

**United States Department of Justice
Executive Office for Immigration Review**



**FY 2020
Congressional Budget Submission
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I. Overview for Executive Office for Immigration Review

Introduction

To support the mission of the agency, the Executive Office for Immigration Review (EOIR) requests a total of \$672,966,000, 3,761 permanent positions, and 2,899 full-time equivalent (FTE). The request includes a \$4,000,000 transfer from the Department of Homeland Security's (DHS) Immigration Examination Fee Account.

The Department of Justice's (DOJ or "the Department") EOIR is responsible for conducting immigration court proceedings, appellate reviews, and administrative hearings to fairly, expeditiously, and uniformly administer and interpret U.S. immigration law. As the Department's primary office for applying and adjudicating immigration law, EOIR plays an essential role in the larger immigration system. As one of several major actors within the immigration space, it is crucial that EOIR be prepared to meet current and future challenges.

Immigration cases begin when the DHS files a Notice to Appear (NTA), which charges a potential illegal alien with a violation of federal immigration law and seeks the removal of that individual from the United States. Due to recent changes in immigration enforcement priorities and policies, DHS agencies such as Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and United States Citizenship and Immigration Services (CIS) have increased their enforcement and processing significantly and will likely continue to do so in the coming years. As a result, it remains critically important that EOIR has sufficient resources to keep pace with DHS enforcement efforts.

Budget Summary

EOIR's primary strategic focus is increasing adjudicatory and case processing capacity. Although EOIR is examining all potential avenues to increase efficiency and adjudicative capacity through existing means, additional resources are necessary. EOIR's Fiscal Year (FY) 2020 budget request includes a program increase totaling over \$71M to provide funding for: additional immigration judges (IJs) and the necessary support staff. This request is essential to enable EOIR to advance initiatives that implement Presidential and Attorney General priority areas and to support EOIR's mission of adjudicating immigration cases promptly without compromising due process.

EOIR continues to face a myriad of internal and external challenges to increasing adjudicative and case processing capacity to reduce the pending caseload. The additional IJs afforded through this program increase will help EOIR better address these challenges and ensure the efficient administration of immigration law.

The President's 2020 Budget proposes the creation of a Border Security and Immigration Enforcement Fund (Fund). The Fund will provide additional mandatory resources beyond existing discretionary and mandatory appropriations that will be available for authorized purposes. These may include (but not be limited to) Department of Homeland Security and Department of Justice pay and non-pay costs for non-wall-related border security, criminal and administrative immigration enforcement and adjudication, and customs enforcement activities.

Additional mandatory funding in these areas is necessary to bridge the gap between mission requirements and appropriated resources. The U.S. Government's efforts to counter illegal mass migration, human smuggling and trafficking, drug smuggling, and transnational criminal organizations' illicit cross-border activities must be sufficiently resourced. However, appropriated resources are limited. This proposal would increase revenues that would be applied to ensure staffing and operational requirements are met.

Without additional mandatory resources from the Fund, current federal resources will be insufficient to mitigate and reverse the growing illicit trade and travel activities taking place across our borders.

Program Overview

Organization of EOIR

EOIR administers the Nation's immigration court system. EOIR primarily decides whether foreign-born individuals charged by DHS with violating immigration law should be a) ordered removed from the United States or b) granted relief or protection from removal and allowed to remain in the country. To make these critical determinations, EOIR operates 61 immigration courts throughout the country and has a centralized Board of Immigration Appeals located at EOIR Headquarters.

EOIR also adjudicates cases involving illegal hiring and employment eligibility verification violations, document fraud, and immigration-related employment discrimination. EOIR Headquarters, located in Falls Church, Virginia, provides centralized operational, policy, and administrative support to EOIR immigration proceedings and programs conducted throughout the United States.

EOIR's 2020 Budget Strategy

EOIR's program increase of \$71,147,000 supports EOIR's current strategic initiatives of increasing adjudicatory and case processing capacity, which help advance EOIR's mission¹. Increasing adjudicatory and case processing capacity is particularly important given the growing pending caseload and the increase in the rate of new NTAs filed.

Challenges

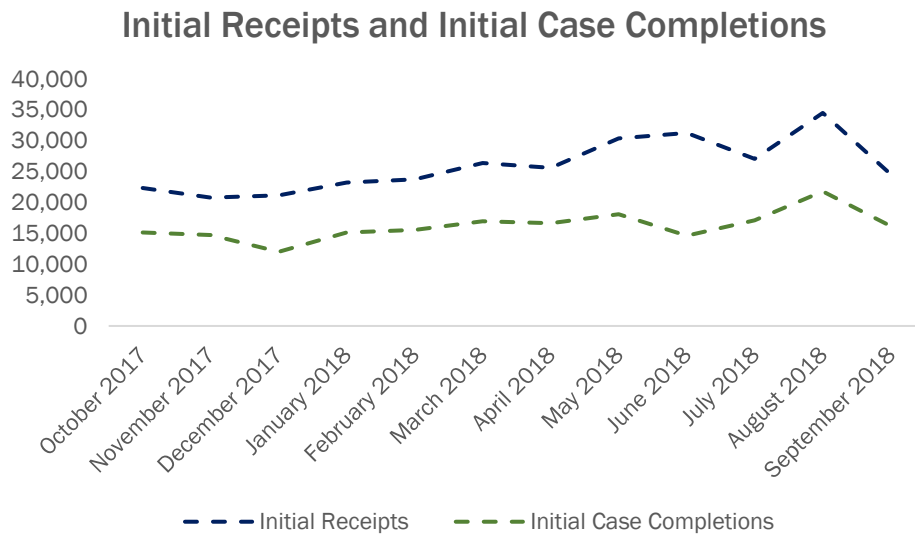
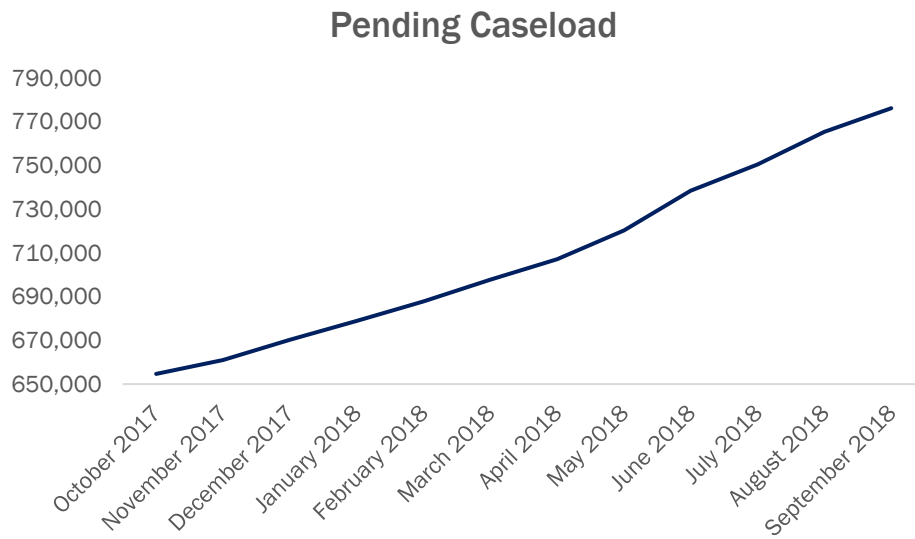
EOIR continues to face both internal and external challenges to increasing adjudicative and case processing capacity to help reduce the pending caseload. Internal challenges include the IJ hiring process and the geographic disbursement of courtrooms. Externally, the most significant factor is the recent shift in DHS enforcement priorities and resulting rapid increase in the number of new immigration cases.

