



# Department of Justice

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**STATEMENT OF**

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**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES DEPARTMENT OF JUSTICE**

**BEFORE THE**

**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE**

**FOR A HEARING ENTITLED**

**“CHALLENGES AT THE BORDER: EXAMINING THE CAUSES, CONSEQUENCES, AND  
RESPONSES TO THE RISE IN APPREHENSIONS AT THE SOUTHERN BORDER”**

**PRESENTED ON**

**JULY 9, 2014**

**Statement of Director Juan P. Osuna  
Executive Office for Immigration Review  
Before the Senate Committee on  
Homeland Security and Governmental Affairs  
July 9, 2014**

**Introduction**

Mr. Chairman, Senator Coburn, and other distinguished Members of the Committee, thank you for the opportunity to speak with you today about the Department of Justice's Executive Office for Immigration Review (EOIR), and our contributions to the Government-wide response to the humanitarian situation in the Rio Grande Valley areas of our Nation's Southwest border.

EOIR administers the Nation's immigration court system, composed of both trial and appellate tribunals. Removal proceedings before EOIR begin when the Department of Homeland Security (DHS) formally charges an alien with being removable from the United States. EOIR's immigration judges decide whether the alien is removable based on the facts and the DHS charges and, if removable, whether the alien is eligible for and merits relief or protection from removal. EOIR is responsible only for civil immigration proceedings, and EOIR's adjudicators have no role in state or federal criminal proceedings. EOIR's immigration judges, for example, do not determine the guilt or innocence of aliens charged with criminal wrongdoing at the border or in the interior of the country.

Overall there are now 243 immigration judges in 59 courts around the country. Many of our courts are located near or along the southern border, including in San Diego, California; El Paso, Texas; and Harlingen, Texas. Some courts are located within DHS detention centers, including the border locations of East Mesa, California; Eloy, Arizona; and Port Isabel, Texas.

The appellate level of EOIR is the Board of Immigration Appeals (BIA), which sits in Falls Church, Virginia. The BIA consists of 15 Board Members, supported by a staff of attorney advisors, and is headed by a Chairman. The BIA has nationwide jurisdiction and hears appeals of immigration judge decisions. When appropriate, the BIA issues binding precedent decisions interpreting complex areas of immigration law and procedure. Either an alien or DHS may file an appeal with the BIA.

At the end of FY 2013, EOIR's immigration courts had 350,330 cases pending, marking an increase of approximately 23,000 cases pending over the end of FY 2012. In the first three quarters of FY 2014, that pending caseload grew by approximately 25,000 cases, reaching 375,373 cases pending, our highest caseload to date. The pending caseload is directly tied to

both the number of cases that DHS files in the immigration courts and EOIR's ability to complete those cases with available resources.

Each immigration court's caseload is tied directly to DHS enforcement activities. DHS determines both detention space allocations and the filing of charging documents. As such, EOIR is in regular and continuing contact with DHS to anticipate and respond to caseload trends. Through this close coordination, our two departments are able to explore additional ways of handling the removal adjudication process more efficiently and focus resources on the highest priority cases.

### **Immigration Court Process**

DHS initiates removal proceedings when it serves an individual with a charging document, called a Notice to Appear (NTA), and files that NTA with one of EOIR's immigration courts. This is the same process currently being followed for the large numbers of unaccompanied minors and adults with children that have been crossing the border in recent weeks.

When the immigration court receives the NTA from DHS, the court schedules a removal hearing before an immigration judge. There may be one or multiple hearings, depending on the nature of the case. Removal proceedings begin with a "master calendar" hearing, during which the immigration judge ensures that the individual understands the alleged immigration law violations. The judge also provides information on available free or low cost legal representation resources in the area. Then, generally, the immigration judge will schedule an "individual" hearing at which both parties will present the merits of the case to the immigration judge.

The outcome of many removal proceedings depends on whether the individual is eligible for relief or protection from removal. Immigration law provides relief or protection from removal to individuals who meet specific criteria. In most removal proceedings, individuals admit that they are removable based on the charge contained in the NTA, but apply for one or more forms of relief such as cancellation of removal, adjustment of status, asylum, or other remedies provided by immigration law. For cases involving adults with children, DHS will issue an NTA to each family member, although the individual members may, if appropriate, appear together in consolidated proceedings before the immigration court.

Unaccompanied minors are placed in immigration proceedings when DHS files an NTA with the immigration court after the child is placed with an appropriate sponsor or in the long-term care of HHS' Office of Refugee Resettlement (ORR), thereby allowing the child's case to begin in the court location where the child will be residing and can avoid delays due to changes in venue. Cases involving children are placed on the court's juvenile docket. All immigration

courts have arranged for specialized juvenile dockets, which consolidate children’s cases for master calendar hearings. Twenty-six immigration courts are actively hearing such cases on these dockets. The cases generally proceed under the laws that apply to adults, but judges employ their training to take into consideration the special vulnerabilities and needs of children. We provide specialized training to immigration judges who are expected to hear cases involving juveniles. In addition, the Office of the Chief Immigration Judge has issued an Operating Policies and Procedures Memorandum that deals exclusively with the handling of cases involving unaccompanied children.

### **Asylum and Protection Under the Convention Against Torture**

All EOIR staff members understand the importance of asylum claims and claims for protection and of the need to decide these life-changing cases expeditiously while taking appropriate time to consider all of the relevant facts and applicable law. While we take seriously our responsibility to decide cases in an expeditious manner, the utmost priority for every type of case is ensuring that every respondent is treated fairly and that the facts and arguments presented by the parties are considered in accordance with U.S. immigration law.

