United States Government Accountability Office

Report to Congressional Requesters

June 2017

IMMIGRATION COURTS

Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges

GAO-17-438

AILA Doc. No 17060260. (Posted 6/2/17)

GAO Highlights

Highlights of GAO-17-438, a report to congressional requesters

June 2017

IMMIGRATION COURTS

Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges

Why GAO Did This Study

The Department of Justice's EOIR is responsible for conducting immigration court proceedings, appellate reviews, and administrative hearings to fairly, expeditiously, and uniformly administer and interpret U.S. immigration laws.

GAO was asked to review EOIR's management of the immigration court system and options for improving EOIR's performance. This report addresses, among other things, (1) what EOIR data indicate about its caseload, including the backlog of cases; (2) how EOIR manages and oversees immigration court operations, including workforce planning and hiring; and (3) the extent to which EOIR has assessed immigration court performance, including case continuance data. GAO analyzed EOIR's case data from fiscal years 2006 through 2015—the most current data available—reviewed EOIR documentation, interviewed agency officials, and conducted visits to six immigration courts selected to include courts with relatively large and small case backlogs, among other things. GAO also interviewed experts and stakeholders selected based upon, among other things, their published work on the immigration court system.

What GAO Recommends

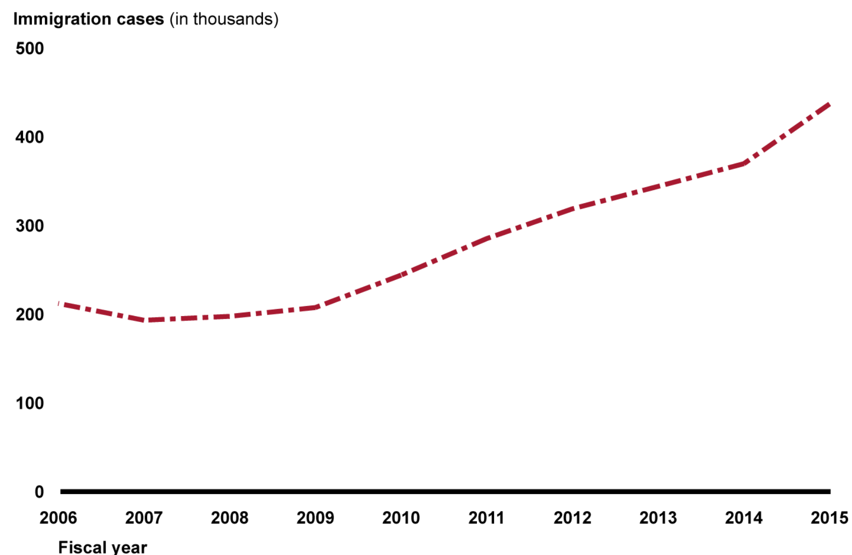
GAO is making 11 recommendations to, among other things, improve EOIR's workforce planning, hiring, and analysis of continuance data. EOIR stated that it agrees with most of the recommendations, but did not specify whether it agrees with individual recommendations. GAO continues to believe that all 11 recommendations remain valid as discussed further in this report.

View GAO-17-438. For more information, contact Rebecca Gambler at (202) 512-8777 or gamblerr@gao.gov.

What GAO Found

GAO's analysis showed that the Executive Office for Immigration Review's (EOIR) case backlog—cases pending from previous years that remain open at the start of a new fiscal year—more than doubled from fiscal years 2006 through 2015 (see figure) primarily due to declining cases completed per year.

Immigration Courts' Case Backlog, Fiscal Years 2006 through 2015



Source: GAO analysis of Executive Office for Immigration Review caseload data. | GAO-17-438

EOIR has taken some steps to address its workforce needs, such as entering into a contract to determine judicial staff workloads, but does not have a workforce plan that would help EOIR better address staffing needs, such as those resulting from the 39 percent of its immigration judges who are currently eligible for retirement. EOIR also does not have efficient practices for hiring new immigration judges, which has contributed to immigration judges being staffed below authorized levels. GAO found that it took an average of 742 days to hire new judges from 2011 through August 2016. By assessing its hiring process and developing a hiring strategy that targets staffing needs, EOIR would be better positioned to hire judges more quickly and address its staffing gaps.

One example of EOIR's efforts to assess court operations is the extent and reasons why judges issue continuances—temporary case adjournments until a different day or time. EOIR collects continuance data, but does not systematically assess them. GAO's analysis of continuance records showed that that the use of continuances increased by 23 percent from fiscal years 2006 through 2015. Systematically analyzing the use of continuances could provide EOIR officials with valuable information about challenges the immigration courts may be experiencing, such as with operational issues like courtroom technology malfunctions, or areas that may merit additional guidance for immigration judges.

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Abbreviations

ACUS	Administrative Conference of the United States
BIA	Board of Immigration Appeals
BVA	Board of Veterans' Appeals
CAVC	Court of Appeals for Veterans Claims
DHS	Department of Homeland Security
DOJ	Department of Justice
ECAS	EOIR Courts and Appeals Systems
EOIR	Executive Office for Immigration Review
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act
NTA	Notice to Appear
OCAHO	Office of the Chief Administrative Hearing Officer
ODAR	Office of Disability Adjudication and Review
OIT	EOIR Office of Information Technology
OPLA	Office of the Principal Legal Advisor
OPM	Office of Personnel Management
SSA	Social Security Administration
USCIS	U.S. Citizenship and Immigration Services
VA	Department of Veterans Affairs
VTC	video teleconference

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Washington, DC 20548

June 1, 2017

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable F. James Sensenbrenner, Jr.
Chairman
The Honorable Zoe Lofgren
Ranking Member
Subcommittee on Immigration and Border Security
Committee on the Judiciary
House of Representatives

The Honorable Trey Gowdy
Chairman
Subcommittee on Crime, Terrorism,
Homeland Security, and Investigations
Committee on the Judiciary
House of Representatives

Each year, the Department of Homeland Security (DHS) initiates hundreds of thousands of cases with the U.S. immigration court system to decide whether respondents—foreign nationals charged on statutory grounds of inadmissibility or deportability—are removable as charged; and, if so, should be ordered removed from the United States or granted any requested relief or protection from removal and permitted to lawfully remain in the country.[1] The Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) is responsible for conducting immigration court proceedings, appellate reviews, and administrative hearings to fairly, expeditiously, and uniformly administer and interpret U.S. immigration laws and regulations. A significant and growing case backlog—the number of cases pending at the start of each fiscal year—before the immigration courts has been the subject of attention by Congress, immigration court experts and stakeholders, and others. Additionally, EOIR's Director has testified that EOIR's growing pending

[1]Throughout this report we generally use the term "relief" in reference to any form of relief or protection from removal provided for under U. S. immigration law.

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caseload is its largest challenge.[2] In particular, according to data EOIR reported in its *Fiscal Year 2016 Statistics Yearbook,* the number of pending cases before its immigration courts grew by 58 percent from fiscal years 2012 through 2016 to a backlog of more than 500,000 cases pending at the start of fiscal year 2017.[3] As a result, some respondents' cases may take years to resolve.

EOIR officials have identified increases in immigration court caseloads and legal complexity, as well as resource shortages as contributing to the backlog. However, immigration court experts and stakeholders have cited additional challenges and the immigration court system's structure as adversely affecting the courts' efficiency and effectiveness. To address these challenges, various organizations, such as the American Bar Association and the National Association for Immigration Judges, have recommended, among other things, management improvements; incremental reform of the immigration courts within the existing EOIR structure; and major structural changes, such as creating an immigration court system independent of any executive branch department or agency. These and other organizations have suggested that restructuring could result in various benefits, such as enhanced credibility and organizational capacity.

EOIR's quasi-judicial functions are carried out by the immigration court system, which includes 58 immigration courts located nationwide that are overseen by the Office of the Chief Immigration Judge, whose immigration judges preside over removal proceedings to determine respondents' removability and eligibility for any relief being sought, and the Board of Immigration Appeals (BIA), whose members hear and issue decisions regarding appeals of immigration judge and certain DHS decisions.[4] Additionally, the Office of the Chief Administrative Hearing

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[2]*The 2014 Humanitarian Crisis at Our Border: Review of the Government's Response to Unaccompanied Minors One Year Later: Hearing Before the S. Comm. on Homeland Sec. & Gov. Affairs*, 114th Cong. 1 (2015) (statement of Juan P. Osuna, Director, DOJ EOIR).

[3]Executive Office for Immigration Review, *FY2016 Statistics Yearbook*, (Falls Church, Va.: March, 2017).

[4]The term "quasi-judicial" generally characterizes the adjudicatory function(s) of an administrative agency, such as EOIR, involving the exercise of discretion, judicial in its nature, in connection with the resolution of matters presided over by its officers or employees through the consideration of evidence and application of law to fact(s) on a case-by-case basis, thus exercising independent judgment and discretion consistent with relevant legal authorities.

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Officer (OCAHO) adjudicates immigration-related employment and document fraud cases.

In 2006, we reported on trends in the immigration courts' caseload from fiscal years 2000 through 2005, how the Office of the Chief Immigration Judge assigned and managed the immigration courts' caseload, and how EOIR evaluated the courts' performance.[5] We found that despite an increase in the number of immigration judges, the number of new cases filed in immigration courts outpaced cases completed, resulting in a case backlog. Specifically, during this period, while the number of on-board immigration judges increased approximately 3 percent, the courts' caseload grew by approximately 39 percent. Regarding caseload assignment and management, we found that the Office of the Chief Immigration Judge primarily relied on an automated system to assign cases to immigration judges within a court, but also considered the number of newly filed cases and cases awaiting adjudication from prior years, historical data, and the type and complexity of cases. Additionally, we found that EOIR evaluated the performance of the immigration courts based on the immigration courts' success in meeting case completion goals, but its performance reporting could be more accurate and consistent. To more accurately and consistently reflect the immigration courts' progress in the timely adjudication of immigration cases, we recommended that the EOIR Director maintain appropriate documentation to demonstrate the accuracy of case completion goal reports and clearly state which cases are being counted in the reports. EOIR agreed with our recommendations and took actions to implement them, such as issuing standard operating procedures for generating case completion goal reports.

You asked us to review EOIR's management and oversight of the immigration court system, as well as options for improving EOIR's performance, including through restructuring. This report addresses the following questions: (1) What do EOIR data indicate about its caseload, including the backlog of cases, and potential contributing factors and effects of the backlog according to stakeholders? (2) How does EOIR manage and oversee immigration court operations, including workforce planning, hiring, and technology utilization? (3) To what extent has EOIR assessed immigration court performance, including analyzing relevant

[5]GAO, *Executive Office for Immigration Review: Caseload Performance Reporting Needs Improvement,* GAO-06-771 (Washington, D.C.: Aug. 11, 2006).

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information, such as data on case continuances? (4) What scenarios have been proposed for restructuring EOIR's immigration court system and what reasons have been offered for or against these proposals?

To address all four objectives, we analyzed agency documentation, consulted with immigration court system experts and stakeholders, and interviewed EOIR and DHS officials from headquarters and six immigration courts. In particular, we conducted site visits to the Baltimore, Maryland; Chicago, Illinois; Houston, Texas; Port Isabel, Texas; San Francisco, California; and Seattle, Washington immigration courts to observe proceedings and interview EOIR immigration court officials, including judges, about court management and operations. During these visits we also interviewed DHS attorneys who represent the government in immigration proceedings at the courts. Toward maximizing the diversity of the sites we visited, we selected them to include courts with relatively large and small case backlogs; relatively high and low case completions per judge; a large number of detained cases, which are deemed a priority by EOIR; and that have experienced staffing shortfalls. We also selected courts in different geographic regions and courts that are proximate to other courts. Since we selected a non-probability sample of courts to visit, the information we obtained cannot be generalized more broadly to all immigration courts. However, the information provides important context and insights into EOIR's management of the immigration court system.

To determine what EOIR data indicate about its caseload, including the backlog of cases, we analyzed data on immigration case receipts and completions from EOIR's case management system for fiscal years 2006 through 2015, the most current data available at the time of our review.[6] We assessed the reliability of these data by reviewing system documentation, interviewing knowledgeable officials about system controls, and conducting electronic testing. We determined that these data were sufficiently reliable for the purposes of our reporting objectives. We included all immigration court cases received or completed that were adjudicated by EOIR immigration judges in EOIR immigration courts and

[6]We selected fiscal years 2006 through 2015 as our period of analysis to include all EOIR caseload data from the time we previously reported on the subject in 2006 until the last full year of data available at the time we began our review in November 2015. See GAO-06-771. We use the term caseload to denote the workload or volume of open cases before the courts during a given time period. These cases may or may not have been adjudicated by the courts during the time period. This definition may be different from how EOIR uses the term in its annual statistics yearbook or other publications.

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at the BIA.[7] To determine the case backlog, we calculated the number of cases that were opened in previous fiscal years that remained open at the start of the new fiscal year. During our six immigration court site visits, we interviewed DHS attorneys from six offices, twelve EOIR immigration judges, and five court administrators to determine potential contributing factors to the case backlog, and how, if at all, the immigration courts' backlog has affected stakeholders. Additionally, we identified and obtained perspectives from ten entities that represent other immigration court experts and stakeholders, the selection of which we describe below, to obtain their perspectives on potential contributing factors to the case backlog and how it has affected stakeholders, if at all.[8] Among others, these included the American Immigration Lawyers Association, an association of attorneys and law professors who practice and teach immigration law, and the National Association of Immigration Judges, which represents immigration judges.

To address our second objective on how EOIR manages and oversees immigration court operations, a GAO research librarian conducted a literature search of scholarly, peer-reviewed publications and trade and industry articles published from 2000 through November 2015 addressing EOIR's management of the immigration courts. Following an initial review to further refine the scope of publications most relevant to this objective, an additional analyst then independently reviewed these reports to identify the most commonly cited management issues affecting the immigration court system. Any differences between their assessments were reconciled to reach agreement on these management issues. This process identified workforce planning and hiring, technology utilization, including the use of video-teleconferencing (VTC) for hearings, and performance measurement, which is addressed in the third objective, as the most prominent issues related to EOIR's management and oversight of the immigration court system.

To assess EOIR's workforce planning and hiring efforts, we analyzed relevant documentation, such as contracts for workforce planning services as well as personnel files and data containing information on immigration judge hiring. In particular, we reviewed EOIR data on the

[7]We did not analyze data from OCAHO because its caseload is small in comparison to that of the immigration courts and the BIA and, as a result, would not significantly affect our case backlog analysis.

[8]For a full list of groups we interviewed and how we identified and selected them, see app. I.

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number of immigration judges it was authorized by Congress to hire and the number of immigration judges on board from fiscal years 2006 through 2015 as well as data on timeframes for hiring new immigration judges from fiscal years 2011 through August 2016. We assessed the reliability of these data by comparing data in a sample of hiring files with EOIR-compiled data on the hiring process, as well as gathering information on the reliability of hiring data from EOIR headquarters officials. We determined that these data were sufficiently reliable for the purposes of our reporting objectives. Additionally, we interviewed EOIR headquarters officials on how EOIR determines its workforce needs and hires immigration judges. We then assessed EOIR's workforce planning and hiring processes against GAO's key principles for effective strategic workforce planning and human capital self-assessment checklist, which provides human capital guidance for agencies.[9]

To evaluate how EOIR utilizes technology in the immigration courts, particularly its efforts to implement a comprehensive e-filing system and use of VTC for immigration hearings, we reviewed pertinent agency documentation and interviewed EOIR Office of Information Technology (OIT) officials. Additionally, we interviewed immigration court officials in all six of the courts we visited and observed technology use in three of the courts. We used this information to assess EOIR's efforts against best practices for developing and acquiring technology and best practices established by the Administrative Conference of the United States (ACUS) that provide technical, operational, and environmental guidance on how agencies may implement or improve their use of VTC in administrative hearings and related proceedings.[10]

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[9]GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning,* GAO-04-39 (Washington, D.C.: Dec. 11, 2013); and *Human Capital: A Self-Assessment Checklist for Agency Leaders,* GAO/OCG-00-14G (Washington, DC: Sept.1, 2000).

[10]Project Management Institute, Inc., The Standard for Program Management–Third Edition, 2013; Software Engineering Institute/Carnegie Mellon, Capability Maturity Model® Integration (CMMI®) for Development, Version 1.3, CMU/SEI-2010-TR-033 (Hanscomb AFB, Massachusetts: November 2010) and CMMI® for Acquisition, Version 1.3, CMU/SEI-2010-TR-032 (Hanscomb AFB, Massachusetts: November 2010); GAO, *Information Technology Investment Management: A Framework for Assessing and Improving Process Maturity*, GAO-04-394G (Washington, D.C.: March 2004); GAO, *Immigration Benefits System: Better Informed Decision Making Needed on Transformation Program,* GAO-15-415 (Washington, D.C.: May 18, 2015); and Center for Legal and Court Technologies and the Administrative Conference of the United States, *Report to the Administrative Conference of the United States: Best Practices for Using Video Teleconferencing for Hearings and Related Proceedings* (Washington D.C.: 2014).

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To address the third objective, the extent to which EOIR has assessed immigration court performance, we reviewed documentation on EOIR's performance measurement system, including case completion goals and the Immigration Court Evaluation Program, and interviewed EOIR officials. We also obtained and analyzed data on immigration case continuances, receipts, and completions from EOIR's case management system from fiscal years 2006 through 2015 to determine the extent to which these data support EOIR's performance monitoring activities. As previously mentioned, we assessed the reliability of these data using a variety of methods and determined they were sufficiently reliable for the purposes of this report. We then compared the results of our analysis against criteria such as *Standards for Internal Control in the Federal Government,* EOIR's most recent strategic plan covering fiscal years 2008 through 2013, and best practices for using performance information for management decisions.[11]

To address our fourth objective on proposals for restructuring the immigration court system, we collected information and perspectives from experts and stakeholders to identify scenarios that have been proposed for restructuring the immigration court system and reasons offered for or against them. Specifically, a GAO research librarian conducted a literature search of scholarly, peer-reviewed publications and trade and industry articles to identify publications from 2000 through January 2016 containing information on proposals for restructuring EOIR's immigration court system. We reviewed this literature and used the following criteria to assess and select an initial list of experts and stakeholders to interview regarding restructuring scenarios: relevance of published work to immigration court restructuring, author's type and depth of experience, and rigor of methodology used in the published work. To further develop the list, we also considered input from our identified experts and stakeholders, as well as EOIR, on any additional experts or stakeholders we should interview. To ensure a diversity of perspectives regarding proposed scenarios for restructuring the immigration court system, we selected 10 experts and stakeholders from a variety of organizations, including federal agencies, immigration lawyer and respondent advocacy groups and individuals, and the immigration judges' union. These entities

[11]GAO, *Standards for Internal Control in the Federal Government,* GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov.1 1999); *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: Sept.10 2014); and *Managing for Results: Enhancing Agency Use of Performance Information for Management Decision Making*, GAO-05-927 (Washington, D.C.: Sept.9, 2005).

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may not be representative of the universe of experts and stakeholders on the immigration court system and therefore may not represent all views on this topic; however, their views provide insights on proposals for restructuring the immigration court system. We also interviewed officials and reviewed related documentation from existing court and adjudicatory systems, including the U.S. Bankruptcy Courts, the Social Security Administration's (SSA) Office of Disability Adjudication and Review (ODAR), and the Board of Veterans' Appeals (BVA) and Court of Appeals for Veterans Claims (CAVC), that, according to experts and stakeholders, exemplify various aspects of scenarios proposed for restructuring the immigration court system. Appendix I provides additional information on our scope and methodology.

