



Transcript

U.S. CITIZENSHIP AND IMMIGRATION SERVICES MEETING WITH IIUSA

U.S. Department of Homeland Security, 20 Massachusetts Ave., NW, Washington, DC 20529

Friday, October 5, 2018

Audience (Internal)

Participants:

L. Francis Cissna, Director, U.S. Citizenship and Immigration Services

Kaitlin Stoddard

Kathy Nuebel Kovark

Sarah Kendall

Rachel Peterson

Robert Kraft, President, IIUSA Board

Brill Gresser, Vice President, IIUSA Board

Steve Strnisha, Treasurer, IIUSA Board

Pat Hogan, IIUSA Board

Kyle Walker, IIUSA Board

Cletus Weber, IIUSA Board

David Andersson, IIUSA Board

Robert Honts, IIUSA Board

Robert Divine, IIUSA Board

Aaron Grau, IIUSA

Nicole Merlene, IIUSA

George McElwee, IIUSA



C O N T E N T S

- I. Welcome and Introductions
- II. Five Suggested Discussion Topics
- III. Desire for Cooperation, Mutual Support, & Continued Dialogue
 - a. Small Industry Meetings
 - b. Quarterly Stakeholder Meetings
- IV. Redeployment
 - a. Requirements
 - b. Action Letter Prior to I-829 Adjudications
- V. Site visits
 - a. Types of Questions Asked to Whom
 - b. Timeline Implication of Unnecessary RFEs
- VI. Backlog of Adjudications in all Forms
- VII. Common Project Financing Structures and Term Sheets
- VIII. Additional Comments & Questions, As Time Allows
- IX. Ideas for Next Steps
- X. Thank You - Adjourn



PROCEEDINGS

- **DIRECTOR CISSNA:** Okay, so before we begin, why don't we just go around one more time for the sake of the transcriber, so he has a record of who was here at the meeting and who was present. So, Francis Cissna, Director of USCIS.
- **MS. NUBEL KOVARK:** Kathy Nuebel Kovark, Office of Policy and Strategy of USCIS.
- **MR. KRAFT:** Bob Kraft, President of IIUSA and Chairman of First Pathway Partners, Milwaukee, Wisconsin.
- **MR. DIVINE:** Robert Divine, I'm a lawyer at Baker Donelson.
- **MR. HOGAN:** Patrick Hogan, the CEO of the CMB Regional Centers.
- **MR. STRNISHA:** Steve Strnisha, CEO of Cleveland International Fund and Secretary-Treasurer of IIUSA.
- **MR. WALKER:** Kyle Walker, CEO of Green Card Fund and board member of IIUSA.
- **MR. GRAU:** Aaron Grau, Interim Executive Director of IIUSA.
- **MR. WEBER:** Cletus Weber, a lawyer in Peng and Weber in the Seattle area.
- **MR. ANDERSSON:** David Andersson from Bellingham, Washington, President of the Pacific Northwest Technology Resource Center.
- **MR. HONTS:** Bob Honts, President of Texas Lone Star Enterprises and Secretary-Treasurer Emeritus of IIUSA -- means I'm old.
- **MR. GRESSER:** Bill Gresser with EB-5 New York State out of Buffalo, New York, and also Vice President of IIUSA.
- **MS. KENDALL:** I'm Sarah Kendall. I am with the IPO.
- **MR. McELWEE:** George McElwee – [inaudible/unintelligible]
- **MS. MERLENE:** Nicole Merle, Director of Policy and Government Affairs at IIUSA.
- **MS. PETERSON:** I'm Rachel Peterson, I'm with the counsel's office at USCIS.
- **MS. STODDARD:** Caitlin Stoddard, advisor to the director -- [inaudible/unintelligible]



U.S. Citizenship and Immigration Services

Office of Public Affairs

- DIRECTOR CISSNA: Okay, so welcome, IIUSA, board members past and present, and to USCIS.

I think we all share a common purpose, which is to make the EB-5 program work well. And you all, from your perspective and I from mine. It is lawful, it's in the statute. So it exists, it needs to work well. And it needs to achieve the purposes, I believe, that Congress intended for it. So to that end, you all have seen, you know, some time ago, we proposed a regulation that would do two main things. It would address the levels of investment and the area -- the gerrymandering issue, as we call it. And we also issued an advanced notice of proposed rulemaking, when was it, last year, January 2017, that proposes a few ... opens for discussion a few other potential items for reform.

And then you might have seen in the Department of Homeland Security's Regulatory Unified Agenda, there's another regulation that we announced that we're working on, another proposed rule with potentially more reform proposals in it. But that's -- that's not -- hasn't been published. You know, we're still talking about it internally. But there are two live regulations. One is the proposed rule, which has yet to be finalized, the one about the gerrymandering and the investment levels. And the second one is the ANPRM but we still haven't taken further steps on that. So on the main one, the proposed rule that has yet to go final, it is going to go final. We're just not ready yet. We're still working on it.

You might have seen, I testified in front of the Senate a few months ago, back in June, and I got screamed at because Senator Grassley was wanting that regulation to be final even quicker. So I told him what I'll tell you is the answer hasn't changed. We are going to finalize it; just we're not done yet. It's a lot of work to finalize a regulation. But that should come soon.

So that's kind of the lay of the land with the regulations. You all know very well what's in those regulations and the NPRM that's going to be finalized and the ANPRM. I think what the regulations show is that we in the agency, as I said at the outset, we want the program to work well. We want it to work in accordance with what we interpret to be Congress's intent for the program. And it's not just regulations we're working on. We have issued a couple policy memoranda over the past year. The one I can think of off the top of my head is we withdrew the policy of allowing tenant occupancy, which I understand was an underutilized model anyway in the industry. But for reasons which we elaborate in the announcement, we thought it was appropriate to pull that back.

We have expanded our work in monitoring compliance at regional centers. We've expanded site visits over the past year, year and a half, to both new commercial entities and job-creating entities, so that's another development that we've been pushing. And all these changes, all these new things that we're doing, again, are just directed at ensuring that the program works better and that actors who are abusing the program or violating the spirit of the program shouldn't stay in the program. If the regional center is not complying with the terms and conditions of the program, the regional center should be terminated. If the regional center hasn't been doing anything at all, it's just been fallow,



U.S. Citizenship and Immigration Services

Office of Public Affairs

it shouldn't be. So we think that the work we're doing is a genuine, good-faith attempt to make the program better.

That's kind of the lay of the land. I think I would just finish by saying, before we open it up to conversation, there's no -- there's no intent on our part to damage the program or to in any way, you know, hurt the good work that is done by it. We just want it to work better and work with integrity and work in fulfillment of what we believe to be Congress's intent for the program.

And we await, as you do, any potential action in Congress on this. I've lost track of where that is now or what might or mightn't happen in the near future on that. And at this point, I'm focused just on what our agency is doing. Congress will do whatever it's going to do. It will affect all of us in this room and we'll all have to live with whatever that is. But for now, I and my agency are just focused on the day-to-day running of the program, the day-to-day maintenance of the program's integrity and these various regulations that I talked about at the outset.