As of October 1, 2018, there were nearly 790,000 active cases pending in immigration courts nationwide, a nearly 20 percent increase from October 2017 and by far the largest pending

¹ EOIR's primary mission is to, "adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws."

caseload before the agency, marking the twelfth consecutive year of increased pending caseload. Additionally, in FY 2018, DHS filed nearly 304,000 NTAs. This is almost a five percent increase from FY 2017.

OCIJ Caseload in Fiscal Year to Date 2018²



While the challenges noted below are specific to the Office of the Chief Immigration Judge (OCIJ), EOIR remains cognizant that the large and growing pending caseload will also affect the Board of Immigration Appeals (BIA). From FY 2014-2016, BIA received on average about 12,000 appeals per year. However, in FY 2017, over 16,000 appeals were filed with BIA, a 36 percent increase over the prior fiscal year. In FY 2018, nearly 32,000 case appeals were filed, surpassing FY 2017 by 86 percent. This work is shared across 15 (out of an authorized 21) current permanent Board Members, an extremely large volume for any appellate body. As both

² Due to data entry lag, recent months underreport the number of receipts, incorrectly implying that the pending caseload is increasing at a slower rate.

new OCIJ case receipts and the number of immigration judges' increase, the BIA will likely continue to face a resultant increase in the number of appeals filed.

Internal Challenges

First, the Department-wide hiring freeze between January 2011 and February 2014, coupled with natural and expected attrition, exacerbated the shortfall in adjudicative capacity. During this time, EOIR was unable to hire new immigration judges. Meanwhile, year-to-year fluctuations in case receipts were slowly trending upward, with the pending caseload increasing by about 40 percent from January 2011 to February 2014.

Second, the thorough vetting and hiring process for IJs has historically taken well over a year. Although EOIR hired 64 immigration judges in FY 2017, the FY 2017 pace was insufficient to fully make up for prior shortfalls in filling authorized positions. IJ hiring time improved dramatically in FY 2018, with EOIR hiring 81 IJs during the fiscal year, and recent hiring time has been reduced to between 250-275 days for IJs hired under the new process. Although the initial impact of recent adjustments to the hiring process have been positive, EOIR and the Department continue to take steps to improve internal hiring processes. IJ retirements and separations were higher in FY 2017 and FY 2018 than in recent years, and a concerted effort to hire rapidly needs to continue to ameliorate the lower staffing levels resulting from years of relying on a complex and lengthy process.

Third, as referenced above, IJ attrition poses potential difficulties for increasing adjudicative capacity. The typical attrition rate for the previous seven fiscal years was roughly 12 judges. However, 21 IJs separated from EOIR in FY 2017; and 23 separated in FY 2018. Furthermore, with 33 percent of IJs currently eligible to retire, the attrition rate may very likely rise in the coming months and years, further exacerbating staffing challenges.

Fourth, the current case management system (CASE) is a fragmented, paper-based system. For years, EOIR has been planning to upgrade CASE to a single, electronic platform for all aspects of case management. However, a new system had not yet been fully deployed. EOIR began developing an ECAS pilot in late FY 2017 and deployed the pilot in the summer and fall of 2018. EOIR expects to study the information gained from the pilot and to make necessary corrections and adaptations over the remainder of FY 2019, with a nationwide roll out planned for FY 2020.

Finally, the geographic disbursement of immigration courts across the country presents several challenges for EOIR. More populous and urban locales tend to attract more IJ candidates, which can create difficulties allocating IJs and supporting staff appropriately across all courts. In addition, EOIR currently has underutilized courtrooms, meaning that the given courtroom is not in use during a typical hearing block. This has several causes, including, but not limited to, unexpected IJ absences, compressed work schedules, scheduling challenges, and understaffing. Operational efforts to use courtroom space more effectively must be executed in tandem with IJ Team increases and the IT modernization program to more fully mitigate this challenge.

External Challenges

EOIR faces two prominent external challenges: (1) changes in DHS enforcement policies and (2) the continuing residual impact of the 2014 and 2016 border surges and EOIR's responses to those surges. DHS has made several changes to immigration enforcement, including increased

enforcement and decreased use of prosecutorial discretion. With nearly 305,000 new NTAs filed with EOIR during FY 2018, the already large pending caseload has increased dramatically in this new enforcement environment, now nearly reaching 800,000 cases.

The residual impact of cases generated by the border surges in the summer of 2014 and in 2016 continues to impact EOIR’s pending caseload. This surge included an increase in both unaccompanied children and adults with children, and cases involving children tend to take longer to resolve, as their cases often require continuances.

II. Summary of Program Changes

Item Name	Summary	Pos.	FTE	Dollars (\$000)	Page
Immigration Judges & Support	<ul style="list-style-type: none"> Enables EOIR to add 100 IJs and support Each IJ and support costs approximately \$1.5M and includes salaries and associated expenses (e.g., office space, furniture) 	600	300	71,147	23
Total		600	300	71,147	

The program requirements for increases in the number of immigration judges and support staff assumes that immigration adjudication trends in FY 2020 will be largely similar to FY 2017, other than a sustained decrease in the utilization of administrative closure, stemming from DHS’s movement away from the practice of exercising prosecutorial discretion to close cases and new EOIR policies. EOIR used input from DHS and recent trends to approximate the expected levels for case receipts in FY 2020. Using these assumptions, these program increases and corresponding budget request are projected to achieve a clearance rate – the ratio of receipts to completions – between 0.95 and 1.57 completions per receipt. A clearance rate above one indicates that more cases are completed in a given time period than received in the same time period. Assuming current hiring trends and policies, even with these program increases EOIR expects the pending caseload to continue growing in the immediate future, with full effects of the staffing increase only being realized after about six to seven years.

III. Appropriations Language and Analysis of Appropriations Language

The FY 2020 budget request includes proposed changes in the appropriations language set forth below.

