



# Department of Justice

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**STATEMENT OF**

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UNITED STATES DEPARTMENT OF JUSTICE**

**BEFORE THE**

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES,  
BORDER SECURITY, AND INTERNATIONAL LAW**

**HEARING ENTITLED**

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**PRESENTED**

**JUNE 17, 2010**

Madam Chair, Congressman King, and other distinguished Members of the Subcommittee, thank you for the opportunity to appear before you today to speak about the progress that the Department of Justice's Executive Office for Immigration Review (EOIR) has continued to make since the agency's last appearance before the Subcommittee in 2008. The Department is taking significant steps to further improve the immigration adjudication system, while managing the more than 275,000 pending cases, the largest number the system has ever encountered.

As background, EOIR administers the immigration court system, composed of both trial and appellate tribunals. The trial level consists of 237 immigration judges in 58 immigration courts around the country. The immigration courts are overseen by a Chief Immigration Judge, assisted by a Deputy Chief Immigration Judge and a number of Assistant Chief Immigration Judges. Removal proceedings begin with the filing of a formal charging document against an alien by the Department of Homeland Security (DHS). EOIR's immigration judges must decide whether the alien is removable from the United States based on the DHS charges and whether the alien is eligible for and merits any relief from removal. The immigration courts are high-volume tribunals; in FY 2009 the courts received more than 390,000 matters, a number expected to rise in FY 2010. As discussed below, the Department is currently adding the resources required for the immigration court system to handle this caseload in coming years.

The appellate level of EOIR is the Board of Immigration Appeals (BIA), which sits in Falls Church, Virginia. The BIA has nationwide jurisdiction and hears appeals from the decisions of immigration judges. The BIA is composed of 15 Board members, supported by a staff of about 150 attorney advisers, and headed by a Chairman. Like the immigration courts, the BIA is a high-volume operation; in FY 2009 the Board issued more than 33,000 decisions. In addition, the BIA issues binding precedent decisions interpreting complex areas of immigration law and procedure. An appeal to the Board can be filed by either the alien or DHS. An alien who loses his or her appeal before the BIA may seek review of that decision in the federal courts. DHS, however, may not seek review of a BIA decision in federal court.

The immigration courts' caseloads are tied directly to DHS enforcement and detention initiatives. DHS determines both detention space allocations and the filing of charging documents, and thus EOIR is in regular and continuing contact with DHS in order to anticipate and respond to caseload trends. This close coordination is important to allow our two departments to explore additional efficiencies and ways of handling the removal adjudication process smarter and more effectively, while ensuring that we are focusing resources on the highest priority removal cases, those involving individuals with serious criminal convictions and others who pose a danger to our communities.

My testimony today will discuss several key areas where the Department of Justice and EOIR are focusing particular attention to ensure that the immigration court system functions effectively.

## Hiring

A well functioning immigration court system begins with adequate resources. The Department is fully committed to ensuring that the immigration courts have the appropriate number of immigration judges and support staff to make sure that the system operates efficiently, providing prompt adjudication of removal cases while giving each individual case the review that it merits.

A major hiring initiative is underway this year which, by the time it is finished, will add 47 immigration judges and additional support staff in 2010 alone. The initiative involves the hiring of newly authorized immigration judges, which, when filled along with other vacancies, will bring the total immigration judge corps to 280 by the end of this year. This hiring initiative is one of the Department's high priority performance goals for FY 2010 and 2011. If Congress approves the Administration's request for 2011, this initiative will have the effect of increasing the size of the immigration judge corps to 301 by next year.

Since 2008, the process by which EOIR hires immigration judges has changed substantially. Under the current process, EOIR places job opportunity announcements on the Department's website, and on the Office of Personnel Management's federal employment website, [www.usajobs.gov](http://www.usajobs.gov). When EOIR advertises an immigration judge vacancy, the Department also notifies more than 120 well-established legal organizations. The multiple methods of announcing these important vacancies help ensure wide dissemination of the announcements to potential applicants with varied backgrounds and the strongest possible qualifications. In December 2009, EOIR posted multiple immigration judge vacancies, resulting in the agency receiving about 1,750 applications. After vetting through human resources, four panels, each consisting of Assistant Chief Immigration Judges (ACIJs), screened and evaluated the applications. They were evaluated based on the candidate's temperament to serve as a judge, knowledge of the relevant law, experience handling complex legal issues, experience conducting administrative hearings, and knowledge of judicial practices and procedures.