So with that, I'm happy to -- [cut-off]

- MR. KRAFT: Yeah, if I could maybe go first?

Well, first of all, Director Cissna, thank you so much for having all of us here. We have representatives on the board from the entire country, pretty much all regions. And IIUSA represents 90 percent of the capital deployed. And you probably know all these stats.

But our objective is to assist you in your stated goals. I mean, we're on the same page. And we really appreciate this opportunity to begin a dialogue. And we have probably a few questions and some comments to make. But it's in the spirit of improving the program. It's a great program. It's had a huge economic impact on the country. If it's properly administered and properly managed from our standpoint, together we can make this even better. And so we share and we support everything that you're doing. And we appreciate, I can't tell you how much, the opportunity to open a dialogue like this and hopefully we'll be able to have an opportunity on a quarterly basis or regular to provide good feedback that might help you in your goals. So thank you very much.

- DIRECTOR CISSNA: I would say also during the time I spent on the Hill in 2015 and 2017 when all this legislation was really hot and moving, I do remember that IIUSA was a good partner. You know, clearly, we didn't agree on a lot of the policy things that were going on. But your organization generally was a good faith participant in that process. And I appreciated it and I know Kathy did during the time that we were there and working on those bills. So I haven't forgotten that. Your organization is a good one.
- MR. KRAFT: Well, thank you. And Aaron, do you want to -- [trails off]



U.S. Citizenship and Immigration Services

Office of Public Affairs

- MR. GRAU: Very briefly, again, thank you to all of you for this opportunity. I wanted to share three sort of high-level housekeeping issues from our perspective, if you will.

The first one is during our breakfast meeting this morning, the question was raised, what is exactly the outcome that we hope to receive from this meeting? And the consensus was unanimous that we are looking to establish a positive, productive working relationship with USCIS, period. To open up the lines of communication and to let you know that we are here as a resource, should you need us.

Number two, to that point, is that we're very interested in understanding what your priorities are for the balance of the year, as well as for 2019. I think that, you know, in my experience in working with the administration, it's always a good starting place to understand, well, where is it the administration wants to go, as opposed to trying to pull it one direction or another. If there's an understanding of where it wants to go, we can take a step in that direction with you and again be helpful to help you reach your priorities.

And finally, the point was discussed during our breakfast meeting this morning with regard to the regulations. We appreciate the statements that you shared with us at the outset just now and we simply wanted to say that, you know, we have participated in the regulatory process. We have submitted our comments and, you know, we're simply here to reinforce what we've already provided to you.

And, you know, to the extent there are any questions for me or, you know, the approach that IIUSA is taking from those perspectives, I'm happy to be part of that conversation. But truth of the matter is, the subjects that we outlined and provided you earlier in the week are good and viable starting points for us to begin that conversation and dialogue, to the extent you guys feel it's helpful, and we're very appreciative of being here. So, Bob.

- MR. KRAFT: Thank you. I guess, again, we are definitely aligned with what you're trying to achieve. And we think we can be a great resource in terms of maybe practices from the field, if you will, you know, what our members are experiencing that might help USCIS from a handling standpoint, processing consistency. And probably most importantly, the dialogue. The ability to interact and find out why was this decision made or, you know, this is totally different, maybe, than another one. And again, in the spirit of making sure that this is properly managed for all parties, our investors, the regional center operators and, of course, all the people we affect in the communities. You know, this program is really doing great work.
- MR. GRAU: We also took the time during our meeting to sort of lay out who would be responsible among our group for discussing what topics. But agreed that before we even started there to ask you if you had any questions for us with regards to our direction or our priorities. Anything at all? Or any direction you may want to give us? We thought we would hear from you first to the extent you wanted to.



U.S. Citizenship and Immigration Services

Office of Public Affairs

- **DIRECTOR CISSNA:** Well, I think, I mean, you asked, you know, what are our priorities for the next fiscal year. I think, you know, putting aside the regulations which we already discussed, I think the main one is continuing to ensure the integrity of the program. That's what it's about. The reg., it might take a while yet before it gets finally published. Congress might do whatever it's going to do, or not. But our concern right now, what we're really focusing on, is the day-to-day operation of the program and ensuring its integrity. Thus the emphasis that I just described on the site visits, on the compliance work that we're doing at the back end, that's what it's about. And I guess, from my perspective, I wonder what you all as an industry organization are doing on your end to ensure that bad actors are, I don't know what the verb would be, booted out or, you know, that integrity is maintained in the program? That's our concern and anything you can do to supplement or complement our efforts to ensure that people who are abusing the program, using it badly or contrary to the law, shouldn't be doing that.
- **MR. ANDERSSON:** Not to speak out of turn, but I am. I'm President Emeritus of IIUSA. And during my tenure, we were responsible through whistleblower action of bringing the Chicago Convention Center case to the attention of the authorities. And IIUSA began a tradition then of filing amicus briefs with the federal courts so that they would understand the working of the program. Because federal courts, you know, I mean, EB-5 is new to a lot of people and so that SEC action, which is still trumpeted as the most successful SEC recovery action probably in the history of the organization, was supported full on by IIUSA. We were able to get to the escrow bank. We were able to get, you know, the valves turned, so that when the money needed to go back to the investors, it was a very efficient process. We were able to slap down some bad intentioned intervenors who were trying to gum up the works. And so that's a commitment that we've had since Chicago broke. We vowed at many meetings after that, never again. And, unfortunately, that was out of our control, unfortunately. You know, there's been bad actors since then. But I can tell you, the level of vigilance in this room to detecting bad actors and then taking some action on it is very high. We've got probably more at stake than you do in protecting the industry.
- **DIRECTOR CISSNA:** That's what I'm talking about. And I think, as you all appreciate, anything that brings disrepute to the program and the industry is bad for all parties. So I think we definitely agree on that. I remember that. I remember that Chicago case and I remember your all's role in that. So I thank you for reminding me of that, you're right.
- **MR. DIVINE:** We also have a best practices committee that has published best practices for regional centers who do commercial enterprises. And that's, I think, readily available on our webpage for you all to see.
- **MR. ANDERSSON:** We'll make sure Aaron sends that to you. It's an evolving document, as well, as things change. But we come up with new suggestions about compliance with SEC and other things that regional centers should adhere to. I was cheeky enough to put it in my I-924 application, just to show that we have it.



U.S. Citizenship and Immigration Services

Office of Public Affairs

- MR. GRESSER: And we have long supported legislative efforts to increase integrity. And you're well aware, I don't need to say it. But as an association. And I would say that the vast majority of the industry, even outside of our association, supports increased integrity requirements and reforms.
- MR. HOGAN: It was also an issue on communication. CMB and myself, we were the ones that provided the USCIS the information to take down the Victorville Regional Center, the first one that was terminated. The second one was El Monte. We provided the information to show them. Because we're boots on the ground, we see it.

