175   | 27%        |
| I-134A, Online Request to be a Supporter and Declaration of Financial Support | 97    | 15%        |
| I-130, Petition for Alien Relative                                            | 94    | 14%        |
| I-765, Application for Employment Authorization                               | 83    | 13%        |
| N-400, Application for Naturalization                                         | 42    | 6%         |

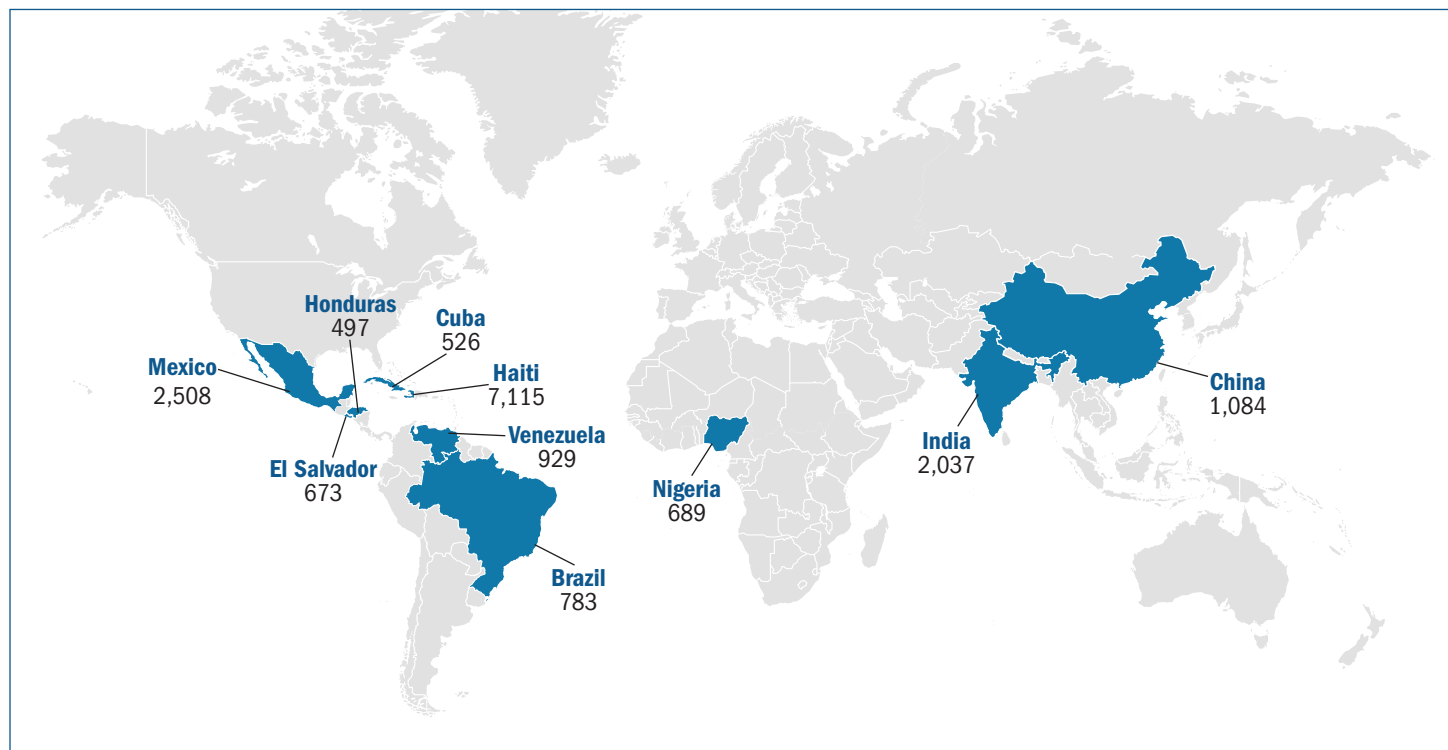
**Requests for Case Assistance: Top Office Locations**

| USCIS Office              | Count         |
|---------------------------|---------------|
| Potomac Service Center    | 2,042         |
| Nebraska Service Center   | 1,990         |
| National Benefits Center  | 1,960         |
| Texas Service Center      | 1,781         |
| California Service Center | 1,397         |
| Vermont Service Center    | 1,350         |
| Investor Program Office   | 394           |
| Dallas Field Office       | 353           |
| Chicago Field Office      | 348           |
| Houston Field Office      | 315           |
| <b>Total</b>              | <b>11,930</b> |

