



Congresswoman Carolyn Bourdeaux

U.S. House of Representatives
Georgia's Seventh District

December 15, 2021

The Honorable Ur M. Jaddou
Director
United States Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, DC 20529

Dear Director Jaddou,

Thank you for your work as Director of United States Citizenship and Immigration Services (USCIS). We write today to better understand the current visa processing case backlog and how Congress can support your work to address the backlog.

From fiscal years 2015 to 2020, the total USCIS visa backlog increased by 85 percent.¹ We understand that the backlog was exacerbated by Trump Administration policy changes, insufficient staffing, and the impact of the COVID-19 pandemic. However, the backlog clearly predates the COVID-19 pandemic. During your Senate Judiciary Committee nomination hearing and subsequent meetings with members of Congress, you made it clear that addressing the case backlog would be one of your top priorities.²

While Congress works to finalize FY2022 Appropriations bills and other legislation that offer additional funding to address the backlog, we hope to gain a better understanding of the additional resources and authorities USCIS needs to improve processing times. **Does USCIS currently have the resources and authorities it needs to effectively address the backlog?**

A recent report by the Government Accountability Office outlined six steps for USCIS to address the pending caseload. However, there was only one recommendation that the Department of Homeland Security did not concur with: to develop a long-term workforce plan that includes strategies for acquiring, developing, and retaining staff.³ The Department's explanation for this is the frequently changing nature of USCIS's work as new laws and regulations are enacted. However, workforce issues have long been an issue at USCIS. **How is USCIS preparing to address workforce shortages and ensure you have the personnel in place to address the case backlog?**

According to USCIS numbers, over 1.3 million employment authorization applications are pending, and an additional 1.5 million immigrants are waiting for employment-based green

¹ <https://www.gao.gov/products/gao-21-529>

² <https://www.rollcall.com/2021/07/30/ur-jaddou-confirmed-as-immigration-agency-director/>

³ <https://www.gao.gov/products/gao-21-529>

cards.⁴ There is also evidence that benefits such as work authorization have been lapsing. As you know, this is especially devastating for DACA recipients,⁵ H-4 recipients,⁶ and the Asian American community, who often end up losing their ability to lawfully work in the United States. **What can USCIS do in these cases to ensure workers do not lose their employment authorization status and expedite processing of EADs?**

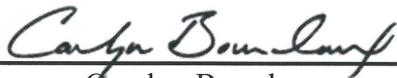
Additionally, there have been concerns related to transparency and communication around the status of applications. For example, we have heard of instances where USCIS caseworkers sometimes notify Congressional casework staff that they cannot move on a case because the applicant is on a watch list, but do not provide any more details. **Moving forward, are USCIS staffers able to provide a more thorough response as to why constituents are on a watch list?**

There has also been a lack of clarity around the status and timeline for processing of their applications. **What is USCIS doing to communicate with applicants about the status of their applications in a timely manner?**

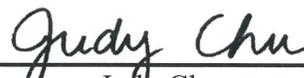
Lastly, there has been some confusion around the sequencing in which applications are processed. **Can you explain whether applications are processed chronologically or if there is another methodology?**

Again, we thank you for your diligent work and prioritization of the visa backlog. We look forward to working with you to achieve our shared goals.

Sincerely,



Carolyn Bourdeaux
Member of Congress



Judy Chu
Member of Congress



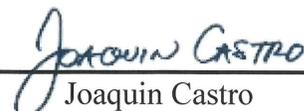
Jake Auchincloss
Member of Congress



Karen Bass
Member of Congress



Jamaal Bowman
Member of Congress

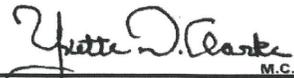


Joaquin Castro
Member of Congress

⁴ https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2021Q3.pdf?source=email

⁵ <https://chicago.suntimes.com/2021/10/3/22696596/chicago-illinois-daca-renewal-delays-immigration>

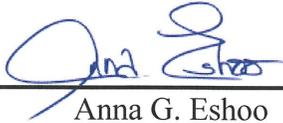
⁶ <https://www.mercurynews.com/2021/02/25/h-1b-bay-area-spouses-of-visa-holders-thrown-out-of-work-by-government-delays/>



