



Department of Justice

STATEMENT

OF

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DIRECTOR
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES,
BORDER SECURITY, AND INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

HEARING ENTITLED

"OVERSIGHT OF THE EXECUTIVE OFFICE OF IMMIGRATION REVIEW"

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**Statement of Kevin A. Ohlson
Director, Executive Office for Immigration Review**

**before the
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and
International Law**

House Committee on the Judiciary

Hearing entitled

**“Oversight of the Department of Justice’s Executive Office for Immigration
Review”**

September 23, 2008

Chairwoman Lofgren, Ranking Member King, and members of the Subcommittee, it is a pleasure to be here today and to testify before you. It provides me with an opportunity to fully answer any questions you may have about the Immigration Courts and the Board of Immigration Appeals (BIA or the Board). Further, it gives me the chance to brief you on how we are transforming their operations.

The Executive Office for Immigration Review (EOIR) is an agency within the Department of Justice (the Department). Under delegated authority from the Attorney General, Immigration Judges and Board Members interpret and adjudicate immigration cases according to United States immigration laws. EOIR has more than 220 Immigration Judges who conduct administrative court proceedings in more than 50 Immigration Courts located throughout the nation. These Immigration Judges determine whether foreign-born individuals—who are charged by the Department of Homeland Security (DHS) with violating immigration law—should be ordered removed from the United States or should be granted relief from removal and be permitted to remain in this country. The Board primarily reviews appeals of decisions by these Immigration Judges. EOIR’s Office of the Chief Administrative Hearing Officer adjudicates immigration-related employment cases. EOIR is committed to ensuring fairness in all of the cases it adjudicates.

As has been noted in the report prepared by the Office of the Inspector General and the Office of Professional Responsibility, the process that was previously used to hire Immigration Judges was problematic. I want to assure you, madam chairwoman, that we now have in place a recruitment, screening, interviewing, recommendation, and selection process that, although time-consuming, is a premiere system for identifying and appointing the very best candidates to serve as Immigration Judges. This new process was implemented in April 2007, and it has returned primary responsibility for reviewing Immigration Judge applications to career officials in EOIR. These new procedures include public announcements for vacancies, a rigorous, multi-level review of applications, and a multi-panel interview and selection process involving career officials

in EOIR and senior career and non-career officials in the Department. It is important to note that even those Immigration Judge candidates who applied prior to the institution of this new hiring process were recently evaluated using the current procedures and were given full consideration.

Regardless of whether an Immigration Judge was hired pursuant to the old system or the new one, our agency now closely monitors them. Newly-hired Immigration Judges typically serve a two-year trial period during which they can be terminated if they fail to consistently demonstrate the necessary abilities, professionalism, and temperament on the bench. As part of this monitoring process, EOIR consults with court staff, peers, and interested parties, and, five months before the end of the Immigration Judge's probationary period, files a report with the Office of the Deputy Attorney General.

With respect to veteran EOIR adjudicators, we recently implemented annual performance evaluations for the Board of Immigration Appeals and are currently in union negotiations concerning the implementation of annual performance evaluations for Immigration Judges. In addition, Assistant Chief Immigration Judges have been assigned to six regional offices to supervise the Immigration Judges in their geographic regions. Further, we have created the new position of "Assistant Chief Immigration Judge for Conduct and Professionalism." This person reviews and monitors all complaints and allegations of misconduct involving Immigration Judges. As part of our new emphasis on professionalism, we also have created a link on EOIR's internet web page which allows members of the public to easily file complaints about Immigration Judges' conduct. We take all such complaints seriously. We investigate them, we refer the matters to the Office of Professional Responsibility and/or the Office of the Inspector General as appropriate, and we discipline Immigration Judges as circumstances warrant.

