AILA Annual Conference on Immigration Law
Transcript of USCIS' Open Forum
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USCIS Speakers:	Bret Gregg, Contact Center West, External Affairs Roland Lyons, Deputy District Director in San Francisco, FOD John Abram, Chief of Staff, California Service Center, SCOPS Kathy Nuebel Kovarik, Chief, OP&S
Moderators:	Robert H. Cohen, Liaison Committee Chair, AILA Bennett Savitz, Liaison Committee Vice Chair, AILA

Rob Cohen: I'm Rob Cohen. I'm the outgoing Chair of USCIS Benefits Liaison Committee and I'd like to just briefly introduce everybody on the panel here. To my far right is Bennett Savitz, who is going to be taking over as the new chair of USCIS Liaison Committee. And from USCIS, we're very pleased that Kathy Nuebel Kovarik, who's Chief of Office of Policy and Strategy. Roland Lyons – this isn't the right order because I'm reading from my sheet rather than across the table here. Roland Lyons is Deputy District Director here in San Francisco Field Operations. John Abram is Chief of Staff at the California Service Center representing the SCOPS Division. And Bret Gregg to my immediate right is with the Contact Service Center that we all call on a regular basis.

So a couple of introductory notes here. One is I'd like to say thank you very much to the CIS speakers who have come, some of them so far and some of them not so far, to join us. We appreciate that. Our liaison committee has not had a meeting with USCIS since April of 2017. This is actually our first contact on a formal basis since then and we very much appreciate your coming and we appreciate the time and attention. We've provided a list of topics to discuss that the CIS speakers received in advance and we hope to get through all of that. We'll also take questions as Michelle pointed out. Betsy is sitting right up here on the front row and if you'll get her any written questions, we'll try and get to as many of them as we can. We appreciate the opportunity to engage in this dialogue. We anticipate that we may disagree on some issues but we very much appreciate the opportunity to discuss it and want to thank you all for coming to join us today. And with that, I'd like to start and ask the CIS speakers to introduce themselves and what they do and make a few introductory comments. I don't know which order you'd like to…

Bret Gregg: Thanks, Rob. Yeah. Hi. My name is Bret Gregg. I work in the External Affairs Directorate. I'm here on behalf of Mariela Melero, who couldn't be here, but she wanted to say hello to everyone. I work in the Contact Center program and like Rob said, when you guys call the 800 number, that's kind of the program I work in. Our contact centers consist of four

different tiers. When you initially call in, you're talking to contract reps and onto our second through fourth tiers, are actual ISOs, Immigration Service Officers.

I wanted to let you guys know we're working on a number of initiatives to expand our channels of service including live chat and upgrading and streamlining our integrative voice response system. That's the system when you first call in, kind of the gateway that you push buttons to go through. We're going to be promoting, expanding and improving a lot of our digital tools over the next couple years. There's a few areas that I'll talk about that you guys had expressed some interest in. InfoPass, so we've been partnering with FOD, Field Operations Directorate, on using a web-based inquiry system at five pilot offices and this allows an applicant or petitioner to submit a web form. It comes in to us. We look at it at the contact center and we're resolving about 75 percent of those via email and phone call and not having to schedule a live InfoPass appointment. About 25 percent of them, we still do have to schedule and the majority of those are for ADIT stamps.

The processing time report, you guys have mentioned an interest in, you've noticed we've made some changes that. We received a lot of feedback from AILA on that over the years and we've modified it now so there's a processing date range for everyone to see. We have a rolling case inquiry date which represents the time when you can actually submit your inquiry. These changes will provide a more consistent and accurate processing time information to all of our stakeholders and it's going to reduce the number of service requests that go to our field. And we needed to address that service request population because we're kind of spinning our wheels a little bit in responding to those when we want to dedicate our officers to actually doing adjudications. And lastly, there are tools for attorneys. As we kind of expand our digital realm, we're making improvements to try to allow greater self-service options.

We encourage everyone to create a myUSCIS account and utilize our online filing where available and explore the set of self-help tools that we make available. Within the account experience, users can submit certain benefit requests; receive automatic case status updates, information on when we interview and when you can schedule an interview. You view notices, submit evidence and engage in secure communications with us. We do recognize that the representative account experience, which would be a lot of you guys, is less than stellar right now and we are directing that to try to improve it and make it equal to the individual user account experience. So we recognize there's been some concerns that when you log in you can't necessarily see everything that your individual user might be able to look at and we're looking to improve that. And I will say we're happy to receive feedback on any of these initiatives so if any of these things – if you have ideas, suggestions or things you want to reach out to us on, you can email us at public.engagement@uscis.dhs.gov. And with that, I'll turn over to Roland.

Roland Lyons: Thank you, Bret. Good afternoon. I'm Roland Lyons. I am the Deputy District Director for the San Francisco District of USCIS. I'm here on behalf of Dan Renaud, who is the Associate Director of Field Operations and he regrets not being able to be here this afternoon but

I'm honored to be here on his behalf to thank you for this invitation to speak with you about field operations and where we are right now. For those of you who have represented clients at adjustment of status interviews or at naturalization interviews, you've already had an opportunity to interact with many of our staff and you're probably familiar with a lot of the work that we do out in the field offices. Our directorate oversees the day-to-day operations of the National Benefit Center, the Immigrant Investor Program Office, the four regional offices, twenty-five district offices and ninety field offices across the continental US, Hawaii, Alaska, Puerto Rico, Guam, Saipan and the US Virgin Islands.

