



OOD
PM 19-07

Effective: December 19, 2018

To: All of EOIR
From: James R. McHenry III, Director *JRM*
Date: December 19, 2018

IDENTIFYING AND REPORTING FRAUD AND ABUSE

PURPOSE:	Provides guidance regarding the reporting of suspected instances of fraud in EOIR proceedings
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b),(e)
CANCELLATION:	None

This policy memorandum is intended to remind EOIR employees to remain alert for fraud in our immigration proceedings and to act appropriately when suspected fraud is discovered. EOIR's mission is "to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws." Application and benefit fraud in immigration proceedings erodes EOIR's ability to carry out that mission successfully. Accordingly, EOIR employees must remain vigilant and assertive regarding potential fraud and misrepresentation in order to protect the probity and fairness of all proceedings before the Office of the Chief Immigration Judge, the Board of Immigration Appeals, and the Office of the Chief Administrative Hearing Officer.

Fraud may occur in any immigration case, including asylum cases. As one federal court has observed, "[c]ases involving fraudulent asylum claims are distressingly common." *Angov v. Lynch*, 788 F.3d 893, 902 (9th Cir. 2015), *cert. denied* 136 S. Ct. 896 (2016). The same court further described "an unfortunate reality that makes immigration cases so different from all other American adjudications: Fraud, forgery and fabrication are so common—and so difficult to prove—that they are routinely tolerated." *Id.* at 901. Although the administration of immigration laws may create "an environment where lying and forgery are difficult to disprove, richly rewarded if successful and rarely punished if unsuccessful," *id.*, EOIR does not tolerate fraud or misrepresentation and should not contribute to any environment that would undermine the fundamental integrity of its proceedings.

On June 22, 2017, EOIR's Office of the Director issued a Memorandum, attached as Appendix A, reminding all EOIR employees of their responsibilities regarding suspected fraud and abuse and directing them to take action where warranted.

On December 5, 2017, former Attorney General Jeff Sessions outlined for EOIR several principles, adherence to which ensures that the adjudication of immigration cases serves the national interest. Those principles include one regarding fraud in immigration proceedings: "The attempted perpetration of fraud upon the United States government in our immigration court system can lead to delays, inefficiencies, and the improper provision of immigration benefits." Former Attorney General Sessions also directed that any and all suspected instances of fraud should be promptly documented and reported to EOIR management in accordance with applicable law. The memorandum from the former Attorney General is available at <https://www.justice.gov/eoir/file/1041196/download>.

These policies remain in effect at EOIR, and all employees, especially those who have entered on duty after these policies were issued, should review them to ensure compliance. Fraud and misrepresentations have no place in immigration proceedings and will not be tolerated.

To report issues of fraud or abuse, EOIR employees should contact the Fraud and Abuse Prevention Program at EOIR.Fraud.Program@usdoj.gov or (877) 388-3840. Complaints or questions may also be directed to Fraud and Abuse Prevention Counsel, Brea Burgie, at Brea.Burgie@usdoj.gov or (703) 756-8156.

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.

Please contact your supervisor if you have any questions.

Appendix A



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Director

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

June 22, 2017

MEMORANDUM FOR: ALL EOIR EMPLOYEES

FROM: James McHenry *M*
Acting Director

SUBJECT: Identifying and Reporting Fraud and Abuse

The Department of Justice plays a central role in ensuring the faithful application of the law in the United States, including immigration law. Application and benefit fraud in immigration proceedings, however, undermines the overall integrity of our immigration law system, places unwarranted burdens on taxpayers, and puts public safety and national security at risk. Thus, we must remain watchful in ensuring that immigration fraud and abuse is rooted out of EOIR proceedings to the greatest extent possible. To that end, I am reminding all EOIR employees of their responsibilities regarding suspected fraud and abuse, particularly regarding applications for benefits, relief, or protection in removal proceedings, and directing EOIR employees to take action where warranted.