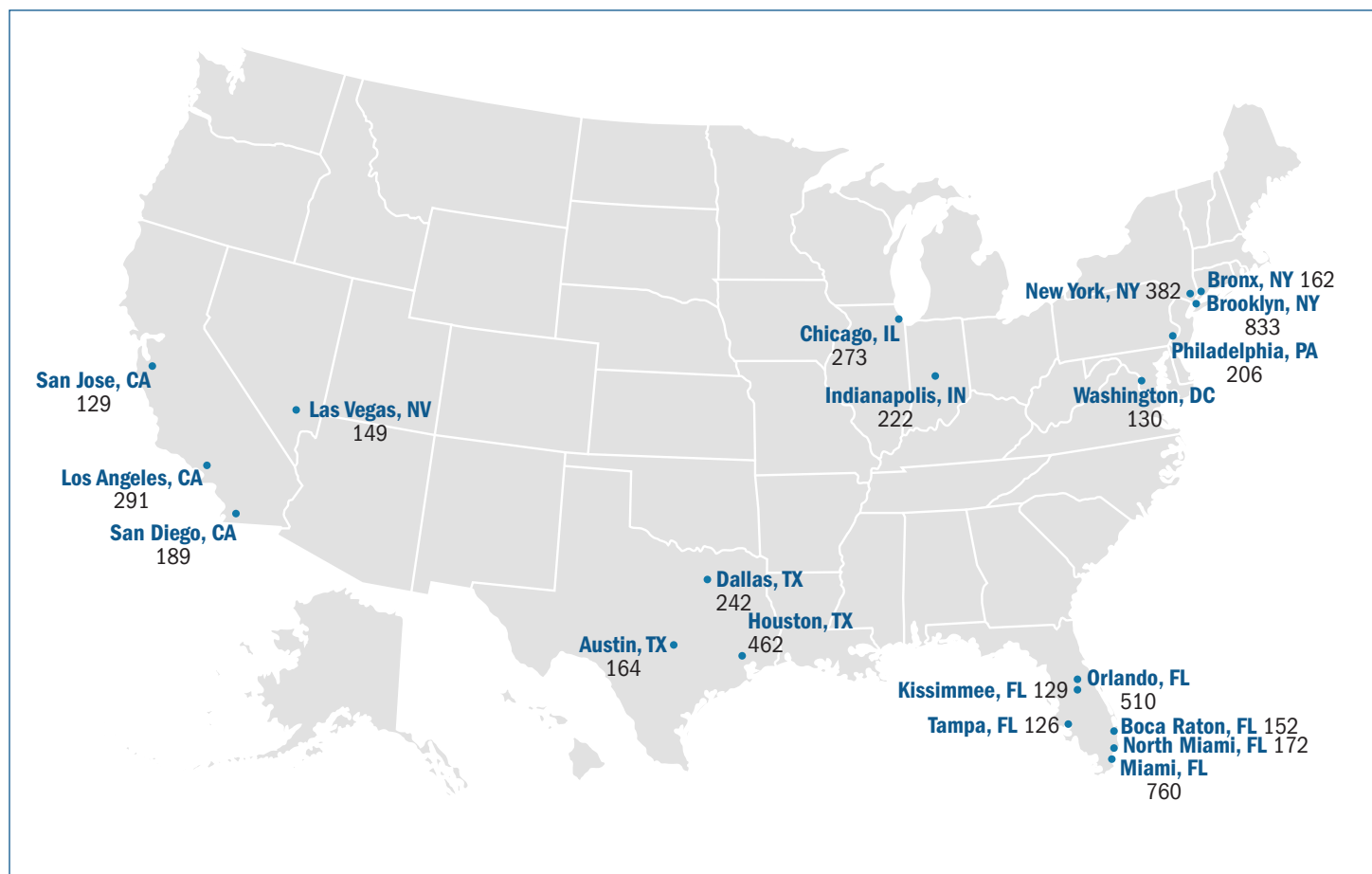
**Requests for Case Assistance: Top Requestor Locations**

| City         | Count        |
|--------------|--------------|
| Brooklyn     | 833          |
| Miami        | 760          |
| Orlando      | 510          |
| Houston      | 462          |
| New York     | 382          |
| Los Angeles  | 291          |
| Chicago      | 273          |
| Dallas       | 242          |
| Indianapolis | 222          |
| Philadelphia | 206          |
| <b>Total</b> | <b>4,181</b> |