Our mission, of course, is the correct and efficient adjudication of all applications and petitions for immigration benefits that require face-to-face interviews. We also strive to take timely action on ancillary applications and providing direct customer service and immigration information and, of course, ensuring the integrity of our immigration system. We are currently taking a close look at our current processes to see where we can make improvements to consistency and integrity and most recently, we have implemented a new system called ELIS that we are using to process our naturalization workload, N-400s, and that system is really a huge step forward moving us away from a file-based, paper-based system to something that's more secure and consistent electronic system for workload processing.

Most of our field offices across the country are currently only using ELIS for processing naturalization cases and very soon, the rest the offices will be joining them. Bret's already mentioned our partnership with his directorate with the InfoPass modernization and San Francisco happens to be one of the offices that is involved in that pilot and I'd say it's going very well. We've received some very positive feedback from our applicants and from those representing them. You may realize last week we started issuing redesigned certificates of citizenship and certificates of naturalization at field offices and naturalization ceremonies across the country. We periodically update the design and printing methods for these certificates to ensure that we are staying a step ahead of counterfeiters. And although the look and feel of the document is new, the process for applying for these documents has not changed and individuals who have older versions of the certificates do not need to apply for a new one. Those certificates will still be accepted as proof of citizenship.

And as many of you who've come into our field offices know, earlier this year, we have started conducting interviews on many employment-based I-485 adjustment of status cases. The employment-based I-485 workload is our top priority in Field Operations. We are working very closely with the Department of State to ensure that we are using up the entire allotment of immigrant visas that are available. And at this point, it looks like we're going to reach our goal by the end of this fiscal year. We also continue to focus on our N-400 and family-based workloads. And now I'll pass it on over to Mr. Abram from Service Center Operations.

John Abram: Hello, all. My name is John Abram. I am the Chief of Staff at the California Service Center. I'm sitting in for my director, the CSC Director, Kathy Baran as well as for Don

Neufeld, who is the Associate Director for the Service Center Operations Directorate. I'd like to thank you for this opportunity to meet with you today and to provide updates on the important work that SCOPS does. First, I'd like to start with some personnel updates. SCOPS has grown tremendously in recent times, in large part, in response to the increase to workloads and filings that we've received. And at the present, SCOPS is over 4,000 strong and the breakdown is more or less 1,000 at Vermont, Nebraska and the California Service Centers, about 500 or so at the Potomac Service Center, about 800 at the Texas Service Center and then Headquarters itself is about 150 people all told.

We've also had quite a few changes in leadership in the last few months of mention. Mister Nicholas Colucci is the new Deputy Associate Director for SCOPS. He started in April of 2018. Many of you may know Mr. Colucci because he previously served as the Director of the Investor Program Office handling EB-5 cases. We also have a new Deputy at the California Service Center, Mr. John Rossler, who started April 30. He previously worked within USCIS in the Immigration Records and Identity Services Directorate where he served as the Records Division Chief. I also want to note that Mr. Lauren Miller is the new Director of the Nebraska Service Center. He started in May. He previously worked with Veterans' Affairs where he served as the Director for the regional office in Salt Lake City, Utah. Ms. Debra Rogers is the new Director of the Potomac Service Center. She OED'd in May. You may know her name. She has served in many positions throughout the agency and with the ombudsman as well. Ms. Barbara Velarde, the former Director of the Potomac Service Center is now the Chief of the Administrative Appeals Office.

What I'd like to do now is turn to some of the topics that were asked of us in preparation for today's meeting and to provide some commentaries on those. So AILA asked for an update on the H-1B wage leveling consideration. The issue is currently under active review at headquarters but I will say in general terms that ISOs review the labor condition application to ensure that it supports and properly corresponds to the position including the wage level. While the wage level is relevant, it is certainly not a substitute for whether a position meets the specialty occupation definition. Sometimes level one may be appropriate and conversely, a level four wage does not necessarily indicate that a position is in fact a specialty occupation.

Determining that the labor condition application supports and corresponds to the position in the petition is one component of the LCA and petition review process. It is handled on a case-by-case basis looking at the particular facts and circumstances presented. Turning now to the topic of alternate wage sources for H-1B. This has been an issue recently, especially among hospitals petitioning for medical residence. USCIS continues to review issues pertaining to private wage surveys and will consider issuing additional guidance to our officers in the future, if needed. Again, with H-1B, this time with RFEs raising issues about DOL statutory authority, again it goes back to the LCA and what is our authority for reviewing the contents of the LCA.

What I would like to do is give you a couple of citations for you to review at your convenience. I start with the Department of Labor regulations at 20 CFR 655.705. That regulation, among other things, does specifically authorize DHS to look at the LCA and the pertinent part of that regulation states DHS determines whether the petition is supported by an LCA which corresponds with the petition. Thus, USCIS, and not DOL, is tasked with determining whether the content of the LCA corresponds to and supports the petition. I would also like to reference matter of Simeio Solutions which was an AAO published decision in 2015. Matter of Simeio had a lengthy footnote, footnote 6 on page 546 of the decision and I'll read you the brief summary or paragraph discussing this issue.