We conducted this performance audit from November 2015 to June 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Immigration Court System Roles, Structure, and Budget

EOIR is an office within DOJ that, subject to the direction and regulation of the Attorney General, conducts immigration court proceedings, appellate reviews, and administrative hearings.[12] EOIR was created as a separate agency within DOJ on January 9, 1983 as a result of an internal DOJ reorganization to improve the management, direction, and control of the quasi-judicial immigration review programs that had been within legacy Immigration and Naturalization Service.[13] This reorganization placed the BIA and immigration judge functions under the newly created EOIR independent of the Immigration and Naturalization Service. OCAHO was established in 1987 by the Attorney General pursuant to the

[12]See 6 U.S.C. § 521; 8 U.S.C. § 1103(g); 8 C.F.R. § 1003.0(a).

[13]See Board of Immigration Appeals; Immigration Review Function; Editorial Amendments, 48 Fed. Reg. 8038 (Feb. 25, 1983). See, generally, 8 C.F.R. pt. 1003, for organization and responsibilities of OCIJ and the BIA within EOIR.

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provisions of the Immigration Reform and Control Act of 1986.[14] EOIR's primary mission is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering federal immigration laws. EOIR immigration judges and the BIA members are responsible for hearing, and exercising their independent judgment and discretion in deciding, all cases that come before them.[15]

As previously discussed, EOIR's primary adjudicatory functions are housed within the Office of the Chief Immigration Judge, the BIA, and OCAHO, as shown in figure 1. The Office of the Chief Immigration Judge provides overall program direction, articulates policies and procedures, and establishes priorities applicable to the immigration courts.[16] This office—comprised of approximately 998 full-time employees in 2016—is headed by a Chief Immigration Judge who carries out these responsibilities with the assistance and support of three Deputy Chief Immigration Judges and 14 Assistant Chief Immigration Judges. The Assistant Chief Immigration Judges serve as the principal liaisons between the Office of Chief Immigration Judge's headquarters and the immigration courts, and have supervisory authority over immigration judges, court administrators, and judicial law clerks.[17] At the court level, court administrators manage the daily court operations as well as the administrative staff, which include clerks and administrative assistants, among others. The BIA is headed by a Chairman designated by the Attorney General, who is to direct, supervise, and establish internal

[14]See Pub. L. No. 99-603, tit. I, pt. A, §§ 101(a)(1), 102(a), 100 Stat. 3359, 3360-72, 3374-79 (classified, as amended, at 8 U.S.C. §§ 1324a, 1324b).

[15]Under U.S. immigration law, an "immigration judge" is an attorney appointed by the Attorney General as an administrative judge within EOIR, qualified to conduct specified classes of proceedings, including formal removal proceedings under INA § 240. See 8 U.S.C. § 1101(b)(4); 8 C.F.R. § 1003.10. A "Board Member" is an attorney appointed by the Attorney General to act as their delegate in resolving administrative appeals. 8 C.F.R. § 1003.1(a)(1). Regarding an immigration judge's or Board Member's independence and discretion in rendering decisions consistent with relevant law and regulation, see 8 C.F.R. §§§ 1003.1(d)(1)(ii), 1003.10(b).

[16]See 8 C.F.R. pt. 1003, subpt. B (Office of the Chief Immigration Judge).

[17]The Assistant Chief Immigration Judges have supervisory authority over the immigration judges, but they do not review the immigration judges' decisions, which are reviewed only on appeal before the BIA, as discussed further below. See 8 C.F.R. § 1003.9(c), which prohibits the Chief Immigration Judge from directing the result of an adjudication assigned to another immigration judge.

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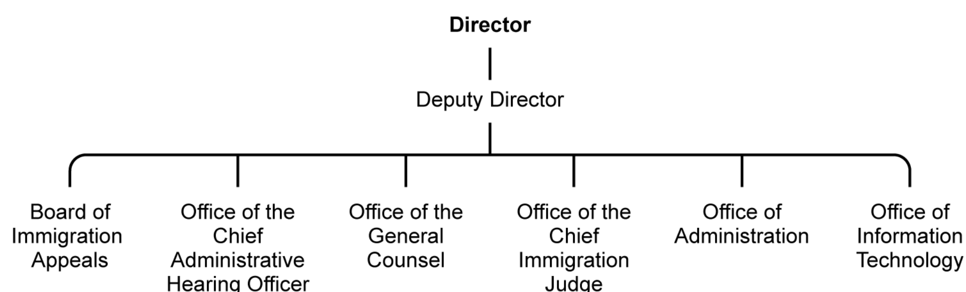
operating procedures and policies of the BIA.[18] The Chairman has various management authorities, such as providing appropriate training for the BIA members and staff, and evaluating the performance of the BIA and taking corrective action where needed.[19]

Figure 1: Organization of the Executive Office for Immigration Review (EOIR)



Source: EOIR. | GAO-17-438

EOIR has 58 courts nationwide, as shown in figure 2, including courts that are co-located with a detention center or correctional facility.[20] The sizes of the immigration courts vary. For example, in fiscal year 2015, the smallest of the immigration courts—Fishkill, New York—consisted of 1 full-time employee and the largest court—Los Angeles, California—had approximately 85 full-time employees.

[18] 8 C.F.R. § 1003.1(a)(2). The Attorney General may also designate one or two Vice Chairmen to assist the Chairman in the performance of their duties and to exercise all of the powers and duties of the Chairman in their absence or unavailability. Id.

[19] The Chairman is not authorized to direct the result of an adjudication assigned to another Board member or to a panel. 8 C.F.R. § 1003.1(a)(2)(ii).

[20] In addition to the immigration courts, EOIR has designated other locations where hearings can take place for administrative reasons.

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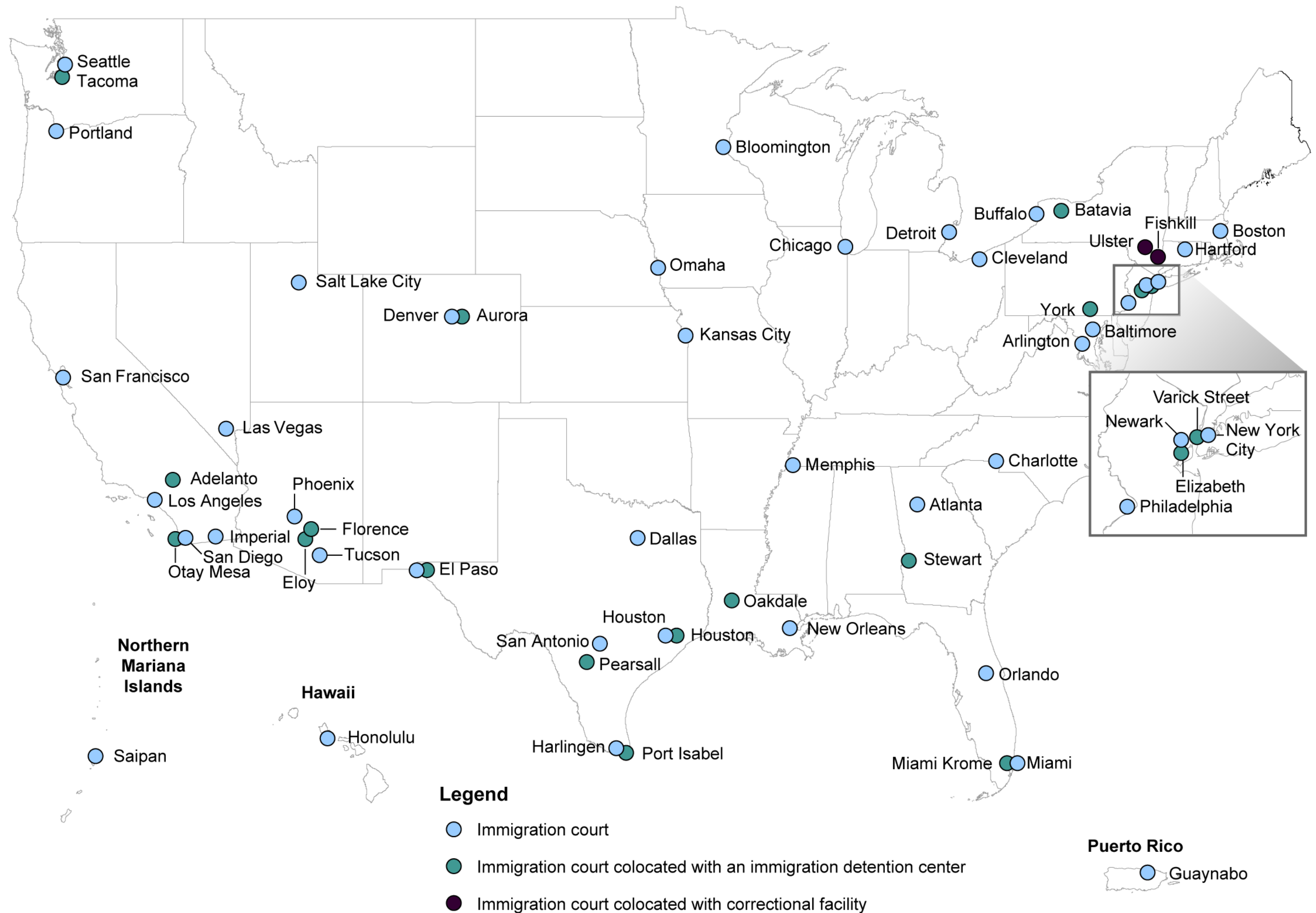
Figure 2: Map of Executive Office for Immigration Review (EOIR) Immigration Court Locations



Source: Executive Office for Immigration Review information on immigration court and office locations; MapInfo (map). | GAO-17-438

In 2016, the BIA had 237 full-time employees, including 15 BIA Members, who are the attorneys appointed by the Attorney General to hear and issue decisions regarding administrative appeals.[21] In 2016, OCAHO had 11 full-time employees. Apart from the Office of the Chief Immigration Judge, the BIA, and OCAHO, EOIR has additional offices, including OIT, which is responsible for the design, development, operations, and maintenance of the agency's information technology systems.

[21] See 8 C.F.R. pt. 1003, subpt. A (Board of Immigration Appeals).

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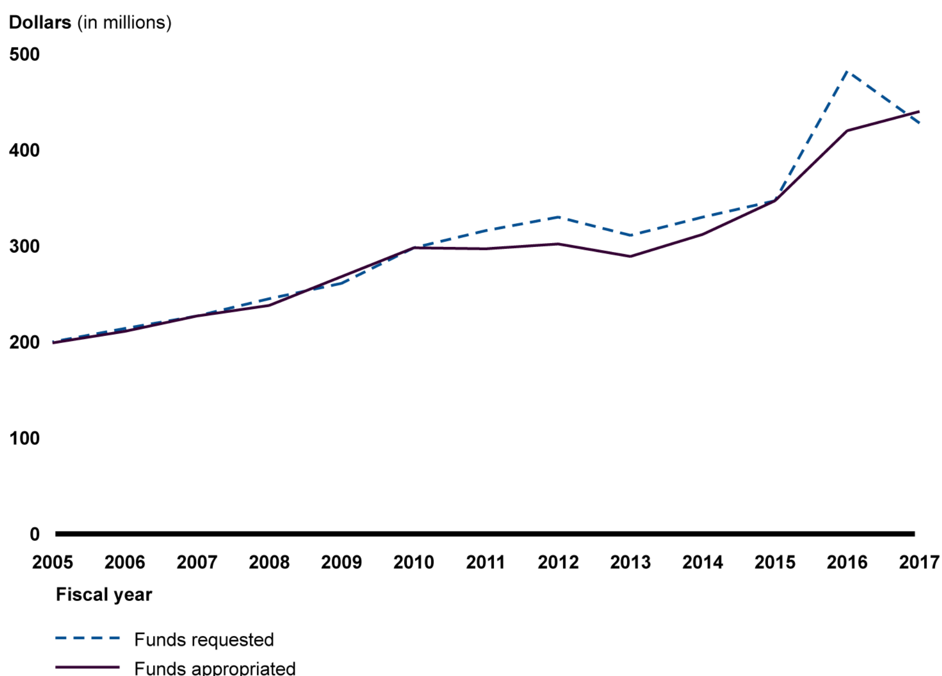
EOIR's total appropriation increased every year, except for fiscal years 2011 and 2013, from approximately $199 million in fiscal year 2005 to approximately $440 million in fiscal year 2017, as shown in figure 3. Regarding expenditures by component, the Office of the Chief Immigration Judge spent the highest percentage of total appropriated funds—about 51 percent—from fiscal years 2012 through 2016. The BIA's average percentage of total expenditures from fiscal years 2012 through 2016 was approximately 15 percent, and OCAHO's the smallest at less than 1 percent. EOIR's Offices of Information Technology, Administration, General Counsel, Legal Access Programs, and Director made up the remainder of EOIR's total expenditures for this period.

Figure 3: Total Executive Office for Immigration Review Appropriated and Requested Funds, Fiscal Years 2005 through 2017



Source: GAO analysis of Executive Office for Immigration Review budget data. | GAO-17-438

DHS is responsible for identifying, detaining, litigating charges of removability against, and removing foreign nationals who are suspected and determined to be in the United States in violation of U.S. immigration laws. Within DHS, trial attorneys from U.S. Immigration and Customs Enforcement's (ICE) Office of the Principal Legal Advisor (OPLA) are

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charged with representing the U.S. government as civil prosecutors in removal proceedings before EOIR immigration judges.[22] ICE's Enforcement and Removal Operations is responsible for detaining certain potentially removable foreign nationals pending the outcome of their immigration court cases and for detaining and removing from the country individuals subject to an immigration judge's final order of removal.

Overview of the Immigration Court Process

If DHS alleges a violation of U.S. immigration law that is subject to adjudication by the immigration courts (i.e., grounds of removability), it serves the individual—the respondent—with a charging document, known as a Notice to Appear (NTA), ordering the individual's appearance before an immigration judge to respond to removal charges.[23] DHS also files the NTA with whichever EOIR immigration court it determines appropriate and advises the respondent of, among other things, the nature of the proceeding, the alleged grounds of removability, the right to an attorney at no expense to the government, and the consequences of failing to appear at scheduled hearings. While removal proceedings are pending, respondents may be detained in ICE custody or, if otherwise eligible for bond, released on bond or conditional parole.[24] Respondents may request a bond redetermination hearing in which an immigration judge reviews ICE's custody and bond decision.[25]

In conducting removal proceedings and adjudicating cases, immigration judges conduct an initial master calendar hearing to, among other things, ensure the respondent understands the immigration court proceedings and provide the respondent with an opportunity to admit or deny the charge(s) brought against them. If the issue of removability is not resolved at the initial or follow-on master calendar hearings, or if the respondent concedes or the immigration judge otherwise determines that the respondent is removable and the respondent seeks relief or protection

[22]See 6 U.S.C. § 252(c).

[23]8 U.S.C. § 1229 (Initiation of removal proceedings).

[24]The Immigration and Nationality Act (INA), as amended, provides DHS with broad discretion (subject to certain legal standards) to detain, or release aliens on bond, conditional parole or terms of supervision, depending on the circumstances and statutory basis for detention. The law requires DHS to detain particular categories of aliens, such as those deemed inadmissible for certain criminal convictions or terrorist activity. See 8 U.S.C. §§ 1225, 1226, 1226a, 1231.

[25]8 C.F.R. § 1003.19.

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from removal, the immigration judge schedules a merits hearing.[26] During a merits hearing, the immigration judge may hear arguments as to removability, if still at issue, and if the respondent is deemed removable, any claims for, and OPLA opposition to, relief or protection from removal, such as asylum.[27] Other forms of relief that may be sought during removal proceedings include adjustment of status, and withholding or cancellation of removal.[28]

As part of the merits hearing, immigration judges hear testimony and review documentary evidence from the respondent regarding the facts and circumstances of their case relative to the statutory requirements for relief, and any other witnesses, such as family members, friends, or experts on country conditions; and attend to cross-examinations

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[26]Under U.S. immigration law, a foreign national is removable if: (1) not admitted to the United States and found inadmissible under section 212 of the IINA; or (2) admitted to the United States and deemed deportable under INA § 237. See 8 U.S.C. §§ 1182, 1227, 1229a(c), (e)(2). Those determined to be removable and not eligible for any requested relief or protection from removal would be subject to removal pursuant to the judge's order once it is administratively final. 8 C.F.R. § 1241.1. Throughout this report we generally use the term "relief" in reference to any form of relief or protection from removal provided for under U. S. immigration law.

[27]In November 2016, GAO reported on (1) variation in asylum applications outcomes over time, across courts, and between immigration judges; (2) factors associated with this variation; and (3) EOIR's actions to facilitate asylum applicants' access to legal resources. See GAO, *Asylum: Variation Exists in Outcomes of Applications Across Immigration Courts and Judges,* GAO-17-72 (Washington, D.C.: Nov. 14, 2016). U.S. immigration law provides that foreign nationals arriving or present in the United States may be granted humanitarian protection in the form of asylum if they are unable or unwilling to return to their home country because of past persecution, or a well-founded fear of future persecution based on their race, religion, nationality, membership in a particular social group, or political opinion. See 8 U.S.C. § 1158.

[28]See, e.g., 8 U.S.C. §§ 1229b (Cancellation of removal may be available for an otherwise removable permanent resident alien if the individual has had permanent residency for at least 5 years, resided in the United States continuously for 7 years under any lawful status, and not been convicted of an aggravated felony; a non-permanent resident alien may also be granted cancellation of removal provided, among other things, they have continuous physical presence in the United States for at least 10 years, and establish that removal would result in exceptional and extremely unusual hardship to their U.S. citizen or lawful permanent resident spouse, parent, or child), 1231(b)(3) (To qualify for withholding of removal under INA § 241(b)(3), the applicant must establish a clear probability that their life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, in the proposed country of removal), 1255(a) (An alien may have their status adjusted to that of an alien lawfully admitted for permanent residence where an application is made for such adjustment, the individual is eligible to receive an immigrant visa and is admissible to the United States, and an immigrant visa is immediately available at the time of filing).

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conducted by OPLA attorneys. Additionally, the immigration judge may question the respondent or other witnesses.

Based on the testimonial and documentary evidence in the record, the immigration judge must then decide whether the removable respondent satisfies the applicable eligibility criteria for any requested relief, and with respect to discretionary relief, that the respondent merits a favorable exercise of discretion.[29] If the judge finds that the respondent is removable and not otherwise eligible for relief, the judge will issue an order of removal and the respondent would be subject to removal pursuant to the judge's order once it has become administratively final.[30] Other potential outcomes of removal proceedings include the judge permitting the respondent to withdraw their application for admission; granting voluntary departure; or administratively closing, terminating, or dismissing the case.[31] Immigration judges render oral or written decisions at the end of immigration court proceedings. EOIR uses its case management system to internally record events, actions, decisions, and workflow for all immigration cases. Figure 4 describes the general process for removal proceedings in immigration courts.

[29]See 8 U.S.C. § 1229a(c)(4).

[30]The removal order becomes administratively final when all avenues for review or appeal through EOIR have been exhausted or waived. See 8 C.F.R. § 1241.1.