Appropriations Language:

Executive Office for Immigration Review (Including Transfer of Funds)

For expenses necessary for the administration of immigration-related activities of the Executive Office for Immigration Review, \$672,966,000, of which \$4,000,000 shall be derived by transfer from the Executive Office for Immigration Review fees deposited in the “Immigration Examinations Fee” account. Provided, That not to exceed \$35,000,000 shall remain available until expended; Provided further, That any unobligated balances available from funds appropriated for the Executive Office for Immigration Review under the heading “General Administration, Administrative Review and Appeals” shall be transferred to and merged with the appropriation under this heading.

Note.—A full-year 2019 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Continuing Appropriations Act, 2019 (Division C of P.L. 115–245, as amended). The amounts included for 2019 reflect the annualized level provided by the continuing resolution.

Analysis of Appropriations Language

No substantive changes proposed.

IV. Program Activity Justification

<i>Executive Office for Immigration Review</i>	Direct Pos.	Estimate FTE	Amount (\$000)
2018 Enacted	2,798	1,698	504,500
2019 Continuing Resolution	2,798	1,698	504,500
Adjustments to Base and Technical Adjustments	363	901	97,319
2020 Current Services	3,161	2,599	601,819
2020 Program Increases	600	300	71,147
2020 Request	3,761	2,899	672,966
Total Change 2019-2020	963	1,201	168,466
<i>Executive Office for Immigration Review- Information Technology Breakout (of Decision Unit Total)</i>	Direct Pos.	Estimate FTE	Amount (\$000)
2018 Enacted	39	39	58,474
2019 Continuing Resolution	39	39	58,474
Adjustments to Base and Technical Adjustments	0	0	10,900
2020 Current Services	39	39	69,374
2020 Program Increases	0	0	0
2020 Request	39	39	69,374
Total Change 2019-2020	0	0	10,900

A. Program Description

Under the direction of the EOIR Director and Deputy Director, the following components conduct adjudicative proceedings:

Adjudicative Components

- Board of Immigration Appeals (BIA) – The BIA hears appeals of decisions of immigration judges (IJs) and certain decisions of officers of DHS in a wide variety of proceedings in which the Government of the United States is one party and the other party is an alien, a citizen, permanent resident, or a transportation carrier. The BIA exercises independent judgment in hearing appeals for the Attorney General and provides a nationally uniform application of the immigration laws. The majority of cases before the BIA involve appeals from orders of EOIR’s immigration judges entered in immigration proceedings.

Appeals of decisions of DHS officers, reviewed by the BIA, principally involve appeals from familial visa petition denials and decisions involving administrative fines on transportation carriers. The BIA also issues decisions relating to the EOIR Attorney Discipline Program.

BIA decisions are binding on immigration judges and all DHS officers unless modified or overruled by the Attorney General or a Federal Court. Certain BIA decisions that the BIA designates as precedent decisions apply to immigration cases nationwide. Through

precedent decisions, the BIA provides guidance to immigration judges, DHS, and the general public on the proper interpretation and administration of the immigration laws and regulations. The BIA is the highest administrative tribunal for interpreting and applying U.S. immigration law.

The BIA plays the major role in interpreting the immigration laws of the country in an area of law the courts have characterized as uniquely complex. A challenge for the BIA is to maintain a high-volume administrative caseload while addressing the differing issues associated with the law of eleven different circuits and the Supreme Court.

- Office of the Chief Immigration Judge (OCIJ) – The OCIJ oversees the administration of approximately 60 immigration courts located throughout the United States and exercises administrative supervision over EOIR employees, including immigration judges, assigned to those courts. The OCIJ develops policies and procedures for immigration proceedings throughout the immigration court system. The IJs in OCIJ preside over administrative court proceedings, called removal proceedings, to determine whether foreign-born individuals, who are charged by DHS with violating immigration law, should be ordered removed from the United States or should be granted relief or protection from removal and be permitted to remain in this country. Generally, IJs determine removability and adjudicate applications for relief from removal such as cancellation of removal, adjustment of status, asylum, or waivers of removability. Custody redetermination hearings are held when an alien in DHS custody seeks a reduction in the bond amount set by DHS, or a release on his or her own recognizance.

With respect to criminal alien adjudications, the Institutional Hearing Program (IHP)³ provides the framework for hearings to determine the immigration status of aliens convicted of offenses who are incarcerated in federal, state, and local prisons across the United States. EOIR’s IHP is designed to expedite the removal of criminal aliens and involves close coordination with DHS, the Bureau of Prisons, and state and local corrections authorities.

The Chief Immigration Judge provides overall program direction, articulates policy, and establishes priorities for the immigration judges located in courts throughout the United States. The Chief Immigration Judge carries out these responsibilities with the assistance of Deputy and Assistant Chief Immigration Judges; offices such as the Chief Clerk’s Office and Language Services Unit assist with coordinating management and operation of the immigration courts.

- Office of the Chief Administrative Hearing Officer (OCAHO) – The OCAHO adjudicates cases involving illegal hiring and employment eligibility verification violations (“employer sanctions”), document fraud, and employment discrimination under the Immigration and Nationality Act (INA). The OCAHO is headed by a Chief Administrative Hearing Officer (CAHO) who provides overall program direction and management, articulates and develops policies and procedures, establishes priorities, assigns cases, and administers the hearing process presided over by Administrative Law Judges (ALJs). The CAHO also reviews decisions and orders issued by OCAHO ALJs in