Upon receiving DOL certification, the prospective employer then submits the certified LCA to USCIS with an H-1B petition on behalf of a specific worker. DOL reviews LCAs for completeness and obvious inaccuracies and will certify the LCA absentee determination that the application is incomplete or obviously inaccurate. In contrast, USCIS must determine whether the attestations and content of an LCA correspond to and support the H-1B visa petition including the specific place of employment. I would like to add further that footnote 6 page 3 of the rescission memo which came out in March of 2017 offers some guidance on this as well. And that footnote to the memo states officers are reminded that USCIS must determine whether the attestations and consent of an LCA correspond to and support the H-1B visa petition. Accordingly, USCIS officers must also review the LCA to ensure the wage level designated by the petitioner corresponds to the preferred position. If a petitioner designates a position as level I entry level position, for example, such an assertion will likely contradict a claim that the preferred position is particularly complex, specialized or unique compared to other positions within the same occupation. In general, a petitioner must distinguish its preferred position from others within the same occupation through the proper wage level designation to indicate factors such as the complexity of the job, duties, the level of judgment, the amount and level of supervision and the level of understanding required to perform the job duties.

I would now like to turn briefly to the topic of the recently published USCIS memo on unlawful presence. The policy memo was posted on the USCIS website on May 11, 2018, with a comment period ending on June 11. The memo does contain a background section which explains the reason for the change and how DHS will calculate unlawful presence for the F, J, M nonimmigrants and their dependents who fail to meet their status. Since the creation of the current unlawful presence policy, DHS has made significant progress in DHS's ability to identify and calculate the number of nonimmigrants who have failed to maintain status including systems creation and improvement and I'm thinking specifically of SEVIS. The goal of the new policy is to reduce the number of overstays and to improve how USCIS implements the unlawful presence ground of inadmissibility. This policy will become effective on August 9, 2018, and pursuant to USCIS' standard approach to implementing new policies. USCIS will prepare training materials for its officers and outreach in order to implement the new policy.

I'd also like to talk briefly about another topic that was raised and this has to do with third party placement for STEM OPT students. There was a website change which apparently caused some consternation and the issue there is whether F1 students are permitted to work at third party locations. Our position is that third party placement for this purpose would run contrary to the many employer-based requirements for STEM OPT. This is not a new policy. In fact, it has been our interpretation since the March 11, 2016 regulation was promulgated. The website was updated to provide clarity after USCIS received requests from students and employers about what is permissible. Indeed, the publication of that regulation did discuss this specific issue and I'll read to you a very short paragraph which describes what was the thought at that time.

There are several aspects of the STEM OPT extension that do not make it apt for certain types of arrangements including multiple employer arrangements, sole proprietorships, employment through temp agencies, employment through consulting firm arrangements that provide labor for hire and other relationships that do not constitute a bona fide employer/employee relationship. One concern arises from the difficulty individuals employed through such arrangements would face in complying with, among other things, the training plan requirements of this rule. Another concern is the potential for visa fraud arising from such arrangements. Furthermore, evaluating the merits of such arrangements would be difficult and create additional burdens for DSOs. Accordingly, DHS clarifies that students cannot quality for STEM OPT extensions unless they will be bona fide employees of the employer signing the training plan and the employer that signs the training plan must be the same entity that employs the student and provides the practical training experience. DHS recognizes that this outcome is a departure from SEVP's guidance April 23, 2010.

So that was written into the comments with the promulgation of that final rule. I also note that the regulation itself at 8 CFR 214.2f10, which is the employer requirements for the STEM OPT outline all of these various requirements, completion of a training plan on an ICE Form I-983 specific knowledge, skills or techniques to be imparted that has to be laid out and described in detail. Also, a performance evaluation process for the employee. It deeds a description of the methods of oversight and supervision. Student self-evaluation signed by the student and the appropriate individual in the employer's organization, sufficient resources and personnel available and that the employer is prepared to provide appropriate training. So in signing that form, the employer is attesting to all of these. I note that a lot of these details also exist on the ICE Form I-983 itself which has to be completed by the employer. And that concludes my portion and I'll turn it over to Kathy. Thank you.

Kathy Nuebel Kovarik: Hello. My name is Kathy Nuebel Kovarik. Thank you so much for having me here today so that I can share my thoughts on where USCIS is going with regard to our goals and our priorities and mostly our policy agenda as these two talk about our operation and work in the field. I've enjoyed sitting on some of the panels today and meeting some of you between panels so again, thank you for having us. I just started at USCIS a year ago. I spent 18 years in the United States Senate. I worked on the Senate Judiciary Committee, the committee

that oversees immigration. So I left the Senate last year to join USCIS. In April, I became the Chief of the Office of Policy and Strategy. My office is responsible for all regulations and policy memoranda for the agency, also the USCIS policy manual.

The American people, through congress, have entrusted USCIS with the stewardship of the legal immigration programs which we administer so that foreign nationals can live, work and seek refuge in the United States. Our new director, Lee Francis Cisna, has made it a priority to ensure that USCIS operates in a legal, fair, efficient and transparent manner. We answer first and foremost to the American people. The director has traveled across country and has met with adjudicators, officers and other USCIS employees and they have embraced him. Our personnel feel that they're being heard and indeed they are.