[31]A respondent who is deemed an "arriving alien" may be permitted to voluntarily withdraw their application for admission during removal proceedings where certain requirements are satisfied, including that the respondent intends, and has the means, to depart immediately from the United States. See 8 U.S.C. §1225(a)(4); 8 C.F.R. § 1240.1(d). Voluntary departure refers to an order from an immigration judge that permits aliens to leave the country on their own within a designated amount of time in lieu of formal removal; and failure to comply with such an order carries certain immigration and other legal consequences. Generally, voluntary departure is permitted at the alien's own expense. See 8 U.S.C. § 1229c. Administrative closure is a procedural tool available to an immigration judge which is used, as appropriate under the circumstances, to temporarily remove a case from the active calendar. Cases that are administratively closed can be re-calendared at a later date. Termination or dismissal of proceedings generally occurs when the respondent is found not removable as DHS charged, or meets criteria for cancellation of the notice to appear; and it constitutes a conclusion of the proceedings requiring that DHS file another charging document to initiate new proceedings. 8 C.F.R. §§ 239.2, 1239.2(c), (f).

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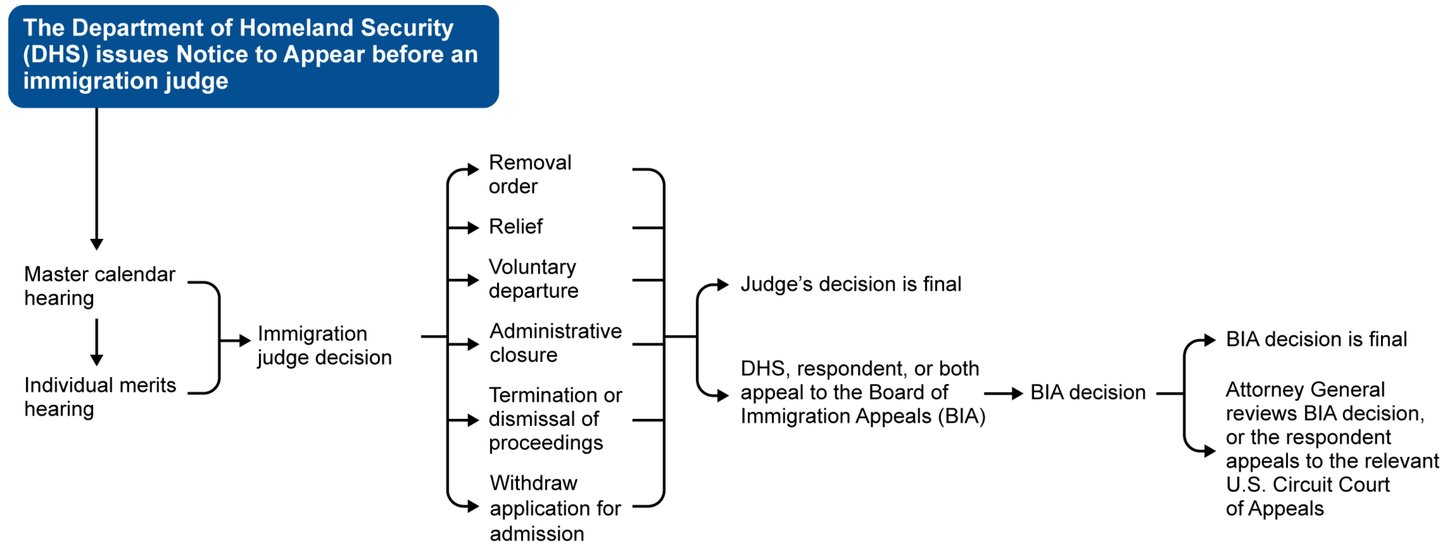
Figure 4: Steps in Immigration Court Removal Proceedings Process



Source: GAO analysis of Executive Office for Immigration Review and Department of Homeland Security information. | GAO-17-438

Note: In this figure, a removal order is not entered in conjunction with any relief; and relief refers to any form of relief or protection from removal.

In addition to removal proceedings, described above, immigration judges conduct other types of hearings as well, including the following:

- **Credible Fear Review.** Arriving and other designated foreign nationals subject to expedited removal and deemed inadmissible as a result of seeking entry (or any other immigration benefit) by fraud or willful misrepresentation, falsely claiming U.S. citizenship, or lacking valid immigration documents and who express a fear of persecution or torture, or an intention to apply for asylum, are to be referred by DHS to a U.S. Citizenship and Immigration Services (USCIS) asylum officer for a credible fear interview.[32] If the asylum officer determines that the individual has credible fear of persecution or torture, the individual will be referred to an immigration judge for further consideration of the

[32]See 8 U.S.C. §§ 1182(a)(6)(C), (a)(7), 1225(b); 8 C.F.R. §§ 1208.30, 208.30. Expedited removal under INA § 235(b) is the process by which a DHS immigration officer may, subject to statutory criteria, order arriving and other designated foreign nationals removed from the United States without a formal removal proceeding under INA § 240.

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asylum and withholding of removal claim in removal proceedings.[33] If the asylum officer determines that the individual has not established a credible fear of persecution or torture, the respondent may request review of that determination by an immigration judge who may concur with the asylum officer's credible fear determination and return the case to ICE for removal of the individual. However, if the immigration judge determines that the individual has a credible fear of persecution or torture, the individual is placed in removal proceedings for adjudication of their application for relief.

- **Reasonable Fear Review.** If a foreign national who is subject to administrative removal for conviction of an aggravated felony at any time after admission, or a reinstated order of removal for having illegally reentered the country expresses a fear of persecution or torture if removed, DHS refers that individual to a USCIS asylum officer to determine whether this individual has a reasonable fear of persecution or torture.[34] If the asylum officer determines that the individual has a reasonable fear of persecution or torture, the individual will be referred to an immigration judge solely for consideration of the request for withholding of removal ("withholding-only" proceedings); and if the asylum officer determines that the individual does not have such reasonable fear, the individual may request a review of that determination by an immigration judge.
- **Withholding Only.** As stated above, USCIS refers foreign nationals found to have a reasonable fear of persecution or torture to EOIR for "withholding only" proceedings, during which an individual may apply for withholding or deferral of removal under section 241(b)(3) of the Immigration and Nationality Act (INA) or the United Nations Convention Against Torture.[35] To qualify for withholding of removal

[33]The term "credible fear of persecution" means that there is a significant possibility, taking into account the credibility of the statements made by the individual in support of their claim and such other facts as are known to the asylum officer, that such individual could establish eligibility for asylum. See 8 U.S.C. § 1225(b)(1)(B)(v).

[34]8 U.S.C. §§ 1228(b), 1231(a)(5); 8 C.F.R. §§ 208.31, 1208.31, 238.1, 1238.1, 241.8, 1241.8.

[35]See Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85. Obligations of the United States under article 3 of the Convention Against Torture were implemented pursuant to the Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, div. G, tit. XXII, ch. 3, subch. B, § 2242, 112 Stat. 2681, 2681-822 to -823 (classified at 8 U.S.C. § 1231 note); see also Regulations Concerning the Convention Against Torture, 64 Fed. Reg. 8478 (Feb. 19, 1999).

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under INA § 241(b)(3), respondents must establish a clear probability that their life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion in the proposed country of removal.[36] An applicant for withholding of removal under the Convention Against Torture must establish that it is more likely than not that they would be tortured if removed to the proposed country of removal.[37] An order granting withholding of removal does not prevent removal to a third country other than the country to which removal has been withheld or deferred.[38]

Immigration judges' decisions become administratively final at the time of issuance, if no further action is taken by either party; or when all avenues for appeal through the BIA, the highest administrative body within DOJ for interpreting and applying immigration law, or review by the Attorney General, have been exhausted or waived.[39] The BIA appeals are reviewed either by a single BIA member or by a three-member panel. In general, a single BIA member decides the case unless the case falls into

[36]8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 208.16, 1208.16.

[37]8 C.F.R. §§ 208.16, 1208.16, 208.17, 1208.17, 208.18, 1208.18.

[38]Other types of immigration court cases include "Asylum Only," in which immigration judges determine whether certain individuals who are not entitled to a removal hearing (crewmen, stowaways, Visa Waiver Program travelers, and those ordered removed from the United States on security grounds) are eligible for asylum or withholding of removal under INA § 241(b)(3) or the Convention Against Torture; "Claimed Status," in which immigration judges review DHS's negative determination as to whether an individual in expedited removal proceedings has a valid claim to U.S. citizenship, lawful permanent residency, refugee, or asylum status; and "Rescission," in which immigration judges determine whether a lawful permanent resident should have his or her permanent resident status rescinded because he or she was not entitled to it at the time it was granted. Immigration judges also make decisions on motions to reopen cases or reconsider prior decisions and conduct bond redetermination hearings in which they review custody and bond decisions made by DHS, among other things.

[39]See 8 C.F.R. §§ 1003.1(b), (h), 1003.3(a)(1), 1003.38, 1241.1.

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one of six categories that require a decision by a panel of three members.[40]

The BIA's decisions can be reviewed by the Attorney General.[41] After exhausting administrative remedies within DOJ, a respondent may appeal a final order of removal to the U.S. Court of Appeals for the circuit in which the immigration judge completed the initial removal proceedings.[42] There are 13 U.S. Circuit Courts of Appeals (circuit courts), which are appellate courts that review U.S. District Court and certain administrative decisions, such as those made by the BIA. Circuit court decisions on the application of relevant immigration law to particular issues are binding on the BIA and immigration judges in cases presenting sufficiently similar factual scenarios that arise within the circuit court's territorial jurisdiction.[43]

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[40]The BIA refers cases to three-member panels when it determines there may be a need to: (1) settle inconsistencies among the rulings of different immigration judges; (2) establish a precedent construing the meaning of laws, regulations, or procedures; (3) review a decision by an immigration judge or DHS that is not in conformity with the law or with applicable precedents; (4) resolve a case or controversy of major national import; (5) review a clearly erroneous factual determination by an immigration judge; or (6) reverse the decision of an immigration judge or DHS in a final order or a reversal by a single BIA member. By a majority vote of the permanent BIA members selected decisions rendered by a three-member panel or by the BIA *en banc* may be designated to serve as published legal precedent in all proceedings involving the same issue(s). See 8 C.F.R. § 1003.1(e)(6), (g).

[41]See 8 C.F.R. § 1003.1(h).

[42]See 8 U.S.C. § 1252.

[43]The U.S. Courts of Appeals for the Federal and D.C. Circuits do not have jurisdiction over appeals from the BIA because they lack subject matter and territorial jurisdiction, respectively, over the immigration courts.

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Immigration Courts' Caseload Grew Due to an Increased Case Backlog, Posing Challenges to Stakeholders

The Immigration Courts' Caseload and Case Backlog Grew As Immigration Courts Completed Fewer Cases

Our analysis of EOIR's annual immigration court system caseload—the number of open cases before the court during a single fiscal year—showed that it grew 44 percent from fiscal years 2006 through 2015 due to an increase in the case backlog, while case receipts remained steady and the courts completed fewer cases. For the purpose of our analysis, the immigration courts' annual caseload is comprised of three parts: (1) the number of new cases filed by DHS in the form of new NTAs (also called new case receipts); (2) the number of other case receipts the court receives due to motions to reopen, reconsider, or recalendar, or remands from the BIA; and (3) the case backlog—the number of cases pending from previous years that remain open at the start of a new fiscal year.[44] During this 10-year period, the immigration courts' overall annual caseload grew from approximately 517,000 cases in fiscal year 2006 to about 747,000 cases in fiscal year 2015, as shown in figure 5.[45]

[44]We use the term caseload to denote the workload or volume of open cases before the courts during a given time period. These cases may or may not have been adjudicated by the courts during the time period. This definition may be different from how EOIR uses the term in its annual statistics yearbook or other publications. Cases that remain open at the start of a new fiscal year—pending cases—are cases that have not yet received an initial completion. An initial completion is an initial ruling on the case by an immigration judge. This does not include later motions to reopen, reconsider, or remand a case as those actions can occur many years after the initial decision and are out of the control of immigration court judges.

[45]App. II provides the caseload for each of EOIR's 58 courts for fiscal years 2012 through 2015, including new and other case receipts and the case backlog.

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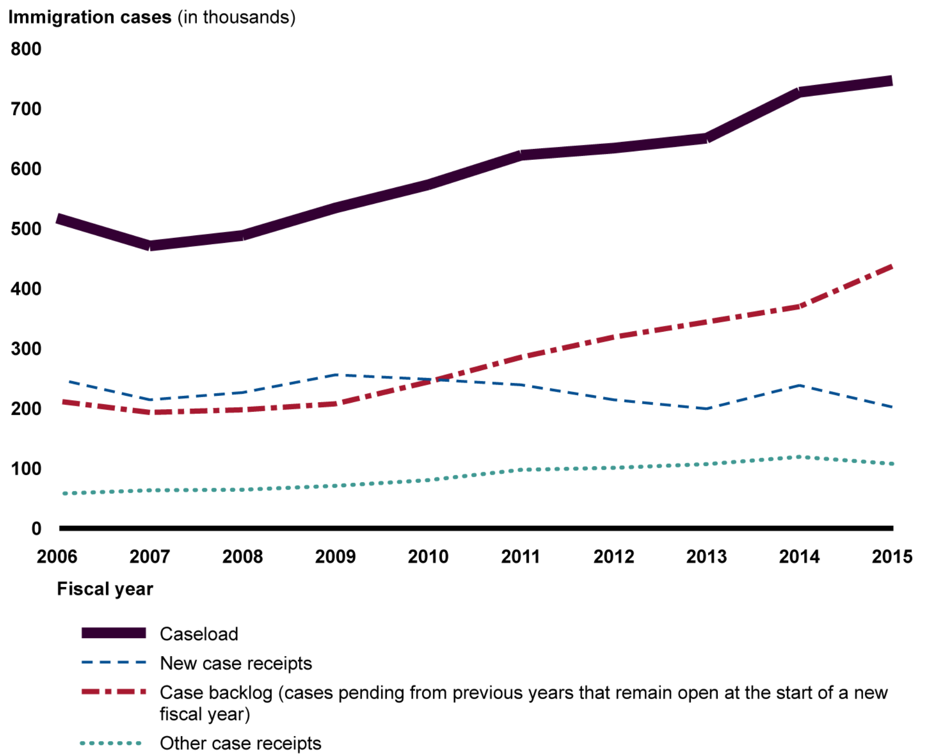
Figure 5: Immigration Courts' Annual Caseload and Component Parts, Fiscal Years 2006 through 2015



Source: GAO analysis of Executive Office for Immigration Review caseload data. | GAO-17-438

According to our analysis, total case receipts remained about the same in fiscal years 2006 and 2015 but fluctuated over the 10-year period, with new case receipts generally decreasing and other case receipts generally increasing. Specifically, there were about 305,000 total case receipts in fiscal year 2006 and 310,000 in fiscal year 2015. The number of new cases filed in immigration courts decreased over the 10-year period but fluctuated within this period. New case receipts increased about four percent between fiscal year 2006 and fiscal year 2009, from about 247,000 cases to about 256,000 cases, but declined each year after fiscal year 2009, with the exception of an increase in fiscal year 2014. Overall, new case receipts declined by 20 percent after fiscal year 2009 to about 202,000 during fiscal year 2015. Other case receipts, such as motions to reopen, reconsider, or recalendar, or remands from the BIA, increased by about 50,000 over the 10-year period, from about 58,000 cases in fiscal year 2006 to about 108,000 cases in fiscal year 2015.

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Our analysis showed that EOIR's case backlog more than doubled from fiscal years 2006 through 2015. In particular, the case backlog remained relatively steady from fiscal years 2006 through 2009 and then rose each year starting in fiscal year 2010. The immigration courts had a backlog of about 212,000 cases pending at the start of fiscal year 2006 and the median pending time for those cases was 198 days. By the beginning of fiscal year 2009, the case backlog declined slightly to 208,000 cases. From fiscal years 2010 through 2015, the case backlog grew an average of 38,000 cases per year. At the start of fiscal year 2015, immigration courts had a backlog of about 437,000 cases pending and the median pending time for those cases was 404 days.

Further, as a result of the case backlog some immigration courts were scheduling hearings several years in the future, according to EOIR documentation. As of February 2, 2017, half of courts had master calendar hearings scheduled as far as January 2018 or beyond and had individual merits hearings, during which immigration judges generally render case decisions, scheduled as far as June 2018 or beyond. However, the range of hearing dates varied; as of February 2, 2017, one court had master calendar hearings scheduled no further than March 2017 while another court had master calendar hearings scheduled in May 2021—more than 4 years in the future. Similarly, courts varied in the extent to which individual merits hearings were scheduled into the future. As of February 2, 2017, one court had individual hearings scheduled out no further than March 2017 while another court had scheduled individual hearings 5 years into the future—February 2022.[46]

The increase in the immigration court case backlog occurred as immigration courts completed fewer cases annually. Specifically, the number of immigration court cases completed annually declined by 31 percent from fiscal year 2006 to fiscal year 2015—from about 287,000 cases completed in fiscal year 2006 to about 199,000 completed in 2015, as shown in figure 6.

[46]EOIR officials stated that court staff may schedule non-priority cases to dates several years in the future to accommodate large influxes of priority cases in the nearer term. According to these officials, court staff intend to reschedule these cases to more proximate dates as space on the docket becomes available. However, the extent to which EOIR will be able to advance hearing dates for non-priority cases is uncertain.

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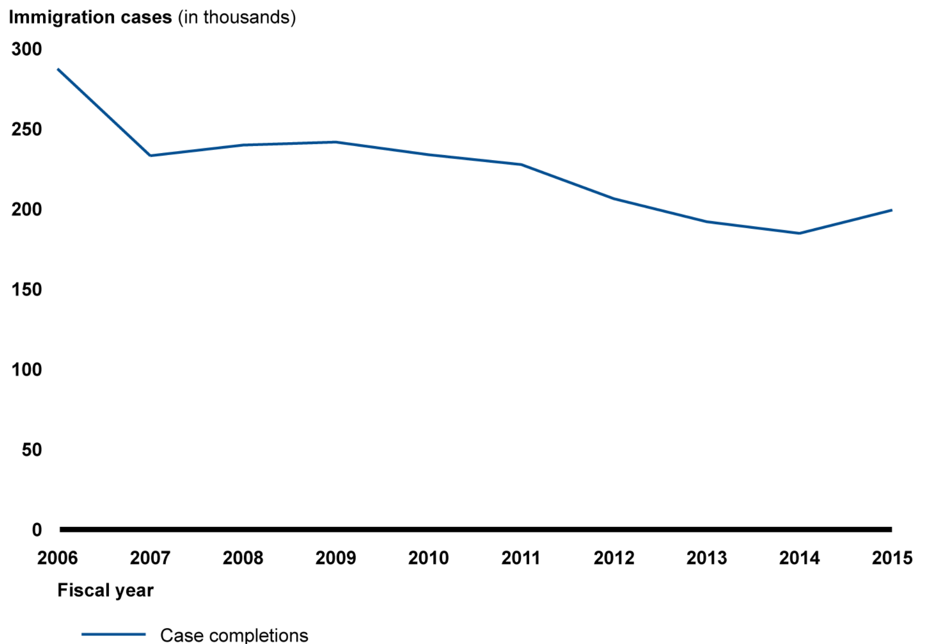
Figure 6: Immigration Court Completed Cases, Fiscal Years 2006 through 2015



Source: GAO analysis of Executive Office for Immigration Review caseload data. | GAO-17-438

According to our analysis, while the number of cases completed annually declined, the number of immigration judges increased between fiscal year 2006 and fiscal year 2015, which resulted in a lower number of case completions per immigration judge at the end of the 10-year period. Specifically, the number of immigration judges increased by 17 percent, from 212 in fiscal year 2006 to 247 in fiscal year 2015, while the immigration court caseload increased by 44 percent during the same period.[47] Further, the number of total case completions per immigration judge decreased on average 5 percent per year over the 10-year period—from 1,356 per immigration judge in fiscal year 2006 to 807 per immigration judge in fiscal year 2015. EOIR officials told us that EOIR

[47]On average, the number of judges increased by 2 percent each year from fiscal year 2006 to fiscal year 2015. The number of judges increased overall from fiscal year 2006 through fiscal year 2011 and then declined during fiscal years 2012 through 2014 before increasing again in fiscal year 2015. However, the number of judges from fiscal year 2012 through 2015 remained higher than the number of judges in fiscal year 2010, although the number of completions fell each year from fiscal year 2010 through fiscal year 2014, but increased slightly in fiscal year 2015. EOIR officials stated that the decrease in the number of judges from 2012 through 2014 was due to a department-wide hiring freeze in place from January 21, 2011 through February 10, 2014.