As a result of the screening and evaluation process, EOIR interviews the most highly rated candidates. At the conclusion of the interviews, the EOIR Director and the Chief Immigration Judge identify the top candidates for each vacancy and they are referred to panels of senior Department officials for further evaluation and interviews. These panels make the final recommendations for selection by the Attorney General.

Under this new process, the Department has hired 11 highly qualified immigration judges so far this fiscal year. Further, 43 immigration judge candidates are in the final stages of the hiring and selection process, and will be placed in more than 25 immigration courts nationwide. The length of time from when a person applies for an immigration judge vacancy to when an appointed candidate enters on duty has been substantially reduced under the new process, from more than a year in some instances to a few months.

In addition, EOIR is focused on hiring judicial law clerks to assist the immigration judges. Law clerks are hired for two years. For 2009-10, the number of

judicial law clerks in place is 62. For 2010-2011 that number will rise to 90, and EOIR hopes to have further increases in future years. These law clerks are critical to helping the immigration judges manage their large and complex caseloads.

### **Training**

It is not enough to hire the most qualified people to serve as immigration judges. The Department must also make sure that judges receive robust initial training and that continuing and appropriate training opportunities are provided. The Department recognizes the central role that training plays in maintaining a professional corps of judges, and has ramped up training initiatives at EOIR.

In December 2009, EOIR added a new ACIJ for training. This new senior official is responsible for enhancing and maintaining adequate training programs for immigration judges and other court staff. To ensure that they are ready to hear cases fairly and promptly, EOIR now provides new immigration judges with five weeks of training. 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 a new immigration law exam before they can begin adjudicating cases. A formalized review process is included as part of a new immigration judge's probationary period, which typically lasts two years. If performance issues arise, EOIR offers counseling, and additional training and mentoring before more formally disciplining an immigration judge.

EOIR also goes to great lengths to ensure that both new and experienced immigration judges receive continuing education. In addition to the new immigration judge training described above, EOIR held a legal training conference in August 2009 and will do so again in July of this year. The week-long training conference is mandatory for all immigration judges, members of the BIA, and BIA attorney advisors. The conference covers the many substantive legal issues that come before the immigration courts, relating to asylum, criminal issues, bond proceedings, adjustment of status, and many other topics. The conference also covers topics ranging from handling immigration proceedings involving unaccompanied alien children and respondents with mental competency issues to combating immigration fraud and managing a courtroom. EOIR also holds training conferences for judicial law clerks, court administrators, and staff interpreters.

In order to maintain flexibility and meet the agency's continuing education demands throughout the year, EOIR also offers other training, both mandatory and optional, via a computer-delivered system. For example, the ACIJ for training is currently developing two DVDs for the immigration judges on dealing with diverse populations and courtroom management issues. We expect both to be complete by the end of 2010 and EOIR will make this combined eight hours of immigration judge training mandatory. At the BIA, all Board members and attorney advisors are offered monthly training sessions on diverse legal and procedural topics that come before the BIA.

In addition to the formal training programs that EOIR offers its staff, the agency continues to improve the Immigration Judge Benchbook. In March, EOIR added a section on mental competency issues that has been well-received by many in the private sector. This new section provides guidance and templates for immigration judges in handling the special challenges posed by respondents with mental competency issues. The Immigration Court Practice Manual and BIA Practice Manual, both available on EOIR's website, are also valuable resources for immigration judges, the BIA, and the public.