And we as a group here feel that if we see something, we'd like to say something. But we as regional centers have no voice. We're not a G28. We can't pick up the phone and call you. We have no means of communication other than the mailbox. And that mailbox, it doesn't work. I'm flat telling you, it doesn't work. And that's been a huge problem. Before, when you had the California Service Center meetings and we actually, you know, most of the time, the best communication was after the meeting when we were able to come up and talk to you and tell you things that we saw and that -- you know, to help you in your regulation of this to say, this is not right, this is -- because, you know, this whistleblower stuff, everybody is looking for a big payday now for some reason because of that law. That's not what we're about. We as a group here, all of us here, just want to see this program be fair, equal, flat, transparent. I don't think anybody argues with that. But how do we communicate to you? We're really, especially the regional centers, are hobbled in that. So that's one of the first questions that I'd like to ask, is how can we improve that communication? How do we talk to you?

- DIRECTOR CISSNA: Well, right now, I -- the agency is working on a new what you would call it, I guess external engagement policy. We're not done yet. But the external engagement policy would affect everybody, not just EB-5 parties. And one of the things that I've stressed in there is that there does need to be some sort of way that we can regularly communicate with stakeholders but without favoring any one particular group.
- What we do has to be open, you know, more generally to the public, you know, to the public generally. And this is an evolving piece of work that we're engaged in. And I do comprehend the unique, you know, the uniqueness of the EB-5 program because of its extraordinary complexity. It doesn't really lend itself to kind of high-level stakeholder engagement sessions. But I hear what you're saying and I'm going to ask that that definitely be factored into whatever policy we build. I do understand the point.
- MR. GRAU: If there's no other initial exchange, I think what we had done is gone through the anticipated agenda that we forwarded to you this morning and sort of prioritized it, understanding that these conversations were truly a means to an end of establishing a rapport with USCIS. But we identified some of these issues as important to address. The first one we have covered, a desire for cooperation, mutual support. And we look forward to following up with you in any way we can to do so. But from a policy, a



U.S. Citizenship and Immigration Services

Office of Public Affairs

procedural perspective, B did come in number two, redeployment. And Robert Divine graciously volunteered to sort of help guide that part of the conversation.

- MR. DIVINE: So I think there are two things at work in trying to protect the integrity of the program. One, is for the rules to be clear so that everybody can know what they're trying to follow. And two, is to try to reduce the chances of people sort of losing their head and going whacky with money. Right? And there's one thing I've learned in this industry after having just been an immigration lawyer, doing H's and L's and perms and whatever for a long time, human nature is what it is. And some people, when they get their hands on a whole lot of money, lose their head. And that kind of describes what has happened in some of -- in most of the really notorious problems.

Often, it has been a situation where the same party controlled the new commercial enterprise and the regional center and the job-creating enterprise, so there's no check and balance and no real accountability for what's happening with the money. And I've even had that -- I've experienced that really up close, where one or more of my own clients, you know, ended up doing something like that, that I couldn't even detect while I was representing him. So it can happen, and it always will. And I remember testifying in front of Chairman Grassley back in like 2010. And he asked, how do we stop these, you know, these situations from happening? I was like, you know, until we change human nature, we're really not going to do that. And the securities laws are there to prohibit mishandling people's money and misleading people. And they're also there to provide remedies for those situations.

But we want to try in any way possible to reduce the chances where -- and the temptations for that kind of thing. Again, by clear rules and then otherwise. And one area that is the biggest problem we see coming down the pike is this problem, and opportunity really, of redeployment. And it really arose from the agency trying to help. Where we have situations where the EB-5 money goes into a project and it gets used and it's successful, and the business is built. Say it's, you know, classically a hotel or something. And it's built and it's functioning and it's doing well. And the developer then either sells it or refinances it and wants to pay back the loan that it got from the new commercial enterprise. And up until really last year, it was not clear whether that could happen before the end of the whole immigration saga of all of the investors in that new commercial enterprise.

The perception was, you know, the only safe thing is to keep that money in that original job-creating enterprise to the very end of the thing. And that was kind of manageable up until the time of -- when it was about a five-year track. But now with the wait for visa numbers for China, now Vietnam, anticipating India we assume is what's next, and those waiting periods may become, people estimate, 15 years. Then you've got way too long to realistically keep money in that original job-creating enterprise and that developer shouldn't have to, you know, just hold onto the thing and the money and never be able to sell it and refinance it and move on for that long a period of time. And if you imposed that requirement, then good developers just wouldn't take it, they wouldn't take EB-5



U.S. Citizenship and Immigration Services

Office of Public Affairs

money and you wouldn't be able to do a lot of things that EB-5 money can help it make possible.

So the agency thoughtfully tried -- you know, tried to come up with how can we make this possible but still keep some, you know, protect the integrity of the program and the intent of what was supposed to happen. We said, okay, after the jobs have been created, so the project has basically been created, completed, the jobs have been created, then the job-creating enterprise can liquidate or pay back the money to the new commercial enterprise. But the new commercial enterprise cannot distribute that money to the investors until they have reached the end of their conditional residence. And it was helpful we clarified that means when the I-829 is due, not when it's adjudicated a few years later.

So then comes the question. Okay, the new commercial enterprise has this money. And they can't distribute it to the people who invested it. So what do they do with it? And the policy described in the policy manual that was updated maybe middle of last year stated that -- tried to define some parameters. But those parameters are just not clear enough for the industry. And we've got an estimated \$16 billion of EB-5 money that is coming back out of job-creating -- that is on track, coming back out of EB-5 original projects that is going to need to be redeployed. And the standards for that need to be clear. Imagine if you were running a new commercial enterprise that has \$50-, \$100 million coming back to you and you need to exercise your fiduciary duty to the investors to redeploy this within the parameters that make sure they keep their green card and get their I-829 approved one day. But at the same time, you don't want to put this thing into unnecessarily risky new projects. You already risked their money once in the original job-creating enterprise and you already created the jobs.

So we need clarity. What can that be? Does it have to be into another job-creating enterprise like the one it already was? Can it be into some kind of fund of things? Can it be buying somebody else's interest in such a thing? All the way to can you use this money to buy -- to buy interest in a mutual fund of publicly traded securities. That's a risk. Is that enough? The rules -- the policy that has been articulated is just not clear about what that needs to be. It says that it needs -- it doesn't say whether the redeployment needs to be within the scope of the regional center or not. I don't think that the people writing this thought that that was required. But they didn't say it one way or the other and it needs to say one way or the other. And I think it should say it doesn't have to be in the same regional center or any regional center, doesn't have to be in a targeted employment area. But it needs to say, one way or the other. And it needs to say: does this thing that it's redeployed in need to be like the original one that is using the money newly to create jobs? Or can it be taking out somebody else's interest in a thing that created jobs already? I mean, can a -- if the money originally went to build a building that had some operations, we sold it and now the enterprise wants to redeploy this money in a real estate investment trust, is that okay? Here, it's not clear.