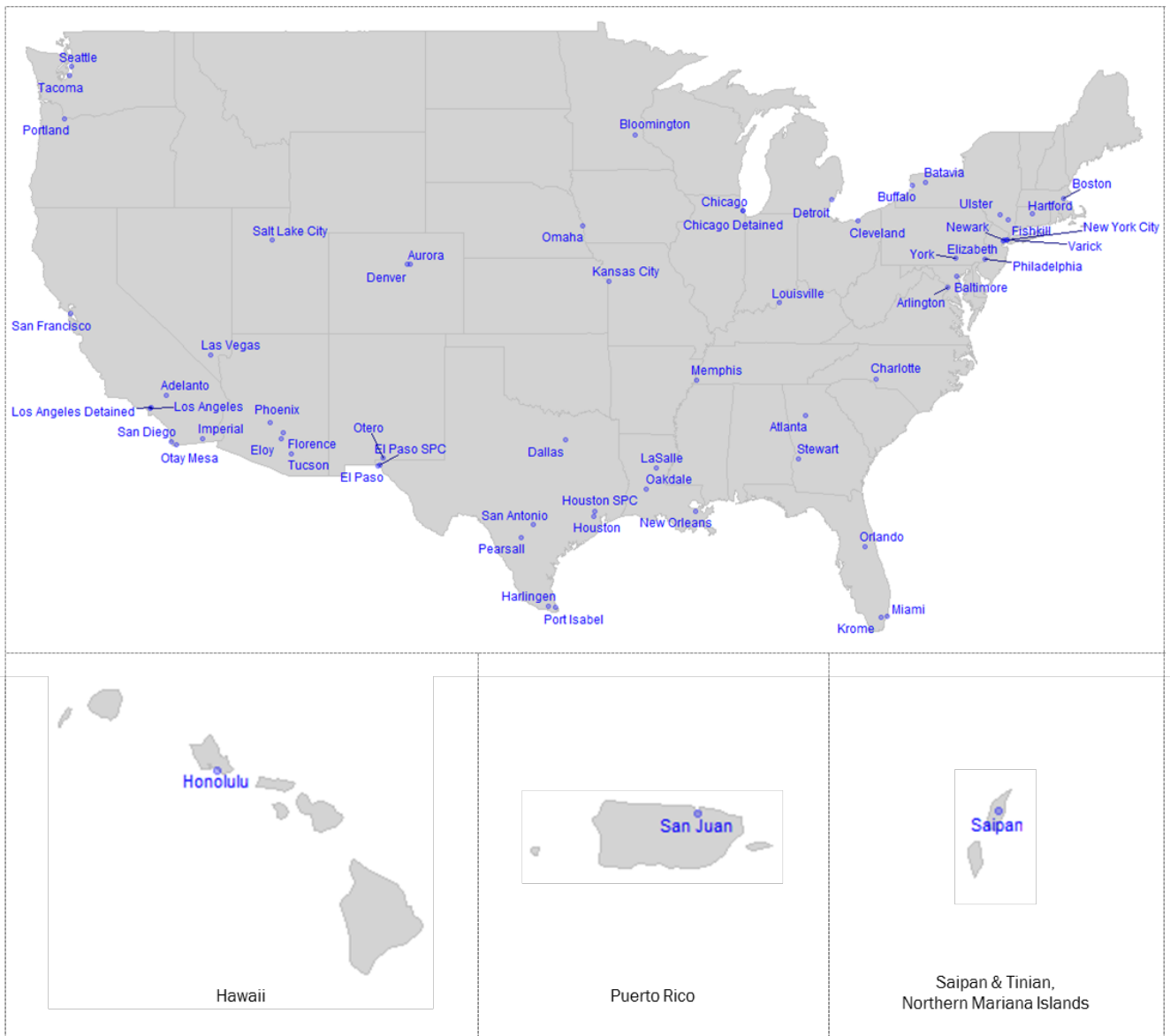
³ Note, DHS refers to this same program as the “Institutional Hearing and Removal Program.”

employer sanctions and document fraud cases, and may modify, vacate, or remand those decisions and orders.

OCAHO employs ALJs appointed pursuant to 5 U.S.C. § 3105 to adjudicate cases arising under Sections 274A, 274B, and 274C of the INA. Section 274A provides for sanctions (civil penalties and injunctive relief) against employers or entities who: (1) knowingly hire, recruit, or refer for a fee, or continue to employ, unauthorized aliens; (2) fail to comply with employment eligibility verification requirements; or (3) require the execution of an indemnity bond by employees to protect the employer or entity from potential liability for unlawful employment practices. Section 274B prohibits employment discrimination based on national origin or citizenship status and provides for civil penalties and various equitable remedies. Section 274C provides civil penalties for immigration-related document fraud. Adjudicative proceedings are initiated by complaints filed with OCAHO by DHS (in Section 274A and Section 274C cases), or the Immigrant and Employee Rights (IER) section in the Civil Rights Division, and/or aggrieved private parties and entities (in section 274B cases).

Parties may seek administrative reviews of ALJ decisions in INA Sections 274A and 274C cases, or the CAHO may review such decisions on his or her own initiative, and may affirm, modify, vacate, and/or remand such decisions. Unless the case is certified to the Attorney General, the CAHO's decision on review constitutes the final agency action with respect to these cases. Appeals from final OCAHO decisions are brought before the U.S. circuit courts of appeal.

Map of the Immigration Courts



Non-Adjudicative Components

A number of other Headquarters offices also provide EOIR-wide mission support:

- Office of the Director – In addition to the Director, Deputy Director, Chief of Staff, and senior advisors, the Office of the Director includes the Equal Employment Opportunity Office, the Office of Legal Access Programs (OLAP), the Ombuds, and the Planning, Analysis, and Statistics Division (PASD). These offices provide mission support to the Office of the Director by (1) ensuring equality and diversity in the work place; (2) providing oversight of certain pilot programs and initiatives; (3) overseeing the strategic management process; (4) conducting research, evaluation, and statistical analysis; (5) expanding analytics capacity to meet the demand for advances and predictive analysis; and (6) enhancing data quality and governance to quickly and effectively mitigate any data quality issues in the field.

- Office of the General Counsel (OGC) provides legal advice on a wide variety of matters involving EOIR employees in the performance of their official duties. OGC staff handle employee labor relations issues, review and prosecute complaints involving attorney misconduct, and coordinate and respond to requests for assistance involving immigration fraud. OGC also coordinates development of agency regulations and forms; provides litigation support to U.S. Attorneys, the Civil Division's Office of Immigration Litigation, and the Solicitor General's Office; coordinates inter-agency activities; and responds to all Freedom of Information Act and Privacy Act requests.
- Office of Policy (OP) centralizes coordination between the components on a number of policy projects and issues, including policy development, communications, strategic planning, training, and legal updates. This new office (1) identifies, develops, drafts, standardizes, and communicates agency priorities and policies; (2) oversees and standardizes the EOIR regulatory process; and (3) coordinates all legal training and related resources.
- Office of Administration (OA) provides administrative and managerial support in several areas concerning financial management or special emphasis and compliance programs. Specifically, OA supports the following areas: appropriations, budget and financial management, contracts and procurement, human resources, security, space and facilities management, and logistics.
- Office of Information Technology (OIT) is responsible for the design, development, operations, and maintenance of the complete range of information technology systems supporting EOIR's day-to-day operations. OIT manages programs such as EOIR's current multi-year effort to modernize the case management and related electronic systems that support EOIR's mission. The EOIR Court and Appeals Systems (ECAS) program has been established to modernize these systems and reduce maintenance costs through phased elimination of paper filings and processing and retaining all records and documents in electronic form. OIT has also improved EOIR's IT security posture by leveraging staff resources and refining internal change management processes, positioning EOIR as one of the Department's cybersecurity leaders.

Adjudication of Immigration Cases

Immigration Court Proceedings Overview: DHS initiates all cases before the immigration courts by charging an individual with potential grounds of removability and issuing a Notice to Appear (NTA) in Immigration Court under §240 of the Immigration and Nationality Act (INA) (8 U.S.C. 1229a).

