



# Department of Justice

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**STATEMENT OF**  
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**BEFORE THE**  
**UNITED STATES HOUSE OF REPRESENTATIVES**  
**COMMITTEE ON THE JUDICIARY**

**HEARING ON**  
**“OVERSIGHT OF THE EXECUTIVE OFFICE**  
**FOR IMMIGRATION REVIEW”**

**PRESENTED**

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## **Introduction**

Mr. Chairman, Representative Conyers, and other distinguished Members of the Committee, thank you for the opportunity to speak with you today about the Department of Justice's Executive Office for Immigration Review (EOIR).

EOIR administers the Nation's immigration court system, composed of both trial and appellate tribunals. Removal proceedings before EOIR begin when the Department of Homeland Security (DHS) files a formal charging document with an immigration court. EOIR's immigration judges decide whether the alien is removable from the United States based on the DHS charges and, if removable, whether the alien is eligible for any relief or protection from removal. EOIR is responsible for civil immigration proceedings, and EOIR's adjudicators do not determine the guilt or innocence of aliens charged with criminal wrongdoing at the border or in the interior of the country. Overall, there are now 250 immigration judges in 58 courts around the country.

The appellate level of EOIR is the Board of Immigration Appeals (BIA). A Chairman heads the BIA, which consists of 17 Board Members, who are supported by attorney advisers. The BIA has nationwide jurisdiction and hears appeals of the immigration judge decisions. When appropriate, the BIA issues binding precedent decisions interpreting complex areas of immigration law and procedure. Either an alien or DHS may file an appeal with the BIA. An alien who loses an appeal before the BIA may seek review of that decision in the applicable federal circuit court of appeals.

EOIR's third adjudicatory component is the Office of the Chief Administrative Hearing Officer (OCAHO). The Chief Administrative Hearing Officer heads a tribunal comprised of administrative law judges, who handle and adjudicate cases related to illegal hiring and employment eligibility verification violations, document fraud, and unfair immigration-related employment practices. Although there is a much smaller volume of these cases relative to the immigration courts, OCAHO case receipts doubled between Fiscal Year (FY) 2008 and FY 2012.

## **Current State of the Immigration Courts**

The immigration courts' pending caseload continues to increase. The immigration court caseload is tied directly to DHS enforcement and detention activities. DHS determines both initial detention decisions and whether to file a charging document with the immigration court. As such, EOIR is in regular and continuing contact with DHS to anticipate and respond to caseload trends.

EOIR recognizes the continuing public interest in the immigration court pending caseload and the impact of that caseload on the nation's immigration system. At the end of FY 2015, EOIR's immigration courts had 457,106 cases pending, marking an increase of more than 298,171 cases pending over the end of FY 2011. The cases of individuals whom DHS detains, including those who have been convicted of serious crimes, remain a priority for EOIR.

In July 2014, EOIR acted to prioritize the cases of unaccompanied children and families who are not detained in addition to its existing priority caseload of detained aliens. This reprioritization was in direct response to the border surge in summer 2014, and in support of the Administration's effort to address the reasons for individuals leaving their home countries and the perceptions that led people to come into the U.S., both of which contributed to an unusually high number of people crossing the southwest border.

Since the summer of 2014, the immigration courts have received tens of thousands of cases involving unaccompanied children and families who crossed the southwest border. Most priority cases completed to date have been removal orders, and many of those removal orders have been issued *in absentia*, the manner in which the law requires that a hearing proceed if the immigration judge is satisfied that the respondent or a relevant representative received proper notice of the hearing, and that DHS has established that the respondent is removable as charged in the charging document.

EOIR is working tirelessly to maximize its limited resources to hear as many of these cases as possible while ensuring due process and appropriate considerations. Immigration courts are still hearing all cases, including non-detained, non-priority cases, as quickly as available docket time allows. Immigration judges are still actively hearing cases from the full docket as resources allow.

For the last several years, EOIR has been under increased scrutiny during a time of tremendous challenge. The 2014 border surge put unprecedented pressures on EOIR, and our agency responded by updating its practices and policies, which streamlined and strengthened the immigration court system. EOIR is hiring immigration judges to increase the size of the immigration judge corps, thereby augmenting adjudicatory capacity and working to reduce the case backlog and wait times for those in proceedings. EOIR is making organizational changes, at Headquarters and in the individual immigration courts, to increase efficiencies through better communication and providing more direct supervision. EOIR is leveraging technology to assist those who appear before our adjudicators by allowing for real-time information flow.