The thing that it says -- the policy says that it has to be within the scope of the new commercial enterprise's ongoing business. And nobody knows what that means. And I



U.S. Citizenship and Immigration Services

Office of Public Affairs

say that really with appreciation for the intent of the people writing it. But as a practical matter, you need to hear from us that we don't know what that means. And so we're not going to be able to comply. People are going to do all kinds of different things. And then we'll find out whatever you meant in a context of the gnashing of teeth with 829s getting unnecessarily denied because somebody went outside what somebody was thinking but didn't exactly say.

So -- and it needs to be clarified. I mean, I think that the new commercial enterprise should be able to -- I mean, obviously, the new commercial enterprise shouldn't use people's money in a way differently than they told people they would. But if a new commercial enterprise has people's money and can't pay it back to them and has to redeploy it to keep their green card alive, those people will agree to change the rules of the organization to redeploy it in a way that works, right? So the organization should be able to redefine what the NCE's ongoing business is to fit whatever redeployment opportunities there are. And it shouldn't be restricted in what it can do just because somebody drafted a new commercial enterprise document at the beginning, not anticipating all these issues that have come up.

Then finally, it says that the redeployment needs to be adequately described in the I-526 record. There's only one place where that shows up but it's a scary notion. And what does it mean to redeploy in something that's adequately described in the I-526 record? Does that mean it can only be in a hotel if it was originally a hotel? Or can it be any kind of real estate? Does it have to be something that's job creating a new or not? These things are, you know, terribly unclear as a practical matter.

I mean, the people who wrote this were trying to help and give some guidance. But, you know, it's important for us to say back, we need more guidance about what it is that you mean. And we certainly would offer suggestions about what the guidance ought to be. And I think it ought to be pretty open. Again, these people have already risked their money once. They shouldn't have to risk it as much again. But they have to have it at risk in some way. And what is the at-risk -- what at the parameters that are at risk that it has to be?

So there are two examples that are given in the policy manual. One is you can put it in another real estate loan like the one you did. If it was a real estate loan, then you can put it in another one like that one. It doesn't say how it needs to be like that one. Does it need to be creating new jobs? Does it need to be newly using the money? Or can you put it into buying someone else's interest in something like that, can we just buy a different hotel that's already done? Or does it have to be something that's new. But it just says another thing like that.

And then the other example it gives is you can use it to buy new-issue government bonds, like municipal bonds in a public works project. Now why did they say new issue? And the worry is that means this must be money that's being newly used to spend on job creation. Which means a very different thing than buying someone else's interest in something that's already happened. I mean, can I buy into a real estate trust of properties that



U.S. Citizenship and Immigration Services

Office of Public Affairs

already exist? My money's at risk. Or do I have to be buying into something that's going to be using that money new to build something? Right? If the answer is, you know, on the wide open side, then we need to all know that so everybody can be playing by the same rules. And if it's not, if it's the narrow, then we desperately need to know that immediately. Because people are out offering very well-intentioned products of investment funds that would use these things for existing real estate properties, to buy interests in existing real estate properties. Which makes sense. But we need to know if it doesn't comply.

- MR. HOGAN: So a real-life example of that is we have over \$300 million now redeployed. However, I don't think it's as complicated some ways as Robert is making it because I don't think there's ever a job requirement creation in redeployment because we've already created the jobs. So I wouldn't want to confuse that, that I have to go and create jobs again.
- MR. DIVINE: Well, I've already clarified that we don't.
- MR. HOGAN: That's fine. But I've already created the jobs and I'm living up to the statute. And my individuals should be approved because I've done that. But the partnership agreement is what tells you what you can and cannot do to deploy those funds in redeployment. You have to stay within the parameters of the partnership. Which then goes to Robert's thought process, how do we build the partnership documents so that they correspond in the beginning? Because we're talking about the I-526 that we might - we anticipated it to be a five- to six-year situation. Now we know it could be 15 years. We can't tell you what's going to happen but we try within our partnership agreement to describe that. Anyone who entered into business and entered into, let's say, a loan agreement and didn't anticipate early repayment and say what they were going to do with those funds didn't think very well. So even in the earliest of early partnerships, most of us that were in the beginning at least thought about that if we got paid back early and said what we were going to do with those funds.

So I think you should look to that in some of your guidance to say what does the partnership agreement say to what those funds are going to be used, because then that's in compliance also with the securities laws as well as the USCIS.

- MR. DIVINE: And Pat is, I mean, I think articulating a -- you know, a very sensible position from having anticipated things that not everybody did. But there are plenty of players out there who were understanding that the rule at that time was that you had to keep the money in the project, original project, until the end of the entire immigration process for the investors. They also didn't anticipate that there would be a 15-year wait instead of a five-year wait. And so those people shouldn't be trapped -- and the policy already says something along the lines of if you didn't -- if you had a liquidation policy before, meaning I think that if the policy -- if the partnership agreement said when we get the money paid back, we will distribute it, that that would now ruin the investment -- the immigration benefits for all the investors, you can change the partnership agreement



U.S. Citizenship and Immigration Services

Office of Public Affairs

to not make that liquidation from the NCE to the investors. Essentially, that means you can come up with a redeployment plan. But the point is that the partnership should be able to change the partnership agreement to do whatever kind of redeployment the rules allow. And that should be able to be changed now and not just have those organizations be stuck with whatever the partnership agreement said back when the rules were understood to be quite different.

- MR. HOGAN: And what Robert talked about in the beginning about the integrity, about individuals that might get sideways with money, that easily though, for instance, a real-life example, CMB went back and audited all its partnerships from 2014 to inception, so that anybody who looked at it said every dollar never left the silo that it was supposed to be in. And from 2014 forward, we have audited every one of our partnerships continually. So in other words, we have an outside auditing firm, a public auditing firm, that audits all of ours. So, you know, we didn't wait for regulation to tell us to do this because we wanted to tell the industry this is what we do. And I think that's what we talked about with our best practices here. Now, if those individuals don't want to have a certified public audit, fine, that's theirs. But you'll see amongst us, amongst these board members here, I think that we take this very seriously about the integrity of that. So there are ways to do it without regulation if it's done voluntarily in a situation like that.
- MR. WALKER: Bill, do you want to touch on -- we understand no guidance can be perfect. No guidance can contemplate anything we might do. And, Bill, you articulated a nice process where maybe we could –
- MR. GRESSER: I'll be very quick. But, you know, on the SEC and the IRS, there's a no-action letter. And the ramifications of doing the wrong thing, of making an investment that doesn't comply with the regs, if it was possible that we could come in advance and say, hey, look, this is the next redeployment, is it okay? You know what I mean? Not trying to hide the ball but trying to be extremely transparent, just because of the ramifications of inadvertently not doing something that complies could be quite significant. And there are precedent in other agencies to do similar things. I don't know whether CIS has the authority to do that, but it's a concept. We wouldn't have to do exactly that but however it worked with CIS, just so that we knew, a priori, it was right.
- MR. DIVINE: I think the problem is the options are so many and the rules are so difficult to nail down absolutely on the front end to cover every parameter, every different issue that could come up, some way to prospectively test out avenues of practical action on the front end is critical, yeah.
- MS. NUBEL KOVARK: On that point, knowing it may be difficult that there are different circumstances, different redeployment schemes, but has the industry or IIUSA put together any points on how to clarify this policy? Have you sent –
- MR. DIVINE: Like a proposal? Here's how we would suggest that you regard the policy manual on this front?