Our officers have complicated work and they work hard and they're very important and I know they're important to you as well and important to the petitioners and applicants who seek benefits. So we take tremendous pride in helping prospective immigrants who desire to take part in our country. The director has several key priorities which I want to share with you. First, I want to touch on some policy changes in our regulatory agenda and then I'll discuss his top priority of transforming the agency's paper-based system into one that allows petitioners and applicants to seek benefits electronically. Before I begin, let me mention his unwavering commitment to transparency. I hope you all have had a chance to look at the USCIS Electronic Reading Room. If you have not, I urge you to do so. That page has been updated significantly to include more immigration and citizenship data. It includes statistics, reports and studies and it also displays the correspondence that we receive from members of congress, as well as our response back to them.

Also, in relation to transparency, we are looking to how we interact with groups such as yours to ensure that we provide these types of opportunities to the appropriate audience. We're looking at our engagements. We haven't made significant changes but we are looking at how to improve our engagement strategy. So on transparency, just I urge you to look out for more data and more information to be made available on our website because we will be adding as we go forward.

So let me talk about our regulatory agenda. USCIS is committed to making an endeavor to make policy through a very thoughtful and deliberative process. Regulations are the ideal way to implement policies as they are subject to public notice and comment procedures and it also provides transparency to the public and codifying these policies make them both durable and accessible to the public. Where appropriate, however, we have to update policies through memos and updates to the policy manual to provide timely guidance to the field on what the law and regulations allow or do not allow.

We use the memoranda and policy manual updates to clarify our laws and regulations and to provide more detailed guidance to the field. Overall, we're committed to making sure that the policies we make are established in a fair and transparent manner and that they are consistent

with the law. USCIS, like every agency, publishes the regulatory agenda on the unified agenda at reginfo.gov for the public to see. So I encourage you to look at that website to see our spring 2018 regulatory agenda. I'd like to talk a little bit about the Buy American Hire American Executive Order. President Trump was elected with a promise to focus on the U.S. economy and to promote opportunities for American workers. So on April 18, 2017, President Trump signed the Buy American and Hire American Executive Order. This order instructed USCIS and other federal agencies to protect the economic interest of U.S. workers by rigorously enforcing and administering our immigration laws.

It also directed the Department of Homeland Security in coordination with others to advance policies to help ensure that the H-1B nonimmigrant visas are awarded to the most deserving and highest paid beneficiaries. To implement the Executive Order, we are working on a combination of regulations, policy memoranda, operational changes and enhanced fraud detection efforts. My colleagues touched on a few of the items that we're working on the regulatory agenda. We do have several regulations. The regulation registration requirement for petitioners seeking to file H-1B petitions on behalf of cap-subject aliens which will propose to establish an electronic registration system for cap-subject H-1B petitions. You may recall that this was a proposal by a previous administration that was never finalized. We also have removing H-4 dependent spouses form the class of aliens eligible for employment authorization as well as strengthening the H-1B nonimmigrant visa classification program. So pursuant to that Executive Order, we are also looking at all of the employment-based categories including E-1, E-2, H-1B, H-2B, L, L-1 nonimmigrant visa programs. We're also looking and working with our partner agencies on possible reforms to the B1 visitor category, STEM OPT and the J-1 exchange visitor program where employment authorization is available. These discussions involve USCIS, ICE, CBP and the Department of State.

We are undertaking across the board, the review of all Homeland Security Secretary's discretionary authority to grant employment authorization. I'll skip over the policy memorandum. He did touch on several of the policy memorandum that we have issued. We also rescinded and replaced guidance regarding deference to prior determinations of eligibility for extension of nonimmigrant status. The updated guidance instructs officers to apply the same level of scrutiny applicable to initial adjudications when reviewing nonimmigrant visa extension requests, even in instances where the petitioner, beneficiary and underlying facts are unchanged from a previously approved petition. While adjudicators may ultimately reach the same conclusion as in a prior decision, they are not compelled to do so as a default starting point. The INA statutorily mandates that the burden of proof to establish eligibility for an immigration benefit lies with the petitioner. This matters in all cases even when there was a prior approval.

Finally, we've issued memoranda on the L and TN classifications. I encourage you to look at our website for more information on those two. We also have a website devoted exclusively to the Buy American Hire American Executive Order. This website allows us to communicate with the public and with you about the changes in the policies that we make. We also have various

datasets that we've added to that website. And as I've noted, we've made great strides to release more data and more information on these employment-based immigration programs.

Let me talk a little bit about the EB-5 Immigrant Investor Program. In addition to the regulations I've previously mentioned, we are working to finalize and propose new regulations related to the EB-5 program. Our goal is to ensure that the program is being administered according to the law and consistent with congressional intent. Our goal is to ensure that foreign investment through the EB-5 program is truly being used to create American jobs in rural and distressed communities.

Toward that end, we are finalizing the EB-5 rule proposed under the previous administration but we will propose new regulations to modernize and strengthen oversight of the program. The proposed rule we are finalizing included proposals to end targeted employment areas gerrymandering and it will also appropriately raise the investment threshold for foreign investors. We are working on another proposed rule based on the Advanced Notice of Proposed Rule Making, the ANPRM. We also solicited feedback on ways to build in more accountability in regional centers for operators and we are seeking ways to mitigate risk for US investors involved in EB-5 projects. We've been doing compliance reviews of regional centers and as part of our risk mitigation efforts, we continue to terminate regional centers that no longer promote economic growth or fail to submit required information. We terminated 83 regional centers in Fiscal Year 2017 and to date, in Fiscal Year 2018, we have surpassed that with 85 terminations. You can read our notices and those terminations in our electronic reading room.