Our focus is not just on a few "problem" judges. We now are committed to providing assistance, training, and guidance to all our Immigration Judges, the vast, vast majority of whom perform in an exemplary manner on the bench. Specifically, to ensure that newly-appointed Immigration Judges are proficient in applying immigration law to specific cases, training for new Immigration Judges has been extended to five weeks. This new training program includes an extensive academic curriculum covering relevant legal and procedural topics, as well as on-the-job training where new Immigration Judges observe, and are observed by, mentor judges. Additionally, new Immigration Judges must pass a rigorous immigration law examination before being permitted to adjudicate cases.

Once on the bench, the learning continues for all of our Immigration Judges. Continuing education opportunities on important topics, such as asylum and country conditions, are offered to all adjudicators and legal staff on a regular basis. Participation in many training sessions is mandatory. To accommodate the fact that our Immigration Judges are spread out from Honolulu, Hawaii, to San Juan, Puerto Rico, we offer

computerized training sessions and home-court peer mentoring. In August 2008, all Immigration Judges nationwide participated in a two-day training program on asylum and other topics relevant to their duties. Due to the success and positive feedback from this training, we are currently planning a similar session on international religious freedom.

Further, to ensure that the Immigration Judges have legal research tools readily available, we launched a new *Immigration Judge Benchbook* that contains a growing library of reference materials on immigration law topics. We also expanded EOIR's online *Virtual Law Library*, which includes up-to-date case decisions, immigration law resources, and guidance. In addition, we now distribute on a monthly basis the *Immigration Law Advisor*, a newsletter on regulatory, judicial, and legislative developments in immigration law. We also recently published an online *Immigration Court Practice Manual* that provides uniform procedures, requirements, and recommendations for parties who present cases before the Immigration Courts. The manual was made publicly available in February 2008 and became effective nationwide in July 2008, giving the private bar and others ample time to review and provide comments before its implementation. Revisions based on public comments were made to the manual before its implementation, and our efforts have been applauded by the private bar. Further, we continue to encourage the public to identify errors or ambiguities in the text and to propose revisions for future editions. Equally importantly, EOIR's *Ethics Manual* is being revised to provide detailed ethics guidance to Immigration Judges and Board Members.

In terms of technology, we have begun implementing Digital Audio Recording (DAR) to replace the analog taping system that has been used in the past to record immigration proceedings. DAR is a new, state-of-the-art recording system designed to achieve better quality recordings of Immigration Court hearings. DAR has been implemented in 21 Immigration Courts, and, subject to the approval of the President's Budget for 2009, we intend to continue its implementation nationwide.

As Director of EOIR I can assure you that EOIR and the Department continue to seek the resources necessary to hire additional Immigration Judges and staff, to provide them with sufficient training and assistance, to fully implement DAR, and to continue pursuing other improvement measures that will benefit our agency and the parties who appear before us. During the last three budget cycles, the Department and the Office of Management and Budget (OMB) have supported EOIR's requests for increased resources without exception. For FY 2007, the Department and OMB approved our request for a program increase of 120 positions, which included 20 additional Immigration Judges. Congress ultimately approved that request.

At the time the FY 2007 budget was under review in Congress, the Department and OMB approved our request for an additional 120 positions to be included in the 2006 War Supplemental appropriation. Congress approved that request as well, providing

“start up” funding which expired at the end of FY 2007. Permanent funding for those positions was included in the President’s Budget for 2008. However, while both the House and Senate bills approved the request, ultimately the final FY 2008 Omnibus appropriation did not include enough funding to support the positions.

Therefore, to date, Congress has provided funding for 120 of the 240 positions that EOIR requested funding for over the last three fiscal years, and EOIR is near the end of the process of filling those positions.

In regard to the FY 2009 budget, we urge the appropriators in Congress to meet the President’s budget. The resources the President requests are essential to our ongoing efforts to recruit, train, and equip top-quality Immigration Judges and court staff. Further, it would greatly assist in the process of transforming our entire immigration court system.

Chairwoman Lofgren, we appreciate your interest in EOIR and the opportunity to share with you the accomplishments we have made in better fulfilling our mission. I would be pleased to answer your questions at this time. Thank you.