



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

Ur Jaddou  
Director  
United States Citizenship & Immigration Services  
Department of Homeland Security  
5900 Capital Gateway Drive  
Camp Springs, MD 20588

August 4, 2023

**Re: Recommendations to USCIS on Publicly Posted Processing Times for Benefits Requests**

Dear Director Jaddou:

We write on behalf of the American Immigration Lawyers Association (AILA) to provide suggestions to further enhance how the processing times for benefits requests are displayed on the USCIS website. We also propose alternative thresholds for placing service requests as well as other measures that would facilitate reporting of more consistent and relevant processing time information.

Established in 1946, AILA is a voluntary bar association of more than 16,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes advancement of the law pertaining to immigration and nationality and facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. Our members' collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

As an initial matter, we greatly appreciate both the substance and spirit of the changes that USCIS made to the posted processing times and to related resources in May 2022. These changes were clearly focused on providing users with the information that is most salient to them, from providing separate processing times for different form categories to tailoring the case inquiry tool to a user's specific receipt date. It is also evident that considerable thought and effort went into the explanations found throughout the various processing time-related webpages.

In the press release announcing these changes, we were also pleased to see that "the agency seeks and encourages the public's input so we can continue to improve how we display processing times

in a meaningful and helpful way.”<sup>1</sup> In that spirit, we wish to provide you with feedback regarding processing time metrics on the USCIS website, and to suggest alternative metrics that should help “improve the ability of users to estimate how long it is likely to take USCIS to process a benefit request”.<sup>2</sup>

## I. Feedback and Suggestions Regarding Processing Time Metrics

### A. Feedback Regarding the 80th Percentile Processing Time

In order to provide a concrete example that will help facilitate our feedback, the following discussion will consider the 80th percentile processing time for employment-based I-485 adjustment applications at the Nebraska Service Center (NSC). We understand that this is derived from the set of processing times for every such application that the NSC finished processing within the last six months (regardless of when those applications were initially filed).

The 80th percentile would then be the point in that set of processing times where 80% of the applications were processed more quickly and 20% of the applications were processed more slowly. Accordingly, the currently reported 80th percentile processing time of 27.5 months<sup>3</sup> means that, of all of the employment-based I-485 adjustment applications that the NSC finished processing in the last six months, 80% took less than 27.5 months to process while 20% took more than 27.5 months to process.

Thus, given that 80% of applications took less time than this, the 80th percentile processing time necessarily represents significant and unusual delay and is thus inherently mismatched to its stated goal of “improv[ing] the ability of users to estimate how long it is likely to take USCIS to process a benefit request.”<sup>4</sup> Indeed, as a processing time metric, it can only give users a sense of when a benefit request will have been pending longer than most other benefit requests.

Furthermore, the 80th percentile processing time, standing alone, provides very little insight into the overall spread of processing times, which is an important part of estimating how long it might take USCIS to process a benefit request. Again, the Nebraska Service Center example is illustrative. While we know that 80% of the employment-based Form I-485 applications in question were processed in less than 27.5 months, we do not know *how much faster* these applications were processed. Did most of these applications still take almost 27.5 months to process (e.g., anywhere from 20 to 27 months) such that there was little spread in processing times? Or were many of these applications processed in substantially less time (e.g., anywhere from 6 to 18 months) such that there was considerable spread in processing times?

Finally, it bears emphasizing that because the processing times in question include all the time from receipt to completion (including the time it takes to reply to any Requests for Evidence

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<sup>1</sup> U.S. Citizenship and Immigration Services, *USCIS Simplifying, Improving Communication of Case Processing Data*, May 5, 2022, [USCIS Simplifying, Improving Communication of Case Processing Data | USCIS](#).

<sup>2</sup> *Id.*

<sup>3</sup> Obtained from <https://egov.uscis.gov/processing-times/>.

<sup>4</sup> *USCIS Simplifying, Improving Communication of Case Processing Data*, *supra* note 1.

(RFEs) or other inquiries),<sup>5</sup> the 80th percentile may then principally reflect the longer amounts of time it takes to process benefits requests which resulted in an RFE. If so, the 80th percentile would provide no insight whatsoever into how long it took USCIS to process benefits requests which did not result in an RFE, which is an important piece of information for customers.

### ***B. Suggestions for Alternative Processing Time Metrics***

A partial step towards addressing the deficiencies of the 80th percentile as a processing time metric would be to complement it with the 50th percentile (or median) processing time, that is, to report both of these figures together.<sup>6</sup> In this scenario, the median processing time would provide users with a natural, intuitive “estimate [of] how long it is likely to take USCIS to process a benefit request” (as USCIS intended to provide),<sup>7</sup> while the 80th percentile processing time would play a role for which it is better suited, providing users with a sense of the lengthier processing times that have occurred. Furthermore, a comparison of the median and the 80th percentile would provide users with at least some sense of the overall spread in processing times, i.e., are the median and the 80th percentile close together (suggesting that there may be less spread in processing times), or are they further apart (suggesting that there may be more spread in processing times)?<sup>8</sup>

However, our preferred suggestion to improve reporting of processing times derives from statistical theory and would eschew the 80th percentile altogether, instead providing the 25th percentile, the 50th percentile (or median), and the 75th percentile processing times. Along with the aforementioned benefits of reporting the median processing time, the inclusion of the 25th and 75th percentiles in this setup provides users with a clear sense of both the shorter and lengthier processing times that have occurred. These percentiles also provide a much more complete sense of the overall spread in processing times – in fact, the difference between the 75th and 25th percentiles (termed the “interquartile range”) is a frequently-used measure of spread in statistics.

