



OOD  
PM 19-11

Effective: May 1, 2019

To: All of EOIR  
From: James R. McHenry III, Director *JM*  
Date: March 29, 2019

### **“NO DARK COURTROOMS”**

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PURPOSE:	Memorialize policies to reduce and minimize the impact of unused courtrooms and docket time
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	None

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A “dark,” *i.e.* unused, immigration courtroom represents a lost opportunity for both respondents and the government to resolve immigration cases in a timely manner consistent with due process. The current pending immigration court caseload exceeds 850,000, and some cases are scheduled two to three years in the future. Consequently, dark courtrooms not only exacerbate the size of the pending caseload, but also significantly hinder the agency’s ability to reduce the backlog.

A combination of sluggish immigration judge hiring between FY 2010 and FY 2016 and the prevalence of overlapping alternate work schedules contributed to a proliferation of dark courtrooms. For instance, as of June 2017, there were more than 100 immigration courtrooms not being used nationwide each Friday of every week.

Beginning in 2017, however, EOIR has actively sought to minimize the presence and effects of dark courtrooms by implementing practices designed to ensure that all available courtrooms are used for hearing cases every day during normal court operating hours. Although EOIR has discussed these practices previously in different fora and its Office of the Chief Immigration Judge (OCIJ) has been working on them for some time, this PM formally codifies EOIR’s policy of “no dark courtrooms” and reaffirms its commitment to reducing unused docket time in order to adjudicate cases in a timely and impartial manner.

Increased hiring of immigration judges, increased availability of video teleconferencing (VTC), and improved scheduling and docketing practices since 2017 have made it easier to identify and address dark courtrooms and unused docket time. As most immigration judges maintain relatively consistent dockets over time, EOIR is also aware of gaps in immigration court scheduling that need to be covered, and it can take appropriate steps far enough in advance to address those gaps.

EOIR now also has a robust corps of supervisory immigration judges who can more easily coordinate scheduling across courts as necessary to ensure that as many dark courtrooms as possible are covered.

Accordingly, it is appropriate for EOIR to adopt a formal policy of “no dark courtrooms” and to direct OCIJ managers to ensure, to the maximum extent practicable, that all blocks of available immigration court time are being utilized for scheduling cases. In short, there should not be a dark courtroom during a court’s normal operating hours unless there is absolutely no immigration judge available, including by VTC.

In implementing this policy, OCIJ managers should be mindful that immigration courts that presently have excess capacity due to small numbers of cases on their home dockets may hear cases from other courts, either in-person at a nearby court or by VTC. Similarly, immigration judges with small dockets may be re-assigned cases from those with heavier dockets to ensure consistent and timely scheduling of cases overall. Further, OCIJ managers should ensure that each individual immigration judge is assigned a sufficient number of cases to allow that judge the ability to meet any applicable performance measures. Additionally, consistent with OPPM 17-01, if an immigration judge grants a continuance of an individual merits hearing more than 30 days prior to the scheduled hearing date, the court administrator should endeavor to schedule another case in that slot as soon as possible.

To assist in addressing dark courtrooms, OCIJ managers should also be mindful of the availability of rehired retired immigration judges and of the ability of immigration judges at EOIR’s immigration adjudication centers to hear cases by VTC.

It is important for supervisory immigration judges to maintain familiarity with adjudicatory conditions and case issues encountered by non-supervisory immigration judges. Although many supervisory immigration judges do hear cases on a regular basis, it is vital for all supervisory immigration judges to do so in order to better understand and assess the working conditions of the immigration judges and court staff whom they supervise. Accordingly, each Assistant Chief Immigration Judge should hear cases at least four times per month while covering a dark courtroom. Each Deputy Chief Immigration Judge, the Principal Deputy Chief Immigration Judge, and the Chief Immigration Judge should also hear cases at least once per month, again while covering a dark courtroom. Supervisory immigration judges on leave, on detail, or otherwise unavailable in circumstances approved by the Office of the Director are exempt from this requirement.

Finally, nothing in this policy is intended to eliminate or restrict the use of administrative time by immigration judges, and the agency understands that some courtrooms may not be used while immigration judges are utilizing administrative time. Rather, OCIJ management should ensure that the use of administrative time does not leave courtrooms dark any more than is necessary, and it should consider utilizing VTC or supervisory immigration judges to cover cases during that time.

This PM is effective May 1, 2019.

This PM is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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