## Requests for Case Assistance: Top Requestor Countries of Birth



## Top 20 Cities of CIS Ombudsman Case Assistance Requestors



## ***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—**

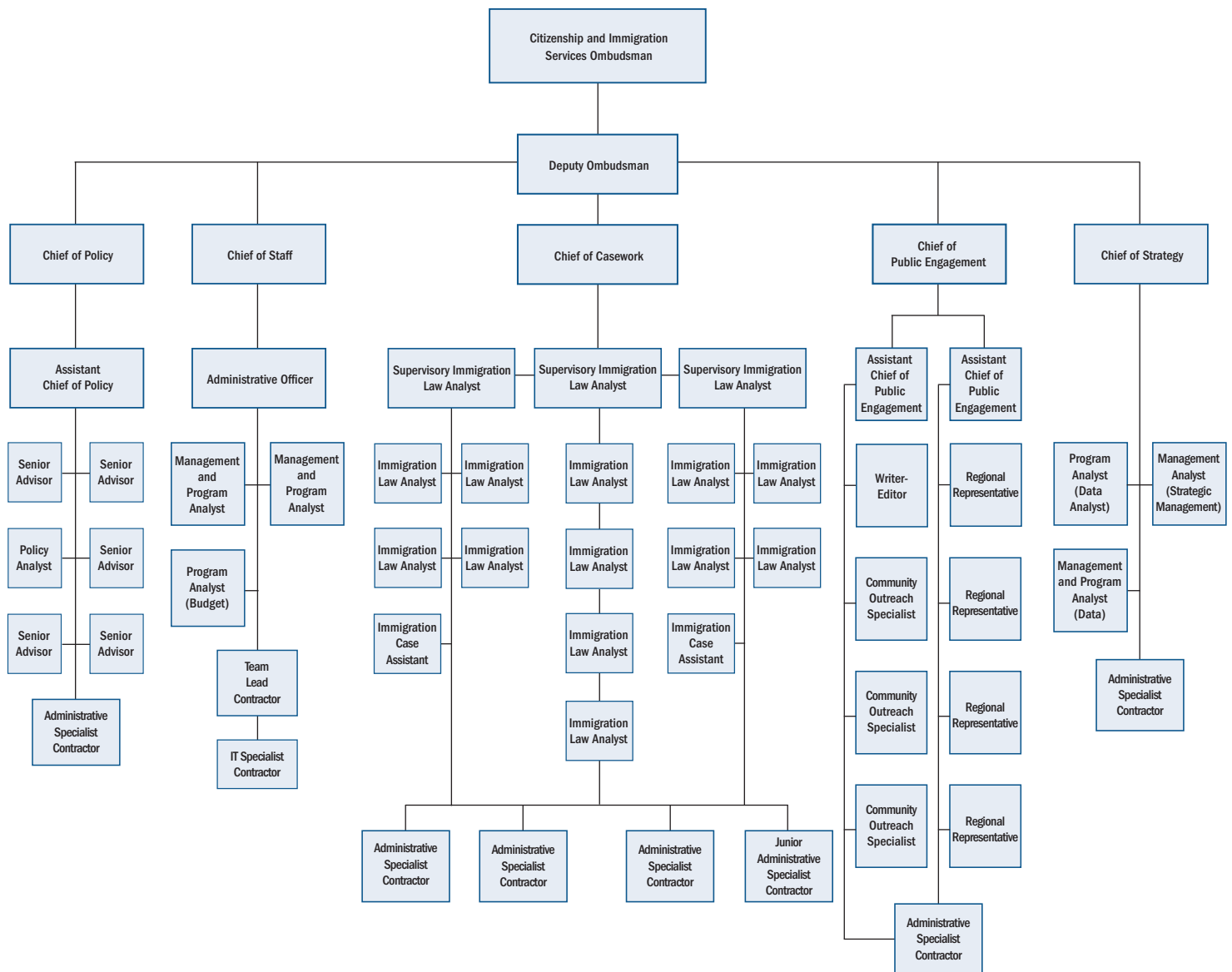
**1) IN GENERAL**—Each local ombudsman—

- (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;