### **Immigration Judge Hiring**

It is critical that EOIR maintain the ability to properly staff our agency with the adjudicators and support staff needed to most efficiently and fairly process cases. In 2010, the Department and EOIR placed great emphasis on hiring new immigration judges in order to address the rapidly rising caseload. The effort met with success, increasing our immigration judge corps and adding more court staff and law clerks to assist the judges. However, funding constraints led to a hiring freeze beginning in January 2011. Due to attrition, EOIR had fewer immigration judges than at the start of each respective

Fiscal Year from the end of Fiscal Years 2012, 2013, and 2014. The chart below details the number of immigration judges at EOIR for the past several years<sup>1</sup>.

FY	All Immigration Judges		Only Adjudicating Immigration Judges	
	On-Board	Hired	On-Board	Hired
2010	245	17	238	17
2011	273	39	265	37
2012	267	4	258	3
2013	262	8	253	7
2014	249	0	240	0
2015 1 <sup>st</sup> Qtr	249	2	240	2
2015 2 <sup>nd</sup> Qtr	243	0	235	0
2015 3 <sup>rd</sup> Qtr	255	18	247	18
2015 4 <sup>th</sup> Qtr	254	0	247	0
2016 1 <sup>st</sup> Qtr	257	3	250	3

The Department continues to seek the resources necessary to hire additional immigration judges, BIA attorneys, and other staff; to provide them with sufficient training and tools; and to continue pursuing other improvements that will benefit the immigration court system and the parties who appear before EOIR. The resources in the President’s Budget request for FY 2016 are essential to EOIR’s ongoing efforts to recruit, train, and equip top-quality immigration judges and court staff.

In FY 2015, Congress provided EOIR with additional resources to hire immigration judges, and for the first time since FY 2011, EOIR launched a significant hiring initiative and was able to increase the total number of immigration judges. After taking into account attrition through the end of FY 2015, EOIR has increased the total number of immigration judges for the first time since FY 2011, and aggressive hiring efforts continue. A total of 23 new immigration judges have entered on duty since November 2014, and, as of November 15, 2015, the Attorney General had selected another 25 new judges, who are now going through the required background and security checks before they can start hearing cases. Another two dozen immigration judge candidates are going through the final stages of the hiring process. All of these new judges will greatly assist in reducing the pending caseload when they arrive in immigration courts over the coming months.

<sup>1</sup> The chart above shows the total number of immigration judges at the end of each listed time period, as well as the number of immigration judges hired during these time periods. The “On-Board” numbers take into account attrition in a given year or quarter. The chart provides both the total number of immigration judges (“All Immigration Judges”), as well as information on the subset of immigration judges who adjudicate cases (“Only Adjudicating Immigration Judges”). The overwhelming majority of immigration judges at EOIR are assigned to adjudicate cases (i.e., immigration judges assigned to the field and Assistant Chief Immigration Judges assigned to the field who routinely hear cases). A small number of immigration judges who oversee the country’s immigration courts do not typically adjudicate cases during those leadership assignments (i.e. Chief Immigration Judge, Deputy Chief Immigration Judges, and Assistant Chief Immigration Judges assigned to EOIR Headquarters).

EOIR has a well-established and effective means of training its judges for the substantive rigors of their jobs. An Assistant Chief Immigration Judge (ACIJ) for training is responsible for enhancing and maintaining adequate training programs for immigration judges and other court staff. EOIR provides new immigration judges with six weeks of training in order to ensure that they are ready to hear cases. Further, they are assigned a mentor immigration judge to assist them throughout their first year on the bench. They are also required to take and pass immigration law exams and preside over mock hearings before they can begin adjudicating cases. A formalized review process is included as part of a new immigration judge's trial period, which typically lasts two years. If performance issues arise, EOIR offers counseling and additional training and mentoring to return that judge to the required level of performance. EOIR also takes steps to ensure that both new and experienced immigration judges receive continuing education. EOIR continues to rely on many of its established methods of training to bolster and fine-tune the immigration judges' knowledge, such as video and webinar trainings and an intensive annual training session.

The process for on-boarding immigration judges is lengthy and rigorous. The hiring timeframe has often taken more than one year due to the need to adequately vet the qualifications of the hundreds of applicants seeking these positions. The Department is actively considering ways in which the immigration judge hiring process can be streamlined.

### **Agency Organization**

On November 12, 2015, EOIR announced the appointment of six new ACIJ's. These ACIJ's will provide oversight of their assigned immigration courts from a field office while continuing to hear cases. Such immediate and present supervision allows for enhanced communication between the immigration court locations and Headquarters and makes experienced supervisory judges available for mentoring and consultation with the immigration judge corps.