### **Accountability**

The Department of Justice expects not only legally correct decisions from its immigration judges and Board members, but also the demeanor and temperament appropriate for delegates of the Attorney General. In May of this year, EOIR increased the transparency of its system for addressing complaints about immigration judges. EOIR continues to monitor immigration judge performance through an official performance work plan and evaluation process, as well as EOIR's performance management program and the daily supervision of the courts by ACIJs in the field. EOIR's website now houses a link to a summary of the complaint process, along with a flow chart and instructions for filing a complaint. In the near future, the website will also include statistics related to the numbers and types of complaints filed and how they were resolved. EOIR remains committed to ensuring that any allegations of misconduct involving immigration judges are investigated and resolved, promptly and appropriately.

In recent years, disparities in the grant rates in asylum cases among immigration judges or courts have been studied and reported upon. The Department and EOIR take seriously any claims of unjustified and significant anomalies in immigration judge decision-making, and EOIR has taken a number of steps to evaluate the problem and seek possible solutions. For example, in November 2008 EOIR met with the Government Accountability Office (GAO) to explore GAO's multi-variate analysis methods demonstrating asylum grant rate disparities. With that information, and with its own internal analysis, EOIR identified judges with grant or denial rates significantly different from those of their peers and cross-referenced that data with other indicia of judicial performance. As appropriate, ACIJs assess the reasons for the disparity and address any underlying performance issues.

### **Board of Immigration Appeals**

In 2006 the Attorney General ordered changes in the procedures governing the BIA, in order to make sure that appeals from immigration judge decisions receive adequate review while still ensuring that cases move quickly and do not linger at the BIA for years, as was a problem in the past.

Over the past two years, the BIA has implemented the Attorney General's directives by enhancing the quality of its decisions while still keeping up with the appellate caseload. One example is the BIA's use of affirmances without opinion

(AWOs), which are controversial because they do not spell out the BIA's reasons for its decisions. In 2004, AWOs comprised more than 30 percent of the BIA's decisions. In the past few years the Board has steadily decreased the use of AWOs, to the point that now only four percent of the BIA's decisions are AWOs. At the same time the Board has improved the quality of its decisions by ensuring that they set forth the legal bases for the Board's conclusions, to ensure that parties appearing before the Board understand why the Board decided how it did.

Another mission of the BIA is to publish precedent decisions, which provide guidance to immigration judges and the parties in removal proceedings on the many complex legal issues that arise in removal proceedings. The BIA has increasingly emphasized this part of its mandate, publishing more precedent decisions in the past four years than in any similar period since the late 1990s.

The Department currently has under advisement draft regulations that would codify these changes, and it is considering whether other changes are worth making. Regardless, EOIR and the BIA have largely implemented the Attorney General's 2006 directives, even in the absence of regulations.

These changes at the BIA have been partially responsible for a welcome and declining caseload in the federal courts of appeals in the past two years. We can confirm the assessment provided in Chief Justice Roberts' 2009 year-end review on the judiciary, in which he reported that the workload in the regional courts of appeals declined in 2009, primarily as a result of fewer appeals from decisions of the BIA.

There are approximately 2,700 fewer appeals to the federal courts from decisions of the BIA now as compared to a year ago. The most significant decreases have been in the Second and Ninth Circuits, which traditionally have been the courts with the largest immigration caseloads. In addition, the federal courts are affirming BIA decisions at a higher rate now. The percentage of BIA cases reversed by the courts declined from 17.5 percent in 2006 to 11.2 percent in 2009.

The federal court picture is complex, and there are various possible reasons for the decline in the federal courts' immigration caseload. These likely include legal and procedural changes in the federal courts themselves. However, we believe that one reason for the decline is the changes at the BIA over the past few years outlined above, namely improvements in the clarity and quality of BIA decisions and the decline in the use of AWOs.

### **Other Initiatives**

#### **Legal Orientation Program**

In FY 2008, EOIR's Legal Orientation Program (LOP), which provides assistance to aliens in detention, was expanded from 13 sites to 25 sites. For FY 2010, the LOP was expanded to four additional sites in the New York City area. The LOP now provides

legal orientation, which includes legal information, self-help assistance, and pro bono referral, to over 60,000 detained aliens per year, roughly 40 percent of all detained aliens in removal proceedings.