Another helpful change would be for USCIS to report data regarding when a case is *first adjudicated* (i.e., time from receipt until the officer’s first adjudicative action – whether approval, denial, or issuance of an RFE or NOID), either in addition to or instead of when a case is *finally completed*. Notably, time until first adjudication is a far more salient metric to immigration attorneys and their clients than is time until final completion.

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<sup>5</sup> U.S. Citizenship and Immigration Services, *Frequently Asked Questions About Processing Times – Methodology and Calculations of Processing Times*, <https://egov.uscis.gov/processing-times/processing-times-faqs>, at 2.

<sup>6</sup> We do note that USCIS reports historical median processing times for FY2012 through FY2023 on its website, at <https://egov.uscis.gov/processing-times/historic-pt> (last updated June 30, 2023). However, the most recent of these historical median processing times – for FY2023 – is derived from applications completed (i) by all USCIS offices during (ii) the period from October 1, 2022 to April 30, 2023. In contrast, we suggest providing “fresher” median processing times which are specific to a particular field office or service center – much like the 80th percentile processing times, these median processing times would be derived from applications completed (i) by a particular service center or field office during (ii) the last six months. We also note that providing these “fresher” median processing times on the “Check Case Processing Times” page at <https://egov.uscis.gov/processing-times> would likely reach a much wider audience than does the historical median processing times page at <https://egov.uscis.gov/processing-times/historic-pt>.

<sup>7</sup> *USCIS Simplifying, Improving Communication of Case Processing Data*, *supra* note 1.

<sup>8</sup> Of course, comparing the 50th and 80th percentiles in this way does not provide insight into the spread of processing times at lower percentiles (that is, it does not tell us how quickly the quickest applications were processed). Our preferred suggestion, described below, would help address this blind spot.

### ***C. Feedback Regarding Continued Use of “Cycle Times” to Calculate Processing Times***

Another issue that is of concern to our members is the continued use of cycle times as equivalent to processing times for several form types. As far back as 2018, the Office of Inspector General (OIG) expressed its concerns about the cycle time methodology.<sup>9</sup> In its response to the OIG report, USCIS concurred that using cycle times was not an appropriate method of reporting actual processing times on the website and promised to develop and implement a new methodology for calculating processing times.<sup>10</sup> Nevertheless, USCIS appears to continue to do so for several case types, including Form I-129, Form I-129CW, Form I-130, and Form I-730,<sup>11</sup> which leads to unreliable and unrealistic processing times being published on the USCIS website for its stakeholders.

## **II. Feedback Regarding Timing for Placing Service Requests**

### ***A. Feedback Regarding the 93% Threshold for Placing a Service Request***

We appreciate the work USCIS has done to try to improve communication of processing times that fall outside the normal range, including allowing stakeholders to enter a filing date to automatically calculate when a particular benefit application is deemed outside normal processing time (ONPT) and an inquiry can be placed. In furtherance of USCIS’s important stated goal of increased transparency, we wanted to highlight an issue that has created confusion for our membership and their clients. As mentioned above, the current processing times displayed on the USCIS website are the amount of time it took USCIS to complete 80% of adjudicated cases over the last six months. However, USCIS only allows service requests for cases that are taking longer than the time USCIS took to complete 93% of adjudications. From the stakeholder perspective, it is unclear why there should be two high-yet-distinct figures. USCIS states that the purpose of the 93% figure is to “better manage our limited resources by allowing staff to focus on adjudicating cases rather than responding to inquiries.”<sup>12</sup> However, this concern must be counter-balanced against the unnecessary and excessive confusion caused by the two-tier method and the lack of transparency in this system.

Moreover, we believe that using the 93% figure as the lower limit for filing an ONPT service request is inappropriate because the processing time is calculated, as mentioned above, based on case completions. This significantly inflates and distorts processing times because such a high figure would almost certainly include a large amount of “outlier” cases that are long-pending for complicated and unique reasons, such as Requests for Evidence, background checks, investigations, etc. Pegging the inquiry threshold to this 93% figure is therefore problematic because stakeholders cannot begin to inquire about their case until it becomes an extreme problem potentially affecting their future, when there may be a simple solution to why the case is stuck such as an RFE was never received by an applicant.

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<sup>9</sup> Office of Inspector General, *USCIS Has Unclear Website Information and Unrealistic Time Goals for Adjudicating Green Card Applications*, OIG-18-58 (March 9, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-03/OIG-18-58-Mar18.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> Obtained from “Case Processing Times,” available at <https://egov.uscis.gov/processing-times/more-info>.

<sup>12</sup> Obtained from “Case Processing Times,” *supra*.

