

Written Statement for the Record

Submitted to the

US House of Representatives
Committee on the Judiciary
Subcommittee on Immigration and Citizenship

Subject: Policy Changes and Processing Delays at US Citizenship and
Immigration Services

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I am a Department of Justice Accredited Representative authorized under 8 CFR § 1292.1(a)(4) to practice immigration law before agencies of the Department of Homeland Security (primarily USCIS) under the auspices of the Family Resource Center of Truckee, a 501(c)(3) charitable non-profit organization in Truckee, California (a short distance from the Northern California/Nevada border). I have been involved in immigration law practice since July 2015 when I began working under the supervision of accredited representatives and attorneys at Catholic Charities of Northern Nevada in Reno, NV. I have personally been accredited to practice immigration law, first in Reno, NV and then in Truckee, CA, since March 2016. My current period of accreditation began August 31, 2018 and lasts through August 31, 2021.

I would like to preface my statement by noting that the American Immigration Lawyers' Association (AILA) and the Catholic Legal Immigration Network Inc. (CLINIC), both of which have representatives present at the hearing today, have produced high quality, data driven analyses of the broad trends in USCIS processing times. Rather than simply reiterate these organizations' comprehensive documentation of USCIS's mismanagement of its mandate, I would like to focus my commentary specifically on one form, Form I-918, with which I have extensive experience in my own practice. I hope that the honorable members of the committee will find my account of delays in processing of Form I-918 to be helpful in evaluating the conduct of USCIS under the Trump administration. While hardly comprehensive, I believe my account to be illustrative of USCIS's failure to perform its duties, and it is my hope that my contribution to this hearing may eventually lead to relief for my clients who continue to wait for decisions on their petitions.

Form I-918, Petition for U Nonimmigrant Status

U status, authorized at 8 USC § 1101(a)(15)(U), provides immigration status to foreign nationals who have suffered harm as the result of certain crimes and who have been helpful or are likely to be helpful to law enforcement agencies in the United States. In plain language, those who file an application for U status have been victims of serious crimes in the United States and have cooperated to the satisfaction of at least one law enforcement agency. A petition for U status cannot be filed without a certification from a US law enforcement agency that the petitioner has cooperated to the agency's satisfaction.

U status is a mainstay of nonprofit immigration legal work as it is prohibitively difficult to file without legal counsel and is provided, by definition, to traumatized applicants who rarely possess the financial means to hire a private attorney. Most applicants I have observed in my own practice have suffered from sexual assault, child molestation, and particularly egregious forms domestic abuse generally consisting of repeat incidents of sexual and/or physical violence. Most (although not all) are women and children. Since 2015, I have filed or assisted in the filing of numerous I-918 petitions for U status. No I-918 that I have filed has ever been adjudicated.

Data available on USCIS's website indicates that from FY 2015 through FY 2018, the average USCIS processing time for Form I-918 increased from 11.4 months to 40.6 months. That is

to say that, over the course of three years, the processing time increased by about two and a half years. Over the first three months of FY 2019, the processing time has increased by a little over three months. When I meet with prospective I-918 clients, I typically simplify this phenomenon with the explanation that USCIS has only processed about six months' worth of I-918 petitions in the last four years.

Origin and Expansion of Delays

Observant committee members will likely note at this point that the timeline I have just described places the origin of the delays in processing of the I-918 during the Obama administration. The point is well taken, and it is important to acknowledge that USCIS under the Obama administration was not renowned for quick and efficient processing of applications, particularly the I-918. Nonetheless, even if we wish to place the blame for the origin of the problem on the previous administration, we can nonetheless conclude that policy choices undertaken by the Trump administration have exacerbated the problem.

Under the Obama administration, following the increases in processing times noted in FY 2015, USCIS let it be known to stakeholders that the agency took seriously concerns relating to the processing of I-918s and was working to resolve the problem by training additional officers in the more specialized skills required to adjudicate sensitive I-918 petitions. In June 2016, USCIS announced to all stakeholders that the agency would begin transferring cases from the Vermont Service Center, which, at the time, processed all I-918 petitions, to the Nebraska Service Center, to help resolve the unprecedented I-918 backlog. Six months later, President Donald Trump was inaugurated, and nothing has been heard since of the efforts to reduce the I-918 backlog. I place the blame for the current delay primarily on the current administration because it is under the Trump administration that efforts to mitigate the delay seem to have been terminated.

While I would not be surprised to learn that the initiative to transfer cases to the Nebraska Service Center might have had less impact on the backlog than originally planned, I also find it hard to believe that a substantial redeployment of staff toward the processing of one particular form should have had no impact whatsoever. The fact that processing times for the I-918 have continued to worsen since additional staff were trained to process the form suggests that additional changes were enacted subsequent to the 2016 initiative that counteracted the acceleration in processing times for the I-918 before they had meaningfully begun to take effect.