U.S. Citizenship and Immigration Services

Office of Public Affairs

- MS. NUEBEL KOVARK: Correct.
- MR. DIVINE: I don't think so, but sure can.
- MR. HONTS: Haven't been asked to do that.
- MR. DIVINE: We sure can.
- MS. MERLENE: We commented on redeployment seven policies in the past, but we haven't set parameters just because -- the market in general -- we'll be able to do as required by law and keeping it as open and a free market as possible and basically just -- and I think what Bill's point is just -- [inaudible/unintelligible]
- MR. DIVINE: Let's face it, too. I mean, some developers -- let's say a developer is one who's behind the new commercial enterprise. And so they've used the NCE to get this money to use for development number one. Well, they've got development number two, right? And so they would like to use it for development number two, some cheaper money, readily available, kind of a captive audience here. Let's put it here. And that's a natural phenomenon. Of course, you know, you could imagine that investors might or might not want that. And there's a publicly available lawsuit already that has occurred in New York kind of along this line. And so if it really does have to be within the narrow scope of this kind of project just like the one before, then investors need to know that so that they don't push for and sue for something that's more diversified and less risky, right? In a way though, my point is that's hard for us as the industry that has people with every different angle of interest to come up with, you know, what it ought to be. It really ought to be grounded in what does the law say? And I mean, one could say, well, I mean, certainly plenty would argue that once money has been invested in project number one and paid back to the new commercial enterprise, it ought to be able to be distributed right away; they've taken the risk they should have had to have. And the only reason that is not the policy, I think, is because of a regulatory concern that the -- to what extent does the statute and the law, the regulations, require that the money -- the investment be sustained through that two-year period of conditional residence after the people have been admitted?

I think it could be -- the agency could come to the conclusion, you know, they meant two years. They were thinking that those two years were probably going to coincide with, you know, people were going to get in here really quickly and there needed to be two years where you kept it in, something like that, and then it could be distributed. The agency could go that far in being, you know, in allowing freedom of people to get their money back. I think that could be a permissible interpretation. I'm not presuming that that's where you're going to go. But something else requires more clarity. What are the parameters you have to follow to keep it ask risk during this very extended period of time?



U.S. Citizenship and Immigration Services

Office of Public Affairs

- MS. NUBEL KOVARK: I have one more question. Given, I think, the cornerstone of his leadership is transparency and fairness, asking a question about your proposal to come forward to the agency, would the industry be okay with having transparency about each and every deployment that is approved and the particulars of --
- MR. GRESSER: That's interesting. In essence, publishing these I'll say no-action, you know, your position on individual investments?
- MS. NUBEL KOVARK: Right. So your colleagues in your industry know exactly what redeployment scheme you may have.
- MR. GRESSER: Yeah. I mean, I can only speak for myself. But I do think that more transparency is really important. I feel that if there was transparency in that, that would be a great step forward. I think if there was also transparency in other adjudications, that would also be a tremendous step forward so that as an industry, we know. So I can only - it's a question, but I would say that, I mean, my gut says yes. I would, personally. But what do others --
- MR. WALKER: Just to clarify, are you just talking about, this much money was redeployed to this location in this structure? Or are you talking about all the deal documents and structuring that goes along with it.
- MS. NUBEL KOVARK: What your partnership agreement was and --
- MR. WALKER: Okay, the whole thing. Some people will react to that. I can almost guarantee you that they will say it's proprietary, I've worked with my counsel on this and it's the best thing since sliced bread and nobody has figured it out. Now, I wouldn't join them in that but you're going to hear that.
- MR. DIVINE: Well, conceivably you can say, well, if you want this protection, you're going to have to put up with this transparency. I guess it's a possible approach to it. You don't have to ask for this clarification on the front end. I mean, I think -- I really do think the first emphasis should be on clarifying the rules. The second emphasis would be on providing an avenue for people to get a safe harbor by positing an arrangement under the rules as best they can figure it out. There really is an industry. People are making redeployment products, right? They're forming funds and they're offering these things to the market. But they can't be sure that what they're offering complies with the rules.
- MR. HOGAN: It's a burden to us. I'd rather give the money back. I don't want this money. I'm not trying to make money off of this redeployment. I don't make money off of redeployment because I charge my investors in a different way than most regional centers. So redeploying this money is nothing but a burden to me. And it's a risk to my investors on, twofold, A, the money; and, B, their immigration pursuit. And I just think it's totally unfair to these investors who have already achieved the goal that you set out for them to achieve, which is have this money at risk and create the jobs that they have



U.S. Citizenship and Immigration Services

Office of Public Affairs

created, to then say to them, oh, don't slip up in this meantime while we're waiting to reach this adjudication because therefore we can then revoke what you've already earned. So it's a burden to us. And understanding that, I think, is important to what rules you can come forth with.

- DIRECTOR CISSNA: Well first, Robert, I completely understand everything you've said.
- MR. DIVINE: That's a great -- I love that right there. (Laughter.)
- MR. DIVINE: Just that right there, what you just said, and I believe it.
- DIRECTOR CISSNA: And that's the value of this meeting. I mean, thank you for saying all that and we're going to talk about this and what we can do. It all -- you said is first clarity and then maybe some sort of transparency. But I think the first step is what you said also, which is what's the law? So I think we should just reconfirm amongst ourselves that our interpretation of the law is such that the money does have to be redeployed in the fashion that we describe. I think we're right. I think we're all in the same boat here, and that is, as Robert correctly described, back when this law was created, you know, many years ago, everyone did assume that there would be pretty quick transition from the first stage to the next stage. This is a running theme that I found in other dimensions of immigration law which have nothing to do with EB-5. The laws have not been touched for so long, they haven't caught up with the reality on the ground of the time tables that it takes for certain things to happen. So here, I see it again.

So we're all bedeviled by this. And you all, the issue you is you have to live with it and hold that money and figure out something to do with it. And we have to monitor what you're doing. And so that is the original sin here that we're all suffering under. But if we're right and that's what we're stuck with then, yeah, then the guidance has to be clear. It is no good if the guidance is not clear. So thank you for that. We will definitely talk about that. It may be that, you know, that you're all stuck having to redeploy in the fashion that we described and that's the price we pay because the laws have not been updated and improved in a long time. And that will just, I hope -- it's one more thing, one more reason why Congress needs to fix the laws that underlie the program. One more problem to add on. But I do understand the issue and we'll definitely talk about that.