Immigration judges (IJs) are responsible for conducting formal immigration court proceedings. In removal proceedings, IJs determine whether an individual from a foreign country (an alien) should be allowed to enter or remain in the United States or should be removed. IJs also have jurisdiction to consider various forms of relief or protection from removal. If the IJ finds the individual to be removable as charged, the individual can then request several different forms of relief or protection from removal such as asylum and withholding of removal (including protection under the Convention Against Torture), cancellation of removal, voluntary departure,

or other forms of relief or protection from removal. IJ decisions are administratively final unless appealed or certified to the BIA.

Some removal proceedings are conducted in prisons and jails as part of the Institutional Hearing Program. In coordination with DHS and correctional authorities across the country, IJs conduct hearings to adjudicate the immigration status of alien inmates while they are serving sentences for criminal convictions.

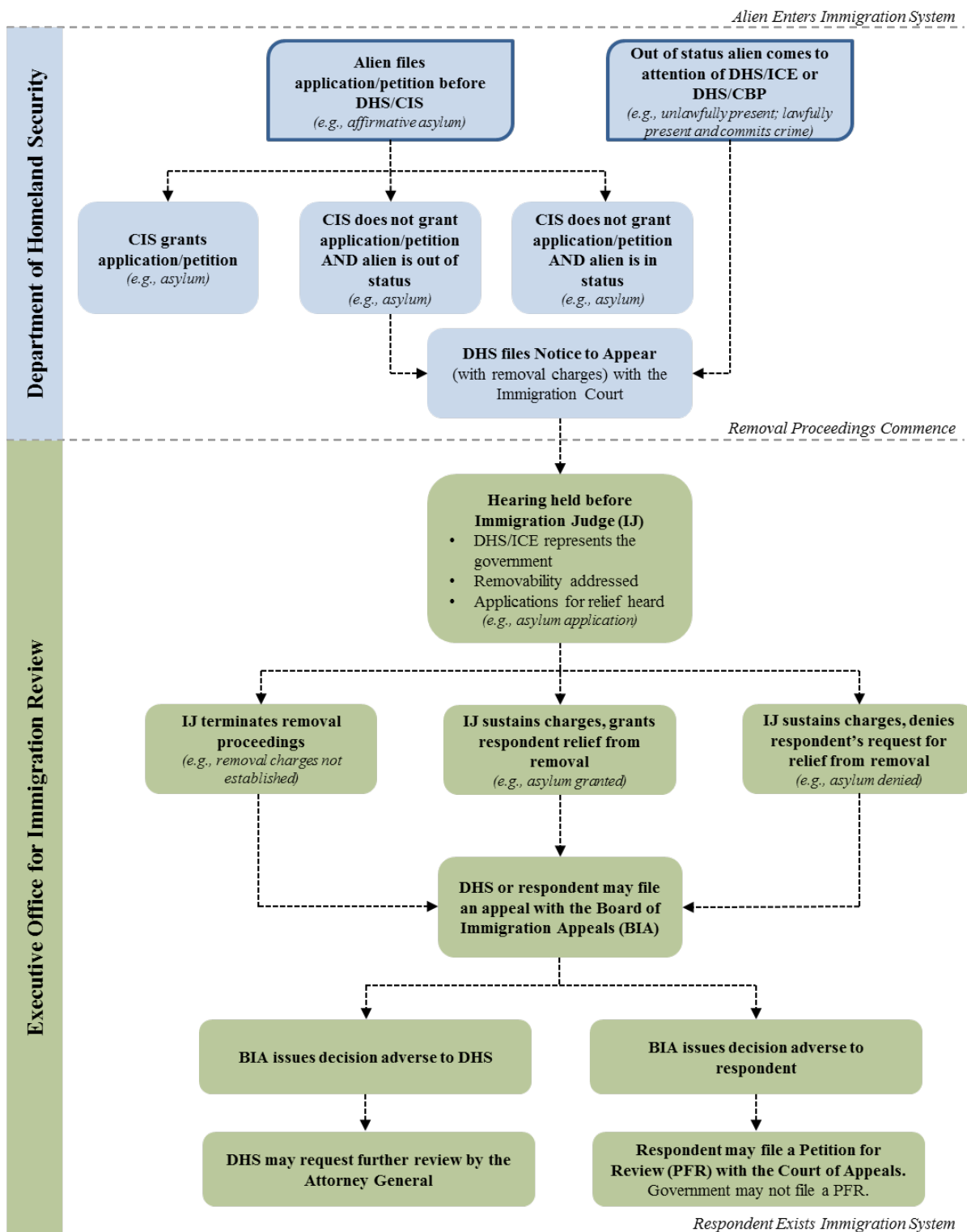
Appellate Review: In most appeals to the BIA, the process begins with filing a notice of appeal challenging an IJ decision. The appeal can be filed either by the alien or the Government (represented by DHS's ICE).

When an appeal is filed by either party, the BIA acknowledges receipt of the appeal, transcribes the proceedings (where appropriate), and sets a briefing schedule to allow both parties to present their arguments. Once briefing concludes, the appeal is adjudicated by a panel of one, three, or all Board Members.

If the decision is not published, the decision is binding only on the parties. If the BIA elects to publish the decision, it becomes legal precedent and is binding nationwide. The BIA's decision will stand unless and until modified or overruled by the Attorney General, a Federal Court, or the BIA itself.

The following flow chart details examples of paths to and through removal proceedings.

EXAMPLE PATHS TO AND THROUGH REMOVAL PROCEEDINGS



OCAHO Administrative Hearings: OCAHO cases begin with the filing of a complaint, either by the DHS/ICE, in employer sanctions and document fraud cases under INA §§ 274A and 274C, respectively, or by private individuals or entities and/or the Civil Rights Division’s IER Section in immigration-related employment discrimination cases under INA § 274B. After the complaint is filed, the respondent is given an opportunity to file an answer. Following the answer, the parties typically file prehearing statements, undertake discovery, and participate in one or more telephonic prehearing conferences with the ALJ. Parties may also engage in settlement negotiations and file dispositive motions with the ALJ. Cases that are not resolved or dismissed proceed to a formal evidentiary hearing, typically held near where the parties reside or the alleged violation(s) occurred. Final decisions and orders issued by the ALJ in employer sanctions and document fraud cases are reviewable by the CAHO and/or the Attorney General. Once a final agency decision has been issued, a party may file an appeal with the appropriate federal circuit court of appeals. Final ALJ decisions in immigration-related employment discrimination cases are not reviewable by the CAHO or the Attorney General; rather, these decisions may be appealed directly to the appropriate federal circuit court of appeals.