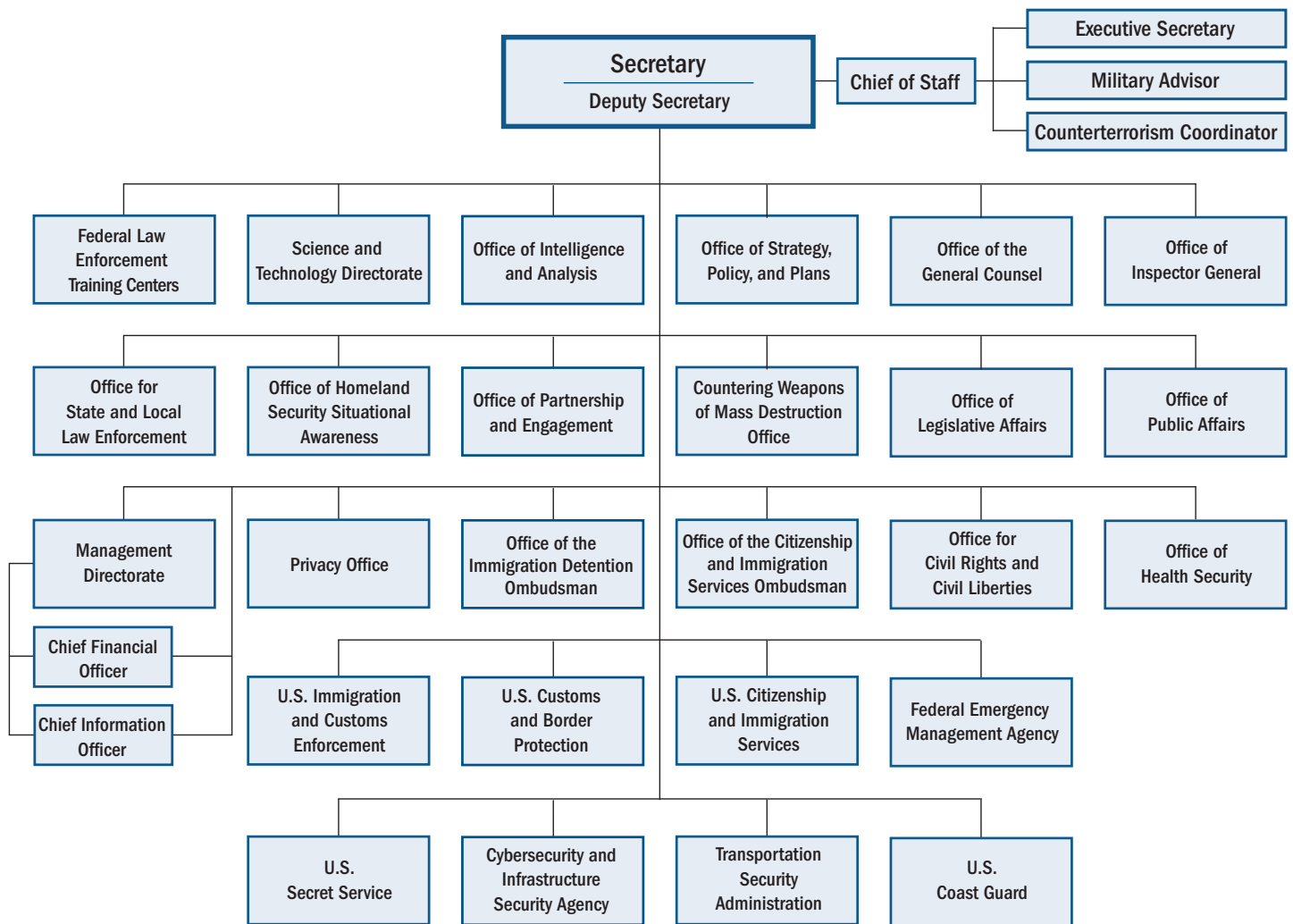
- (C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; 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.