Consequences of I-918 Delays

Over the past decade, I-918 submissions have routinely exceeded the annual statutory cap of 10,000 visas, making it impossible for USCIS to approve all the applications submitted and contributing to a backlog of cases that have received a provisional approval but have no visa available. With this fact in mind, USCIS officials might argue that an effort to process I-918 petitions more rapidly is misguided and a poor use of resources. This objection, while superficially

reasonable, fundamentally misrepresents the nature of U status from the perspective of the petitioner. When an I-918 petition is provisionally approved, even if a visa is not currently available, the petitioner will be placed in deferred action, a temporary status that grants the petitioner protection from removal and the opportunity to apply for work authorization, until a visa becomes available.

The 43.9 months that USCIS currently takes to process a Form I-918 are 43.9 months in which a victim of a violent crime who cooperated with law enforcement is left in limbo, unable to sustain his or herself through lawful employment and vulnerable to removal. The latter of these two concerns was somewhat mitigated under the Obama administration, but, under the Trump administration, the prospect of removal is a clear and present threat to crime victims. In fact, recent policy changes suggest that delays in adjudication of the I-918 application may be part of an overarching effort to increase the probability that the victim of a violent crime will be removed from the United States before he or she can be granted status.

Under the Obama administration's priorities for immigration enforcement, U petitioners, even those experiencing long delays in the processing of their I-918 petitions, were at low risk for arrest and detention by Immigration and Customs Enforcement (ICE) agents. Even if petitioners found themselves in removal proceedings, the widespread use of administrative closure, a process in immigration court by which a judge removes a low priority case from the court's calendar, coupled with appropriate discretion granted to immigration judges to issue continuances of hearings in immigration court to applicants with pending relief from removal, allowed petitioners to remain in the US while USCIS worked to alleviate its crushing I-918 backlog.

The issuance of President Trump's executive order 13768, on January 25, 2017 replaced the Obama Administration's enforcement priorities, which targeted unauthorized immigrants convicted of serious crimes, with broad enforcement priorities that targeted any unauthorized immigrant who might be suspected of a crime including the crime of illegal entry to the United States. Despite rhetorical implications to the contrary from the President himself, this executive order mandated that ICE should no longer target "criminal aliens" for enforcement and should instead target any undocumented immigrant who the agency happened to encounter. Furthermore, in his 2018 decisions in *Matter of L-A-B-R- et al.* and *Matter of CASTRO-TUM*, Attorney General Jeff Sessions effectively eliminated administrative closure for almost all immigration court cases and drastically limited the discretion of immigration judges to grant continuances that would prevent applicants for relief from removal from being penalized for USCIS backlogs.

Viewed in isolation, the delays in processing of Form I-918 under the Trump administration are embarrassing. Viewed in conjunction with changes in enforcement priorities and court procedure, they appear sinister. This is to say nothing of efforts made by erstwhile Director Lee Francis Cissna to increase the probability of case denials and ensure that petitioners whose cases

were denied would find themselves in removal proceedings. The implications of I-918 case delays in conjunction with changes in court procedure appear to be designed to function as follows:

1. A victim of crime who cooperates with law enforcement will wait for more than three years for his or her case to be adjudicated.
2. During those three years, changes in removal priorities will increase the odds that the crime victim will be placed in removal proceedings.
3. If placed in removal proceedings, the likelihood that the immigration judge will order removal will be increased because the judge will not be able to administratively close the case or issue continuances to accommodate USCIS delays.

The backlog in processing just one immigration form, Form I-918, thus creates a perverse situation in which victims of crime are forced to wait for years with no protection from initiatives outside the scope of USCIS that increase the odds that they will be ordered removed while they wait. It is of course, possible that the continued delays in processing times are the result of incompetent management of the agency on the part of the Trump administration. The reversal of a significant Obama administration effort to accelerate I-918 processing times suggests, however, that USCIS is engaging in a kind of calculated and malicious incompetence in an attempt to subvert the agency's mandate. To subvert an agency's intended purpose through the regulatory process is frustrating to those of us who believe in the values that agency was originally intended to embody. To subvert an agency's intended purpose through calculated incompetence is shameful.

Thank you to the Honorable Chairperson, the Honorable Vice Chair, the Honorable Ranking Member, and the Honorable Members of the Committee for your consideration.

A handwritten signature in black ink, appearing to read "David Spencer Cooper". The signature is fluid and cursive, with a large initial "D" and a stylized "C" at the end.

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