



U.S. Citizenship
and Immigration
Services

July 29, 2018

The Honorable Catherine Cortez Masto
United States Senate
Washington, DC 20510

Dear Senator Cortez Masto:

Thank you for your May 7, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

Please find enclosed answers to your questions regarding a report in the *Washington Post* that U.S. Citizenship and Immigration Services (USCIS) intends to establish an internal affairs division charged with oversight of the agency's caseworkers. On July 10, 2018, USCIS combined existing internal investigations and counterintelligence functions into one organization, the Office of Investigations, reporting directly to the USCIS Deputy Director. These functions have existed in USCIS for years within the Office of Security and Integrity; they have simply been realigned organizationally. This organizational realignment of investigative functions was the result of a recommendation made by the Department of Homeland Security Office of Inspector General that was submitted to Congress on June 6, 2016.

Thank you again for your letter and interest in this important issue. The co-signers of your letter will receive separate, identical responses. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in blue ink, appearing to read "LFC", written over a horizontal line.

L. Francis Cissna
Director

Enclosures

**The Department of Homeland Security's Response to
Senator Cortez Masto's May 7, 2018 Letter**

- 1. Please provide all relevant documents, including but not limited to draft policy guidance and implementation directives, detailing USCIS' plan to develop a new internal affairs division (i.e., "Organization of Professional Responsibility"). Alternatively, please make someone from your staff available to brief staff no later than June 1, 2018.**

On July 10, 2018, U.S. Citizenship and Immigration Services (USCIS) combined existing internal investigations and counterintelligence functions into one organization, the Office of Investigations (OI), reporting directly to the USCIS Deputy Director. These functions have existed in USCIS for years within the Office of Security and Integrity; they have simply been realigned organizationally. This organizational realignment of investigative functions was the result of a recommendation made by the Department of Homeland Security (DHS) Office of Inspector General that was submitted to Congress on June 6, 2016. USCIS staff is available to discuss additional details as requested.

- 2. Has USCIS begun staffing the new internal investigation office by reassigning personnel, as has been reported?**

The pre-existing staff will continue working in their current roles, but within OI. If necessary, OI may grow to meet USCIS' needs in relation to investigations and counterintelligence to include any additional support staff that may be needed.

- 3. In another effort to reorganize aspects of USCIS, it has been recently reported that the now former head of the Administrative Appeals Office (AAO) was reassigned to the Potomac Service Center. Please explain in detail the facts and circumstances, including whose decision it was at USCIS, to reassign the former head of AAO.**

In preparation for a realignment of the USCIS Administrative Appeals Office (AAO) to DHS Headquarters, USCIS senior leadership earlier this year selected Barbara Velarde, director of the Potomac Service Center (PSC), to lead this transition by serving as acting chief of AAO. Our selection was based in part on the successful start-up of the PSC in July 2015. Under Ms. Velarde's innovative leadership, the PSC became a fully operational service center within one year. Senior leadership selected Ronald Rosenberg, who was chief of AAO at the time, to lead the PSC as acting director on a temporary basis. Mr. Rosenberg is now Chief of USCIS International Operations Division, and Ms. Debra Rogers is the current Director of the PSC.

4. Please provide the following information:

- a. A list of all trainings, field manuals, and other resources USCIS adjudicators currently receive prior to being authorized to make adjudication decisions. If these vary by type of benefit, please describe each separately.**

Officers in Field Operations and Service Center Operations rely on the USCIS Adjudicators Field manual. A public version of the USCIS Adjudicators Field Manual is available on our public website at:
www.uscis.gov/laws/immigration-handbooks-manuals-and-guidance.

Officers within the Refugee, Asylum, and International Operations Directorate (RAIO) complete standardized and integrated training programs, inclusive of the RAIO Combined Training Program (RAIO CTP), which officers of all three divisions attend, and the relevant division-specific training program for the Refugee Affairs Division, Asylum Division, and International Operations Division. The trainings are designed to establish consistent policy and legal guidance and to prepare officers to correctly adjudicate the work of the division.

RAIO CTP consists of 80 hours of Distance Learning coupled with approximately three weeks of face to face residential training. Topics include foundational legal, policy, credibility, fraud, and interviewing skills training. Instructors are subject matter experts from across USCIS, non-governmental organizations, law schools, and the United Nations High Commissioner for Refugees.