EOIR's Fraud and Abuse Prevention Program (Fraud Program) was created as a result of a directive in 2006 by then-Attorney General Alberto Gonzales entitled "Measures to Improve Immigration Courts and the Board of Immigration Appeals." Measure Twenty-One, "Referral of Immigration Fraud and Abuse," instructed the Director of EOIR, "in consultation with the Director of the Executive Office for United States Attorneys," to "develop a procedure by which immigration judges and Board members may refer cases of immigration fraud and abuse to the appropriate investigative body for appropriate action, including possible future referral to and prosecution by the U.S. Attorney's Offices."

As a result of this measure, EOIR promulgated 8 C.F.R. § 1003.0(e)(2), which directed EOIR's General Counsel (OGC) to designate an anti-fraud officer to:

- (i) Serve as a point of contact relating to concerns about possible fraud upon EOIR, particularly with respect to matters relating to fraudulent applications or documents affecting multiple removal proceedings, applications for relief from removal, appeals, or other proceedings before EOIR;
- (ii) Coordinate with investigative authorities of the Department of Homeland

- Security, the Department of Justice, and other appropriate agencies with respect to the identification of and response to such fraud; and
- (iii) Notify the EOIR disciplinary counsel and other appropriate authorities with respect to instances of fraud, misrepresentation, or abuse pertaining to an attorney or accredited representative.

When EOIR employees report suspected incidents of fraud and abuse to the Fraud Program, the Fraud Program will investigate all complaints and, if substantiated, take appropriate actions. Those actions may include referring the matter to federal, state, or local law enforcement, sending cease-and-desist letters, or coordinating with EOIR's Attorney Discipline or state bar authorities for disciplinary enforcement actions.

EOIR's General Counsel designated EOIR's first Fraud and Abuse Prevention Counsel in 2007, and former EOIR Director Kevin D. Rooney noted in a memorandum that same year that "every EOIR employee who detects suspicious conduct is required to report it." Since then, Fraud Program personnel have worked closely with law enforcement authorities and prosecutors on the federal, state, and local levels to investigate and prosecute fraud in all forms. They have also coordinated with EOIR's Attorney Discipline Program and state bar counsel to seek discipline of attorneys or accredited representatives who commit, enable, or suborn fraud. Additionally, the Fraud Program has provided extensive training to EOIR personnel on identifying and reporting fraud and enhanced EOIR's internal resources for this purpose.

Although increased training and heightened awareness of the problem are important tools in combating fraud and abuse in EOIR proceedings, our ultimate success in protecting the integrity of those proceedings depends upon the vigilance and assertiveness of our employees. Moreover, all employees of EOIR have an ethical duty to the United States government and its citizens to disclose "waste, fraud, abuse, and corruption to appropriate authorities." 5 C.F.R. § 2635.101(b)(11). This duty applies to immigration judges and is further codified in Section VII of the Ethics and Professionalism Guide for Immigration Judges. Accordingly, because reporting fraud and abuse in the immigration system is an ethical duty of all EOIR employees, including immigration judges, I am directing that all EOIR employees who encounter suspected fraud or abuse in EOIR proceedings report those incidents to the Fraud Program. Activities that warrant reporting include, but are not limited to, (1) the submission of fabricated applications for benefits, protection, or relief, including, but not limited to, an asylum application determined to be frivolous under applicable law, (2) the submission of fraudulent documents or evidence, (3) the subornation or provision of false or fraudulent testimony under oath, and (4) the provision of false information regarding an individual's capacity to represent an alien in EOIR proceedings. Importantly, an express finding of fraud is not necessary to report activities to the Fraud Program. Rather, suspected fraudulent activities can and should be reported as well.

Finally, EOIR's OGC has determined that reporting suspected fraud and abuse to the Fraud Program within EOIR does not violate any applicable confidentiality or privacy laws. Additionally, OGC has determined that reporting to the Fraud Program, by itself, does not create an appearance of impropriety or bias on the part of the reporter. Thus, such concerns are not a basis to decline to report suspected fraud or abuse to the Fraud Program.

To report issues of fraud or abuse, EOIR employees should contact the Fraud and Abuse Prevention Program at EOIR.Fraud.Program@usdoj.gov or (877) 388-3840. Complaints or questions may also be directed to Fraud and Abuse Prevention Counsel, Brea Burgie, at Brea.Burgie@usdoj.gov or (703) 756-8156.