- MR. DIVINE: Now, in the interest of full disclosure and not trying to sneak one over on you, if you were to go in the more permissive interpretation that having deployment doesn't have to go on for all this time or any redeployment at all, you've got to face the specter of money coming in to replace bridge financing at a -- might be at a fairly late stage in the development of the project. And then money can be paid back to the NCE rather quickly after the money first came in. And I think if you looked at those scenarios, you would probably find that unseemly if there was no requirement to redeploy after that. And you might choose to enact some policy that money has to stay in the original



U.S. Citizenship and Immigration Services

Office of Public Affairs

JCE for at least two years or something that prevents just in the door, out the door the next minute.

- MR. ANDERSSON: If we could react to Kathy's request for some homework on our side? We always love putting together a memo for you so we can do that.
- MR. KRAFT: Say, Aaron, not to cut you off, but we've got about five minutes? And is there anything else? Because we do want to respect your time and appreciate --
- DIRECTOR CISSNA: Yeah, I do have to move on. So I guess the remaining subjects on the agenda, we had site visits, backlogs and then common projects and -- term sheets, so...
- MR. ANDERSSON: So I was assigned the next topic, which was backlogs. Which is why I spoke up, as a nice segue. And this is more of a pedestrian type issue. The disaster of us not getting legislation in 2015 was this tsunami of 526s that the agency received. By some accounts, you know, 20,000 - 30,000 petitions, each of 500-plus pages. That's, if you do the math, somewhere between 10- and 15 million pages of documents. So as I understand it, you know, you have a mailroom that gets boxes and boxes of FedEx and then it goes up to your file room where they're properly sorted and then some poor little adjudicator has to go and grab a box off the top shelf and drag it to his desk and try to make heads or tails of it for a while within his allotted adjudicative time, which is very at a premium. But unfortunately, the whole process has resulted in some of our I-526 babies having their third-year birthday in your file room. And so we have -- so that, I think is the problem. And by the way, Sarah, welcome aboard.

(Laughter.)

- MS. KENDALL: Thank you.
- MR. ANDERSSON: And we very much look forward to seeing you in Chicago and thank you very much for engaging with us and reaching out. That is so proactive. And you will be a hero. You don't have to worry about what you say. Just smile and everybody will --
- MS. KENDALL: I was pleased to meet everybody. Thank you.
- MR. ANDERSSON: Just knowing that, you know, there's somebody back at the helm. Because we did have the distinct sort of impression that perhaps we were rudderless there for a little while. And so, you know, putting a face to the captain of the ship is very important for us. There's a couple of ideas that have been discussed in USCIS since time immemorial, back in the Bill Yates years, if you want to read those memos. Which is the agency is authorized to take petitions out of order and to group them and to engage in efficiencies within there. So, you know, if you're like Pat and you've had the unfortunate experience of having boxes and boxes of his petitions lost and then said, just resubmit them, we'll start again, or like everybody in this room, you've had, you know, a tranche



U.S. Citizenship and Immigration Services

Office of Public Affairs

that gets three different responses, an adjudication, an RFE and a NOID, all in the same tranche, which means that probably three different adjudicators were coming to, for whatever reasons, three different points of view. But the point here is most of us submit 526s in connection with a project or a tranche, if you like. It's generally the NCE. And so I know that you're trying to encourage the adjudicators to go and group them together. But that's harder to do.

Now, there are a few things that we could do. On all of our cover letters that go in, we identify everybody in the tranche, we cross-reference it, try to put that up front. We could probably formalize that a bit which would help the adjudicator go, okay, in Pat's tranche number 37, you know, he's got 100 investors, you know, and he's got 50 so far -- 200, small number -- and, you know, and here's the previous WAC numbers of everything that's been submitted. And maybe you wait until the last one's in and you go, okay, now we're ready to go adjudicate all 200 of those. We only have to read, you know, the offering documents once.

- MR. DIVINE: Don't wait until the last one. Our members will not accept that idea.
- MR. ANDERSSON: Anyway, these are just ideas.

(Laughter.)

- MR. ANDERSSON: But we do recognize that you're snowed under. We'd love to do anything that we can to help. And so when you come up with ideas and you want to float them by us, you'll definitely find a willing audience on the adjudication of backlog. But it does -- it's doing tremendous harm to the program and there's literally billions of dollars that, with the touch of an adjudicative switch, can flow into the U.S. economy and do the good that we've all decided that it's going to do.
- MS. KENDALL: So we anticipated that you might be interested in how productive the I-526 team was in this last year. We started fiscal year '17 with 12,282 matters before us. We ended the year -- or we ended last year with 12,282 completed adjudications. This year, we upped that number to 14,977. This represents a 21 percent increase in our productivity. And I believe it represents that it was a good decision for the leadership here to invest additional resources in the program. We are fully staffed now. And with the normal continuing rotation of having to hire to replace people that are moving on, right? But we are fully staffed and we anticipate that we will continue to be as productive and we're aiming to be more productive. I say that within the limits of the parameters for integrity that the Director has laid out and that you all have embraced in your discussion with us. So the productivity on the 526s was very good this year. But we're not sitting on our laurels. We recognize that this is a business community. There are business practices. There are people, the individuals behind every application. And that the credibility of that application's likelihood of being adjudicated in a timely way is important. So we hear you. And the agency has made long-term investments to make sure that we can reasonably manage the work load that comes in.



**U.S. Citizenship
and Immigration
Services**
Office of Public Affairs

I will associate myself with the records remarks because they are true, that is a challenge. And we appreciate those of you who are working diligently to make sure that, you know, everything -- the cover letter -- I've heard about cover letters, I've heard about other techniques that savvy operators have used in the industry.

Just as an additional note, the 924 production went up 72 percent this year. The 829s remained mostly steady because they got a bump, a bit of a bump going on. But it still increased by 2.6 percent, the time line. So we are conscious of our obligations to be productive, to be good stewards of public resources. And I think we can be as productive while still doing the integrity work that we need to do based on the policy manual parameters and background checks and other tools that you are all, I'm sure, very familiar with. So I hope that's helpful. We'll keep working and see where we can go.

- **MR. HOGAN:** In the case of the – Steve referred to the lost -- I appreciate the honesty. We kept asking what happened to this petition, what happened? And they came back and said, we've lost it. So we did submit it. And I do appreciate that honesty. Because when we did resubmit, they did come back with an adjudication rather quickly for us. And it worked out very well. So I did appreciate that communication. But, yeah, it was lost.
- **MS. KENDALL:** So one other set of facts that may be of interest to you on the overall inventory, at close of fiscal year 18, we find a reduced inventory at 47 percent. So we are making some headway and still keeping our standards intact. We found a reduced inventory of 56 percent for 924s. We had a little bump last month because of the -- oh, no, we're not, and then we continued, right? And in the next year we anticipate putting additional resources to the A-219 so that we can address the needs of that particular line of adjudication.