Asylum Officers subsequently attend the Asylum Division Officer Training Program (ADOTP), consisting of 30 hours of Distance Training and approximately three weeks of face to face residential training that focuses on asylum-specific procedures, case law, guidance, credibility, fraud, and national security, including mock interview, legal analysis, and decision writing practicums. Instructors are subject matter experts from the RAIO Directorate, particularly the USCIS Asylum Division.

The trainings are validated, and officers must successfully complete the courses as a condition of employment as an officer.

Some of the course materials are available to the public in the USCIS Electronic Reading Room which can be found at: www.uscis.gov/about-us/electronic-reading-room.

The training list for Refugee Officers is attached. Refugee Officers also receive pre-departure briefings specific to the location they will be traveling to prior to each circuit ride with specific information regarding the caseload, country conditions, and adjudicative, fraud and national security considerations and trends in that region.

Required training materials include: Lesson Plans and Standard Operating Procedures. The training list for International Operations Division officers is also attached. Required training materials include Lesson Plans and Standard Operating Procedures.

b. Please provide a list of adjudication types, which by operation of law or policy, have officer discretion as an essential element of the adjudication.

The following adjudications entail officer discretion as an essential element of the adjudication:

- Form I-539, Application to Extend/Change Nonimmigrant Status and Form I-129, Petition for a Nonimmigrant Worker. These forms are filed by aliens who will apply to extend their nonimmigrant stay in certain nonimmigrant classifications pursuant to INA 214, or change their status to certain nonimmigrant classifications pursuant to INA 248.
- Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. This is used by inadmissible applicants for T nonimmigrant status or inadmissible petitioners for U nonimmigrant status who seek a discretionary waiver of inadmissibility.
- Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA)).
- Form I-910, Application for Civil Surgeon Designation. USCIS exercises its discretion to designate physicians as civil surgeons.
- Form I-912, Request for Fee Waiver. Used by aliens seeking a waiver of the fee associated with the application or petition, pursuant to 8 CFR 103.7(c)(3).
- Deferred action. This is not an immigration benefit, but an exercise of prosecutorial discretion in which DHS decides not to pursue removal.
- Form I-485, Application to Register Permanent Residence or Adjust Status, with some exceptions such as refugee adjustment, adjustment under Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), etc. The relevant INA sections are 209, 245, 249, and Cuban Adjustment Act.
- Form I-191, Application for Relief Under Former INA section 212(c). This form is filed by lawful permanent residents who were convicted of certain offenses before April 1, 1997.
- Form I-601, Application for Waiver of Grounds of Inadmissibility. Used when alien is inadmissible under INA sections 212(a)(1), 212(a)(2), 212(a)(3), 212(a)(4), 212(a)(6), 212(a)(9)(B), or 212(a)(10). The waivers are found at INA sections 212(a)(3)(D)(iii)[Totalitarian Party], 212(d)(11)[alien smuggling], 212(d)(12)[civil penalty], 212(g) [health], 212(h) [crimes], 212(i) [misrepresentation or fraud].
- Form I-601A, Application for Provisional Unlawful Presence Waiver. This waiver permits under INA 212(a)(9)(B)(v).
- Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal. Used when aliens is inadmissible under INA section 212(a)(9)(A) or (C).
- Form I-765, Application for Employment Authorization. Used by aliens seeking employment authorization pursuant to 8 CFR 274a.12(c). With limited exceptions, Form I-765 determinations are discretionary.
- Form I-131, Application for Travel Document. Used by aliens seeking an advance parole document, INA 212(d)(5) and by aliens seeking a Refugee Travel Document. Discretion to approve or deny an application for a Refugee Travel Document, 8 CFR

§ 223.2 (e). Discretion to adjudicate Refugee Travel Documents Abroad pursuant to 8 CFR § 223.2 (b)(2)(ii).

- Form I-131A, Application for Travel Document (Carrier Documentation).
- Form I-130, Form I-129F, Form I-800, Form I-600, subject to the Adam Walsh Act.
- Form I-140, Immigrant Petition for Alien Worker. National Interest Waiver cases, Extraordinary Ability cases, Outstanding Researcher cases, and Revocation cases.
- INA section 212(k) waivers of inadmissibility under INA sections 212(a)(5)(A) or (7)(A)(i). INA section 212(l) waives INA section 212(a)(7)(B)(k) for entry into Guam or the Commonwealth of the Northern Mariana Islands.
- Form I-821D, Consideration of Deferred Action for Childhood Arrivals. Deferred action is a discretionary determination to defer removal action against an individual as an act of prosecutorial discretion.
- Form I-690, waiver of inadmissibility used by Legalization, LIFE Act and SAW applicants.
- Form I-590, Registration for Classification as a Refugee pursuant to INA § 207.
- Form I-589, Application for Asylum and Withholding of Removal pursuant to INA §208.
- Form I-602, Application by Refugee for Waiver of Grounds of Excludability.
- Form I-730, Refugee and Asylee Relative Petition (as applicable to derivative asylees).
- Exemption from inadmissibility under certain provisions of INA § 212(a)(3)(B) pursuant to INA §212(d)(3)(B)(i).
- An extension of stay request or change of status request filed on Form I-129 or Form I-539.
- Form I-941, Application for Entrepreneur Parole.
- Form I-821, Application for Temporary Protected Status.