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engaged in hiring during this period and that new judges initially complete fewer cases as they are learning on the job, which contributed to the decrease in case completions per judge.

In addition, cases decided by immigration judges on the merits of the case (merit decisions) declined, while cases completed through administrative closure of the case increased over this period.[48] Specifically, the percentage of merit decisions declined from 95 percent of all cases completed in fiscal year 2006 to 77 percent of all cases completed in fiscal year 2015. We found that when immigration judges made merit-based decisions, immigration judges ordered fewer respondents removed and provided relief or terminated more cases. Particularly, the percentage of respondents whom immigration judges ordered removed declined from 77 percent of all completed cases in fiscal year 2006 to 52 percent of all completed cases in fiscal year 2015. Conversely, the percentage of cases in which the immigration judge granted relief or terminated removal proceedings grew from 18 percent of

[48]Immigration judges may, under appropriate circumstances, and either on their own initiative or at the request of either DHS or the respondent, administratively close a case, thus removing it from their calendar. An immigration judge may grant administrative closure for various reasons, including in cases for which DHS exercises prosecutorial discretion and requests a case to be administratively closed because the respondent does not meet enforcement priorities (for DHS's current removal priorities, and guidance on use of prosecutorial discretion in immigration enforcement, see *Enhancing Public Safety in the Interior of the United States*, Exec. Order No. 13768, § 5, 82 Fed. Reg. 8799, 8800 (Jan. 30, 2017), and John Kelly*, Enforcement of the Immigration Laws to Serve the National Interest* (Washington, D.C.: Feb. 20, 2017)). A judge may also administratively close a case where the respondent plans to apply for certain immigration benefits under the jurisdiction of USCIS, such as an unaccompanied alien child's initial asylum claim, or other forms of relief due to specific circumstances such as being the victim of a severe form of trafficking in persons or certain qualifying crimes. An immigration judge can return an administratively closed case to the calendar at his or her discretion or at the request of the respondent or DHS attorney. The primary consideration for an immigration judge in evaluating whether to administratively close or recalendar proceedings is whether the party in opposition has provided a persuasive reason for the case to proceed and be resolved on the merits; and in considering administrative closure, the judge cannot review whether an alien falls within DHS's enforcement priorities. *Matter of W-Y-U-*, 27 I. & N. Dec. 17 (BIA 2017).

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all completed cases to 24 percent of all completed cases.[49] The administrative closure of cases grew by 21 percentage points, from 2 percent of completed cases to 23 percent of completed cases over this same time period.

Initial case completion time increased more than fivefold over the 10-year period.[50] Overall, the median initial completion time for cases increased from 43 days in fiscal year 2006 to 286 days in fiscal year 2015. In particular, the median case completion time doubled from fiscal year 2011 to fiscal year 2012 and then more than doubled again from fiscal year 2012 to fiscal year 2013 before declining slightly in fiscal year 2014. However, as shown in table 1, case completion times varied by case type and detention status. For example, the median number of days to complete a removal case, which comprised 97 percent of EOIR's caseload for this time period, increased by 700 percent from 42 days in fiscal year 2006 to 336 days in fiscal year 2015. However, the median length of time it took to complete a credible fear case, which comprised less than one percent of EOIR's caseload during this period, took 5 days to complete in fiscal year 2006 as well as in fiscal year 2015.[51] EOIR officials attributed the increase in case completion times after fiscal year 2011 to the number of relief applications filed by respondents as well as changes in the types of applications respondents filed. In particular, EOIR officials stated that asylum and withholding applications increased while voluntary departure applications decreased.

[49]An immigration judge may terminate, or dismiss, a case related to a particular charging document if the judge decides that DHS has not established that the respondent is removable as charged, or where criteria are met for cancellation of the notice to appear; thus constituting a conclusion of the proceedings unless and until DHS files charges again in order to initiate new proceedings. 8 C.F.R. §§ 239.2, 1239.2(c), (f). An immigration judge may grant relief or protection from removal to a respondent who is otherwise removable, provided that the applicable eligibility requirements are satisfied, and with respect to discretionary relief, such as asylum, that a grant is warranted as a matter of discretion. 8 U.S.C. § 1229a(c)(4).

[50]Initial completion time refers to the time period between the date EOIR received the NTA date from DHS and the date an immigration judge issued an initial ruling on the case.

[51]As previously discussed, if an asylum officer determines that an alien has not established a credible fear of persecution or torture in their country of origin, the individual may request review of that determination by an immigration judge.

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Table 1: Median Number of Days for Initial Case Completion by Case Type, Fiscal Years 2006 through 2015

Case Type	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Removal	42	36	28	29	56	67	140	321	316	336
Asylum Only	459	532	390	379	320	322	363	348	410	496
Credible Fear	5	2	2	2	4	5	5	4	5	5
Reasonable Fear	7	7	8	11	7	7	7	7	8	8
Withholding Only	90	115	109	106	114	108	118	98	86	103
Other cases	29	24	67	73	127	224	146	118	218	127
All	**43**	**36**	**28**	**29**	**55**	**65**	**135**	**301**	**262**	**286**

Source: GAO analysis of Executive Office for Immigration Review data. | GAO-17-438

Note: The median number of days for case completion for other cases represents a weighted median of the following case types: Claimed Status, Rescission, Continued Detention Review, Nicaraguan Adjustment and Central American Relief Act cases, Exclusion, and Deportation cases. According to EOIR, until April 1997, the two major types of cases adjudicated by immigration courts were exclusion and deportation cases. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 established six new types of cases: removal, credible fear review, reasonable fear review, claimed status review, asylum only, and withholding only. Deportation and exclusions case types are no longer reported as receipts due to changes in the law. Initial completion time refers to the time period between the date EOIR received the NTA date from DHS and the date an immigration judge issued an initial ruling on the case.

Initial case completion times for both detained and non-detained respondents more than quadrupled from fiscal year 2006 through fiscal year 2015.[52] The median case completion time for non-detained cases, which comprised 79 percent of EOIR's caseload from fiscal year 2006 to fiscal year 2015, grew more than fivefold from 96 days to 535 days during this same period. Similarly, the median number of days to complete a detained case, which as discussed later in this report judges are to prioritize on their dockets, quadrupled over the 10-year period, increasing from 7 days in fiscal year 2006 to 28 days in fiscal year 2015.

[52]We include cases in which the respondent was originally detained and then later released among the non-detained cases.

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Stakeholders Cited Various Factors That Potentially Contributed to the Growing Backlog, Which Poses Challenges to Respondents, Attorneys, and Court Staff

EOIR officials, immigration court staff, DHS attorneys, and other experts and stakeholders we interviewed provided various potential reasons why the case backlog may have increased and case completion times slowed in recent years, as well as identified challenges posed by the backlog. Despite an increase in immigration judges over the 10-year period, immigration judges, court administrators, DHS attorneys, experts and stakeholders told us that a lack of court personnel, such as immigration judges, legal clerks, and other support staff, was a contributing factor to the case backlog. Further, some of these experts and stakeholders told us that EOIR did not have sufficient funding to appropriately staff the immigration courts.

EOIR officials, immigration court staff, DHS attorneys, and other experts and stakeholders also stated that a surge in new cases, beginning in 2014, contributed to the case backlog. Further, some of these experts and stakeholders told us that the nature of cases resulting from the surge exacerbated the effects of the backlog. Specifically, many of the surge cases were cases of unaccompanied children, which may take longer to adjudicate than other types of cases because, for example, such a child in removal proceedings could apply for various forms of relief under the jurisdiction of USCIS, including asylum and Special Immigrant Juvenile Status. In such cases the immigration judge may administratively close or continue the case pending resolution of those matters. Therefore, these experts and stakeholders told us that the surge not only added volume to the immigration court's backlog, but resulted in EOIR prioritizing the cases of unaccompanied children over cases that may be quicker for EOIR to resolve. DHS attorneys, experts, and other stakeholders we spoke with stated that immigration judges' frequent use of continuances resulted in delays and increased case lengths that contributed to the backlog.[53] Immigration judges, court administrators, DHS attorneys, and other experts and stakeholders we spoke with also cited issues with the availability and quality of foreign language translation as creating unnecessary delays in cases. EOIR officials and immigration judges also highlighted increasing legal complexity as a contributing factor to longer

[53]An immigration judge has discretionary authority to grant a motion for continuance—a temporary adjournment of a case until a different date or time—for good cause shown, such as to allow respondents to obtain legal representation or DHS to complete required background investigations and security checks. 8 C.F.R. § 1003.29. For additional information on continuances, including the reasons continuances were granted according to EOIR data, see app. III.

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cases and a growing case backlog. In particular, EOIR officials cited Supreme Court decisions in 2013 and 2016, which define analytical steps a judge must complete in determining whether a criminal conviction renders a respondent removable and ineligible for relief.[54] Additionally, EOIR officials cited a reported growth in bond hearings for detainees, particularly in the Ninth Circuit, stemming from that circuit's 2015 decision in *Rodriguez v. Robbins*, which was being reviewed by the Supreme Court as of April 2017.[55] We examine some of these issues, such as court staffing, case prioritization, and the use of continuances, later in this report.

Immigration judges and court staff, DHS attorneys, and other experts and stakeholders we interviewed stated that the delays caused by the backlog posed challenges to respondents, attorneys, and immigration judges and court staff.

Respondents. Seven of the ten experts and stakeholders we contacted and staff at three of the immigration courts we visited told us that respondents can face challenges due to long delays in scheduling and hearing cases and heavy court caseloads. Experts and stakeholders cited challenges in one or more of the following areas:

- The ability of respondents to produce witnesses or evidence or to obtain pro bono legal representation;
- The ability of respondents with strong claims for relief to work or bring family members to the United States; and
- The ability of respondents without sufficient claims for relief to remain in the United States longer than if the case had been promptly decided.

Four of ten experts and stakeholders we spoke with told us that case delays due to the immigration court's case backlog may decrease respondents' ability to produce witnesses or evidence to support their applications for relief. For example, one of these experts and stakeholders told us that due to the backlog, merits hearings are frequently rescheduled. As a result, witnesses for respondents who need

[54]*Mathis v. United States*, 136 S. Ct. 2243 (2016), *Descamps v. United States*, 133 S. Ct. 2276 (2013), *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013).

[55]*Rodriguez v. Robbins,* 804 F.3d 1060 (9th Cir. 2015*), cert. granted sub nom. Jennings v. Rodriguez,* 136 S. Ct. 2489 (2016).

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to travel to attend a hearing may be less likely to attend a rescheduled hearing. Two of these experts and stakeholders also stated that non-detained respondents can also lose track of witnesses who may be able to assist their cases if a significant amount of time passes between the respondent's original merits hearing date and the respondent's rescheduled hearing date. Further, according to four of the ten experts and stakeholders, private bar attorneys may be hesitant to accept pro bono cases because it is difficult for them to commit to representing a respondent at a merits hearing that may be scheduled several years into the future. Additionally, five of the ten experts and stakeholders also stated that due to the length of some cases, respondents who may have been eligible for relief at one point earlier in the case may no longer be eligible by the time the case is heard because the respondents' circumstances have changed. For example, a respondent who is otherwise removable may be eligible for cancellation of removal if it would result in exceptional and extremely unusual hardship to the respondent's U.S. citizen or lawful permanent resident spouse, parent, or child.[56] However, if there is a material change in circumstances regarding a respondent's qualifying family member, such as a child who turns 21, this could adversely affect the respondent's eligibility for relief.

One immigration judge and two of the ten experts and stakeholders also noted that delays due to the case backlog may result in some respondents with strong cases for relief not obtaining the relief to which they are entitled in a timely manner. For example, one of the experts and stakeholders told us that some respondents with strong applications for relief, such as asylum, would generally have to wait to seek derivative status for qualifying family member(s) not initially included in the asylum application until the respondent's own asylum claim has been granted.[57] In light of the case backlog, which results in some cases not being heard for years, this may result in further hardship for the respondents with valid claims for relief. Two of the ten experts and stakeholders told us that respondents may not be able to work while awaiting their case

[56]See 8 U.S.C. § 1229b(b).

[57]An asylum applicant may include his or her accompanying spouse or unmarried children under age 21 in the benefit request, or, if not included in the application for asylum, the asylee may, within 2 years of being granted asylum, request derivative status for such qualifying spouse and children, allowing them to join the asylee in the United States. See 8 U.S.C. § 1158(b)(3); 8 C.F.R. §§ 208.21, 1208.21.

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decisions.[58] Conversely, two immigration judges, DHS attorneys from three offices, EOIR officials, and four of the ten experts and stakeholders stated that the case backlog may also result in respondents without sufficient claims remaining in the United States far longer than if the case had been promptly decided. EOIR officials stated that due to the length of some cases, respondents who otherwise would not have strong claims for relief can develop a cognizable claim that the respondent would not have been able to make had the case been adjudicated more quickly, or the extended time allows the respondent to establish ties to the United States which could support an existing claim.

Attorneys. DHS attorneys from six offices, one immigration judge, and one of the ten experts and stakeholders also cited caseload management and the increased cost of long cases as backlog-related challenges for private bar and DHS attorneys. DHS attorneys from five offices noted that it is difficult to assign cases to specific attorneys for the entire life of the case because they do not know which attorneys will be available when the merits hearing ultimately occurs, which can be months or years after a master calendar hearing in the case. According to these DHS attorneys, they must often assign a new attorney to the case, which requires the newly-assigned attorney to prepare for a case shortly before the merits hearing. As a result, according to these same attorneys, the amount of time spent per attorney in case preparation may increase, which ultimately increases the cost per case to DHS. In addition, one immigration judge posited that some private bar attorneys may miss filing dates due to the backlog and associated delays in hearing cases.

Court Staff. Immigration court officials, experts, and stakeholders we spoke with cited challenges for immigration court staff, including increased workloads, limited time for administrative tasks, and decreased morale. Immigration judges from four of the six courts we visited told us that delays result in increased work, such as additional motions and evidence to review for each case, changes in immigration law that occur over the life of a case that the immigration judge must consider, and increasingly complicated cases that require more time to complete than if

[58]USCIS adjudicates applications for employment authorization and respondents may or may not be legally permitted to apply for work authorization while their case is pending. There are certain classes of respondents who may apply for and obtain employment authorization while awaiting a determination as to their applications for relief. These include respondents who have filed for asylum, cancellation of removal, or adjustment of status. See 8 C.F.R. § 274a.12(c). According to EOIR officials, in the majority of cases, asylum applicants receive employment authorization while their asylum claim is pending.

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the hearings for these cases had been scheduled and held in a shorter timeframe. Immigration judges from four of the six courts we visited also told us that the growing backlog increases the amount of clerical work for court staff because they must continue to process motions and other paperwork for pending cases irrespective of when the next hearing date is scheduled. One immigration judge told us that as cases are pending they accumulate more filings and ultimately take longer to review.

Immigration judges from five of the six courts we contacted also stated that they do not have sufficient time to conduct administrative tasks, such as case-related legal research or staying updated on changes to immigration law. Further, one immigration judge stated that in cases where immigration judges must consider hardship to family members, such as for a cancellation of removal case, delays in processing the case may create additional hardships that the immigration judge must consider in deciding the case. For example, the longer a respondent remains in the United States, the greater the likelihood that the respondent could create ties to the United States including through marriage or parenthood that the immigration judge would consider, as appropriate, before deciding on any applications for relief.[59] Additionally, as a result of the backlog, immigration judges from three of the six courts reported that court staff had feelings of low morale and job-related stress.

BIA Appeal Receipts Declined at a Faster Rate than Appeal Completions, Resulting in a Decreased Backlog

According to our analysis, from fiscal years 2006 through 2015, the number of new appeals filed with the BIA decreased by 37 percent while the number of appeals completed declined by 33 percent. The appeal backlog—the number of appeals pending at the start of each fiscal year—declined by 40 percent over this same period. Specifically, the number of new appeals filed with the BIA annually decreased from about 47,000 appeals filed in fiscal year 2006 to about 29,000 filed in fiscal year 2015. During this period, the number of appeals the BIA completed declined by 33 percent, from about 51,000 in fiscal year 2006 to about 34,000 in fiscal year 2015. Because new appeal receipts declined at a faster rate than appeals completed from fiscal year 2006 to fiscal year 2015, the appeal backlog decreased, from about 42,000 appeals pending at the start of

[59]For example, cancellation of removal may be available for an otherwise removable non-permanent resident alien provided, among other things, the respondent establishes that removal would result in exceptional and extremely unusual hardship to his or her spouse, parent, or child, who is a U.S. citizen or lawful permanent resident. See 8 U.S.C. § 1229b(b).

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fiscal year 2006 to about 25,000 at the start of fiscal year 2015. Further, the number of appeals pending at the beginning of fiscal year 2016 declined to about 20,000 appeals. Cases that were pending at the start of fiscal year 2015 had a median pending time of 211 days, 19 days shorter than the median pending time for appeals that had been pending at the start of fiscal year 2006.

Our analysis showed that over the 10-year period, the largest category of BIA appeal completions were appeals of removal decisions by immigration judges, but this category declined from 55 percent of all appeals completed in fiscal year 2006 to 42 percent of all appeals completed in fiscal year 2015. The completion of DHS decision appeals increased from about 5,000 in fiscal year 2006 to about 7,000 in fiscal year 2015, growing from 10 percent of appeals completed in fiscal year 2006 to 19 percent of appeals completed in fiscal year 2015. Appeals of other decisions by immigration judges, such as appeals of bond redeterminations, motions to reopen when the original case was held in absentia, and interlocutory appeals, remained relatively steady during this 10-year period, accounting for 32 percent of appeals in fiscal year 2006 and 35 percent of appeals in fiscal year 2015.

As previously discussed, single-member or three-member BIA panels review all appeals. From fiscal year 2006 to fiscal year 2015, single BIA members annually reviewed 90 percent or more of completed appeals. Three-member panels consistently reviewed 10 percent or less of completed appeals throughout the 10-year period. Further, the number of appeals completed by three-member panels averaged about 3,000 appeals per year from fiscal years 2006 through 2015.