Yvette D. Clarke
Member of Congress



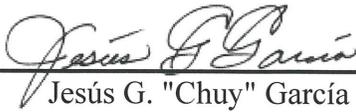
Emanuel Cleaver
Member of Congress



Anna G. Eshoo
Member of Congress



Jason Crow
Member of Congress



Jesús G. "Chuy" García
Member of Congress



Chrissy Houlahan
Member of Congress



Eleanor Holmes Norton
Member of Congress



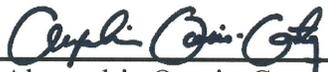
Henry C. "Hank" Johnson, Jr.
Member of Congress



James P. McGovern
Member of Congress



Derek Kilmer
Member of Congress



Alexandria Ocasio-Cortez
Member of Congress



Ayanna Pressley
Member of Congress



Deborah K. Ross
Member of Congress



Mike Quigley
Member of Congress



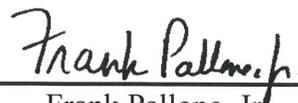
Adam Smith
Member of Congress



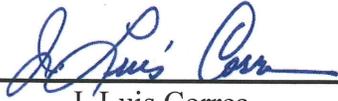
Michael San Nicolas
Member of Congress



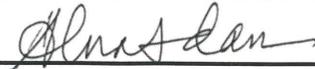
Rashida Tlaib
Member of Congress



Frank Pallone, Jr.
Member of Congress



J. Luis Correa
Member of Congress



Alma S. Adams, Ph.D.
Member of Congress



Haley Stevens
Member of Congress



Marie Newman
Member of Congress



Bill Foster
Member of Congress



Dean Phillips
Member of Congress

/s/

Eddie Bernice Johnson
Member of Congress

/s/

Brian Higgins
Member of Congress

/s/

Barbara Lee
Member of Congress

/s/

Grace Meng
Member of Congress

/s/

Juan Vargas
Member of Congress

/s/

Jackie Speier
Member of Congress

/s/

Madeleine Dean
Member of Congress

/s/

Raúl M. Grijalva
Member of Congress

/s/

Jim Cooper
Member of Congress

/s/

André Carson
Member of Congress

/s/

Adriano Espaillat
Member of Congress

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Camp Springs, MD 20588-0009



U.S. Citizenship
and Immigration
Services

January 31, 2022

The Honorable Carolyn Bourdeaux
U.S. House of Representatives
Washington, DC 20515

Dear Representative Bourdeaux:

Thank you for your December 15, 2021 letter to U.S. Citizenship and Immigration Services (USCIS) regarding the current visa processing case backlog. Addressing the case backlog is one of our top priorities. We have provided responses to your questions in the attached enclosure.

Thank you again for your letter and interest on these important issues. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, reading "Ur M. Jaddou" followed by a long horizontal flourish.

Ur M. Jaddou
Director

Enclosure

**The Department of Homeland Security's Response to
Representative Carolyn Bourdeaux's December 15, 2021 Letter**

1. Does USCIS currently have the resources and authorities it needs to effectively address the backlog?

Response: USCIS does not have adequate resources to effectively address the current backlog, which is 4.79 million¹ for various immigration benefit applications, petitions, and requests. To fully address the existing backlog and mitigate the risk of additional backlog growth, USCIS requires Congressional support of a multi-year resourcing strategy that considers the full resource spectrum of funding, personnel, and technology. In the near term, USCIS requested \$345M in the FY22 President's Budget Request for backlog reduction. We appreciate the partial funding (\$250M) provided through the FY22 Continuing Resolution and the flexibilities offered via the Emergency Stopgap Stabilization Act. These measures will help to begin the process of managing the existing backlog through funding additional staffing in Refugee, Asylum, and International Operations (RAIO) and in field and service center operations. These investments will have direct impact on a significant portion of the backlog. However, they fall short in providing a total near- and long-term solution for elimination of the full backlog and improved management of future benefit requests.