c. What metrics does USCIS rely on in determining whether an officer is properly adjudicating immigration petitions and applications that require the application of the officer's discretion?

USCIS adjudication officers are placed on uniform performance plans, commensurate with their grade level. They are evaluated on five core competencies (communication, customer service, representing the agency, teamwork and cooperation and technical proficiency) and the associated performance standards. The officer corps is also evaluated on three performance goals and associated performance standards which focus on quality (accurately applying appropriate rules, regulations, precedent decisions, policies and procedures); national security/fraud detection (maintaining the security and integrity of the immigration system); and, contribution to the USCIS mission (contributing to the USCIS mission through teamwork and collaboration). Leniency is not a performance standard in any core competency or performance goal.

- d. Is USCIS planning to change current metrics, or add additional metrics to be considered in determining whether an adjudicator is being “too lenient” in making decisions? If these vary by type of benefit, please describe each separately.**

USCIS is not planning to change the current metrics used to evaluate adjudicators. Please see the response to 4c for an explanation of the metrics we currently use.

- e. Please articulate clearly the distinction between a proper exercise of adjudicator judgement in granting (or denying) an immigration benefit, and an adjudicator being “too lenient.”**

“Too lenient” is not a metric USCIS uses to evaluate adjudicators. Please see the response to Question 4c for a description of our current metrics.

- f. What is the current disciplinary process for an adjudicator who is deemed “too lenient” in the application of their discretion?**

USCIS is not changing its disciplinary process. As with all federal agencies, USCIS is governed by the disciplinary procedures contained in 5 USC Chapter 75.

- g. Please provide all information related to any proposed changes to the disciplinary process for caseworkers under the planned Organization of Professional Responsibility.**

As stated in the response to question 4f, USCIS is not changing its disciplinary process. As with all federal agencies, USCIS is governed by the disciplinary procedures contained in 5 USC Chapter 75.

- h. Will a finding by the new the internal affairs division of an improper use of discretion subject an adjudicator to discipline or a finding of misconduct? If so, will employees accused of misconduct or otherwise subject to discipline have an opportunity to seek legal or other forms of redress?**

As stated in the response to question 4f, USCIS is not changing its disciplinary process. As with all federal agencies, USCIS is governed by the disciplinary procedures contained in 5 USC Chapter 75.

- i. For each of the past three years, provide a numerical breakdown, by USCIS service center or field office, as appropriate, of instances in which users adjudicators were [found] to be “too lenient” in approving naturalization or adjustment of status applications.**

USCIS does not use “too lenient” as a metric, nor does USCIS make such findings regarding adjudicators. Because “too lenient” is not a metric, such data does not exist.

5. USCIS processing times for certain benefit types have significantly increased in the past year. For example, in many USCIS field offices across the country, according to USCIS data, processing times now exceed 15 months. For each field office across the country adjudicating naturalization applications, please provide for each fiscal quarter beginning with Fiscal Year 2017:

a. Processing times for ELIS-based naturalization applications;

Please refer to the Question 5a tab of the enclosed spreadsheet.

b. Processing times for non-ELIS-based (paper-based) naturalization applications;

Please refer to the Question 5b tab of the enclosed spreadsheet.

c. Number of instance where more than one naturalization interview notice (regardless of reason) was sent to applicants;

Please refer to the Question 5c tab of the enclosed spreadsheet.

d. Number of requests for additional evidence (“RFEs”) sent to applicants.

Please refer to the Question 5d tab of the enclosed spreadsheet.

6. Does USCIS expect the increased oversight of its caseworkers through the new internal affairs division to increase application processing times and exacerbate existing application backlogs? Is USCIS considering measures to ensure that processing times do not suffer as a result of the increased bureaucratic burden?

The organizational realignment of our pre-existing investigations and counterintelligence staff will have no impact on processing times, as the responsibilities for those programs have not changed as a result of the realignment.