## Office of the CIS Ombudsman Organizational Chart



# Department of Homeland Security Organizational Chart



## USCIS Historical National Median Processing Times (in Months) for All USCIS Offices for Select Forms by Fiscal Year\*

| Form     | Form Description                                                | Classification or Basis for Filing                                                                                               | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024** |
|----------|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|---------|---------|---------|---------|---------|-----------|
| I-130    | Petition for Alien Relative                                     | Immediate Relative                                                                                                               | 8.6     | 8.3     | 10.2    | 10.3    | 11.8    | 11.3      |
| I-131    | Application for Travel Document                                 | Advance Parole Document                                                                                                          | 4.5     | 4.6     | 7.7     | 7.3     | 5.8     | 5.7       |
| I-140    | Immigrant Petition for Alien Workers                            | Immigrant Petition (non-Premium filed)                                                                                           | 5.8     | 4.9     | 8.2     | 9.3     | 4.3     | 6.7       |
| I-360    | Petition for Amerasian, Widow(er), or Special Immigrant         | Immigrant Petition (All Classifications)                                                                                         | 16.8    | 11.4    | 5.5     | 8.4     | 6.8     | 3.3       |
| I-485    | Application to Register Permanent Residence or to Adjust Status | Based on grant of asylum more than 1 year ago                                                                                    | 6.7     | 6.9     | 12.9    | 22.6    | 22.9    | 13.6      |
| I-485    | Application to Register Permanent Residence or to Adjust Status | Employment-based adjustment applications                                                                                         | 10.0    | 8.8     | 9.9     | 11.0    | 8.6     | 6.2       |
| I-485    | Application to Register Permanent Residence or to Adjust Status | Family-based adjustment applications                                                                                             | 10.9    | 9.3     | 12.9    | 10.6    | 11.4    | 9.6       |
| I-539    | Application to Extend/Change Nonimmigrant Status                | All Extend/Change Applications                                                                                                   | 4.4     | 4.8     | 9.6     | 6.8     | 5.8     | 2.8       |
| I-601A   | Application for Provisional Unlawful Presence Waiver            | Provisional Waiver of INA 212(a)(9)(B)                                                                                           | 8.7     | 11.2    | 17.1    | 31.7    | 43.0    | 41.7      |
| I-751    | Petition to Remove the Conditions on Residence                  | Removal of conditions on lawful permanent resident status (spouses and children of U.S. citizens and lawful permanent residents) | 14.9    | 13.8    | 13.6    | 18.2    | 20.8    | 25.4      |
| I-765    | Application for Employment Authorization                        | All other applications for employment authorization                                                                              | 3.3     | 2.4     | 3.0     | 4.7     | 3.2     | 2.8       |
| I-765    | Application for Employment Authorization                        | Based on an approved, concurrently filed, I-821D, Consideration of Deferred Action for Childhood Arrivals (c)(33).               | 1.1     | 1.1     | 1.9     | 0.5     | 1.0     | 1.8       |
| I-765    | Application for Employment Authorization                        | Based on a pending asylum application                                                                                            | 2.0     | 2.5     | 3.2     | 9.2     | 1.6     | 0.5       |
| I-765    | Application for Employment Authorization                        | Based on a pending I-485 adjustment application                                                                                  | 5.1     | 4.8     | 7.1     | 6.7     | 5.5     | 3.8       |
| I-765    | Application for Employment Authorization                        | Based on parole                                                                                                                  | 6.1     | 4.7     | 0.6     | 1.1     | 1.3     | 0.8       |
| I-821    | Application for Temporary Protected Status                      | To request or reregister for TPS                                                                                                 | 6.4     | 2.2     | 4.1     | 10.2    | 11.8    | 6.0       |
| I-821D   | Consideration of Deferred Action for Childhood Arrivals         | Request for Renewal of Deferred Action                                                                                           | 1.1     | 1.1     | 1.8     | 0.5     | 1.0     | 1.8       |
| I-824    | Application for Action on an Approved Application or Petition   | To request further action on an approved application or petition                                                                 | 7.1     | 6.0     | 4.4     | 6.0     | 3.6     | 8.4       |
| I-918*** | Petition for U Non-immigrant Status                             | Provide temporary immigration benefits to an alien who is a victim of qualifying criminal activity, and their qualifying family  | 48.7    | 54.3    | 53.6    | 59.0    | 57.5    | 49.8      |
| N-400    | Application for Naturalization                                  | Application for Naturalization                                                                                                   | 10.0    | 9.1     | 11.5    | 10.5    | 6.1     | 5.0       |

Source: Historic Processing Times (uscis.gov) (accessed June 25, 2024).