2. How is USCIS preparing to address workforce shortages and ensure you have the personnel in place to address the case backlog?

Response: USCIS is addressing workforce shortages by using available hiring authorities, including special authorities sought from and approved by the Office of Personnel Management (OPM).

The following are the hiring authorities we are currently using:

- **Direct Hire Authority (OPM approved)** to streamline and expedite the hiring process.
- **Non-competitive hiring authorities** including Schedule A authority (targeting our disabled community), Veteran's Recruitment Authority (VRA), 30 percent disabled veteran authority, and Peace Corps member authority.
- **Pathway appointments** for college graduates.

Partnering with OPM, USCIS hopes to expedite recruitment even further through development and implementation of new direct hire authorities. The agency is also implementing early and mass hiring approaches to proactively source and fill anticipated vacancies. We would be happy to partner with you in these recruitment efforts and invite you to share USCIS job announcements with your constituents and networks. In addition to actively recruiting, USCIS will expand overtime hours, make impactful technology

¹ Backlog data are current as of November 2021. The term "backlog" as used in this response refers to the volume of pending applications, petitions, or requests that are pending beyond the processing time goal for the relevant application types. Backlog excludes cases that are outside of USCIS' control, including cases waiting for a visa number, pending a response from the applicant or petitioner on a request for evidence, or re-exam for naturalization.

The Department of Homeland Security's Response to Representative Carolyn Bourdeaux's December 15, 2021 Letter

investments, and identify and implement other efficiencies that will directly impact workforce capability and productivity.

Additionally, USCIS is strategically recruiting using nationwide announcements to streamline the hiring of mission-critical positions. With the funding requested through the FY22 President's Budget for backlog reduction, we plan to fill 1,316 positions in support of key programs such as RAIO and field and service center operations.

Also, USCIS will continue to incorporate work/life flexibilities, including increased telework and new remote work options, to entice potential applicants and increase the candidate pool for selection.

3. What can USCIS do in these cases to ensure workers do not lose their employment authorization status and expedite processing of EADs?

Response: USCIS recognizes the importance of continuity of employment authorization to both the individuals and their families as well as the U.S. businesses and organizations that employ them. USCIS is working diligently to reduce processing times across benefit types, including many Employment Authorization Document (EAD) categories, through changes to operations, the increased use of technology, and revising policies.

USCIS has made changes to help prevent gaps in employment authorization and documentation, including the November 12, 2021 policy alert revising its interpretation of 8 CFR 274a.13(d) to allow for the automatic extension of EAD validity dates for certain individuals in E, L-2, and H-4 derivative spousal status if the EAD renewal was properly filed before expiration and the individual has an unexpired Form I-94. The November 12, 2021 Policy Alert also clarifies that E and L dependent spouses are employment authorized incident to their status and therefore they are no longer required to request employment authorization by filing Form I-765, Application for Employment Authorization, but may continue to file Form I-765 if they choose to receive an EAD.² USCIS has also announced that healthcare workers who have a pending EAD renewal application may request expedited processing of their application if their EAD will expire in 30 days or less or has already expired.

Combined with these policy changes, USCIS is continually reviewing its operational procedures to ensure efficiency. While USCIS is moving toward an increasingly electronic environment, paper-based processing sometimes requires the physical separation of an application from the requests for ancillary benefits. USCIS continues to explore additional ways to systematically reduce EAD processing times and mitigate the

² Note, however, that until such time as USCIS can implement changes to the I-94 to distinguish E and L spouses from E and L children, E and L spouses would still need to rely upon an EAD as evidence of employment authorization to present to employers for completion of Form I-9. Until the notation on Form I-94 issued to E and L dependent nonimmigrants is revised, Form I-94 solely indicating E or L nonimmigrant status is insufficient evidence of employment authorization under List C of Form I-9. USCIS expects to implement these changes in the very near future.

The Department of Homeland Security's Response to Representative Carolyn Bourdeaux's December 15, 2021 Letter

potential for gaps in employment authorization while a timely-filed EAD renewal application is pending. At such time as funds are available, overtime funds may also be used to reduce critical backlogs and processing times.