Let me talk about another regulation that we're looking at. On our unified agenda, we have been forthcoming about our desire to review the way in which we enforce the grounds of inadmissibility relating to public charge. The Immigration Nationality Act, Section 212(a)(4) is very clear. Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the attorney general at the time of application for admission or adjustment of status is likely, at any time, to become a public charge, is inadmissible. In determining whether an alien is likely to become a public charge, the statute requires at a minimum consideration of the alien's age, health, family status, assets, resources and financial status and education and skills.

While DHS is currently in process of drafting proposed regulation on which the public will have an opportunity to comment, the proposed regulation will be based on certain guiding principles. Aliens who are subject to the public charge ground of inadmissibility should be able to establish and maintain self-sufficiency including at the time that they apply for a visa, admission or adjustment of status, instead of relying on public benefits. The proposed rule will also recognize that certain categories of aliens such as refugees, asylees and other protected groups are exempted by law from the public charge ground of inadmissibility. The new rule, once effective, will not apply to such individuals.

Let me talk about parole authority. Under Executive Order, we've been directed to review the parole authority the secretary has. We terminated the Central American Minors parole program and we are proposing to rescind the International Entrepreneur Final Rule. Let me be clear that although the Department continues to support the policy objective of promoting investment and innovation in the United States, the Department believes that the complex program contemplated in the final rule is best left to the legislative process. We believe that the rule constitutes an unorthodox use of the secretary's authority to temporarily parole aliens in a categorical way into the United States for significant public benefit. For these reasons, we have proposed to rescind this rule which was finalized in the waning days of the previous administration before this administration could have input. This rule was published on May 28, and the public comment period closes on June 28. So USCIS will be reviewing all other parole programs.

I want to talk about preventing fraud and abuse and preventing national security risk a little bit. I would like to talk about our commitment to the integrity of the immigration system. First, as seen on the unified agenda, we will be proposing to update our regulations to expand the collection of biometrics required to establish and verify identity. This regulation will also propose a number of ways to make our biometric collection more consistent and modify age regulations. As John mentioned, we also updated our policy on how to calculate unlawful presence for foreign students, exchange visitors and vocational students. And as you noted, the new policy's scheduled to take effect on August 9, 2018.

In addition, we've created tip lines and new email addresses for the public to report abuses of the H-1B and H-2B nonimmigrant visa programs and since creating these tip lines, we have begun to receive actionable leads for investigation. Currently, the fraud detection national security has several pending investigations on H-1B employers that started with these tips that led to site visits that have confirmed fraud and the investigations are still underway. We've also improved the administrative site visit in verification programs especially for the H-1B, EB-5 and L-1 programs. We also have started a targeted H-1B site visit program to uncover previously undetected fraud and abuse. This program came fully operational in July of last year and it has already resulted in numerous fraud findings and several referrals to US Immigration and Customs Enforcement for criminal investigation. We're also working to expand our site visit program to include the L-1B petitions and we have expanded our fraud and benefit integrity research efforts to ensure that we are using quality evidence and rigorous research to inform our decision-making.

Before I close, I wanted to go back to a point I mentioned in my introduction and that is as I noted, the director's top priority is to move USCIS from a paper-based environment to a digital environment where filing, adjudication and communication are all electronic, a full end-to-end electronic experience. USCIS currently accepts electronic filings for forms I-90, N-400, N-565 and N-336. By using myUSCIS, we've seen success so we're working to expand that list of forms. We also hope to build in a way for you and your clients to change addresses through myUSCIS. We hope you'll be able to use that feature. As part of our e-processing initiative,

we'll work to eliminate the creation of new paper immigration records. We'll continue working to expand the benefit requests accepted electronically which will benefit the public by increasing efficiencies.

We are aware that there is some desire among practitioners for a mechanism to submit applications electronically in batch so you can leverage the systems that you use on your end. It is on our radar and we will be researching possible ways in which we might be able to accomplish that. USCIS is also working to develop an electronic system to process and deliver official record requests such as certified copies and other agency records available through FOIA requests, development of an end-to-end digital FOIA system called FIRST is ongoing. Some requestors can already create an account and receive FOIA requests electronically. So I hope you visit our website for more information on that as we deploy additional functionality in our e-processing initiatives.

So I know I gave you a lot of information and the big picture on policy. I'm happy to take questions and we do have several questions in the queue. We'll do our best to answer them. I will say we are limited in what we can say with regard to pending or proposed regulations so I won't be able to provide greater detail about those rules since they are in the deliberative stage and we also won't be able to discuss subjects that are impacted by ongoing litigation nor any matters that are currently under investigation or slated or contemplated for investigation. Again, thank you so much for the opportunity to be heard.

Rob Cohen: I don't think it's going to come as much of a surprise to find that many of the lawyers in this room would disagree with many of the points that have been made. What we're going to do, both Bennett and I have a whole stack of questions so we will try and work our way through and work back and forth. Kathy, you talked about transparency in public engagement. As I noted in my opening remarks, we haven't had a chance to meet with the administrative staff since April 2017. This is a committee that has met periodically twice a year for as far as I know, as long as I've been a member of AILA and my nametag says that's a long time. Do you anticipate that we'll be able to restart those meetings?