B. EOIR Metrics Tables

(Tables begin next page)

EOIR Metrics Tables

Decision Unit: Executive Office for Immigration Review											
RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		FY 2018		FY 2018		FY 2019		Current Services Adjustments and FY 2020 Program Changes		FY 2020 Request	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		1,698	504,500	1,698	504,500	1,698	504,500	1,201	168,466	2,899	672,966
TYPE	PERFORMANCE	FY 2018		FY 2018		FY 2019		Current Services Adjustments and FY 2020 Program Changes		FY 2020 Request	
Program Activity	Adjudicate Immigration Cases¹	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		1,698	504,500	1,698	504,500	1,698	504,500	1,201	168,466	2,899	672,966
Office of the Chief Immigration Judge											
Measure	Detained Clearance Rate	Baseline		TBD		TBD		-		TBD	
Measure	Non-Detained Clearance Rate	Baseline		TBD		TBD		-		TBD	
Office of the Chief Administrative Hearings Officer											
Measure	274A Cases Completed Within 430 Days	90%		TBD		90%		-		90%	
Measure	274B Cases Completed Within 500 Days	90%		N/A		90%		-		90%	

Measure	274C Cases Completed Within 750 Days	90%	N/A	90%	-	90%
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Data Validation, Verification, and Limitations: Data are collected from the Case Access System for EOIR (CASE), a nationwide case tracking system at the trial and appellate levels. Court and Appellate staff enters data, which is electronically transmitted and stored at EOIR headquarters, allowing for timely and complete data collection. Data are verified by on-line edits of data fields. Headquarters and field office staff use routine daily, weekly, and monthly reports that verify data. Data validation is also performed on a routine basis through data comparisons between EOIR and DHS databases. There are no data limitations known at this time

¹A case before the immigration courts is a proceeding that begins when DHS files a charging document. Before the Board of Immigration Appeals, a case is an appeal from an immigration judge decision, an appeal from certain DHS decisions, and motions to reopen, reconsider, or reinstate proceedings. This does not include change of venue requests or transfers from one immigration court to another. In addition, initial case completions do not include cases that have been reopened or remanded from the Board of Immigration Appeals.

EOIR METRICS TABLE									
Decision Unit: Executive Office for Immigration Review									
Report and Plan Targets		FY 2014	FY 2015	FY 2016	FY 2017	FY 2018		FY 2019	FY 2020
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Measure	Detained Clearance Rate	N/A	N/A	N/A	N/A	Baseline	Baseline	TBD	TBD
Measure	Non-detained Clearance Rate	N/A	N/A	N/A	N/A	Baseline	Baseline	TBD	TBD
Measure	274A Cases Completed Within 430 Days	N/A	N/A	N/A	N/A	90%	TBD	90%	90%
Measure	274B Cases Completed Within 500 Days	N/A	N/A	N/A	N/A	90%	TBD	90%	90%
Measure	274C Cases Completed Within 750 Days	N/A	N/A	N/A	N/A	90%	TBD	90%	90%

C. Performance, Resources, and Strategies

EOIR’s adjudication functions are part of the Government’s broader immigration and border control programs. As such, EOIR’s ability to adjudicate cases involving individuals housed in DHS detention space in a timely fashion allows EOIR to aid in the efficient utilization of DHS detention space. The guarantee of fairness and due process, including for those individuals in detention, remains a cornerstone of our judicial system, and EOIR’s role in granting relief from removal in meritorious cases, and in the denial of relief from removal in others, helps assure the integrity of the overall process.

a. Performance Plan and Report for Outcomes

For the immigration courts, EOIR set the following goals:

- A clearance rate for detained I-862 case types (removal, exclusion, and deportation). EOIR is establishing a baseline measure for this measure in FY 2018, so that outyear targets can be established.
- A clearance rate for non-detained I-862 case types (removal, exclusion, and deportation). EOIR is establishing a baseline measure for this measure in FY 2018, so that outyear targets can be established.

EOIR established these metrics during the development of the Department of Justice (DOJ) Strategic Plan for FY 2018 – 2022. As such, EOIR spent FY 2018 developing a methodology for

appropriately measuring clearance rate and beginning to benchmark. After benchmarking, EOIR will be able to set a realistic, but challenging target for future fiscal years.

The performance measure for OCAHO is:

- 90 percent of employer sanctions (INA 274A), immigration-related unfair employment practices (INA 274B), and immigration-related document fraud (INA 274C) cases completed within the established timeframe for each case type (430 days, 500 days, and 750 days, respectively).

In FY 2018, OCAHO met this target for all three case types. This performance measure will continue through FY 2019 and FY 2020.

b. Strategies to Accomplish Outcomes

Ongoing Efforts to Achieve EOIR Success

EOIR is undertaking several efforts to increase adjudicative capacity and help reduce the pending caseload. In addition to EOIR's continued focus on hiring all authorized positions to fill existing vacancies, EOIR is making ongoing efforts to maximize existing resources and eliminate agency inefficiencies. These ongoing efforts include making docket adjustments to reflect enforcement priorities, developing and implementing a workforce staffing model, opening new courts, leveraging existing IT systems, emphasizing policy coordination and analysis, and making the IJ hiring process more efficient.

Filling Existing Vacancies

EOIR's continued focus on filling existing vacancies has helped increase adjudicative capacity over the last several years. Despite this increase in adjudicative capacity and EOIR's continued efforts to hire new IJs, the pending caseload continues to grow. To successfully decrease the pending caseload to a manageable level, EOIR requires additional authorized IJs and support staff.

Docket Adjustments

EOIR continues to make docket adjustments and prioritize certain case types to reflect the shifts in enforcement priorities. EOIR will continue engaging with Federal partners to gauge the impact of enforcement activities, migratory patterns, and other factors that affect the immigration courts and adjust dockets and resource allocations accordingly.

New and Expanded Court Locations

Over the last few years EOIR has added space in some existing locations, and expanded its number of locations. In October 2018, EOIR opened a video teleconferencing (VTC)-only adjudication center. Additionally, new courts opened in Louisville, KY, and LaSalle, LA. By expanding available court space as the IJ corps expands, EOIR will be able to hear a greater volume of cases, reducing the backlog more quickly.

Leveraging Existing IT Systems

To maximize the capacity of immigration courts nationwide, EOIR has made greater use of VTC systems, which enable IJs to adjudicate cases in other parts of the country. This has multiple benefits. IJs in locations with a lower caseload can administer cases in higher-volume locations remotely. IJs are able to adjudicate certain detained and Institutional Hearing Program (IHP) cases remotely, diminishing the challenges associated with reaching DHS and Federal facilities that are not co-located with immigration courts. All courtrooms and many conference rooms are now equipped with VTC capability. Additionally, EOIR has successfully upgraded the Digital Audio Recording systems in 413 courtrooms. The touch panel and modernized audio-processing components will provide courtroom users with enhanced phone controls, video teleconference capabilities, and simultaneous interpretation controls. Looking forward, EOIR is using analytics to explore how VTC use could minimize the number of underutilized courtrooms.

