



Department of Justice

STATEMENT OF
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UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

FOR A HEARING ENTITLED
“OVERVIEW OF THE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW”

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**Statement of
Acting Director James McHenry
Executive Office for Immigration Review
Before the House Committee on the Judiciary,
Subcommittee on Immigration and Border Security
For a Hearing Entitled
“Overview of the Executive Office for Immigration Review”
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Mr. Chairman, Congresswoman Lofgren, and other distinguished Members of the Subcommittee, thank you for the opportunity to speak with you today about the current state and future goals of the Department of Justice’s Executive Office for Immigration Review (EOIR).

EOIR is one of the largest Offices, Boards, and Divisions within the Department of Justice with over 2000 authorized positions and approximately 1600 full-time employees. It currently consists of six primary components, three of which are adjudicatory and three of which provide essential assistance and support to its adjudicatory operations.

Among the adjudicatory components, the Office of the Chief Immigration Judge (OCIJ) is responsible for the management of 58 immigration courts throughout the United States. OCIJ is currently authorized 384 immigration judge positions. It employs 336 immigration judges nationwide, plus two Deputies and a Chief Immigration Judge. It also supervises the work of hundreds of essential support personnel, including judicial law clerks, court administrators, legal assistants, and interpreters.

The Board of Immigration Appeals (BIA) conducts administrative appellate reviews of immigration judge decisions, and also of certain decisions by the Department of Homeland Security (DHS). The BIA is headed by a Chairman and Vice Chairman and consists of 16 Members in total at the moment. During this past fiscal year, the BIA published 28 decisions on various points of immigration law and met all three of its case processing goals.

Although smaller than EOIR’s other adjudicatory components, the Office of the Chief Administrative Hearing Officer (OCAHO) nevertheless plays an important role in interpreting immigration laws by adjudicating unlawful hiring, document fraud, and employment discrimination cases under the Immigration and Nationality Act. It is headed by a Chief Administrative Hearing Officer who oversees the adjudication of cases by Administrative Law Judges. In November, OCAHO will celebrate the 30th anniversary of its establishment, and it is poised to continue its historical success. During this past fiscal year, OCAHO published 20 decisions on the important areas of law within its jurisdiction. It also completed 98% of its cases within its case completion benchmarks, including 100% of its cases for the last three consecutive quarters.

Among non-adjudicatory components, the Office of Administration oversees human resources, budget, space and facilities, and security for all of EOIR’s operations nationwide and has performed commendably in managing the various changes and hiring improvements implemented in the past year. The Office of Information Technology handles EOIR’s

technology needs, including recently upgrading its video conferencing (VTC) capabilities, and is spearheading EOIR's efforts to transition from paper files to electronic files. The Office of the General Counsel oversees labor and employment issues, provides litigation support as needed, and manages both an attorney discipline program and EOIR's Fraud and Abuse Prevention Program.

EOIR also has a number of sub-components performing important tasks, such as managing its equal employment opportunity program, its communications and legislative affairs, its programs for access to legal services, and its strategic planning and analytics programs.

Although the last several years have raised significant challenges to EOIR, its employees continue to face those challenges with professionalism and a commitment to public service. Further, in FY 2017, the agency began to take several concrete steps to address those challenges more directly, and with the support of Congress and the Department, we fully expect progress to continue into FY 2018 and well beyond.

Current State of the Immigration Courts

As of October 13, EOIR's active pending caseload stood at approximately 640,000 cases. This number is almost triple the number of cases pending in FY 2009 and double the number of cases pending in FY 2012. A number of factors have contributed to this increase, including prior DHS policies and EOIR caseload management strategies, but EOIR is actively implementing a multi-front plan to reduce that caseload without compromising due process. EOIR is increasing its adjudicatory capacity by hiring more immigration judges and support staff and by piloting more hearing centers to hear cases by VTC. It is maximizing its existing capacity by improving the efficiency of its scheduling, docketing, and adjudicatory practices and by reducing unused courtroom time through a policy of "no dark courtrooms." EOIR is transforming its institutional culture to emphasize the importance of completing cases and to reduce instances of defensive judging in which immigration judges make decisions based on a fear of sanction or reversal, rather than based on the law and the facts of the case. EOIR is modernizing its overall operations by piloting a switch from paper files to electronic files in 2018 and by overhauling its entire infrastructure from a paper-based system to an electronic one. EOIR is strengthening its relationship with DHS in order to better manage any sudden influx of new cases, and it is reviewing its existing regulations and policies to find ways in which additional efficiencies can be achieved.

Some of these initiatives are already beginning to bear fruit, but we recognize that more must be done. The size and trajectory of the pending case load will not reverse overnight, and the situation may continue to worsen in the short run before it gets better. Nevertheless, based on strategic analysis and planning, there are effective ways to improve the pending caseload situation consistent with maintaining due process. The steps outlined above will increase the number of immigration judges, enhance each immigration judge's efficiency and productivity, and ensure that any actions taken by DHS do not work against EOIR's own work to reduce the caseload. If these initiatives are fully realized, EOIR anticipates seeing important changes in the caseload in FY 2018.

Immigration Judge Hiring

Immigration judge hiring has lagged over the past several years, but 2017 has witnessed significant improvement on that front. EOIR has hired sixty-one immigration judges since January 1, which is almost one-fifth of the current corps. The pace of hiring is also expected to improve during FY 2018. In April 2017, the Attorney General announced a new streamlined process for hiring immigration judges. The new process requires thorough vetting, as before, but also aims to reduce the hiring timeline, reflecting the clear need to bring more immigration judges on board in order to address the pending caseload in our immigration courts. The revised process, first implemented for the round of hiring currently underway, sets clear deadlines for assessing applicants moving through different stages of the process and for making decisions on moving applicants to the next stage. It eliminates steps that did not aid the selection process in order to decrease processing times. It also allows for temporary appointments pending the completion of full background investigations for both federal and non-federal employees. This new process should reduce the amount of time that it takes to recommend applicants to six months or less.

