



**U.S. Department of Justice**  
Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

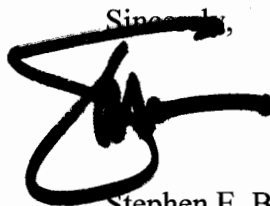
**MAR 05 2018**

The Honorable Raul Labrador  
Chairman  
Subcommittee on Immigration and Border Security  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20510

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Acting Director of the Executive Office for Immigration Review (EOIR), James McHenry, before the House Committee on the Judiciary Subcommittee on Immigration and Border Security on November 1, 2017, at a hearing entitled "Overview of the Executive Office for Immigration Review." We apologize for our delay and hope that this information is of assistance to the Committee.

Please do not hesitate to contact this office if we can be of additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that there is no objection to the submission of this letter from the perspective of the Administration's program.

Sincerely,  


Stephen E. Boyd

Assistant Attorney General

Enclosure

cc: The Honorable Zoe Lofgren  
Ranking Minority Member

**Oversight of the Executive Office for Immigration Review**

**Acting Director James McHenry**

**Questions for the Record**

**Submitted November 8, 2017**

**QUESTIONS FROM CONGRESSMAN LABRADOR**

1. Please describe, in detail, the process for drafting Board of Immigration Appeals decisions.

- a. Does the attorney assigned to draft the decision confer with the Members before the draft is written?

**RESPONSE: Attorney advisors generally do not consult with members prior to the initial drafting of a decision, though consultation may occur when a specific case involves a complex or novel legal or factual issue.**

- b. If not, does the attorney draft the decision and send it to the Members for review?

**RESPONSE: Yes. The attorney advisor drafts a decision and forwards it for member review.**

- c. How are draft decisions reviewed by the Members? Are comments sent directly by the Members to the drafting attorney, or are they routed through a liaison or supervisor?

**RESPONSE: If the member(s) is satisfied with the draft decision, the decision will be finalized and issued. If the member(s) believes changes are necessary, the member(s) will give the attorney advisor written guidance. The case and guidance are routed through supervisory attorneys, who review the member(s) guidance and provide supplementary guidance as needed. It is also common for members to discuss revisions directly with the drafting attorney advisor, particularly when more complicated direction is needed.**

2. How are Members assigned to appeals?

- a. Is this done randomly by the Chairman of the Board, or do the Members have input into which appeals that they want to review?
- b. If this is not done randomly, please describe, in detail, the process by which Members are assigned.

- c. Are Members randomly assigned to panels, or do the Members decide who else will be on the panel with them?

**RESPONSE:** In accordance with 8 C.F.R. § 1003.1(e), the Chairman designates a screening panel which assesses complexity and adjudicates the more straightforward cases. The Chairman assigns approximately half of the members to the screening panel, and cases are assigned randomly within the panel. The screening panel refers the relatively more complex cases to a merits panel which is staffed by the other half of the members, and cases are randomly assigned within that panel. Historically, the Chairman has assigned specific types of cases to a subset of members with the input of the members; however, that practice is ending, and all panel assignments will be made randomly. As provided by 8 C.F.R. § 1003.1(a)(3), the Chairman divides the Board into panels.

3. How many immigration judges are needed to eliminate the backlog of pending cases before EOIR?

**RESPONSE:** As referenced in the President's Immigration Principles and Policies document, EOIR would benefit from up to an additional 370 immigration judges, which would bring it from its current number to an approximate total of 700 immigration judges.

4. Once the backlog is eliminated, how many immigration judges would EOIR estimate are necessary to maintain workflow demands?

**RESPONSE:** EOIR's current focus is on eliminating the backlog, and its strategic analytics have been directed toward that goal. As improvements in managing the backlog materialize, EOIR will also begin assessing its optimal immigration judge corps size to maintain an appropriate clearance rate commensurate with workflow demands in order to ensure that a backlog does not re-occur.

5. Established rations dictate that for every immigration judge hired, EOIR must hire a certain number of judicial law clerks, support staff and attorney advisors. Are those rations being met and what steps is EOIR taking to speed up the hiring of those positions?

**RESPONSE:** Each budgeted immigration judge team includes not just an immigration judge, but also six full-time support positions, both legal and administrative. It also includes technology and space acquisition. When EOIR hires an immigration judge, it also takes steps simultaneously to fill the necessary support positions. EOIR is also employing personnel analytics to evaluate those positions to promote maximum efficiencies in workflow. In FY 2017, EOIR posted 74 job announcements, received nearly 18,000

**applications, and selected staff to fill nearly 400 vacant positions. It also hired 93 judicial law clerks for immigration judges through the Attorney General's Honors Program and converted 16 law clerks to permanent attorney-advisor positions. In FY 2018, it will have up to 95 law clerks eligible for conversion to permanent attorney-advisors as EOIR works to achieve a 1:1 ratio between law clerks and immigration judges. Although some new employees may take longer to enter on duty than others due to background investigations and varying related issues, EOIR is continuing to fill positions as rapidly as possible.**