### ***B. Suggestions for an Alternative Threshold for Placing a Service Request***

If USCIS implements the interquartile range-based reporting system suggested above, we recommend that petitioners or applicants be permitted to place an ONPT service request if their case processing has surpassed the 75<sup>th</sup> percentile date.

Alternately, if USCIS maintains a reporting system using the 80<sup>th</sup> percentile (e.g., reporting the median and the 80<sup>th</sup> percentile), we suggest allowing petitioners or applicants to place an ONPT service request if their case had gone beyond the 80<sup>th</sup> percentile, thereby eliminating the confusion caused by the present system.

Finally, we suggest allowing a stakeholders to place an ONPT service request based upon the date that cases are first adjudicated, rather than when they are finally decided.

### **III. Feedback Regarding Discrepancy Between Processing Time Data on USCIS Website and USCIS Contact Center**

Many of our members report that there is a mismatch between the processing time data published on the USCIS website and the data that the USCIS Contact Center uses to determine when/if a service request will be allowed. There are even reports of processing time data being different depending on how USCIS is contacted, e.g., by telephone or E-Request. This can create confusion and frustration when a stakeholder is trying to file a service request for an application that is ONPT. Members report sometimes attempting to place an E-Request for ONPT but, even though the website states the case is outside of the normal processing times (i.e., beyond the 93% date), not being able to submit the request when the system returns a message that you cannot file a request until a later date. However, when these members called the USCIS Contact Center, they found they could place a service request ONPT for that same case. Inconsistent processing times and service request thresholds on the different platforms leads to inconsistent adjudications, frustration for stakeholders, inefficiency for USCIS and lack of confidence in the system. We believe USCIS must implement greater accuracy and consistency with respect to the data reported across all platforms so that the user experience is the same regardless of how the stakeholder chooses to interact with USCIS.

### **IV. Feedback Regarding Calculation of Processing Times Based on Case Completions: Prospective Enhancement Through Use of Case Volume Data**

The fundamental goal of publishing processing time data is to provide user friendly and reliable information that accurately estimates the length of time that it will take USCIS to process a petition or application. Users value information that is specific to their case type and provides reliable information on when they should expect adjudication. This point cannot be overstated. Important personal, professional and family decisions can be affected by inaccurate estimates of when an applicant may receive an immigration benefit for which they are eligible. In connection with the critical role case processing time data plays in the lives of the USCIS user community, we commend USCIS for its recent efforts to provide more personalized processing times, via myProgress. Providing this functionality to applicants for a selected group of benefits is a significant step towards providing more user-relevant case processing information. However,

myProgress is structurally and fundamentally flawed in that it does not allow access by the user's attorney, meaning that the attorney and client are relying on different data points when understanding the case status. AILA recommends that USCIS provide further transparency into the process to enable attorney access to this information and by notifying when "personalized" estimated times displayed on the myProgress page are reached.

More generally, the processing time data that USCIS publishes continues to rely primarily on historical data tied to recent case completions and does not take into account USCIS' actual workload. Reporting data on past performance is an inherently unreliable predictor for future processing times because it does not factor in the actual volume of the case processing inventory, *i.e.*, it does not consider how long it would actually take the Service to adjudicate a newly filed case given its current workload. The inability to factor this information into case processing time estimates leads to inherently inaccurate predictions, which have a deleterious effect for stakeholders who use the case processing time estimates for the purposes noted above.

A perfect example of this issue occurred after the rapid advancement of employment-based priority date cutoffs in the October 2020 Visa Bulletin. USCIS received a record number of Forms I-485 and ancillary applications in October and November 2020. However, because the processing time calculations published on the website were based on past adjudications and not on actual cases received, it appeared that some applications were already outside normal processing times within just a few months of filing. This, in turn, resulted in unnecessary stress to applicants and the filing of untold numbers of ultimately pointless ONPT service requests for cases that weren't really ONPT, resulting in unnecessary extra work for USCIS.

As USCIS continues to revise and enhance its case processing time capabilities, AILA supports the development of a case volume-based calculation methodology using a mathematical formula designed to enhance the accuracy of the estimated wait times for case completion. On an elemental level, one approach would involve basing the calculation on the best available information with respect to the average amount of time it takes to complete a certain case type, multiplied by the number of known cases in inventory "in front" of the case that is the subject of the inquiry. While we recognize that there is more complexity in this suggestion than outlined above, we look forward to working with USCIS to implement a methodology that incorporates data on the volume of pending cases.

Thank you for your consideration of our recommendations to provide users with more accurate, and therefore more relevant, case processing time information. If you have any questions or would like to discuss our recommendations in greater detail, please contact Shev Dalal-Dheini, AILA's Director of Government Relations at [sdalal-dheini@aila.org](mailto:sdalal-dheini@aila.org) or 202-507-7621.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

CC: Elizabeth Puchek, Chief Data Officer  
Doug Rand, Senior Adviser to the Director  
Mary Herrmann, Chief, Public Services Division, External Affairs Directorate  
Eva Millona, Assistant Secretary for Partnership and Engagement  
Carrie Selby, Associate Director External Affairs Directorate  
Nathan Stiefel, Acting USCIS Ombudsman