So I think the program has got a productivity momentum that is good and we continuously are open to the things that you have talked about, the Director signaled, that integrity is paramount, both in terms of the credibility of the program, as well as our obligation to maintain on behalf of the American people the standard.

- **MR. STRNISHA:** Sarah, when you say you're fully staffed, does that mean the 110 contingent that we heard about?
- **MS. KENDALL:** I'm sorry?
- **MR. STRNISHA:** When you say you're full staffed, does that mean 110? That's the number that we were previously advised.
- **MS. KENDALL:** 110 personnel on duty?
- **MR. STRNISHA:** Yeah.



**U.S. Citizenship
and Immigration
Services**
Office of Public Affairs

- MS. KENDALL: So we have close to 200, 200- plus personnel at this time, spread across FD&S, Fraud Detection and National Security, Adjudications Management. And then we have an excellent support team. So the agency has been forthright and clear about its commitment to needing to staff this for the complexity of the work and it has helped a lot with the integrity work that, you know, we're committed to.
- MR. STRNISHA: Is there anything that prevents you from publishing some of the data that you just mentioned to us here? Because I think that would be helpful for our understanding. I think it would be a credibility thing, particularly if there was improvement.
- MS. KENDALL: We're happy to work with the Office of Policy to figure out --
- MR. STRNISHA: It should be online. Everybody should get it, whether they come to our seminar or not.
- MR. DIVINE: We do publish quarterly --
- MS. KENDALL: We do.
- MR. STRNISHA: These were new numbers.
- MS. KENDALL: They were hot off the presses, because we just crossed the fiscal year, and so I was really proud of our metrics team for just --
- MR. STRNISHA: But I would argue more information like that, and I think maybe others would nod their heads yes, that you are comfortable, can and have no legal prohibition to publish, would be welcome. We'd like transparency as well on that information so that we can see what's going on and ask questions.
- MR. McELWEE: If we could actually provide that to our members --
- MR. STRNISHA: We'd love more, as much as you can --
- DIRECTOR CISSNA: I'm all for that. We've been doing that for all the other visa categories, trying to push out as much as we can, so I'm all for it.
- MR. ANDERSSON: This meeting is such a good idea --
- MR. WALKER: Can I just take 60 seconds on site visits? First, I would like to say I, myself, with our projects have seen improvements already, where the people coming out to the field are more knowledgeable about the projects, more knowledge about who they need to get to ask their questions. One of our projects had a group of volunteers at the



U.S. Citizenship and Immigration Services

Office of Public Affairs

front desk. The first go-around, they were asked the questions. They didn't know a whole lot. Right? After a while, they made their way to the CFO, HR, the people who know these things. Speaking about our best practices committee and ways we can work together, I see it's an evolving process for you guys. You guys are rolling it out, the teams are getting more training. They're changing the way they engage even with us as the regional center and the general partners of these NCEs. As those change and you can push those to us so we can promote the best practices for how our members need to prepare for this, I think that is a synergistic place for collaboration. We can see you've been working hard on it. The sooner you get that information, the sooner we will try to make sure our members move as quickly as you do so you can be efficient. So, that's it. Thank you.

- MR. HOGAN: Also, we had a compliance review with Marlin and Vin --
- MS. KENDALL: Yes, our Complaints Division.
- MR. HOGAN: I was extremely pleased at the knowledge they had and, you know, they asked some pretty tough questions but we were up to the challenge. And this industry has all been afraid of this and I would tell them they don't have to be afraid of it. They came in and they were not hostile. It was, let's find out what we've got here, and it worked very well. So I think they were very prepared to ask the tough questions and we were prepared for it. So if you come prepared for this, it's nothing to be afraid of.
- MS. KENDALL: Thank you for that feedback. I will make sure my team knows that. They take pride in their work. And I think it's going to be meaningful feedback for them, thank you.
- MR. HONTS: You know, this meeting was such a good idea, a former president used to say, it's always good to have a friend inside the skunkworks, and you might guess which one that was. But --

(Laughter.)
- MR. HONTS: Why don't we consider a possible quarterly session that would allow us all to plan for it and communicate? Communication really has suffered with the ex parte fear and all that. So, you know, that's something to think about. If it would work for you, it would work for us.



**U.S. Citizenship
and Immigration
Services**
Office of Public Affairs

- MS. NUEBEL KOVARK: And if you have ideas on other engagements we can do nationally, we're open to those, as well.
- MR. GRAU: That was going to be my final question. If I could follow up with you on our initiatives and thoughts on any of these questions, just to maintain the dialogue. Sounds like a yes.
- DIRECTOR CISSNA: All right, thank you all for coming. And Sarah, you're going to be speaking to the unified body --
- MS. KENDALL: Yes, I'm speaking to your national membership on October 29. And I'm getting ready and looking forward to the engagement.
- DIRECTOR CISSNA: What city is that in?
- MS. KENDALL: Chicago, sir.
- DIRECTOR CISSNA: All right.
- MR. DIVINE: That's IIUSA and AILA together.
- DIRECTOR CISSNA: Okay, perfect. Well, I thought this was great and we're going to talk about all this stuff after you're all gone. And then we'll figure out how to react. And it was all -- it was cordial, good and very productive. So thank you all for coming and good day to you all. Thank you very much.

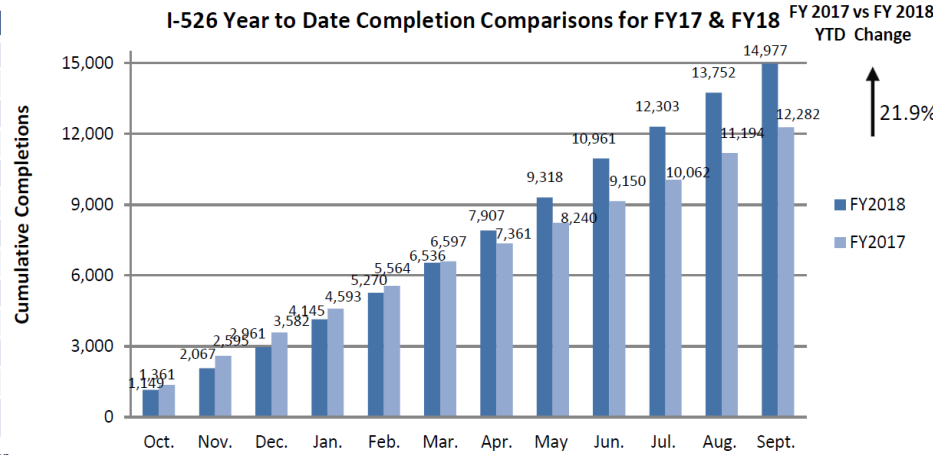
(Whereupon, at 12:08 p.m., the meeting was concluded.)