Since June, EOIR has posted three advertisements for a total of forty-two immigration judge positions in nineteen locations. These are the first postings subject to the new hiring process, and EOIR anticipates recommendations being finalized for these positions by early 2018. Additionally, EOIR has an ongoing advertisement with monthly cutoffs to rehire retired immigration judges on an as-needed basis.

In short, hiring is a top priority for the agency, and the President's Immigration Principles & Policies call for continued effort to hire up to an additional 370 immigration judges. Although hiring more immigration judges will translate into more completed cases, EOIR recognizes that hiring alone will not solve the pending backlog. Nevertheless, improvements in the hiring process and the presence of additional immigration judges are necessary steps toward meeting the overarching goal of expeditiously reducing the number of pending cases while maintaining due process.

Technology

Improvements to EOIR's technological infrastructure are also critical to its overall success as it works toward reducing the pending case load. EOIR first identified a need for an electronic filing system in 2001, but has made little appreciable progress on that front in the intervening years. With the support of Congress and the Department, however, we are poised to finally pilot an electronic case filing and adjudication system in FY 2018. EOIR has begun the process of modernizing its case management tools, which includes a move to a cloud based computing environment and implementation of agile development methodology that will speed up product delivery. In addition to the move toward electronic filing, this modernization also includes electronic records of proceeding and judicial applications that aid immigration judges and the immigration court staff. These initiatives are underway and the initial rollout of capabilities, each of which will increase efficiencies and reduce maintenance costs, are expected later this fiscal year.

We have also recently upgraded more than 175 existing VTC systems and deployed an additional 84 new VTC systems to allow for more geographic flexibility for hearing cases. In fact, we are in the process of reopening one VTC hearing location with five immigration judges and establishing a new one with up to fifteen immigration judges in order to increase our adjudicatory capabilities. Further, in partnership with the Department's Bureau of Prisons (BOP) and DHS, we have deployed 44 VTC units to 22 locations to upgrade our Institutional Hearing Program (IHP).

Immigration Judge Mobilization

Since March, following the President's Executive Order 13767, EOIR has mobilized immigration judges via both in-person and VTC details to multiple DHS detention centers across the country. EOIR has continually monitored these details, and as needs and circumstances have changed, EOIR has adjusted the nature of the details accordingly. Some details have been converted from in-person to VTC, some have become "stand-by" details by VTC, some have ended, and some have been converted to permanent immigration judge positions. Additionally, in July, the Chief Immigration Judge stopped sending detailees from four of the highest-volume courts in order to further ameliorate any impact of the surge on pending cases. EOIR's flexibility in managing this mobilization also produced significant cost savings. Although EOIR estimated in March that the surge would cost \$21 million, its actual cost through the end of the fiscal year was approximately \$2.5 million.

Viewed holistically, the immigration judge mobilization has been a success. Comparing the results of the surge to historical scheduling and outcome data, EOIR projected that the mobilized immigration judges have completed approximately 2700 more cases than expected if they had not been detailed. This means that overall completed cases by detailed immigration judges outpaced expected home court deferrals, resulting in a positive net effect on the nationwide caseload.

Fraud

Embellishment, exaggeration, misrepresentation, and fraud remain significant problems in the immigration system, for each erodes respect for the immigration laws, risks public safety and national security, and creates unnecessary burdens of American taxpayers. To combat these problems, EOIR has significantly expanded its efforts to combat immigration fraud in the past year.

Since May, EOIR has been rapidly expanding its Fraud and Abuse Prevention Program. With EOIR's new fraud attorney and investigator, the team worked to expand the Program's footprint by conducting fraud trainings, including 18 trainings for immigration judges and court staff. The Program also launched a redesigned Internet page with expanded information for making referrals when someone suspects fraud. In numbers, the program received and reviewed 187 fraud complaints, marking an increase from 80 during the previous year. The Program made dispositions of 97 complaints while also implementing the agency's first fraud risk assessment.

In 2007 former EOIR Director Kevin D. Rooney informed all EOIR employees that anyone who detected suspicious conduct was required to report it. In June 2017, I issued a memorandum to all EOIR employees reminding them of that responsibility, as well as of their general ethical responsibility, as government employees, to report suspected fraud and abuse, particularly in regard to applications for benefits, relief, or protection in removal proceedings. In short, immigration benefit fraud erodes the integrity of immigration proceedings, and EOIR has no tolerance for those who would present false information to manipulate the immigration system for personal benefit.

Agency Organization

EOIR is in the process of hiring additional supervisory immigration judges for the field. The addition of more field supervisors will reduce the span of oversight for each manager, allowing for improved communication between EOIR Headquarters and the field and enhancing the ability of each supervisor to focus more on the immigration judges under him or her and provide appropriate mentoring and performance feedback. EOIR is also in the process of establishing a new component, an Office of Policy, in order to better coordinate initiatives to address the case load, to eliminate existing process redundancies across multiple components, and to more effectively oversee strategic planning, analytics, and internal communications.

Conclusion

EOIR continues to face challenges tied to both its unique mission and the policy choices of the past. Nevertheless, our employees are resilient and flexible, and they are motivated to face and overcome these challenges. EOIR's primary mission is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. With the continued support of the Department of Justice and Congress, we are confident that we can reverse the negative trends of the past and become even more effective in fulfilling that mission.