In addition, EOIR continues to strive to modernize and digitize its critical information systems. The benefits of an electronic filing and case management system are undisputed. A fully electronic system will improve case scheduling and adjudication efficiency, reduce time spent on administrative tasks related to paper files, and free additional space to be used for additional staff or court expansion. In 2018 EOIR piloted its new electronic filing system, EOIR Courts and Appeals System (ECAS), at five immigration courts and the Board of Immigration Appeals with encouraging results, as over 7,700 attorneys have registered to use ECAS so far, over 37,000 documents have been uploaded, over 10,000 electronic records of proceeding (eROP) have been created, and nearly 175 EOIR users have been trained. Although the lapse in appropriations during FY 2019 and the delay in receiving FY 2019 funding delayed the nationwide rollout of ECAS until the beginning of FY 2020, EOIR remains confident that with continued support it can finally realize its goal of a fully electronic and integrated filing and case management system.

Policy Coordination and Analysis

EOIR is reviewing and finalizing its internal FY 2019 – FY 2023 Strategic Plan, which complements the DOJ Strategic Plan for FY 2018 - 2022. In addition to process improvement, technology, and communication strategies, this plan will include strategies to ensure that short- and long-term human capital needs are met, particularly as they relate to the IJ hiring process and immigration court staffing and resourcing requirements. An implementation plan will accompany the strategic plan and will define the metrics for monitoring and evaluating progress toward meeting the agency's goals. OCIJ and BIA are also examining activities critical to case completion and the amount of time required for staff to complete these activities thoroughly. This analysis will help inform potential policy, process, and/or role changes to increase the number of cases adjudicated while maintaining due process.

Further, on January 17, 2018, EOIR Director McHenry released a “Case Priorities and Immigration Court Performance Measures” memorandum to announce a series of immigration court performance measures. These measures will help determine which courts are operating in a healthy and efficient manner, and which courts may be in need of more specialized attention in the form of additional resources, training, court management, creative thinking and planning,

and/or other action as appropriate. Establishing measures provides a framework to consider how day-to-day activities can be streamlined to improve efficiency, while maintaining due process.

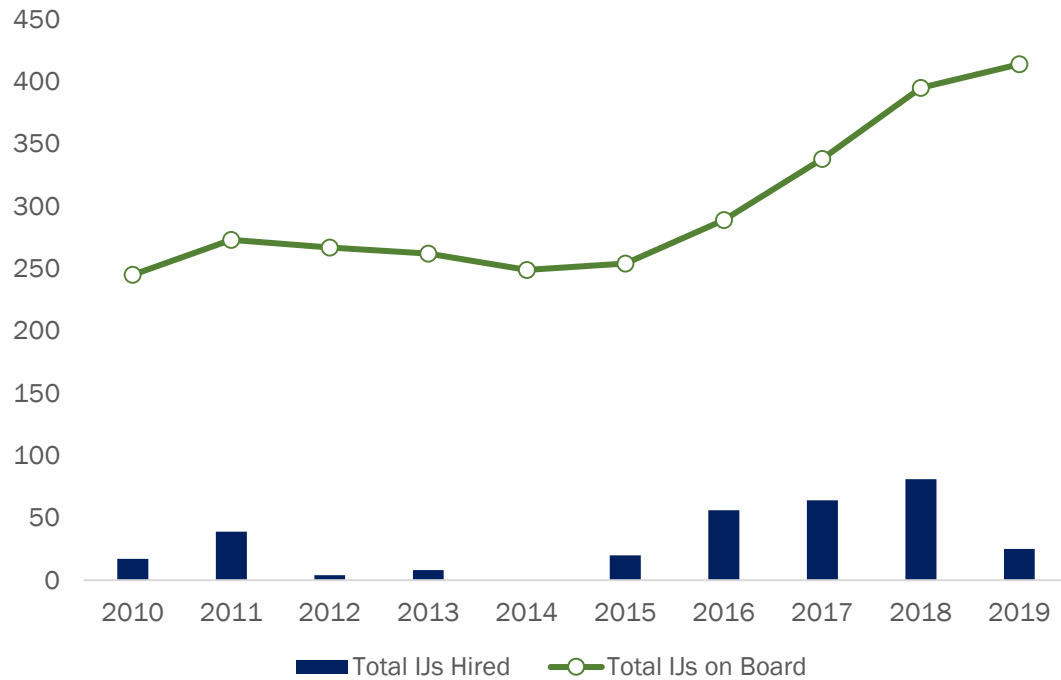
Improving the IJ Hiring Process

EOIR and DOJ continue to take steps to reduce the timeline to hire and on-board new IJs. The Department implemented a new, streamlined hiring plan, announced by the Attorney General during a speech on April 11, 2017. It retains the same degree of rigorous vetting as before, but aims to reduce the timeline an application is pending before the agency.

The revised process: 1) sets clear deadlines for assessing applicants at each stage of the process and for making decisions to move them to the next stage; 2) eliminates steps that did not aid or advance the selection process; and 3) allows for temporary appointments pending full background investigations, which can often take several months to a year to complete. The new process aims to reduce the amount of time that it takes to recommend applicants for appointment to six months or less.

Due to this effort, in August 2018, EOIR was able to hold the largest investiture of immigration judges since at least 2010, with hiring times for IJs hired under the new process reduced by approximately 50 percent from the previous year. EOIR hired 81 new IJs in FY 2018, 46 new IJs through February of FY 2019 and has hired a total 174 new IJs since January 20, 2017. EOIR has been able to clear a new IJ to start in as little as 150 days and to onboard a new IJ in as little as 195 days, which is a 74% reduction in hiring time compared to a GAO report on the subject. Moving forward, EOIR will continue to assess the hiring process and identify any areas for improvement.

Immigration Judge (IJ) Hiring



FY	Total IJs Hired	Total IJs on Board
2010	17	245
2011	39	273
2012	4	267
2013	8	262
2014	0	249
2015	20	254
2016	56	289
2017	64	338
2018	81	395
2019 (First Quarter)	25	414

In addition to increasing the number of IJs, EOIR is working to help those IJs improve their efficiency. To further reduce the backlog of cases, the Department has implemented new measures for immigration courts and immigration judges to assess their efficiency, ensure the quality of operations and decision making, and to better identify and address where problem areas may lay in the overall court process.

As of the end of February, 2019, there are 429 IJs on board, but with those increased IJs the number of cases has also increased. The current caseload has more than quadrupled since FY 2008 and more than doubled since FY 2012. After eight consecutive years of declining or

stagnant productivity between FY 2009 and FY 2016, EOIR is now in the middle of its third consecutive year of increased immigration court case completions. In FY 2018, immigration judges completed almost 200,000 initial cases, a 20% increase over FY 2017 and the highest number of case completions since FY 2011, and at the end of the first quarter of FY 2019, EOIR was on pace to complete more cases than at any time since FY 2006. These results are a testament to the professionalism and dedication of our immigration judge corps and a direct refutation of critics who intimate that immigration judges lack the integrity or competence to resolve cases in both a timely and impartial manner as required by law.