\* USCIS' posted Historical Processing Times do not include processing times for several forms, including Form I-589, *Application for Asylum and for Withholding of Removal*.

\*\* FY 2024 uses data from October 1, 2023 to May 31, 2024.

\*\*\* Includes Form I-918A, *Petition for Qualifying Family Member of U-1 Recipient*.

Note: From FY 2017 through FY 2021, the processing time for the I-918/I-918A is calculated using the receipt date to waitlist determination date. Beginning in FY 2022, the processing time is calculated using the receipt date to Bona Fide Determination (BFD) review.

## How to Request Case Assistance from the CIS Ombudsman

### STEP 1

Try to resolve your issue directly with U.S. Citizenship and Immigration Services (USCIS)

**Before asking the CIS Ombudsman for help, always try to resolve your problem first with USCIS by:**

- Submitting a case inquiry to USCIS through:
  - A USCIS online account at <https://egov.uscis.gov/casestatus>
  - e-Request at <https://egov.uscis.gov/e-Request>
  - Ask Emma
- Calling the USCIS Contact Center at 1-800-375-5283
- Contacting [lockboxsupport@uscis.dhs.gov](mailto:lockboxsupport@uscis.dhs.gov) for a lockbox issue or [refugeeaffairsinquiries@uscis.dhs.gov](mailto:refugeeaffairsinquiries@uscis.dhs.gov) for a refugee processing issue
- For all other inquiries, visiting <https://uscis.gov/about-us/contact-us>

### STEP 2

Submit a case assistance request online at [www.dhs.gov/cisombudsman](http://www.dhs.gov/cisombudsman) and upload supporting documentation

If you have requested help from your congressional representative, please wait for their response before contacting us to avoid duplicate filings.

We strongly prefer that you use our online **DHS Form 7001, Request for Case Assistance**.

If you cannot submit the request online, you can download the paper form on our website and send it to us by:

**Email:** [cisombudsman@hq.dhs.gov](mailto:cisombudsman@hq.dhs.gov)

**Mail:** Office of the Citizenship and Immigration Services Ombudsman  
Department of Homeland Security  
Attention: Case Assistance  
Mail Stop 0180  
Washington, D.C. 20528

- **If you are a legal representative**, you must include a signed Form G-28, *Notice of Entry of Appearance as Attorney or Accredited Representative*. It must match the Form G-28 you submitted to USCIS for the case.
- **If you are an applicant or self-petitioner for (or were previously granted) T, U, VAWA, asylee, or refugee status**, you can file online, but you must upload a copy of your “wet ink” (non-electronic) signature in the consent section. Make sure USCIS has your correct address. Visit [www.uscis.gov/addresschange](http://www.uscis.gov/addresschange) for information on how to change your address.

### STEP 3

After receiving your case assistance request, we will:

- Send you a confirmation email with your CIS Ombudsman request number (or via U.S. mail if you select this option)
- Review your request for completeness and proper consent
- Email you if we need more information
- Verify that we have not received an identical request
- Research your case to determine how best to resolve your issue
- Notify you by email or U.S. mail if we can help, why we cannot help, or if USCIS has taken action to resolve your issue

Don't miss important emails from our office. Add [cisombudsman@hq.dhs.gov](mailto:cisombudsman@hq.dhs.gov) to your contacts list.

### STEP 4

If we can help with your issue, we will:

- Contact the USCIS office working on your case
- Notify you by email or U.S. mail that we have contacted USCIS about your request
- Check in regularly with USCIS until we receive a response that addresses your issue
- Contact you once USCIS confirms it has acted on your case

**Visit [www.dhs.gov/case-assistance](http://www.dhs.gov/case-assistance) for more information**

You can also refer to our Tips for Requesting Case Assistance document for the best ways to ask for our help.

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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

[www.dhs.gov/cisombudsman](http://www.dhs.gov/cisombudsman)

Send your comments to: [cisombudsman.policy@hq.dhs.gov](mailto:cisombudsman.policy@hq.dhs.gov)