The overall median time it took the BIA to complete any type of appeal decreased by 29 percent, from 317 days in fiscal year 2006 to 224 days

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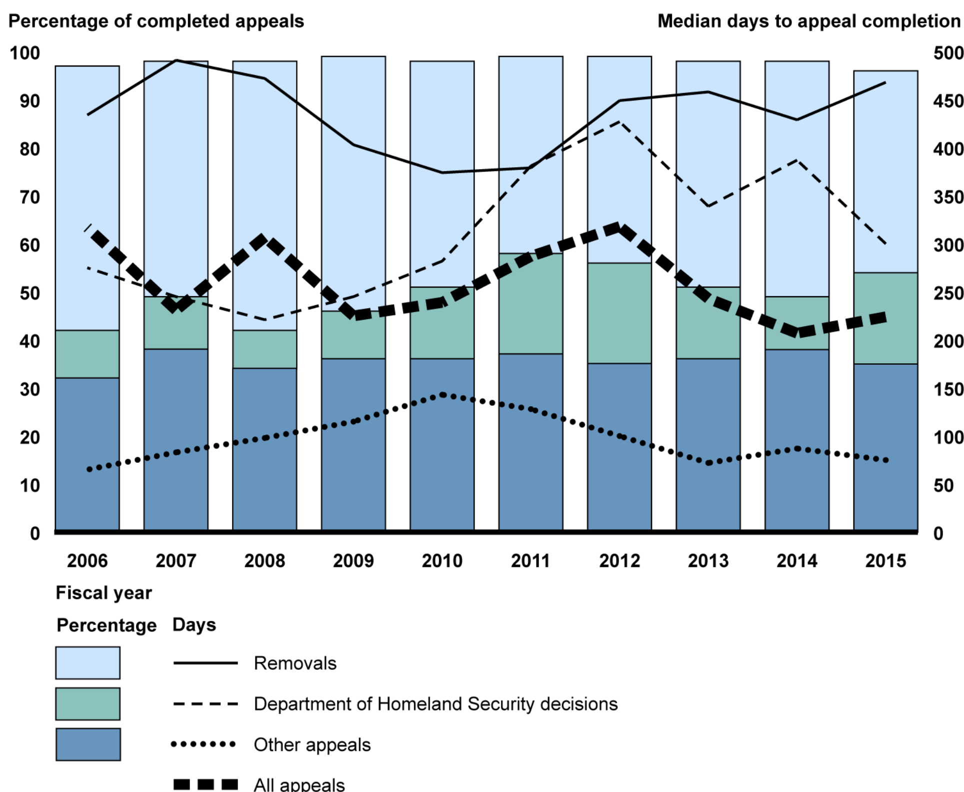
in fiscal year 2015; however, changes in appeal completion times varied across appeal types, as shown in figure 7.[60]

Figure 7: Board of Immigration Appeals Completions by Appeal Type and Median Completion Time, Fiscal Years 2006 through 2015



Source: GAO analysis of Executive Office for Immigration Review data. | GAO-17-438

Note: This figure does not include completions of appeals involving Asylum Only, Claimed Status, Credible Fear, Deportation, Exclusion, Nicaraguan Adjustment and Central American Relief Act cases, Reasonable Fear, Rescission or Withholding Only. From fiscal year 2006 to fiscal year 2015, these cases cumulatively accounted for two percent of all completed appeals.

[60]To calculate the length of a BIA appeal, we counted the number of days between the date the respondent filed the appeal and the date the BIA completed the appeal. We included in this overall median the time it took to complete appeals of DHS decisions. EOIR officials told us that they do not include appeal completion times for DHS decisions when calculating appeal completion times because DHS is initially responsible for the management of DHS decision appeals, including receipt of the Notice of Appeal. However, we included time to complete DHS decisions in the overall median time to illustrate how long it took to complete the appeal from the perspective of the parties involved, not how long it to the BIA to complete the portion of the appeal for which it is responsible.

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EOIR Could Improve its Workforce Planning, Hiring, and Technology Utilization to Help Address the Case Backlog

Better Workforce Planning and Hiring Practices Could Help EOIR Address Staffing Challenges and the Case Backlog

EOIR could help address its staffing challenges, such as not hiring enough immigration judges to meet its authorized number of judges, and the case backlog through better workforce planning and hiring practices. EOIR uses various inputs to estimate staffing needs on an annual basis. However, these annual estimates do not account for a number of factors that affect EOIR's staffing needs, and EOIR has not developed and implemented a workforce plan to guide its efforts for identifying and addressing staffing needs. According to EOIR officials, EOIR currently estimates staffing needs using an informal approach that considers the needs of specific courts, staff availability, and funding. Specifically, EOIR calculates its immigration judge staffing needs by dividing its entire projected caseload for the upcoming fiscal year by the average number of cases completed per immigration judge in the previous year. EOIR then calculates its support staff needs using a predetermined ratio of support staff per immigration judge.

However, this estimate does not account for long-term staffing needs, reflect EOIR's performance goals, or account for differences in the complexity of different types of cases immigration judges are required to complete. For example, in developing this estimate EOIR does not calculate staffing needs beyond the next fiscal year or take into account resources needed to achieve the agency's case completion goals, which as discussed later in this report, establish target time frames in which immigration judges are to complete a specific percentage of certain types of cases. Furthermore, according to EOIR data, approximately 39 percent of all immigration judges are currently eligible to retire. However, EOIR has not systematically accounted for these impending retirements in calculating its future staffing needs.

EOIR's most recent Strategic Plan, which covered 2008-2013, stated that EOIR would create staffing plans for each office that take into account

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new skills needed to achieve EOIR's mission in the future.[61] However, according to EOIR officials, EOIR did not complete these staffing plans due to a lack of resources. In 2016, EOIR awarded a contract to a consulting company for the development of a workforce planning report. Under this contract, the consultant is to provide, by April 2017, objective and standardized measures of judicial and court staff workloads and a method or formula by which EOIR can assess the need for additional resources. Additionally, according to EOIR officials, as of February 2017, the Office of the Chief Immigration Judge had initiated a study of the activities critical to case completion and the time it takes court staff to complete these activities. However, EOIR was unable to provide documentation describing the specific goals of this study.

EOIR's upcoming workforce planning report and the study of case activities are positive steps that could help strengthen EOIR's strategic workforce planning efforts; however, they do not include key elements of a strategic workforce plan that would help EOIR better address current and future staffing needs. Strategic workforce planning, also called human capital planning, focuses on developing long-term strategies for acquiring, developing, and retaining an organization's total workforce to meet the needs of the future, as described in figure 8. We have identified key principles for effective strategic workforce planning that describe several important elements of a strategic workforce plan.[62] For example, the key principles state that agencies should determine the critical skills and competencies that will be needed to achieve current and future programmatic results. Our key principles also state that agencies should develop strategies that are tailored to address gaps in number, deployment, and alignment of human capital approaches for enabling and sustaining the contributions of all critical skills and competencies. Further, the key principles state that agencies should monitor and evaluate the agency's progress toward its human capital goals and the contribution that human capital results have made toward achieving programmatic results.

[61]Executive Office for Immigration Review, *Fiscal Years 2008-2013 Strategic Plan*, (Washington D.C.: January 2008). EOIR has not issued another strategic plan since 2013, and, according to EOIR officials, has instead sought to execute the goals enumerated in DOJ's Strategic Plan.

[62]GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning,* GAO-04-39 (Washington, D.C.: Dec. 11, 2003).

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Figure 8: Strategic Workforce Planning Process

Source: GAO. | GAO-17-438

EOIR's initial contract for the workforce planning report required the development of a method or formula for assessing the need for additional immigration judges and staff, but it did not require the contractor to identify critical skills and competencies or tailor identified requirements to current or future programmatic results. For example, EOIR's contract states that the report will identify the volume of judicial and staff resources necessary to allow EOIR to better fulfill its mission of timely adjudication, as defined by completions that meet EOIR's case completion goals. However, as discussed later in this report, EOIR does not have case completion goals for non-detained cases, and the majority of EOIR's cases—90 percent of the immigration courts' total caseload in fiscal year 2015—do not fit within a case completion goal. Therefore, EOIR's new resource allocation model to be provided under the contract is unlikely to account for target time frames for the adjudication of the vast majority of cases. Moreover, although EOIR's upcoming report is to identify gaps in

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the number of staff needed, the contract does not require the contractor to develop strategies or approaches to address those gaps or analyze the range of flexibilities in hiring available under current authorities. In addition, EOIR's contract does not contain procedures for monitoring or evaluating progress toward its human capital goal of developing a skilled and diverse workforce. EOIR officials stated that the contract does not include these items because EOIR has the option of extending the contract and requesting additional deliverables.[63]

Following our raising of these issues with EOIR in February 2017, EOIR officials stated that the agency is beginning to develop a strategic plan for fiscal years 2018 through 2023 that will address the agency's human capital needs. Specifically, according to EOIR officials, the strategic plan and follow-on plans will collectively include strategies to ensure that short- and long-term human capital needs are met as well as milestones to monitor and evaluate the agency's progress towards meeting these goals. However, EOIR was unable to provide documentation related to the content of this strategic plan. In February 2017, EOIR officials also told us that the agency had recently established an inter-component management staffing committee that will determine the optimal number and type of positions needed in each court. Additionally, in February 2017, EOIR provided us a document indicating that the agency has started to assess in which immigration courts to place 25 judges it may be allocated during fiscal year 2017. These are positive steps; however, in the absence of any follow-on workforce planning contracts or documentation related to EOIR's strategic plan, the extent to which these efforts will result in effective strategic workforce planning reflective of key principles is uncertain. Further, while EOIR's recent establishment of a staffing committee and efforts to determine where to place new judges are good initial steps, developing and implementing a strategic workforce plan that addresses key principles for effective strategic workforce planning, such as including a determination of critical skills and competencies, strategies to address skill and competency gaps, and monitoring and evaluating progress made, would better position EOIR to address current and future staffing needs.

Additionally, EOIR does not have efficient practices for hiring new immigration judges, which has contributed to immigration judges being

[63]The contract's period of performance includes a base year with the option for EOIR to extend the contract with additional deliverables over a 4-year period.

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staffed below authorized levels. We have previously reported that agencies should self-assess their human capital policies and procedures, including hiring, to ensure they are accomplishing agency policy and programmatic goals.[64] Specifically, we have reported that agencies should have a recruiting and hiring strategy that is targeted to fill short- and long-term human capital needs. However, EOIR has not assessed its hiring process or developed a formal hiring strategy, and its hiring process has not kept pace with agency-identified immigration judge staffing needs or authorized staffing levels. EOIR identified a need to continue to aggressively hire immigration judges, according to its fiscal year 2016 congressional budget justification, and requested funding for 55 new immigration judge positions to, among other things, address its caseload and improve the efficiency of the immigration courts. As mentioned earlier, the number of immigration judges has increased from 212 judges in fiscal year 2006 to 247 in fiscal year 2015. However, as Congress has allocated funds to increase the authorized number of judges, the actual number of immigration judges has consistently lagged behind authorized levels, resulting in staffing shortfalls. For example, in fiscal year 2016, EOIR was allocated 374 immigration judge positions and had 289 judges on board at the end of the fiscal year. EOIR officials attributed these gaps to delays in the hiring process. Furthermore, as previously discussed, about 39 percent of its immigration judges are currently eligible for retirement according to EOIR officials.

EOIR hires judges through a multi-step process, involving both EOIR and DOJ. EOIR officials first issue a vacancy announcement, review and interview applicants, and identify top candidates. EOIR then forwards the top candidates to the DOJ Office of the Deputy Attorney General, where a panel reviews the applicants and selects candidates for appointment by the Attorney General.[65] The candidate may then receive an initial employment offer, which the candidate has 21 days to accept or reject. Upon acceptance, the candidate must undergo a background

[64]GAO, *Human Capital: A Self-Assessment Checklist for Agency Leaders,* GAO/OCG-00-14G (Washington, DC: September 2000).

[65]Under U.S. immigration law, an “immigration judge” is an attorney appointed by the Attorney General as an administrative judge within EOIR, qualified to conduct specified classes of proceedings, including formal removal proceedings under INA § 240. See 8 U.S.C. § 1101(b)(4); 8 C.F.R. § 1003.10. This appointment procedure, according to EOIR officials, drives, in large part, the multi-step hiring process. In addition, a “Board Member” is an attorney appointed by the Attorney General to act as their delegate in resolving administrative appeals. 8 C.F.R. § 1003.1(a)(1).

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investigation by the Federal Bureau of Investigation and vetting through DOJ's Office of Attorney Recruitment and Management and Office of Legal Counsel. Following this step, the Deputy Attorney General and Attorney General both review and approve the candidate's application package a second time. EOIR may then make a formal offer of employment to the candidate upon receiving the approval of the Attorney General.

EOIR has not assessed its hiring process or developed a hiring strategy that is targeted to fill short- and long-term human capital needs. According to EOIR officials, this is because EOIR has instead focused on improving aspects of its hiring process. For example, EOIR has entered into contracts for additional human resource support staff. Under one of these contracts, EOIR receives assistance with hiring support staff, which, according to EOIR officials, permits EOIR's human resources staff to focus more of their time on immigration judge hiring. Under the other contract, EOIR is to receive support onboarding new immigration judges. Additionally, EOIR has hired six additional human resources staff members and taken steps to improve its hiring process, according to EOIR officials.[66] Specifically, prior to the contracts increasing EOIR's human resources support, the agency's human resources staff directly referred all applications to the Assistant Chief Immigration Judges who initially reviewed applications and selected the interviewees. According to EOIR officials, this method saved some time in the hiring process because, for example, most applicants who were of sufficient caliber to be identified by the Assistant Chief Immigration Judges as candidates for the position already met the basic qualifications that human resources staff looked for in their initial review of applications.[67]

[66]In addition, according to EOIR officials, in 2012 EOIR received approval from DOJ to change the requirements of the hiring process so that EOIR and DOJ could, following a preliminary background screening, temporarily appoint most immigration judge candidates before their full background investigations are completed. EOIR officials stated that this change reduced the hiring process by months. However, in 2015 DOJ rescinded this authority to temporarily appoint immigration judges, according to these same officials.

[67]According to EOIR officials, following the inclusion of additional human resources staff in 2015, EOIR's Office of Human Resources reverted to its former process of human resources staff first reviewing all applications for candidate qualifications before referring the applications to the Assistant Chief Immigration Judges for further review. EOIR officials stated that while this change in the hiring process worked well, they did not see the need to continue this revised process in light of additional human resources staff for reviewing applications.

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However, our analysis of EOIR hiring data found that from 2011 to August 2016, EOIR took an average of more than 2 years—742 days—to hire new immigration judges.[68] According to EOIR officials, this time period included a 3-year hiring freeze from January 2011 through February 2014 that prolonged the hiring process. When we only included hires initiated after the hiring freeze ended in February 2014, we found that EOIR took an average of 647 days to hire an immigration judge. EOIR officials also attributed the length of the hiring process to delays in the Federal Bureau of Investigation background check process, which is largely outside of EOIR's control. However, our analysis found that other processes within EOIR's control accounted for a greater share of the total hiring time. In fiscal year 2015, EOIR began tracking the immigration judge hiring process in greater detail by maintaining a spreadsheet listing key dates in the process. Prior to 2015, EOIR did not track all key dates in the process, such as dates associated with the background check process, in its hiring files. For judges hired since EOIR began tracking these dates until August 2016, our analysis found that background checks accounted for an average of about 41 days.[69] However, for the same period our analysis found that an average of 135 days elapsed between the date EOIR posted a vacancy announcement and the date EOIR officials began working to fill the vacancy.[70] During this period of time, EOIR's Office of Human Resources reviews and prepares the applications for a subsequent review by hiring officials in the Office of the Chief Immigration Judge. According to EOIR officials, EOIR's vacancy announcements do not necessarily correspond to vacant positions. Rather, EOIR issues annual hiring announcements that cover a large number of immigration courts before they have determined whether those courts have open vacancies. When EOIR seeks to fill a vacancy or a new judge position, officials begin by determining where the judge should be located. Then,

[68]To calculate the average time it took EOIR to hire an immigration judge, we calculated the average number of calendar days between the day EOIR posted a vacancy announcement for the position and the day the judge started in the position.

[69]EOIR cannot track the exact dates the Federal Bureau of Investigation began and completed the background checks, but EOIR officials stated that the background check generally occurs between the date EOIR submits the background check information to DOJ and the date EOIR submits the complete background check information to the Office of the Deputy Attorney General for approval. The 41-day average background check time we cite reflects the period between these two dates.

[70]To calculate the time EOIR took to begin working to fill the vacancy, we subtracted the announcement posting date from the date EOIR began working the vacancy.

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EOIR officials use the previously-issued vacancy announcements to begin identifying candidates for the positions.

Further, our analysis found that since EOIR began tracking key hiring dates, an average of 74 days elapsed between the time EOIR began working to fill a vacancy and the time EOIR's Office of Human Resources provided a list of qualified applicants to hiring officials.[71] EOIR officials attributed this length of time to the large number of applicants EOIR receives for each vacancy announcement.[72] Figure 9 provides an overview of the hiring process and key milestones for immigration judges hired during or after fiscal year 2015, when EOIR began comprehensively tracking dates.

[71]To calculate the time EOIR's Office of Human Resources took to provide a list of qualified applicants to hiring officials, we subtracted the date EOIR began working the vacancy from the date EOIR hiring officials received human resources' list of qualified applicants. This value excludes seven judges for whom EOIR began working vacancies using a list of candidates EOIR's Office of Human Resources had already provided.

[72]According to EOIR officials, EOIR received more than 20,000 applications for immigration judge positions during the fiscal year 2014 through 2016 hiring period.