There are two types of asylum processes – defensive and affirmative. The defensive asylum process generally applies to aliens who are in removal proceedings before EOIR and who request asylum before an immigration judge. The process is called “defensive” because it can provide aliens with relief (a “defense”) from removal from the United States. The affirmative asylum process generally applies to aliens who have not been placed into removal proceedings and who initially file asylum applications with DHS’s U.S. Citizenship and Immigration Services (USCIS). Affirmative asylum applicants whom USCIS does not find to be eligible for asylum and are not in lawful status are referred to immigration court, where immigration judges conduct a *de novo* hearing of their asylum cases.

Generally, a person in removal proceedings would express a desire to file an asylum application at a master calendar hearing. The immigration judge would then schedule the person’s case for an individual hearing on the merits of the asylum claim. Asylum claims asserted by UAC are always initially heard by USCIS, and their immigration court cases may be administratively closed pending a USCIS interview and decision on the asylum application. The immigration judge will consider the asylum application if it is not granted by USCIS.

### **Legal Representation for Children**

Children are not guaranteed representation in immigration court proceedings, and the need for legal services far exceeds available pro bono resources. The removal cases of unaccompanied alien children are often continued multiple times in order to allow a child the

opportunity to seek legal representation. The Department of Justice is taking action to encourage legal access and, in some cases, direct representation to children.

DOJ recently launched "justice AmeriCorps," a grant program that will enroll approximately 100 lawyers and paralegals as AmeriCorps members to provide legal services to the most vulnerable of these children. This program, a partnership with the Corporation for National and Community Service, responds to Congress' direction to EOIR "to explore ways to better serve vulnerable populations such as children and improve court efficiency through pilot efforts aimed at improving their legal representation." In addition, DOJ believes the AmeriCorps members will help identify unaccompanied children who have been victims of human trafficking or abuse to assist in the investigation and prosecution of those who perpetrate such crimes on those children.

### **Adjudication Priorities**

EOIR has been working closely with its federal partners in order to respond to the recent increase in migrants along the southwest border. As a result of this coordination, EOIR will be refocusing its resources to prioritize cases involving migrants who crossed the southwest border in recent weeks and are placed into removal proceedings by DHS. EOIR will now prioritize the adjudication of cases involving unaccompanied children, adults with children in detention, adults with children released through "alternatives to detention," and other individuals in detention. To realign our resources with these priorities, EOIR will reassign immigration judges in immigration courts around the country from their regular dockets to hear the cases of individuals falling in these four groups. Lower priority cases will be rescheduled to accommodate higher priority cases.

In addition, as DHS builds additional detention capacity, including for family units, EOIR will assign additional judges to handle the cases of those individuals who are detained and placed in removal proceedings. These judges will help adjudicate new cases as quickly as possible consistent with fairness and due process and all existing legal and procedural standards, including those for asylum applicants.

Because some immigration judges will be reassigned to immigration courts along the southwest border, the recent migrant influx is likely to impact the dockets of immigration court locations nationwide. Therefore, EOIR will also focus its attention on hiring new immigration judges to adjudicate cases in immigration courts around the country. EOIR also plans to expand its legal access programs in order to improve access to legal information and counseling for those facing removal proceedings. EOIR this week sent to the Federal Register a rule to provide for the appointment of temporary immigration judges to assist with the situation.

Although adjudication priorities are changing, all cases will be adjudicated consistent with all substantive and procedural rights and safeguards applicable to immigration proceedings. EOIR remains committed to working with our federal partners to help address this urgent border situation as it continues to evolve.

### **Budget and Resource Impact**

EOIR must maintain the ability to properly staff our immigration courts with the immigration judges and support staff needed to most efficiently and fairly process cases. In 2010, the Department and EOIR placed a great emphasis on the hiring of new immigration judges in order to address the rapidly rising caseloads. The effort met with significant success, increasing our immigration judge corps and adding more law clerks to assist the judges.

Unfortunately, funding constraints that resulted in a hiring freeze beginning in January 2011 had a negative and worsening impact upon EOIR's core mission, and increased the number of cases pending adjudication and extending court dockets further into the future. And more than 100 immigration judges – more than one third of the immigration judge force – are eligible to retire in FY 2014 alone.

In February 2014, the FY2014 appropriations act included funds enabling the Department to lift the hiring freeze and EOIR began a hiring initiative to backfill more than 200 vacant positions, including at least 30 immigration judges.

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, and to continue pursuing other improvements that will benefit the immigration court system and the parties who appear before EOIR.

On March 4, 2014, the President presented his FY 2015 Budget request to Congress. EOIR's request includes \$347.2 million in discretionary budget authority, which is approximately 11% above the FY 2014 enacted level. The resources the President's Budget requests for EOIR for FY 2015 are essential to our ongoing efforts to recruit, train, and equip top-quality immigration judges and court staff.

### **Conclusion**

Mr. Chairman, Senator Coburn, and distinguished Committee Members, despite the caseload challenges that it faces, EOIR continues to make great strides. Our adjudicators and staff are dedicated professionals who work every day to ensure efficient and fair immigration court proceedings, both at the trial and appellate levels. EOIR faces the demands of a large and

increasing caseload, but, with Congress's continued support, we are 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.