In addition to serving detained aliens, the LOP is also being utilized for certain non-detained aliens who appear in immigration court. For example, EOIR is close to implementing a pilot program for the Miami Immigration Court which, if successful, could be expanded nationwide. The program will use a local LOP contractor to provide LOP services to non-detained or released individuals with cases before the Miami Immigration Court who (1) have been unable to secure counsel after being given the opportunity to do so; and (2) the immigration judge believes do not understand the nature and purpose of the proceedings, such as those who might be mentally incompetent.

Under the program, immigration judges at the Miami Immigration Court will be able to refer these individuals to the LOP contractor to receive individual legal orientation and referral to pro bono legal services. EOIR is planning to launch the pilot program this July. The agency will also expand the LOP for custodians of unaccompanied alien children in the Fall of this year.

### **Digital Audio Recording**

The technology available to assist the immigration courts and the BIA in carrying out their responsibilities has improved tremendously in the past few years. EOIR continues to implement a Digital Audio Recording (DAR) system to replace the antiquated analog taping system in the immigration courts. DAR is a state-of-the-art recording system designed to achieve better quality and more easily accessible recordings of immigration court hearings. DAR has now been implemented in 281 courtrooms around the country. Full implementation, including the final installations in New York, Los Angeles, and Honolulu, should be complete by the end of FY 2010.

### **Fraud and Abuse**

In 2007, EOIR established a Fraud and Abuse Program so that cases of immigration fraud and abuse can be properly referred to the appropriate investigative agencies for action. To assist immigration court and BIA staff in identifying suspected fraud in immigration proceedings, EOIR conducts a Fraud Program training during the annual legal training conference. The staff then refers identified cases to the Fraud Program, whose staff reviews the information, conducts preliminary investigations, and forwards those cases with evidence of fraud to investigative agencies. The Fraud Program also receives referrals regarding improper activity by aliens, practitioners, and immigration consultants from many other sources, including the public.

### **Interpreters**

EOIR has developed an orientation, mentor, and continuing education program for interpreters. The performance review process was redesigned to centralize,

standardize, and enhance staff interpreter evaluations. Moreover, EOIR created a website link for the public to report complaints regarding interpreter services.

### **Sanction Authority/Frivolous Filings**

A draft EOIR civil money penalties rule that relates to sanction authority is currently under review. Finalizing the rule for vetting and publication is a priority for the agency.

EOIR has, however, by way of a final rule effective January 20, 2009, increased the grounds for disciplining attorneys and representatives who appear before immigration courts or the BIA. The rule also allows EOIR to sanction the parties and counsel for clearly defined categories of gross misconduct.

### **Budget**

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, to fully implement DAR, and to continue pursuing other improvement measures that will benefit the immigration court system and the parties who appear before EOIR. During the last five budget cycles, the Department and the Office of Management and Budget have supported EOIR's requests for increased resources. For FY 2010, the President requested and Congress approved \$298 million and 1,558 positions for EOIR, including a critically-needed increase of 172 positions (28 immigration judges; 28 judicial law clerks; 16 BIA attorneys; and requisite support staff positions). The appropriation also included \$10.2 million to continue development of EOIR's priority information technology initiatives, including DAR, information sharing and electronic document management systems. For FY 2011, the President's budget includes \$316 million and 1,683 positions for EOIR, representing an increase of 125 positions (21 immigration judges; 21 law clerks; 10 BIA attorneys; and requisite support staff). The resources the President requests are essential to our ongoing efforts to recruit, train, and equip top-quality immigration judges and court staff.

### **Conclusion**

Madam Chair, Congressman King, and distinguished Subcommittee Members, despite the continuing challenges that it faces, EOIR has made great progress in the past two years. Our EOIR staff – immigration judges, Board members, attorney advisors, and support staff – are dedicated professionals who work every day to ensure fair immigration court proceedings, both at the trial and appellate levels. EOIR faces the demands of a large and increasing caseload, but, with Congress' continued support, the Department is 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.