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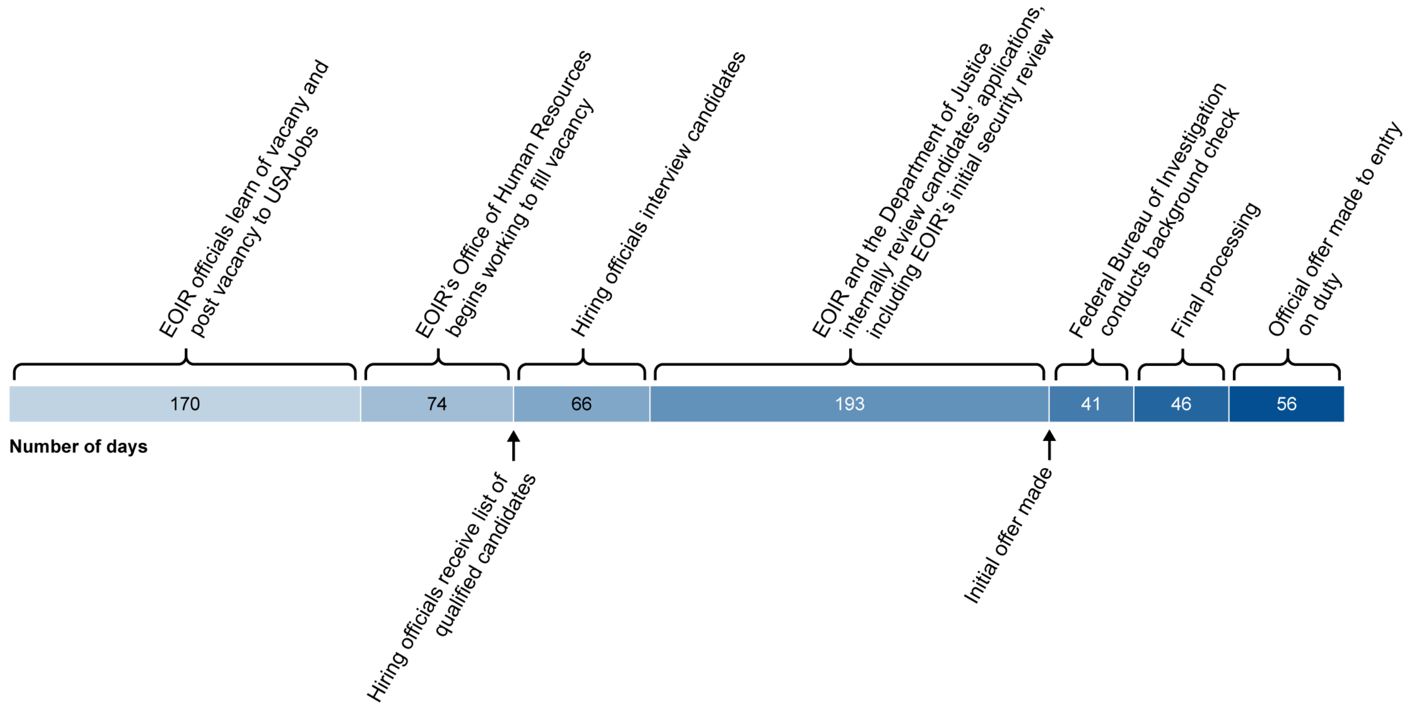
Figure 9: Average Hiring Timeline for Executive Office for Immigration Review (EOIR) Immigration Judges, Fiscal Year 2015 through August 2016



Source: GAO analysis of EOIR data. | GAO-17-438

Note: The averages for each segment of the timeline do not sum to 647 due to rounding.

In February 2017, EOIR officials stated that the agency was under a hiring freeze as a result of the President's January 23, 2017 memorandum freezing the hiring of federal civilian employees, but that EOIR planned to request an exception to permit the agency to resume hiring.[73] The explanatory statement accompanying the Consolidated Appropriations Act, 2017, states that within the funding provided, EOIR is to continue hiring new judges funded in fiscal year 2016 and hire at least

[73]White House, *Presidential Memorandum Regarding the Hiring Freeze* (Washington, D.C.: Jan. 23, 2017).

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10 new immigration judge teams.[74] The President's fiscal year 2018 budget, released in May 2017, proposed funding to allow EOIR to hire 75 additional immigration judge teams, including judges and supporting staff.[75] Uncertainty regarding when and for how long EOIR will be able to hire immigration judges coupled with its staffing gaps makes EOIR's ability to hire judges efficiently, when authorized, particularly important. EOIR's beginning to track key dates in its hiring process is a positive step toward gathering information needed to assess and improve its hiring process. Using this and other information to assess its immigration judge hiring process to identify opportunities for efficiency; using the assessment results to develop a hiring strategy that targets short- and long-term human capital needs; and implementing actions to increase efficiency could better position EOIR to hire new judges more quickly and address immigration judge staffing gaps, which could improve EOIR's overall operations.

EOIR Needs to Better Manage Implementation of Its Electronic Filing Capability

EOIR identified a comprehensive electronic filing (e-filing) capability—a means of transmitting documents and other information to immigration courts through an electronic medium, rather than on paper—as essential to meeting its goals in 2001; however, as of February 2017 EOIR has not implemented such a system. In particular, EOIR issued an executive staff briefing for an e-filing system in 2001 that stated that only through a fully electronic case management and filing system would the agency be able to accomplish its goals.[76] These goals include, among other things, adjudicating all cases in a timely manner while ensuring due process and fair treatment for all parties, and promoting internal and external communication with court stakeholders.

[74]See 163 Cong. Rec. H3327, H3370 (daily ed. May 3, 2017), accompanying Pub. L. No. 115-31, div. B., 131 Stat. 135 (2017). The explanatory statement further directs DOJ to accelerate its recruitment, background investigation, and placement of immigration judge teams; and, for fiscal year 2017, to continue to submit monthly performance and operating reports to the Committees on Appropriations, to include the status of its hiring and deployment of new immigration judge teams. Id.

[75]The President's fiscal year 2018 budget states that the proposed funding for immigration judge hiring would bring the total number of funded immigration judge teams to 449.

[76]In 2001, the former EOIR Director charged an executive-level working group with analyzing the information technology needs of the agency to include the development of an e-filing system. This briefing presents the findings and recommendations of this working group, and EOIR provided it to us in response to our request for an e-filing system concept of operations.

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The briefing cited several benefits of an e-filing system, including:

- Increasing the ability of the immigration courts to track and schedule cases;
- Reducing the data-entry, filing, and other administrative tasks associated with processing paper case files;
- Improving communication with external court stakeholders, such as respondents and attorneys, by providing the ability to file court documents from private home and office computers;
- Enabling immigration court staff to have concurrent and immediate access to the same case file, as well as the ability to share, annotate, and edit documents through e-mail; and
- Allowing immigration court staff and management to conduct analysis and strategic planning using the e-filing system's data to ensure that the agency is meeting its goals.

Since 2001, EOIR has been working to develop a comprehensive e-filing capability, but has not adhered to several of its stated goals and timeframes for implementing this capability. EOIR proposed in the 2001 briefing that the agency would, following the implementation of a case management database in 2002 and successful pilot tests of the e-filing system, fully implement the system in 2003. However, EOIR did not achieve these goals. Rather, in 2005 EOIR issued an alternatives and cost-benefit analysis for a new system known as eWorld, which was to serve as a platform for developing an e-filing capability, among other functions.[77] Specifically, according to this analysis, EOIR planned to implement eWorld in four phases: (1) eInfo to provide a single integrated case management system to replace the legacy systems; (2) eAccess to create web-based internal EOIR and public access mechanisms to access EOIR information, including the incorporation of digital audio recording capabilities; (3) eFiling to automate document-processing capabilities; and (4) ePrecedents to assist judges and BIA members with searching and assembling legal and other information pertaining to cases. The implementation of these phases, according to this analysis, was expected to occur over 7 years and EOIR would develop an e-filing technology that would allow, among other things, all parties to

[77]According to EOIR OIT officials, the eWorld project was a multi-year, multi-phased project to begin the transition from using paper to electronic documents for EOIR's official records. Under the eWorld effort, EOIR developed applications that set the stage for a more integrated information technology environment, according to these officials.

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electronically file documents with the immigration courts during fiscal year 2006.

EOIR implemented other components of eWorld, such as a case management system and digital audio recording systems in all courts, but did not implement the e-filing component during fiscal year 2006, as planned. EOIR continued to emphasize the importance of acquiring a comprehensive e-filing capability in its most recent strategic plan, which covered 2008 to 2013, by establishing the implementation of an e-filing system as one of its four strategic goals to achieve excellence in management, administration, and customer service.[78]

It is unclear, due to a transition in oversight responsibility and a lack of historical documentation, why EOIR did not fully carry out these efforts to implement a comprehensive e-filing system. According to EOIR OIT officials, decision-making authority for these e-filing efforts resided with EOIR's Office of Planning, Analysis, and Technology, which has since dissolved, and OIT is now responsible for implementing new technology. According to these officials, the Office of Planning, Analysis, and Technology—which had the decision-making authority for overseeing eWorld, including e-filing—may have disposed of records documenting reasons for not meeting prior goals and timeframes pursuant to mandatory record retention schedules. As a result, OIT officials were unable to locate historical documentation on prior efforts, such as program baselines or cost estimates.

EOIR OIT officials offered several reasons for not meeting past goals and time frames, including the need to develop several incremental technical capabilities before implementing a comprehensive e-filing system. EOIR has implemented several systems foundational to a comprehensive e-filing system since 2001, which have provided additional capabilities, but have not yet led to the implementation of an e-filing system. EOIR spent approximately $10 million on its case management system and $9 million on its digital audio recording system, which were implemented in 2007 and 2010, respectively. The digital audio recording system allows the immigration courts to digitally record immigration hearings and provide an electronic transcript of the hearings, which was, according to EOIR OIT officials, a key capability they needed to develop before implementing a

[78]Executive Office for Immigration Review, *Fiscal Years 2008-2013 Strategic Plan* (Washington, D.C.: January 2008).

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comprehensive e-filing system. More recently, in 2015 EOIR implemented the eInfo and eRegistration systems, which cost approximately $3.7 million. The eInfo system, which is different from the system envisioned under the eInfo phase of the eWorld platform, is a web-based application that allows registered attorneys and fully accredited representatives to view their clients' case information. The information provided by the eInfo application is similar to that which is currently available by telephone via the Automated Case Information Hotline. The eRegistration system is an electronic registry of respondent representation, such as attorneys and other accredited representatives and allows respondents' representatives to electronically file the forms indicating respondent representation with the immigration courts and the BIA. This application allows for the electronic filing of two forms indicating respondent representation, but EOIR immigration court officials explained that the forms still need to be printed out and placed in the paper case files EOIR maintains.

EOIR OIT officials also explained that prior timeframes and goals were not met because the technology needed to develop a comprehensive e-filing system was evolving and unavailable at the time. Specifically, according to EOIR officials, a single commercial-off-the-shelf solution for an e-filing system was unavailable. However, EOIR reported in 2001 that it was technologically feasible to develop a comprehensive e-filing system and, in 2005, identified two potential e-filing systems in its alternatives analysis for the eWorld platform that would have cost approximately the same as maintaining the existing paper-based method of filing documents with the immigration court. As previously described, it is unclear, due to a lack of available historical documentation, what decisions EOIR made regarding the e-filing options identified in the 2005 alternatives analysis for eWorld. Further, EOIR OIT officials stated in 2016 that it remains unlikely that EOIR will be able to implement a single commercial-off-the-shelf solution without a fair amount of customization before implementation. Additionally, in terms of available technology, other court systems, such as the U.S. district courts, courts of appeals, and U.S. Bankruptcy Courts were able to begin converting to a comprehensive e-filing system in 2001 with the district and bankruptcy courts completing their conversion in 2006 and the courts of appeals completing their conversion in 2012.

EOIR OIT officials also cited evolving federal government technological requirements for data centers, staffing shortages, and a decrease in funding as affecting EOIR's capacity to implement e-filing technology prior

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to 2016.[79] However, EOIR did not demonstrate how evolving data center requirements would prohibit EOIR from developing and implementing a comprehensive e-filing system because these requirements are designed, in part, to encourage IT efficiencies and were not established until 2010 and 2014 respectively. In regard to EOIR staffing shortages, DOJ and EOIR had a hiring freeze, but it did not occur until 2011, nearly 10 years after EOIR first envisioned the development of an e-filing capability. According to EOIR officials, EOIR's OIT experienced a significant decrease in its budget and staffing during key years of the eWorld effort that required the agency to defer costs into 2007 and beyond. Specifically, according to EOIR officials, its Office of Planning, Analysis and Technology's budget decreased from approximately $41 million in fiscal year 2010 to approximately $30 million in fiscal year 2013. However, as previously described, EOIR's total appropriation increased every year from fiscal years 2005 through 2016, except for fiscal years 2011 and 2013.

EOIR initiated a comprehensive e-filing effort in 2016, but improved oversight for this effort could help ensure the successful and timely implementation of this capability. In April 2016, EOIR initiated a market research effort for a comprehensive e-filing system—the EOIR Courts and Appeals Systems (ECAS). According to EOIR OIT officials, EOIR envisions ECAS to be a web-based system that tracks, displays, and manages immigration-related records; routes immigration-related documents for the appropriate approvals and decisions; provides improved access to select immigration data; allows for electronic filing and payment; delivers statistics and reports for enhanced court management; and allows for the intergovernmental secure transfer of data. Key documents associated with the development of ECAS underscore the importance EOIR has identified for implementation of an e-filing system. For example, according to EOIR's statement of work for ECAS, EOIR currently relies on a myriad of outdated systems on multiple platforms. Further, EOIR stated in its fiscal year 2009 budget justification

[79]Specifically, in regard to government technological requirements, EOIR OIT officials explained that the agency has had to consider the requirements imposed by the Office of Management and Budget's 2010 Federal Data Center Consolidation Initiative, which seeks to consolidate federal agency data centers, among other goals; and the Federal Information Technology Acquisition Reform Act (FITARA), which outlines specific requirements for, among other things, the Federal Data Center Consolidation Initiative. Subtitle D of Title VIII, Division A, of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, div. A, tit. VIII, subtit. D, 128 Stat. 3292, 3438-50 (2014).

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that upon fully implementing an e-filing system EOIR will be able to improve the efficiency of its entire adjudication process and that a higher percentage of its cases will be completed within target timeframes. Additionally, officials in 4 of the 6 immigration courts and DHS attorneys in all 6 of the offices we met with reported negative effects due to the absence of an e-filing system, such as an increased risk of losing documents; increased resources and staff hours spent manually entering data into the case management system and filing, storing, and processing paper files; and delays due to, and costs incurred by, reliance on sending paper documents through the mail. Conversely, officials in 3 of the 6 immigration courts reported potential challenges in implementing and using an e-filing system, such as difficulties for unrepresented respondents in accessing and navigating the system, and the need for additional court staff to scan existing paper case files and evidence, such as marriage licenses and birth certificates into the system.

EOIR OIT officials stated that EOIR is in the early phases of the ECAS project and that it will take several years to fully implement ECAS, with the first phase of implementation estimated to begin in 2018. Specifically, in April 2016, EOIR contracted with a vendor to determine the types of commercial-off-the-shelf technologies that are available for implementing ECAS. According to EOIR OIT officials, this effort will result in a "roadmap" for determining the technical solution EOIR should implement for ECAS. The vendor, according to EOIR officials, submitted the alternatives analysis and cost estimate for this effort—a key project milestone—2 months after it was originally due to EOIR. EOIR OIT officials estimated that the process of identifying the ECAS solution, gaining approval from EOIR leadership, and requesting proposals from potential vendors who will implement this solution will be completed by the end of October 2017 and that the contract for implementing ECAS will be awarded by January 2018.

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Best practices for effective program oversight cite the importance of oversight in managing the acquisition and development of IT systems.[80] *Standards for Internal Control in the Federal Government* also state that internal control is a process that should provide reasonable assurance that the objectives of the agency are being achieved. [81] Further, according to internal control standards, management is to identify risks throughout the entity, including the use of new technology in operational processes, and design control activities so that the entity meets its objectives and addresses related risks. According to leading governance practices, to ensure effective program oversight, organizations should, among other practices, create an entity for overseeing IT projects; document policies and procedures for program governance and oversight; monitor program performance and progress toward expected cost, schedule, and benefits; ensure that corrective actions are identified and assigned to the appropriate parties at the first sign of cost, schedule, or performance slippages; and ensure that corrective actions are tracked until the desired outcomes are achieved.

In alignment with these best practices, EOIR has documented policies and procedures governing how its primary ECAS oversight body—the ECAS Executive Committee—will oversee ECAS through the development of a proposed ECAS solution. Specifically, the ECAS Executive Committee, comprised of representatives from EOIR's BIA, Office of the Chief Immigration Judge, and OIT, among other offices, is charged with meeting regularly for ECAS progress reviews, ensuring that the agency's needs are met, and determining and approving ECAS solutions. Additionally, to comply with requirements of the Federal Information Technology Acquisition Reform Act, in 2016 the EOIR Investment Review Board was established and is responsible for

[80]Project Management Institute, Inc., The Standard for Program Management–Third Edition, 2013; Software Engineering Institute/Carnegie Mellon, Capability Maturity Model® Integration (CMMI®) for Development, Version 1.3, CMU/SEI-2010-TR-033 (Hanscomb AFB, Massachusetts: November 2010) and CMMI® for Acquisition, Version 1.3, CMU/SEI-2010-TR-032 (Hanscomb AFB, Massachusetts: November 2010); GAO, *Information Technology Investment Management: A Framework for Assessing and Improving Process Maturity*, GAO-04-394G (Washington, D.C.: March 2004); GAO, *Immigration Benefits System: Better Informed Decision Making Needed on Transformation Program,* GAO-15-415 (Washington, D.C.: May 18, 2015); and Center for Legal and Court Technologies and the Administrative Conference of the United States, *Report to the Administrative Conference of the United States: Best Practices for Using Video Teleconferencing for Hearings and Related Proceedings* (Washington D.C.: 2014).

[81]GAO-14-704G.

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reviewing proposals and recommendations regarding major investments over $1 million and EOIR-wide high risk projects for all information systems, data collections, and resources.[82] According to OIT officials, the board held its first meeting in March 2017 and was briefed on the ECAS project. Consistent with best practices for project oversight, EOIR documented its policies and procedures for how the EOIR Investment Review Board will oversee all major IT investments within EOIR, including how it is to monitor program performance, identify and track corrective actions, and ensure that desired outcomes are achieved.

However, EOIR OIT officials stated that the EOIR Investment Review Board was never intended to oversee ECAS implementation due to the detailed nature of this system's implementation, and EOIR has not yet designated an oversight entity or documented a plan for overseeing ECAS during critical stages of its development and implementation. According to the ECAS Executive Committee charter, the committee will dissolve after 1 year when the ECAS roadmap for eventually determining the solution is identified. EOIR OIT officials stated that they are discussing future oversight for ECAS and may choose to extend the Committee's term, but will not decide how the phased implementation of ECAS, including oversight, will proceed until they identify a vendor because doing so is not yet necessary. As a result, it is unclear how the ECAS project will be overseen during the actual deployment of the ECAS solution. More specifically, it is not clear how the appropriate oversight body will monitor program performance and progress toward expected cost, schedule, and benefits; ensure that corrective actions are identified and assigned to the appropriate parties at the first sign of cost, schedule, or performance slippages; and ensure that corrective actions are tracked until the desired outcomes are achieved. Without a designated oversight entity and a documented plan for oversight for ECAS through its deployment, EOIR is not well-positioned to monitor progress towards meeting expected costs and schedule milestones, such as the awarding of the ECAS contract and the deployment of the solution. Given EOIR's longstanding efforts to develop a comprehensive e-filing system and a delay in meeting a key ECAS milestone, identifying and establishing an appropriate entity for exercising oversight for the entirety of the ECAS effort upfront is particularly important. Further, documenting and

[82]Pub. L. No. 113-291, div. A, tit. VIII, subtit. D, 128 Stat. at 3438-50 (2014). Among other things, this act includes provisions to strengthen the authorities of various agencies' Chief Information Officers, enhance transparency and improve risk management in IT investments, and require agencies to inventory their IT assets.

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implementing a plan that is consistent with best practices for exercising oversight over ECAS until it is fully implemented would better position the agency to identify and address any risks and implement ECAS in accordance with its cost, schedule, and operational expectations.