Kathy Nuebel Kovarik: It is our intention. We don't plan to make major changes but we are looking at our engagements to make sure that everyone has access to the information that we provide to you and to everyone else so I'll take that back.

Rob Cohen: Okay. We'll ask a very specific question here that came up. I think this speaks to a couple of the different issues. This individual writes that it's very hard with current InfoPass unavailability to get an I-94 for individuals who have been granted asylum by an immigration judge. In those cities where InfoPass appointments – and I've heard a lot of lawyers – I fortunately am in a city where it's easy to get an InfoPass appointment but some find that they hit the refresh button every couple of seconds for hours and never get an appointment. How can you

get an I-94 for somebody who's been granted asylum by an immigration judge? That's probably a Field Ops question.

Roland Lyons: Yes. So I'll jump in here and see what I can offer. Yeah. We realize that there are still places across the country where there's a struggle to get InfoPass appointments. With this pilot that we're doing right now at the five offices, we've actually noticed quite an improvement in the availability of appointments. People are now able to come in to see us within three days rather than within two weeks. So for those of you that are still in places where you're unable to get an appointment, just know that the offices are making those appointments available based on the level of resources that are available. Some tips for you as far as trying to get an appointment to go in is – the appointments open up in a two-week window and they open up at like 12:01 in the morning. So if you want to be up that late or I've found in my former field office where we also struggled with making enough appointments available, even by 6 or 7 a.m., there are still some slots open if you can check that early. If you do run into a situation where there is an emergency or there's a reason why somebody needs to have that verification of their asylum status right away, I know most field offices will take walk-in appointments on a case-by-case basis so I would avail yourself of that opportunity as well.

Rob Cohen: Okay. Thank you. Bennett, do you have…

Bennett Savitz: Thank you. So before I ask a specific question, I just want to echo what Rob said about engaging with the agency for transparency as the incoming chair of this committee, I want to put in my plug as well. In the past, we've been able to resolve issues and problems through agency liaison and my job as the incoming chair is to help resolve issues and problems that members have and so we appreciate the opportunity for that resolution to be meetings between us and the agency. So we look forward to hopefully having our regular meetings so we can do that. Specifically, a couple questions have come up on some of the regulatory changes. One is you talked about a potential electronic registration for the H-1B cap cases and wanted to know if there was a timeframe for that. And then also, on the reg to remove H-4 EAD authority, I didn't catch if you had mentioned what the policy was behind that.

Kathy Nuebel Kovarik: In order to be compliant with the APA, I can't give you a timeline on the H-1B preregistration rule. I can tell you that we are committed to it and that we are working hard on it. On the H-4, it is what it is and the unified agenda, I refer you to that. It's a rescission of the H-4 EAD rule.

Rob Cohen: If I can read the next question. Everybody in this room can probably submit an application online so for us, the desire to move everything to electronic submissions is commendable. However, two-thirds of this particular lawyer's clients cannot properly fill out a work copy of a form, let alone get on a computer to complete a form. If you move to a complete electronic system, how do you deal with a public that is not quite as sophisticated as maybe the immigration bar?

Bret Gregg: We encounter this sometimes when we talk about our shift to some digital tools and we remind people there is resources available at public libraries. For the people that don't actually operate on a mobile device and do things where the technology is readily available to them as all of us, it's using things like a public library or somewhere where there is resources where you can utilize the internet and utilize tools that we can get them to. So I think as we move to that environment and the whole world is moving kind of to that environment or move away from paper, there is going to be a small group of people that may struggle to transition but there's public resources out there to assist them.

Rob Cohen: One of the things that your comments frighten me, I also serve on our State Bar Association's unauthorized practice of law and one of the serious problems that exist in this world, the world of immigration applicants is the notario and the UPIL practitioners and I fear that your movement will encourage the notarios who are a pretty scary lot for our clients and would ask that you keep that in the consideration.

Kathy Nuebel Kovarik: I would just note that going electronic means it's more efficient, I believe, for a lot of the petitioners and for applicants. And so that is our goal and if you have suggestions, we're happy to hear them.

Rob Cohen: On the question of the third party placement of the STEM OPT, please clarify because the commentary that you just read would permit third party placement of consultants or IT workers so long as they are supervised by the employer that filled out the training program. So if the employer did have a supervisor on site at a third party employer, can the employer place the employee at that third party site? Say that fast three times. Did you get the question?

John Abram: With all the employer requirements in place, if an employer believes that they can still satisfy all of those requirements and establish that bona fide employer/employee relationship and meet all of the attestations, and there are quite a few, both in the regulation and in the ICE form. If they believe that they can do that, there's nothing which prohibits them from filing and having that case reviewed by an immigration officer to ensure that it makes sense. I will say that with all of those requirements as the promulgation reads, it makes it difficult, it makes it unlikely but if somebody believes that they can satisfy those and place somebody at a third party worksite, there's nothing which prohibits them from filing and giving it a try.

Rob Cohen: I hate to sound like a broken record but you just raised some other concerns because when the employer gives it a try, if the unlawful presence memo that you talked about a little while ago becomes effective on August 9, the consequences of finding out that you may have disagreed with that on some nuance is potentially catastrophic for a student who would like to work in the United States, has filed for an H-1 and finds out he's now subject to the ten-year bar. I guess one of the problems that I have with your discussion of the unlawful presence is basic due process. How does a student know in advance how you might rule on some issue down the road? And they're now risking the ability to live in the United States or even visit

Disney World if they're subject to the ten-year bar because of something you're going to decide after the fact was wrong and I'm having trouble trying to figure that out. Can you address those due process issues?