The agency has modified its Headquarters organizational chart by consolidating offices to avoid duplication of efforts and to streamline operations. We are also actively evaluating how to improve processes in the field. The Office of the Chief Immigration Judge is developing a plan to thoroughly evaluate court operations and has plans to place a Deputy Chief Immigration Judge in the western United States. The agency has also carefully reviewed its external communications activities. To this end, EOIR has initiated an official outreach program to enhance transparency with agency stakeholders and to create a space to regularly receive stakeholder concerns and recommendations that may merit further agency consideration.

### **Leveraging Technology**

EOIR has also strengthened stakeholder engagement via technology-based initiatives. One example of the agency's continued attempts to improve the quality of

stakeholders' interactions with the immigration courts and the BIA is the deployment of the Internet Immigration Information application, known as I<sup>3</sup>. I<sup>3</sup> allows attorneys and accredited representatives to file their appearance with the immigration court or the BIA and to check the calendar of cases pending with those entities. This is an ongoing effort that will continue to offer more electronic options for stakeholders as time goes on and resources are allocated to such improvements.

Moreover, EOIR has digital audio recording available in every courtroom and certain meeting rooms and is using the video teleconferencing (VTC) technology to allow immigration judges to hear cases across the country. Our adjudicators and stakeholders are finding new ways to leverage these available technology options to increase court efficiencies. EOIR's use of VTC technology permits the agency to be responsive to operational demands in difficult and rapidly changing circumstances. For example, during the 2014 border surge, EOIR used VTC technology to allow immigration judges to hear the cases of recent border entrants where there were no court facilities available. The agency's use of technology enables it to respond to quickly-unfolding events in a manner that maximizes our limited resources. Over the next few months we will complete a major upgrade and expansion of our VTC capability. At completion, 263 of 347 courtrooms will be outfitted with VTC, with plans to expand this technology to cover every immigration courtroom.

In the current fiscal year, EOIR will also conclude the most comprehensive modernization of our technical infrastructure in recent years, modernizing every major component of the agency's technology infrastructure. Should EOIR receive the FY 2016 funding for information technology capacity enhancements requested in the President's FY 16 budget, the agency will invest in additional information technology infrastructure improvements intended to facilitate more efficient and effective internal processes, data sharing, and communications with external partners. In addition, EOIR is actively evaluating how to best update our case management and other electronic databases to enable the agency's adjudicatory components to manage their workload in a more efficient manner.

### **Additional Initiatives**

In recent years, EOIR has undertaken a number of initiatives designed to enhance accessibility to the immigration court system, while increasing efficiency and combatting fraud. EOIR heads a Departmental working group designed to fight *notarios*<sup>2</sup> and other unscrupulous practitioners, who not only harm the individuals they purport to represent, but who also undermine the integrity of the system. The working group's efforts have had tangible positive effects, including assisting in the prosecution of a number of *notarios* around the country.

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<sup>2</sup> *Notarios* are persons who provide unauthorized legal advice or representation regarding immigration matters, often charging substantial sums while providing little to no assistance in the matter and making incorrect filings or statements that may have a negative impact on the aliens' cases.

While we help put unscrupulous practitioners out of business, it is important that we make it easier for legitimate legal services providers to step in. On October 1, 2015, EOIR published three regulations designed to make it easier for legal services to reach aliens who are in removal proceedings, including many detained individuals. When added to other legal service programs that are ongoing, the agency expects that the quality and availability of representation in immigration court will continue to improve, thereby benefiting not only the individuals who are in removal proceedings, but the immigration court system itself.

Finally, EOIR continues to expand its highly successful Legal Orientation Program (LOP)<sup>3</sup> and Legal Orientation Program for Custodians of Unaccompanied Alien Children (LOPC)<sup>4</sup>. The LOP program is now active in 37 sites around the country, and the LOPC in 14. Both programs help the immigration court process function more efficiently and effectively, while providing valuable information to aliens facing removal and the custodians of children who arrive in the U.S. without a parent or guardian.

### **Conclusion**

Mr. Chairman, Representative Conyers, and distinguished Committee Members, despite the challenges we face, EOIR continues to make great strides. Our adjudicators and staff are dedicated professionals who work every day to ensure efficient and fair immigration court proceedings, both at the trial and appellate levels. EOIR faces the demands of a large and increasing caseload, but, with Congress's continued support, we are confident that EOIR will effectively meet that challenge.

Thank you for your interest and for the opportunity to speak with you today. I am pleased to answer any questions you might have.

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<sup>3</sup> Through the LOP, representatives from nonprofit organizations provide comprehensive explanations about immigration court procedures along with other basic legal information to large groups of detained individuals.

<sup>4</sup> Through the LOPC, contractors provide legal orientation presentations to the adult caregivers of unaccompanied children in EOIR removal proceedings.