EOIR Plans to Expand Its VTC Use, but Would Benefit from Assessing Any Effects on Hearing Outcomes and Collecting Feedback from Respondents

EOIR Could Improve Its VTC Program by Collecting More Reliable Data on VTC Hearings and Assessing Any Effects of VTC on Hearing Outcomes

EOIR could enhance its VTC program by collecting more reliable data on VTC hearings and using the information to assess any effects of VTC use on hearing outcomes. EOIR is authorized by statute to hold immigration removal proceedings: (1) in person; (2) in the absence of the respondent, where agreed to by the parties; (3) through video conference (i.e., VTC), in which case consent need not be obtained from either party; or (4) through telephone conference, which requires consent of the respondent if it is an evidentiary hearing on the merits.[83] According to EOIR officials, EOIR largely uses VTC for hearings for detained individuals, including both master calendar and individual merits hearings.[84] According to EOIR officials, VTC provides several benefits for the agency, including saving time and funds for judge travel to physical court rooms, particularly in remote locations; and providing more timely hearings for respondents who have cases in which the judge would have to travel to hear their case. Additionally, according to EOIR officials, using VTC can minimize judges' lost productivity resulting from a respondent or their representative not appearing at a court proceeding because the judge can, by virtue of using VTC to remotely hear the case, transition to hearing another case in the courtroom or conducting other work. According to EOIR officials, EOIR is undertaking and considering

[83]See 8 U.S.C. § 1229a(b)(2).

[84]As previously discussed, master calendar hearings are generally used to schedule individual merits hearings and address other administrative matters. Individual merits hearings generally address the specific facts and circumstances of the case, including any assessments of respondent and witness credibility.

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measures to ensure that VTC technology is available for use in every courtroom, which may result in increased VTC usage. EOIR officials also stated that EOIR is considering expanding its VTC program to provide additional interpretation services over VTC to the immigration courts.

Best practices for VTC hearings established by the Administrative Conference of the United States (ACUS) provide technical, operational, and environmental guidance on how agencies may implement or improve their use of VTC in administrative hearings and related proceedings. These best practices include, among others, ensuring available IT support staff and ensuring that the use of VTC is outcome-neutral and meets the needs of users.[85] In alignment with these best practices, EOIR has dedicated technical support personnel for trouble-shooting both routine and urgent VTC technical issues.

However, EOIR has not adopted the best practice of ensuring that its VTC program is outcome-neutral because it has not evaluated what, if any, effects VTC has on case outcomes. Further, *Standards for Internal Control in the Federal Government* state that agencies must have relevant, reliable, and timely information relating to internal as well as external events to manage the agency's operations.[86] EOIR, though, does not collect reliable data on (1) the number of hearings it conducts by VTC, (2) respondent appeals related to the use of VTC in their cases, or (3) motions filed by respondents requesting in-person instead of VTC hearings.[87]

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[85]Center for Legal and Court Technologies and the Administrative Conference of the United States*, Report to the Administrative Conference of the United States: Best Practices for Using Video Teleconferencing for Hearings and Related Proceedings* (Washington D.C.: 2014).

[86]GAO/AIMD-00-21.3.1. The update to the Standards, GAO-14-704G, effective beginning fiscal year 2016, further state that management should use quality information to achieve the entity's objectives.

[87]See 8 C.F.R. §§ 1003.1(b), 1240.15, related to the BIA's appellate jurisdiction. If a respondent believes that the use of VTC or any other factors adversely affected their hearing, the respondent can file an appeal with the BIA arguing that the use of VTC in the hearing was unfair or adversely impacted the outcome of their case. Additionally, prior to a VTC hearing, respondents can file a motion with the immigration judge requesting to hold the hearing in person and not by VTC. Generally, the motion should, according to guidance for private bar immigration attorneys, demonstrate the ways in which a merits hearing conducted by VTC will jeopardize the respondent's rights to a full and fair hearing.

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According to EOIR's most recent analysis of caseload data, EOIR conducted approximately 13 percent of all hearings (105,000 of 809,000) by VTC in fiscal year 2014. However, the number of VTC hearings EOIR conducted could be larger because EOIR does not require the collection of this information. In particular, according to EOIR management officials, EOIR does not require immigration court staff to indicate the hearing medium—in-person, telephonic, or VTC—in its case management system because court personnel have numerous other tasks to accomplish during hearings. Rather, the data field for the hearing medium is automatically populated as "in-person" unless court staff manually select an alternative medium on a drop-down menu within the system. Because the data for this field are auto-populated and voluntarily entered, EOIR does not have reliable data on how many VTC hearings it has conducted.

Congressional committees have also identified a need for EOIR to evaluate its VTC program to determine any relationship between VTC and hearing outcomes. In particular, the House Committee report accompanying the Consolidated and Further Continuing Appropriations Act, 2015 requested that EOIR, in order to assess a possible relationship between the use of VTC and the impact on managing caseloads and outcomes, collect information on the number and type of VTC hearings it conducts, analyze the results to determine if there are any effects of VTC use in hearings on case outcomes, and submit the results of the analysis to the Committee at the time of the fiscal year 2016 budget request.[88] In the House Committee report accompanying the Consolidated Appropriations Act, 2016 the committee noted that this VTC report had not yet been submitted, and directed EOIR to submit the report as soon as possible.[89] As of February 2017, EOIR had not submitted the report, but in a response to the House Committee, EOIR stated that it would need to consult with outside experts to develop a methodology and cost estimate for the study to ensure its validity and that EOIR was receptive to further discussing the study with the Committee.

According to EOIR officials, EOIR has not collected information on or evaluated the use of VTC in its hearings for several reasons.

[88]See H.R. Rep. No. 113-448, at 43 (May 15, 2014) accompanying Pub. L. No. 113-235, div. B, 128 Stat. 2130, 2173-2234 (2014).

[89]H.R. Rep. No. 114-130, at 35 (May 27, 2015) accompanying Pub. L. No. 114-113, div. B, 129 Stat. 2242, 2286-2333 (2015).

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- First, officials stated that modifying EOIR's case management system and retraining court staff to record the hearing medium for every case would create considerable costs for EOIR and create an extra task for already busy court staff. However, as previously described, EOIR's case management system includes a non-mandatory field for collecting data on the hearing medium, including the use of VTC, and some staff are already entering this data into the non-mandatory field to change the auto-population from in-person to VTC, as evidenced by EOIR data showing that over 100,000 hearings were held by VTC in fiscal year 2014.
- Second, officials stated that a study would likely be difficult, costly, time-consuming, and require EOIR to hire outside experts because it would need to account for several non-VTC factors, such as criminal history, that may affect the outcome of an individual's hearing.
- Third, any study on the effects of VTC would have to account for instances in which some hearings for a respondent were held in-person, while other hearings for the same respondent were held by VTC throughout the course of the respondent's case, according to EOIR officials. However, there are alternative methods for conducting studies absent the ability to randomly assign individuals to hearings with VTC and hearings without non-VTC for comparison purposes for evaluation.[90] In addition, other administrative agencies that use VTC, including the Department of Veterans Affairs (VA) Board of Veterans' Appeals (BVA) and the Social Security Administration's (SSA) Office of Disability Adjudication and Review (ODAR), have analyzed the impact of VTC on their hearings.
- Fourth, EOIR officials explained that they do not track the number of appeals related to the use of VTC and motions requesting in-person hearings because, due to the complexity of appeals and motions, it would require additional training for legal assistants and would compel EOIR to begin tracking reasons for other appeals and motions as well. However, the BIA has screening panels of staff attorneys tasked with identifying the legal issues in appeals who could incorporate this additional responsibility into their existing duties with respect to

[90]For instance, statistical procedures, such as "propensity score analysis," can be used to statistically model variables that may influence participants' assigned to a program compared with individuals not assigned. These procedures are then applied to the analysis of outcome data to reduce the influence of those variables on the results attributable to the program. EOIR's case management system includes data on detention status, among other factors. For more on designing evaluations, see GAO, *Designing Evaluations: 2012 Revision*, GAO-12-208G (Washington, D.C.: Jan.31, 2012).

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appeals. Additionally, EOIR does not necessarily have to, by virtue of collecting data on motions and appeals related to VTC, collect data on all reasons for motions and appeals.

Several immigration court officials, experts, and stakeholders we interviewed expressed concern that the use of VTC technology poses challenges for holding immigration hearings. Specifically, officials from all six of the immigration courts we visited reported challenges related to VTC hearings, including difficulties maintaining connectivity, hearing respondents, exchanging paper documents, conducting accurate foreign language interpretation, and assessing the demeanor and credibility of respondents and witnesses. One judge explained that VTC can further complicate foreign language interpretation using two interpreters to translate an uncommon language. For instance, VTC may be used for a first interpreter to translate a respondent's testimony from an uncommon language, such as Quiche, to a more common language, such as Spanish, and for a second interpreter to simultaneously translate the first interpreter's Spanish translation into English. Also, one judge explained that it can be difficult to exchange documents during VTC because the documents must be sent by a fax machine and it is hard to reference specific documents over the VTC. Additionally, immigration court officials from half of the immigration courts we visited stated that they had changed their assessment of a respondent's credibility that was initially made during a VTC hearing after holding a subsequent in-person hearing. For example, one immigration judge described making the initial assessment to deny the respondent's asylum application during a VTC hearing in which it was difficult to understand the respondent due to the poor audio quality of the VTC. However, after holding an in-person hearing with the respondent in which the audio and resulting interpretation challenges were resolved, the judge clarified the facts of the case, and as a result, decided to grant the respondent asylum. Another immigration judge reported being unable to identify a respondent's cognitive disability over VTC, but that the disability was clearly evident when the respondent appeared in person at a subsequent hearing, which affected the judge's interpretation of the respondent's credibility.

Additionally, 9 of the 10 experts and stakeholders we contacted also expressed concerns with VTC immigration hearings, including the potential for VTC to affect hearing outcomes.[91] One of the experts and

[91]According to EOIR officials, these expert and stakeholder perspectives do not align with the holdings of multiple courts of appeal, which have never found that conducting a VTC hearing violates due process.

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stakeholders we interviewed reported concerns with EOIR increasingly using VTC to conduct merits and asylum hearings, which generally address substantive case issues and can result in a decision. According to this individual, hearings held by VTC instead of in-person can exacerbate perceived barriers to pro se respondents—individuals without representation—who already have difficulty understanding the complex immigration legal system.[92] Another one of the experts and stakeholders cited a situation in which the respondent's attorney who was not physically co-located with the respondent could not confidentially confer with his client over VTC, and the respondent was ordered removed by the immigration judge. These experts and stakeholders also cited challenges during VTC hearings related to exchanging documents between multiple locations and the quality of foreign language interpretation during VTC hearings due to poor connectivity and audio quality.

Following our discussion of these issues with EOIR in February 2017, EOIR's Office of Planning, Analysis, and Statistics developed a preliminary proposal document describing possible approaches for studying VTC effects on case outcomes. However, as of February 2017, senior EOIR officials told us that EOIR does not have definitive plans to move forward with a study, leaving the extent to which EOIR will assess the use of VTC in immigration hearings uncertain. By collecting and analyzing data to assess the use of VTC in immigration hearings, EOIR could fulfill the directive in the House Committee report accompanying the Consolidated Appropriations Act, 2016, be better positioned to manage and improve its VTC program, as well as assess and address, as appropriate, concerns expressed by immigration court officials, experts, and stakeholders. Specifically, through collecting more complete data on the number and type of hearings it conducts by VTC, EOIR would have more reliable information for understanding the extent and nature of the agency's VTC use, particularly as it plans to expand its VTC program. Further, by collecting data on appeals related to the use of VTC and the number of in-person hearing motions filed, EOIR would have additional information on how respondents may view the use of VTC for hearings.

[92]According to a 2009 report authored by this expert's organization—the Chicago Appleseed Fund for Justice—VTC can also make detained respondents, who are typically alone in a room in a detention center looking at a video screen, uncomfortable or confused, which can result in the perception that they are being less than fully candid. Further, according to this report, removing the personal contact between the respondent and immigration judge makes it harder for respondents to make their cases. See Chicago Appleseed Fund for Justice, *Assembly Line Injustice: Blueprint to Reform America's Immigration Courts* (Chicago: May 2009).

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By using these and other data to assess VTC hearing outcomes and implementing any corrective actions resulting from this analysis, EOIR could have further assurance that its use of VTC in immigration hearings is neutral.

EOIR Could Further Ensure that Its VTC Program Meets User Needs by Collecting Feedback from Respondents on Their VTC Hearings

EOIR could further ensure that its VTC program meets user needs by soliciting feedback from respondents regarding their satisfaction and experiences with VTC hearings. According to EOIR officials responsible for implementing the VTC program, EOIR primarily gathers informal feedback on its VTC program through meetings between Assistant Chief Immigration Judges, immigration judges, and private bar and DHS attorneys. Additionally, immigration judges and other court stakeholders can take the initiative to provide feedback on the VTC program to the court administrator and Assistant Chief Immigration Judge, according to EOIR officials. However, EOIR does not, according to EOIR officials, systematically collect feedback on VTC immigration hearings from respondents.

According to ACUS best practices for VTC use, federal agencies should solicit feedback and comments about VTC from those who use it regularly. Specifically, ACUS recommends that agencies maintain open lines of communication with participants in order to receive feedback about the use of VTC for the hearing. Post-hearing surveys or other appropriate methods, according to ACUS best practices, should be used to collect information about the experience and satisfaction of the participants with the VTC hearing.

As previously discussed, immigration court officials from all six of the immigration courts we visited cited challenges related to using VTC for immigration hearings, which could impact respondents. Specifically, several of the immigration court officials we interviewed expressed concerns regarding the visual and audio quality of VTC hearings. For instance, one immigration judge explained that she discovered respondents from one DHS detention center frequently could not see all of the courtroom participants, including the immigration judge, on the VTC screen in the detention center. A member from the immigration judges' union explained that this lack of visibility in the courtroom for the respondents is a significant concern because, according to this member, it could affect the ability of the respondents to present evidence in support of their case and respond to evidence presented against them during the proceedings. Additionally, one immigration judge reported that she does not like to hold VTC hearings because it is sometimes hard to hear and fully comprehend what is being said over VTC, which, according to this

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judge, can make it difficult to assess the respondent's demeanor and credibility. Another immigration judge stated that respondents often cannot see everyone in the courtroom or know who is speaking during VTC hearings. Further, an additional immigration judge stated that there are sometimes poor connections over VTC that make it hard to hear the respondent. Additionally, officials from 5 of the 6 immigration courts we visited cited challenges related to VTC equipment malfunctions, including the need to reschedule hearings, move court-rooms, and a lack of visual and audio quality for VTC hearings which could lead to delays in respondents receiving a decision in their case.

Seven of the ten experts and stakeholders that we contacted similarly reported challenges with the visual and audio quality of VTC hearings that could affect respondents and immigration judges. Specifically, one of the experts and stakeholders reported that in some VTC hearings cameras are not always placed in an effective location. Another one of the experts and stakeholders stated that sometimes respondents and private bar attorneys cannot hear or see over VTC what is occurring in the court-room and that foreign language interpretation is also difficult to conduct over VTC when respondents cannot hear the translation, due to VTC audio quality issues. Three additional experts and stakeholders also expressed concerns with immigration judges not being able to see all of the hearing participants due to VTC technical issues.

EOIR does not, according to EOIR officials, systematically collect feedback on VTC immigration hearings from respondents for several reasons:

- The immigration court system is adversarial and respondents may not be able to separate their experiences with VTC from their satisfaction with the outcomes of their cases;
- Respondents can raise concerns with the medium of their hearing by filing an appeal with the BIA; and
- Systematic surveys to collect feedback on its VTC program would likely require significant resources.

However, EOIR could collect the respondent feedback after a hearing, but not necessarily after the immigration judge has decided the case. Specifically, because some cases entail multiple hearings, EOIR could collect feedback after a VTC hearing but prior to the conclusion of the case and respondents knowing the outcome. Additionally, other adjudicatory systems that use VTC have developed methods to collect

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feedback from respondents. For example, BVA officials stated that they previously used a survey card and then an overall veteran satisfaction survey to gather feedback from veterans regarding their hearing experience after the judge decided the case. However, BVA officials explained that due to concerns that the case outcome might bias the veterans' response to the survey and that the integrity of the data may be compromised by waiting to administer the survey, the BVA changed its method and will in 2017 begin using a new survey that it will conduct within 2 or 3 weeks after the hearing and prior to the BVA's decision. Additionally, instead of solely relying on the appeals process to address any respondent concerns with VTC hearings, EOIR could utilize existing feedback processes or potentially lower-cost approaches to collecting feedback that would not likely require significant resources. For instance, EOIR could build on its existing complaint process, which allows respondents to submit complaints regarding immigration judges, private bar attorneys, and foreign language interpreters through e-mail to established EOIR e-mail accounts for receiving each type of complaint.

According to ACUS best practices for using VTC for hearings, in addition to soliciting user feedback agencies should also ensure that conditions allow participants to see, be seen by, and hear other participants. Soliciting feedback from respondents on their satisfaction and experiences with VTC hearings, including the visual and audio quality of the VTC hearing, could give respondents the opportunity to raise such technical and other issues and, in turn, help EOIR identify and address them. Further, soliciting feedback from respondents can help EOIR better ensure that its VTC program meets all users' needs, including respondents whose cases are heard and decided during VTC hearings.

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Comprehensive Performance Assessment Could Help EOIR Identify Effective Management Approaches to Address the Case Backlog

EOIR Established Some Performance Measures, But Has Not Consistently Met Them and Does Not Have Performance Measures for Most Cases

EOIR previously established performance monitoring activities and measures to assess aspects of the immigration courts, but has eliminated several of these performance assessment mechanisms and has not met its remaining goals consistently since fiscal year 2010. Further, EOIR no longer has goals for most cases it adjudicates, including some cases it prioritizes for adjudication. Beginning in 1997, EOIR used the Immigration Court Evaluation Program to qualitatively measure the courts' operational performance. This program employed teams of peer evaluators—immigration judges, court administrators, and legal assistants from other courts—to evaluate a court's operations against established objectives, identify challenges the court faced in achieving EOIR's goals, and recommend appropriate corrective measures.[93] In 2002, EOIR also established 11 quantitative performance goals to help ensure the timely completion of cases, as shown figure 10. In particular, immigration judges were expected to complete a specific percentage of cases within a specified time frame. For example, EOIR established a goal that 80 percent of detained cases—cases in which the respondent is detained throughout the case—were to be completed within 60 days. DOJ uses performance results related to two of these goals—case completion time for detained cases and Institutional Hearing Program cases—in its Annual Performance Report to assess efforts in achieving its strategic objective

[93] GAO-06-771.

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of adjudicating all immigration cases promptly and impartially in accordance with due process.[94]

However, EOIR officials stated that in fiscal year 2008 EOIR moved from conducting qualitative on-site evaluations through the Immigration Court Evaluation Program to using quantitative performance measures. Further, in fiscal year 2010, EOIR eliminated and condensed several of these goals. Specifically, EOIR eliminated four quantitative case completion goals, including goals for most non-detained cases, and condensed four other goals into two goals, leaving five total performance goals for case completion times, as shown in figure 10.

[94]The Institutional Hearing Program provides for the adjudication of immigration cases involving respondents who are incarcerated in federal, state, and local institutions for criminal offenses.