Kathy Nuebel Kovarik: Well, I'm hesitant to get into details about the unlawful presence because we are collecting comments. We did receive AILA's comments and I believe that was one of them. So we work closely with ICE. We will work closely with ICE who runs the CBP program so I don't know if my colleagues have anything else to say.

Bennett Savitz: Well, fortunately, AILA's comments, you can all find them on infonet that AILA submitted were very thorough, very well-done and addressed all these concerns so fortunately, as Kathy said, they are going to be considering all of those comments so that is very helpful. Switching gears, in May of 2018, USCIS recalled over 8,000 green cards due to production errors. If the new green card has not been yet received for these approved I-751's, what proof of LPR status can these people use for travel purposes?

Bret Gregg: So in these situations, I would say that if someone has a need to travel and they have not received their permanent resident card yet, then they should be coming into the field office to get an ADIT stamp or temporary evidence of their lawful permanent resident status.

Unknown: Just make sure they bring the proof of their filing…

John Abram: Yeah. Make sure they also bring proof of the filing of the…

Unknown: If it's the 751 or whatever it's going to be?

John Abram: Oh, these are actually people who got -- right. This is a different situation.

Bennett Savitz: All right. So Bret, I think this one is for you. A lot of times we have a lot of inquiries on a lot of cases and we try to be as efficient as possible with our time and yours and so we like to have the ability for either other lawyers working in our firm or paralegals to make those inquiries. Why can we not do that?

Bret Gregg: The policy's going to be if you're doing a call or doing some kind of inquiry, we'd have to be able to verify it's that G28 on file of that attorney so we would not communicate information with the paralegal. I think that's our policy. So if you're the representative and you ask a fellow attorney to call in and try to do something, if they're not the G28 holder, we're not going to be able to share information with them.

Rob Cohen: The question was how can USCIS, the operator know that the person on the phone is the person, the G28 and the answer was because we are honest and we do need to be honest. A SCOPS question here. We, about a year ago, learned that you began denying advance parole applications if the individual had to travel irrespective of whether or not they had an existing advance parole that would allow them to travel or many of them were on Hs and Ls and

that also allowed them to travel. What confused us about this is it seems like an incredible waste of your resources because you don't get a fee for that application and this seems to engender a lot more applications than would otherwise be necessary. What was the rationale behind that policy change and are you willing to reconsider it?

John Abram: Unfortunately, that's not an issue that I have any background on so I'd rather not comment but what I will do is try to find that information for you. I'm sorry.

Rob Cohen: Thank you. We appreciate that. Another question, the lawyer wanted to know if there's an appeal process when a USCIS has a finding of fraud in the H-1B, H-2B or an L-1 program and they feel that that finding was unwarranted, is there an appeal process? Is there some way to challenge that finding?

John Abram: Certainly. So if there has been an actual finding of fraud which, of course, has led to the denial of a particular case, the motion process is certainly available for that. We do allow motions to reopen and motions to reconsider and we do have the appeal itself to the Administrative Appeals Office. So any part of the denial including the basis for the fraud can be looked at and petitioners and attorneys can certainly provide any countervailing evidence that they have which would establish that perhaps it wasn't fraud, it was something else. It was a mistake of fact, what have you. So we do accept motions and appeals on that basis alone.

Rob Cohen: Bennett, you have a couple questions?

Bennett Savitz: Yeah. So this is a more general question. Can you please explain USCIS' position as to why changes to guidance such as special instructions for changing F-1 status, for example, are not policy changes that require notice and comment under the Administrative Procedures Act?

Kathy Nuebel Kovarik: Well I'm going to have to defer to counsel on this one. I don't think I can answer that question. Those decisions are made in connection with counsel.

Bennett Savitz: When an applicant has two approved I-140s in different categories, will USCIS automatically process the adjustment status under the category that is now current or do we need to interfile such a request to let you know that?

Roland Lyons: It's very helpful to know which one to link to the application. We do, as part of our adjudications, a sweep of all system. We locate any and all A files, any and all petitions, but where there is more than one which can serve as the basis for an adjustment, it's extremely helpful for you as the filer to let us know that shortcuts to some extent the need for us then to come back to you and say well we see there's multiples. Which one would you like us to adjust on which results and unnecessary delays? So if you have that information up front, by all means, please submit it.

Rob Cohen: We have a question here about – we're sticking with SCOPS here. USCIS' reliance on the Occupational Outlook Handbook, sometimes it's limited in terms of what's available and I would also add my own observation that in the determination of whether a specific degree is required for a particular occupation, the reading of the Occupational Outlook Handbook is often at odds with what many of us might think is what we're reading. Specifically, if I can raise a particular example, on a computer systems analyst, it indicates that it generally requires – I think the language is generally or usually requires, a degree in computer science or related technology field and that seems to have been read in a large number of decisions to say that a degree in computer science or related technology is not required. Can you address the way in which officers are instructed to look at and use the OoH and maybe if you can comment on the usual and normal versus the decisions we've been getting on computer systems analyst?