4. Moving forward, are USCIS staffers able to provide a more thorough response as to why constituents are on a watch list?

Response: USCIS follows the protocols and procedures established by the U.S. Government (USG) watch listing program. The USG has integrated terrorist identity information from various federal departments and agencies into a single database, the Terrorist Screening Database (TSDB), which is managed by the FBI's Terrorist Screening Center (TSC). The watchlist is a single database that contains sensitive national security and law enforcement information concerning the identities of those who are known or reasonably suspected of being involved in terrorist activities. The TSC uses the watchlist to support front-line screening agencies in positively identifying known or suspected terrorists who are attempting to obtain visas, enter the country, board an aircraft, or engage in other activities. USCIS is one of many agencies who conduct terrorist screening in support of diplomatic, military, intelligence, law enforcement, immigration, visas, and other protective processes. Since the TSDB is derived from classified intelligence and/or sensitive law enforcement information, the TSC and/or USCIS cannot confirm or deny whether any individual may be included in the watchlist. Disclosure of such information would significantly impair the government's ability to investigate and mitigate terrorism and expose sensitive national security information. However, a constituent who believes they are being impacted can seek resolution through the Department of Homeland Security's Traveler Redress Inquiry Program (DHS TRIP), <https://www.dhs.gov/dhs-trip>. Even though this system normally relates to those who have encountered an issue while traveling, it can also address other watchlist issues.

5. What is USCIS doing to communicate with applicants about the status of their applications in a timely manner?

Response: Information on the length of time USCIS takes to process applications, requests, and petitions is critical to USCIS stakeholders. USCIS currently publishes [processing times online](#) by form type and USCIS office location. In addition, USCIS publishes [historic processing times](#) for past fiscal years and latest quarter for select forms, and recently expanded this data resource from five to ten prior years. The goals of publishing processing times are to increase accountability and transparency; improve public knowledge on the general length of time it takes USCIS to process applications, petitions, and requests; provide the public with data on processing time trends over time; and appropriately set user expectations.

The Department of Homeland Security's Response to Representative Carolyn Bourdeaux's December 15, 2021 Letter

Currently, the processing times website shows how long it took USCIS to process 50 percent and 93 percent of a specific form type over the prior six-month period.³ For a single case, the processing time is defined as the number of days (or months) that elapse between the date USCIS receives the application, petition, or request and the date USCIS issues a decision (i.e., approved or denied). The upper range (93rd percentile) is used to determine the date after which an applicant can contact USCIS for more information on their case.

Applicants, petitioners, and other stakeholders have relayed to USCIS that they often find the USCIS processing times website confusing and the lack of information on their case frustrating. USCIS has heard this frustration in stakeholder engagements, recent listening sessions, through social media and public comments on proposed USCIS actions, and from the USCIS Ombudsman. As a result, USCIS is considering several changes to simplify and clarify the way in which processing times are displayed and will conduct user testing to validate or amend the proposed changes in the second quarter of FY22. We will continue to keep Congressional leaders updated on these changes given their impact on your constituents.

6. Can you explain whether applications are processed chronologically or if there is another methodology?

Response: Most applications, petitions, and requests are assigned for adjudication in a general chronological order known as first-in-first-out or “FIFO” within the like benefit type at the office having jurisdiction. Asylum applications are the notable exception and are currently processed last-in-first-out order or “LIFO.” In some instances, however, cases may be assigned for adjudication outside of strict FIFO processing order, such as a benefit request that USCIS has determined merits expedited processing under guidelines shown on our website at <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request>. Once assigned for processing, final adjudication of the benefit request is dependent on case-specific factors, such as requests for evidence or delays in biometrics services appointments (whether due to backlogs or requested rescheduling).

³ For example, if, during a six-month period the processing times for a particular form are between 3.5 (50th percentile) and 4.5 months (93rd percentile), this means that USCIS adjudicated half the cases in 3.5 months or less (the 50 percent mark) and the next 43 percent of applications were adjudicated between 3.5 months and 4.5 months (93rd percentile). The remaining 7 percent were adjudicated after 4.5 months.