* * * * *

FISCAL YEAR TO DATE COMPLETION COMPARISONS

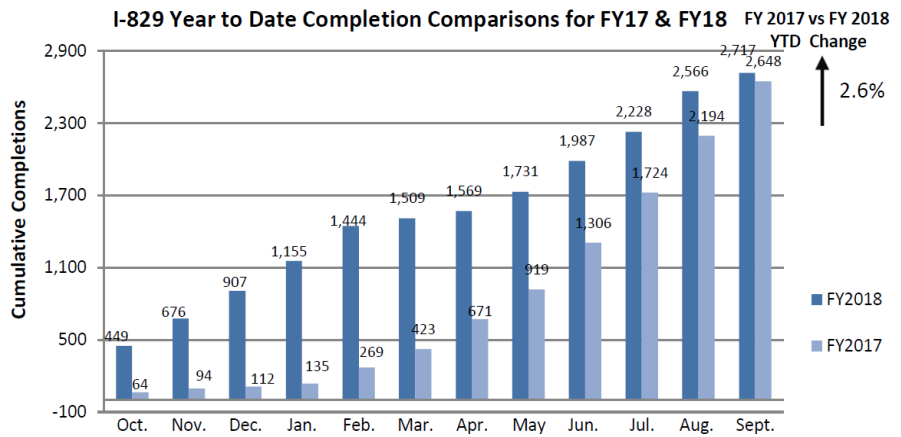
Month	#	Month	#
Oct 16	1,361	Oct 17	1,149
Nov 16	2,595	Nov 17	2,067
Dec 16	3,582	Dec 17	2,961
Jan 17	4,593	Jan 18	4,145
Feb 17	5,564	Feb 18	5,270
Mar 17	6,597	Mar 18	6,536
Apr 17	7,361	Apr 18	7,907
May 17	8,240	May 18	9,318
Jun 17	9,150	Jun 18	10,961
Jul 17	10,062	Jul 18	12,303
Aug 17	11,194	Aug 18	13,752
Sept 17	12,282	Sept 18	14,977
2017 YTD	12,282	2018 YTD	14,977

Source: All data is derived via SAS "Weekly Adjudication Goals" report



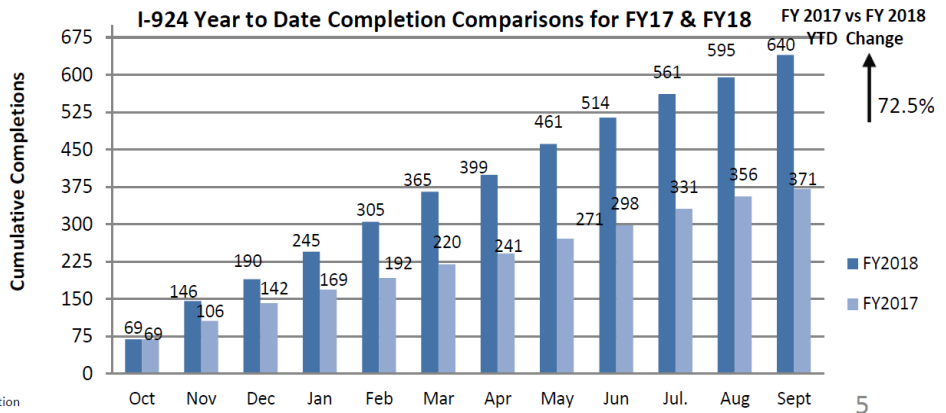
Month	#	Month	#
Oct 16	64	Oct 17	449
Nov 16	94	Nov 17	676
Dec 16	112	Dec 17	907
Jan 17	135	Jan 18	1,155
Feb 17	269	Feb 18	1,444
Mar 17	423	Mar 18	1,509
Apr 17	671	Apr 18	1,569
May 17	919	May 18	1,731
Jun 17	1,306	Jun 18	1,987
Jul 17	1,724	Jul 18	2,228
Aug 17	2,194	Aug 18	2,566
Sept 17	2,648	Sept 18	2,717
2017 YTD	2,648	2018 YTD	2,717

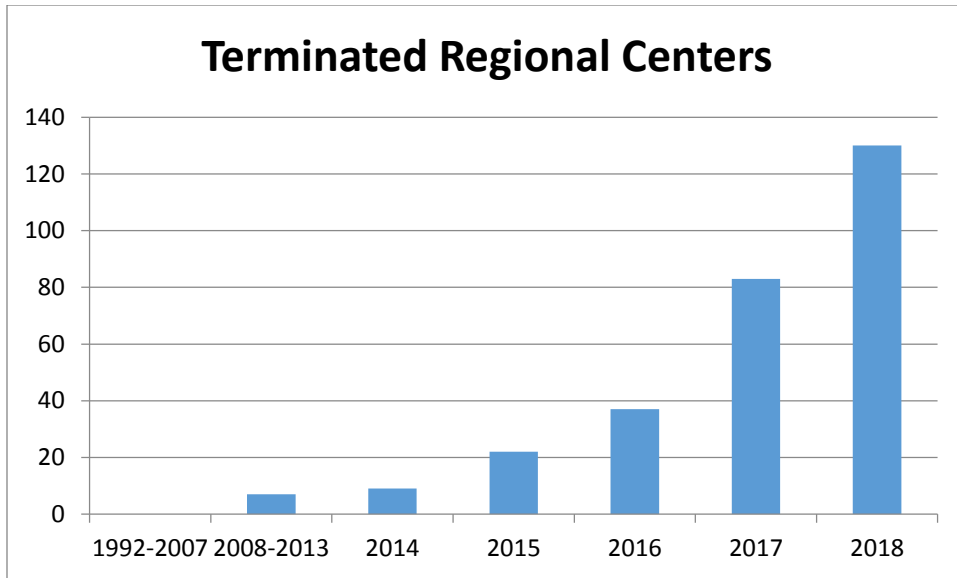
Source: All data is derived via SAS "Weekly Adjudication Goals" report



Month	#	Month	#
Oct 16	64	Oct 17	69
Nov 16	106	Nov 17	146
Dec 16	142	Dec 17	190
Jan 17	169	Jan 18	245
Feb 17	192	Feb 18	305
Mar 17	220	Mar 18	365
Apr 17	241	Apr 18	399
May 17	271	May 18	461
Jun 17	298	Jun 18	514
Jul 17	331	Jul 18	561
Aug 17	356	Aug 18	595
Sept 17	371	Sept 18	640
2017 YTD	371	2018 YTD	640

Source: All data is derived via SAS "Weekly Adjudication Goals" report. Beginning with this report, I-924 completions include EL HAC - Abandonment denial notice ordered





Year	# RC Terminated
1992-2007	0
2008-2013	7
2014	9
2015	22
2016	37
2017	83
2018	130