John Abram: So we adjudicate H-1Bs at three centers so I'll have to keep my comments quite general. We do make reference to the Occupational Outlook Handbook. Of course, it's published by the Department of Labor. It's updated every year. We do consider that as an authoritative source. We don't consider it necessarily as the only authoritative source. We do look at materials which are provided by the petitioner, by the attorney, if you have other materials which you believe are more accurate and more reflective of a particular industry in general terms or a particular industry in specific terms, statewide, citywide, countywide, whatever it is that you have, you are more than welcome to submit supplemental information. But in the absence of information in the petition which provides any detail, we use the Occupational Outlook Handbook as a standard reference source.

The Occupational Outlook Handbook obviously changes from year to year so make sure that you're using the current version of it for whatever case that you're filing because even from year to year, language which looks the same is actually sometimes quite nuance. They'll change a word or two so make sure that you're sensitive to that and you're looking at the Outlook Handbook as it currently stands. There's always going to be an ongoing debate about normally, generally, these kinds of things. I can't really comment on that because we'd have to look at it in the context of a specific case or a series of cases. I will also note that for the H-1B specialty occupation, the best way to go is to document on all four prongs of specialty occupation instead of one.

If you have any doubt or reservation about whether the degree is normal for the field and a particular degree is normal for a field, I also recommend that if you have other literature on any of the other prongs, that you submit that as well because it gives us alternatives. We always prefer to try and address all four prongs of specialty occupation and not just the one. I will say that in general, most of the filers only address number one, which is exactly what this question is premised on, is what is the general, sort of, conventional academic background for this particular profession. So can't answer the specifics of the normally and generally but what I would like to do is give you a bit of advice and that is address all four and that gives us a little bit more wiggle

room because even if we're having difficulty with one, we can still look at two, three and four and maybe you have a better shot there.

Bennett Savitz: All right. Because we've gotten multiple questions on this, so can you please address and share what the internal guidance policy is for special immigrant juvenile cases for those between 18 and 21?

Roland Lyons: This is a workload that we were handling here in the field offices. It's been moved to the National Benefit Center and I'd have to check on that. I will bring it back to my office and get a good response for you.

Bennett Savitz: Thank you.

Rob Cohen: This is a TPS question for Honduran TPS holders that still haven't received the previous card. Processing times are getting longer. Will they have to apply again without receiving the card and how will that be handled? This may result in a requirement that they pay the fee twice and that seems unfair.

Unknown: Thank you for bringing that to my attention. I am not aware that that has been a concern so I'm not prepared to address that but what I will do is if there are any particular case receipts that we can look at in terms of cards which have not been issued, please let me know. I would definitely like to see that.

Rob Cohen: So what he is saying is send those examples to reports@aila.org and we'll pass those on.

Bennett Savitz: So this next question is under the category and topic that we had given you prior on employment-based adjustment interviews, the interview waivers, the processing times and things about that. So maybe you can talk a little bit about that generally but also, this question is that minor children are listed as discretionary waiver of interview for adjustment. If a United States citizen stepparent sponsors two infants on an I-130 45, would that likely have the interview waived? The biological parent/spouse is LPR so not being sponsored.

Roland Lyons: That sounds very case-specific. The interview waiver criteria, that policy is still available. We still review it and consider it so I couldn't speak to what would happen in that situation. We'd have to look at the facts and decide if we would apply the interview waiver criteria to it.

Bennett Savitz: And can you just talk generally about processing times and how that's been impacted by the increase in mandatory interviews?

Roland Lyons: From my experience, our processing times have been increasing before the employment-based workload came into being and also, with the employment-based, some offices are seeing a higher volume than others so it may be having more of an impact, say, in San

Francisco where we do have a lot of people filing for adjustment of status in the employment-based grounds. Most field offices across the country were seeing a pretty large increase in our family-based and naturalization workloads prior to this year and we are working on hiring additional staff and finding more efficient ways to use our available space. And I just want to also point out that in the first quarter and second quarter of this fiscal year, the number of completions that we had was the highest in four years. So we are making progress and we do expect that with the additional staff and looking for more creative ways of using our space, that we will start seeing a decrease in our processing times.

Bennett Savitz: All right. And I should point out that on infonet recently there were two things that you might want to look at regarding this. On May 22, there was the DHS annual report on overall case volumes and processing times so that's on infonet. And then on May 29, a week later, the USCIS historical national average processing times was posted so you should all go look at that to get a much more in-depth accounting of that.

Rob Cohen: I think we're at the last question. A question came in about I-751s, the one-year extension on the receipt that has been expired and a problem getting ADIT stamps in the New York City office and probably elsewhere. Let me also take the opportunity to express our gratitude for the 18-month duration on the 751s. That's sort of a good news and bad news. We appreciate the 18 months but that's an indication that it's taking a long time to adjudicate those applications. Is it a fair statement to say that we should expect the ADIT stamps after the receipt has expired and what can we do when local offices are refusing to issue those stamps?

Roland Lyons: So in general, yeah. If the 751 is still pending or even if it's been decided then it's going to be pending now in immigration court. Field offices should be issuing an ADIT stamp and if that is not happening please bring it to our attention. Either reach out to your local office, field office director or district director and we will raise the concern up to headquarters.

Rob Cohen: Thank you. Once again, I'd like to thank our speakers for showing up. We appreciate the opportunity to have the discussion. Thank you.