V. Program Increases by Item

Item Name: **Immigration Judges and Support**

Strategic Goal: 2
Strategic Objective: 2.2
Budget Decision Unit: EOIR
Organizational Program: Immigration Adjudications

Program Increase: Positions 600 Agt/Atty 300 FTE 300 Dollars \$71,147,000

Description of Item

The request provides \$71,147,000, which will enable EOIR to add 100 new immigration judges (IJs) and necessary support staff. Each IJ is supported by: one attorney position, one legal assistant; and up to two other FTE comprised of a combination of the following positions on an as-needed basis: additional legal assistant, interpreter, and/or other EOIR mission support staff. Some support positions may also go to support the growth of immigration courts at Headquarters.

EOIR is also requesting 100 additional attorney positions, which will be judicial law clerks (JLC). EOIR intends to increase the use of JLCs as part of a broader effort to manage pending caseload more effectively. With a higher ratio of JLCs to IJs, EOIR will be able to issue more written decisions rather than relying on oral decisions, which can require more time in court and can increase the time it takes to close a case. Although EOIR's current IJ team cost module includes one JLC for each IJ, historically the JLCs were not matched to IJs in a one-to-one ratio. The additional attorney positions requested this year for JLCs will move EOIR towards a one-to-one ratio.

This program increase also includes funding for the necessary corresponding courtrooms, office space, and associated expenses (e.g. furniture, equipment).

Justification

EOIR must increase the number of immigration judges as the pending caseload has been steadily increasing since FY 2006, hitting a new high of nearly 790,000 by October 1, 2018, and as a result the time it takes to close a case has increased. Recently, this caseload increase has been exacerbated by the increase in the number of new Notices to Appear (NTA) that DHS files before the immigration court. Over the course of FY 2017, DHS filed nearly 300,000 NTAs, representing a greater than 25 percent increase in new case receipts over FY 2016; DHS further increased that pace in FY 2018, filing nearly 305,000. Without corresponding increases in resources, combined with process improvements, EOIR will not be able to successfully manage the incoming caseload.

As caseload has grown, processing time has increased. Certain typically lengthy applications, like asylum, have increased. Conversely, voluntary departure, a relatively speedier process, has decreased. These findings are also supported by the 2017 GAO report *Actions Needed to Reduce*

Case Backlog and Address Long-Standing Management and Operational Challenges, which notes that the 23 percent increase in continuances from FY 2006 to FY 2015 has lengthened case processing time.

EOIR must also increase the number of JLCs to account for increases in caseload, processing time, and change of venues (COV) and transfers, coupled with a decrease in the proportion of typically quick cases. JLCs are a vital component of the immigration court system. JLCs conduct research, assist with legal analysis, and conduct initial legal drafting in support of IJs as IJs adjudicate cases. Currently, EOIR has a model of approximately one JLC to support every two IJs. This program request will enable EOIR to move to a ratio of one JLC to one IJ, with a focus on ensuring IJs currently without a full-time JLC are assigned coverage by a JLC. With a higher ratio of JLCs to IJs, EOIR will be able to issue more written decisions, rather than the immigration courts current reliance on oral decisions. An increase in written decisions and the use of JLCs would reduce the amount of time IJs spend on reviewing, editing, and preparing written decisions themselves. Furthermore, oral decisions require the IJ to call respondents back into the courtroom, using up valuable calendar time, whereas written decisions do not require respondents be present in the courtroom. In addition to helping with written decisions, an increase in available JLCs would also provide broader benefits with respect to managing an IJ's overall workload.

Impact on Performance

This program increase directly supports current EOIR strategic initiatives to increase adjudicatory capacity and case processing capacity, and EOIR's overall mission. EOIR estimates that each IJ and support staff could help reduce the pending caseload by approximately one percentage point once it is fully staffed and operational. Due to the robust IJ hiring process and the six- to twelve-month timeline for new IJs to begin hearing cases at a rate as efficiently as experienced IJs, this program increase will not affect performance immediately but rather over the course of the next several years. However, with a sustained commitment to increasing the number of IJs and the number of IJ support staff including JLCs, EOIR will be able to decrease the pending caseload and reduce the amount of time respondents must wait until their case is heard.

This initiative also ties directly to DOJ Strategic Goal 2, "Secure the Borders and Enhance Immigration Enforcement and Adjudication," and Objective 2.2, to "ensure an immigration system that respects the rule of law, protects the safety of U.S. Citizens and serves the national interest." Specifically, this initiative would advance strategies four, to "improve fair and timely adjudication of immigration cases in the administrative immigration courts."

Base Funding

FY 2018 Enacted				FY 2019 Continuing Resolution				FY 2020 Current Services			
Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty*	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)
2,798	1,201	1,698	504,500	2,798	1,201	1,698	504,500	3,161	1,341	2,599	601,819

Personnel Increase Cost Summary

Type of Position/Series	Full-year Modular Cost per Position (\$000)	1 st Year Annual- ization	Number of Positions Requested	FY 2020 Request (\$000)	2 nd Year Full Cost	FY 2021 Net Annuali- zation (change from 2020) (\$000)	FY 2022 Net Annuali- zation (change from 2021) (\$000)
Clerical and Office Services (0300-0399)	130	77	100	7,738	12,836	5,098	3,752
Immigration Judges (0905)	255	146	100	14,751	24,749	9,998	803
Attorneys (0905)	165	96	200	9,596	16,282	6,686	4,354
Paralegals / Other Law (0900-0999)	104	65	200	6,406	9,911	3,505	0
Total Personnel			600	38,491	63,778	25,287	8,909

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2020 Request (\$000)	FY 2021 Net Annualization (change from 2020) (\$000)	FY 2022 Net Annualization (change from 2021) (\$000)
Courtroom Buildout (leased)	357,656	100	17,883	17,883	-35,766
Furniture (courtroom and shared spaces*)	40	100	4,028	-3,619	0
Interpretation Services	8,759	1	10,745	7,036	267
Total Non-Personnel			32,656	21,300	-35,499

*Furniture shared between courtrooms is assumed to be shared among 5 courtrooms.

Total Request for this Item

	Pos	Agt/ Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2021 Net Annualization (change from 2020) (\$000)	FY 2022 Net Annualization (change from 2021) (\$000)
Current Services	3,161	1,341	2,599			601,819		
Increases	600	300	300	38,491	32,656	71,147	46,587	-26,590
Grand Total	3,761	1,641	2,899			672,966		

Affected Crosscuts

Immigration
Southwest Border

VIII. Exhibits