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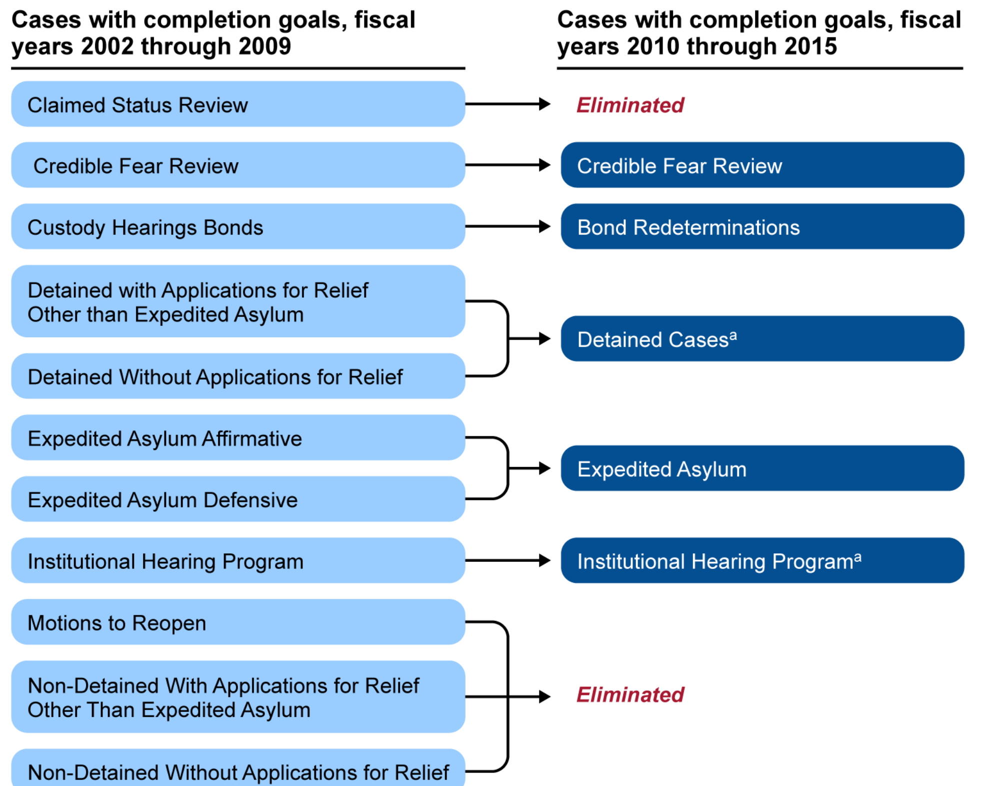
Figure 10: Executive Office for Immigration Review's (EOIR) Cases with Case Completion Goals, Fiscal Years 2002 through 2015



Source: GAO analysis of Executive Office for Immigration Review Performance Reports. | GAO-17-438

[a]Performance reported by Department of Justice in its Annual Performance Report to assess efforts in achieving its strategic objective of adjudicating all immigration cases promptly and impartially in accordance with due process.

Since fiscal year 2010, EOIR reported that it has not consistently met its five remaining goals. Specifically, according to internal quarterly performance reports, EOIR has only consistently met, or come close to meeting, its goal to complete 85 percent of bond redetermination hearings within 21 days, as shown in table 2.

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Table 2: Executive Office for Immigration Review's (EOIR) Case Completion Goals and Quarterly Performance, Fiscal Years 2010 through 2015

Case type	Time goal	Case goal (percent of completed cases)	Fiscal year					
			2010	2011	2012	2013	2014	2015
Bond Redetermination Hearings	21 Days	85	●	◕	●	●	●	◕
Credible Fear Review[a]	7 Days	100	○	○	○	○	○	○
Detained Cases[b]	60 Days	85	●	●	◕	○	○	○
Expedited Asylum Cases[c]	180 Days	90	○	○	○	○	○	○
Institutional Hearing Program	Prior to release	85	●	●	●	●	○	○

Legend: ● = met goal for all four quarters in fiscal year ◕ = met goal for three of four quarters in fiscal year ○ = did not meet goal in any quarter of fiscal year

Source: GAO analysis of Executive Office for Immigration Review Quarterly Performance Reports. | GAO-17-438

[a]For credible fear cases, a respondent who an asylum officer determined does not to have a credible fear of persecution in his or her home country is to be ordered removed. In that circumstance, the individual may seek review of the asylum officer's negative determination by an immigration judge; and this review must be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the adverse determination. (8 U.S.C. § 1225(b)(1)(B)(iii)(III))

[b]For fiscal year 2015, EOIR changed its goal for detained cases to achieve adjudication of 80 percent of cases within 60 days, five percent less than in fiscal years 2010 through 2014. However, EOIR reported that it did not meet this goal.

[c]In the absence of exceptional circumstances, final administrative adjudication of an asylum application is to be completed within 180 days after the date an application is filed (not including time for administrative appeal). (8 U.S.C. § 1158(d)(5)(A)(iii)).

Further, as a result of changes to its performance activities and measures, EOIR does not have performance measures or goals for most of the cases it adjudicates. For example, EOIR does not have performance goals for cases in which the respondent is not detained (non-detained cases).[95] In 2012, the DOJ Office of Inspector General recommended that EOIR develop immigration court case completion goals for non-detained cases.[96] EOIR partially concurred with this recommendation and began to track non-detained case completion times,

[95]EOIR has a performance goal for expedited asylum cases. Expedited asylum cases are cases subject to a 180-day adjudication deadline and respondents in these proceedings may be detained or not detained. Therefore, some of these cases may have an associated case completion goal; however, according to EOIR performance reports and data, all expedited asylum cases constituted a relatively small percentage (about 9 percent) of EOIR's completed cases from fiscal years 2010 through 2015.

[96]Department of Justice Office of Inspector General, *Management of Immigration Cases and Appeals by the Executive Office for Immigration Review,* I-2013-001 (Washington, D.C.: October 2012).

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but did not implement case completion goals for non-detained cases.[97] EOIR officials explained that the agency did not ultimately implement these goals because case completion goals are a statement of agency priorities, and EOIR officials stated that counting every case as a priority does not allow EOIR to effectively allocate its resources. Non-detained cases comprised 83 percent of immigration courts' total caseload from fiscal year 2010 through fiscal year 2015. Further, non-detained cases grew at an average annual rate of 10 percent over that time period and in fiscal year 2015 represented 90 percent of EOIR's total caseload.

Additionally, EOIR has identified certain types of cases as priorities for adjudication and issued guidance to courts on how to prioritize these cases through their scheduling of hearings, but EOIR has not established goals to ensure the timely completion for all of these cases. From September 2014 to January 2017, EOIR prioritized the cases of detained recent border crossers, unaccompanied children, and families held in detention or released on alternatives to detention.[98] EOIR had case completion goals for detained respondents, but not for the other cases it considered a priority—unaccompanied children or families released on alternatives to detention.

Our analysis showed that from September 2014 when the guidance was issued to September 2015, prioritized cases accounted for 28 percent of the NTAs EOIR received as shown in table 3. Prioritized cases without case completion goals, families released on alternatives to detention and unaccompanied children, accounted for 23 percent of NTAs EOIR received during this period.

[97]The DOJ Office of Inspector General stated in an August 2013 letter to EOIR that it considered EOIR's action to begin tracking non-detained case completion times as responsive to the recommendation to develop case completion goals for non-detained cases and stated the recommendation was resolved.

[98]Alternatives to Detention is a DHS program that uses case management and electronic monitoring to ensure respondents released into the community comply with their release conditions—including requirements to appear at immigration court hearings—and comply with final orders of removal from the United States.

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Table 3: New Priority Immigration Court Cases Since Priority Guidance Was Issued in September 2014 through September 2015

Priority categories	Notices to Appear received from September 2014 to September 2015	Percent of Notices to Appear received from September 2014 through September 2015
All Priority Cases	62,424	28
Families Released on Alternatives to Detention	18,492	8
Detained Families	4,148	2
Detained Recent Border Crossers	6,358	3
Unaccompanied Children	33,426	15
Non-Priority Cases	158,257	72
Total	**220,681**	**100**

Source: GAO analysis of Executive Office for Immigration Review data. | GAO-17-438

In January 2017, EOIR changed the cases it prioritized to (1) all detained individuals; (2) unaccompanied children in the care and custody of the Department of Health and Human Services, Office of Refugee Resettlement without a sponsor identified; and (3) individuals released from detention pursuant to a *Rodriguez* bond hearing.[99] EOIR has maintained its case completion goals for detained respondents and incorporated cases involving unaccompanied children without an identified sponsor into the category of detained cases. However, as of February 2017, EOIR has not developed a case completion goal for its case priority of individuals who have been released from detention pursuant to a *Rodriguez* bond hearing and none of its current five case completion goals encapsulate this priority because this category of respondents are not detained. Further, EOIR officials stated that the agency does not plan to develop a goal for completing these cases.

[99]A sponsor is an individual—generally a parent or other relative—or entity, capable of providing for the child's physical and mental well-being, to which the Office of Refugee Resettlement releases an unaccompanied child out of federal custody. Unaccompanied children without an identified sponsor remain in the long-term care of the Office of Refugee Resettlement at the expense of the government. Under *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), *cert. granted sub nom. Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016), individuals within the jurisdiction of the Ninth Circuit who are detained for 6 months or more, including those who would otherwise be subject to mandatory detention, are entitled to an automatic bond hearing before an immigration judge. In addition, individuals who are detained for more than 12 months are also entitled to automatic, periodic bond hearings at 6-month intervals.

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EOIR officials provided several reasons for changes to its performance assessment and measures. According to EOIR officials, EOIR changed the Immigration Court Evaluation Program from a qualitative performance assessment to a solely quantitative assessment as a result of a DOJ hiring freeze in 2011, which reduced the number of available staff for on-site evaluations. EOIR officials stated that in January 2017, the agency hired a staff member to start a new program, the Organizational Results Unit, intended as a successor to the Immigration Court Evaluation Program. According to these officials, EOIR plans to have the new program in place before the end of fiscal year 2017. EOIR officials also told us that EOIR eliminated and combined the quantitative performance measures because the remaining five measures represent the agency's highest priorities. Further, these officials stated that tracking case completion goals for non-priority cases, such as non-detained cases, would limit the agency's ability to focus on meeting case completion goals for prioritized cases. However, EOIR does not have case completion goals for some of the cases it considers priorities, such as individuals who have been released from detention pursuant to a *Rodriguez* bond hearing. Additionally 6 of 12 immigration judges we spoke with told us that achieving case completion goals was not as important to them as ensuring the due process rights of respondents. However, EOIR's primary mission is to adjudicate immigration cases in a careful and timely manner, and, according to statements by EOIR's Director, EOIR works to hear priority cases as quickly as possible while protecting due process.[100]

Standards for Internal Control in the Federal Government state that management should monitor and assess the quality of performance over time.[101] Additionally, these standards state that information is needed throughout an agency to achieve all its objectives. Moreover, we previously identified practices for enhancing agency use of performance information, including communicating performance against established

[100]See *The Unaccompanied Alien Children Crisis: Does the Administration Have a Plan to Stop the Border Surge and Adequately Monitor the Children?* Hearing before the Senate Committee on the Judiciary, 114th Cong. (2016); *The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later*: Hearing before the Senate Committee on Homeland Security and Governmental Affairs, 114th Cong. (2015).

[101]GAO/AIMD-00-21.3.1. The update to the Standards, GAO-14-704G, effective beginning fiscal year 2016, further state that information sharing and communication is vital to ensure an entity achieves its objectives.

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targets.[102] Without establishing performance goals and targets that more comprehensively account for case types, including the majority of its caseload and 73 percent of completed cases in fiscal year 2015, EOIR cannot fully evaluate whether the immigration courts are achieving EOIR's mission which includes the timely adjudication of all cases—both detained and non-detained. Comprehensive case completion goals, including for example new case completion goals for non-detained respondents, and cases it considers a priority, such as individuals who have been released from detention pursuant to a *Rodriguez* bond hearing, would help EOIR more effectively monitor its performance. Further, such goals would not preclude EOIR from reflecting agency priorities by assigning priority cases a shorter case completion goal, a larger percentage goal, or both.

Assessing Case Continuance Data Could Help EOIR Ensure Efficient Management Practices

EOIR collects information on the extent and reasons why immigration judges issue continuances—temporary adjournments of case proceedings until a different day or time—but does not systematically assess these data to identify and address potential operational challenges affecting the immigration courts or areas where immigration judges could benefit from additional guidance or training. Immigration judges may adjourn a case for a variety of reasons, either on their own volition or for good cause shown by the respondent or DHS.[103] For example, an immigration judge has discretionary authority to grant a motion for continuance to allow respondents to obtain legal representation or DHS to complete required background investigations and security checks.[104] EOIR tracks the extent to which immigration judges issue continuances and the reason for each continuance within its

[102]For example, see GAO, *Managing for Results: Agencies Should More Fully Develop Priority Goals under the GPRA Modernization Act*, GAO-13-174 (Washington, D.C.: Apr. 19, 2013), and GAO, *Managing for Results: Enhancing the Use of Performance Information for Management Decision Making*, GAO-05-927 (Washington, D.C.: Sept. 9, 2005).

[103]8 C.F.R. § 1240.6.

[104]See 8 C.F.R. § 1003.29. See also Aliens and Nationality; Rules of Procedure for Proceedings Before Immigration Judges, 52 Fed. Reg. 2931 (Jan. 29, 1987). Immigration judges cannot grant applications for relief subject to identity, law enforcement, or security investigations or examinations until after DHS has completed, and reported to the immigration judge any relevant information from, the appropriate background investigations and security checks. 8 C.F.R. § 1003.47(g).

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case management system. EOIR categorizes reasons for case continuances into approximately 70 different categories, including:

- Respondent-related continuances, such as illness of a respondent or their witness or attorney;
- DHS-related continuances, such as the need for more time to complete a background investigation or security check;
- Immigration judge-related continuances, such as unplanned leave or insufficient time to complete a hearing; and
- Operational continuances, such as a lack of a foreign language interpreter, or a VTC malfunction.[105]

In 2013, EOIR issued guidance to assist immigration judges with fair and efficient practices related to the issuance of continuances.[106] This guidance states that while many requests for continuances are for legitimate or unforeseen reasons, multiple continuances result in delay in the individual case, and when viewed across the entire immigration court system, exacerbate already crowded dockets. According to this guidance, multiple hearings in a case resulting from the use of continuances, especially at the individual calendar hearing, require administrative time and resources for the preparation of notices to the parties, often involve contract interpreters, and use docket time that could otherwise have been used for case resolution.

Our analysis of about 3.7 million continuance records from fiscal years 2006 through 2015 showed that the use of continuances has grown over time and that, on average, cases that experience more continuances take longer to complete. Specifically, our analysis of EOIR's continuance data found that the use of all types of continuances increased by 23 percent from fiscal year 2006 to fiscal year 2015. According to our analysis, immigration judge-related continuances increased by 54 percent from about 47,000 continuances issued in fiscal year 2006 to approximately 72,000 continuances issued in fiscal year 2015. Operational continuances

[105]A full list of continuance reasons and the frequency with which they were used from fiscal years 2006 through 2015 is included in app. III.

[106]Executive Office for Immigration Review, *Continuances and Administrative Closure*, OPPM 13-01, (Mar. 7, 2013). This guidance states that if an immigration judge grants more than two adjournments in a case to (1) allow a respondent to obtain legal representation or (2) allow DHS time to complete background investigations and security checks, the immigration judge will record the circumstances that resulted in the granting of those adjournments.

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increased by 33 percent from about 35,000 continuances issued in fiscal year 2006 to about 47,000 continuances issued in fiscal year 2015. Respondent-related continuances increased by 18 percent from about 214,000 continuances issued in fiscal year 2006 to about 252,000 continuances issued in fiscal year 2015. DHS-related continuances declined by 2 percent from about 25,000 continuances issued in fiscal year 2006 to about 24,000 continuances issued in fiscal year 2015.

We also found that the percentage of completed cases which had multiple continuances increased from fiscal year 2006 to fiscal year 2015 and that, on average, cases with multiples continuances took longer to complete than cases with no or fewer continuances. Specifically, 9 percent of cases completed in fiscal year 2006 experienced four or more continuances compared to 20 percent of cases completed in fiscal year 2015. Additionally, cases that were completed in fiscal year 2015 and had no continuances took an average of 175 days to complete. In contrast, cases with four or more continuances took an average of 929 days to complete in fiscal year 2015.[107] EOIR officials attributed this trend to successful legal challenges brought by respondents where circuit courts have remanded to the BIA cases in which the BIA upheld immigration judge decisions to deny a request or motion for a continuance.[108]

DHS attorneys from four out of six offices we visited told us that granting multiple continuances in cases resulted in inefficiencies and wasted resources such as DHS attorneys having to continually prepare for hearings that continued multiple times. Additionally, some of these attorneys stated that the increased use of continuances across the immigration courts contributed to—or were the primary cause of—the courts' case backlog. Further, DHS attorneys from two offices stated that they had expressed their concerns about the increased use of continuances—some of which they characterized as excessive or unwarranted—to EOIR management but had not seen a shift in the extent to which judges grant continuances. For example, one of these DHS attorneys cited cases involving respondents convicted of serious crimes, such as gang rape, who have received multiple continuances in their cases. As a result, according to this DHS attorney, the cases have

[107]App. III provides tables of the frequency distribution of completed immigration court cases by number of continuances and the average days to completion by number of continuances for fiscal year 2006 through fiscal year 2015.

[108]See e.g., *Simon v. Holder*, 654 F.3d 440 (3rd Cir. 2011); *Lagua v. Holder*, 438 Fed.Appx. 598 (9th Cir. 2011).

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remained open and pending in immigration court for several years and in some of these cases the respondents committed additional crimes while their cases were pending. EOIR's 2013 guidance directs immigration judges to document the circumstances for providing two types of continuances, but EOIR does not track the use of these or any other type of continuance to identify potential management challenges. EOIR officials stated that it does not track the frequency or reasons for continuances because immigration judges have broad discretion over whether to grant continuances. Further, EOIR officials also stated that systematically analyzing the use continuances is not necessary because they have other mechanisms, such as tracking complaints from parties involved in a case, that would alert EOIR to the same issues that analyzing continuances would.

Standards for Internal Control in the Federal Government state that accurate and timely recording of events provide relevance and value to management when controlling operations and making decisions.[109] Further, we have previously found that best practices in managing for results include using performance information to identify effective approaches, as well as identify problems and take corrective action.[110] Systematically analyzing the use of continuances, particularly operational continuances, could provide EOIR officials with valuable information about potential challenges the immigration courts may be experiencing or areas that may merit additional guidance and training for immigration judges. EOIR officials can continue to use complaints from parties to track issues on a case-by-case basis, but also analyzing the use of continuances on a systematic basis would give EOIR greater insight into more widespread issues. For example, EOIR could analyze the extent to which, if any, operational issues with translators, VTC malfunctions, or other issues that could be affecting the immigration courts. In addition, EOIR could use this information to determine whether additional guidance or training in the use of continuance codes would be helpful for judges. For example, our analysis of continuance records showed that judges continued 2,882 hearings in fiscal year 2015 due to the federal government shutdown that occurred and ended in October of fiscal year 2014. Further, using this information to potentially address operational

[109]GAO/AIMD-00-21.3.1. The update to the *Standards*, GAO-14-704G, effective beginning fiscal year 2016 further states that management should use relevant data to achieve the agency's objectives and to monitor the quality of performance over time.

[110]GAO, *Managing for Results: Enhancing Agency use of Performance Information for Management Decision Making*, GAO-05-927 (Washington, D.C.: Sept. 9, 2005).

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challenges could help EOIR meet its goals for completing cases in a timely manner, which it did not consistently do from fiscal year 2010 through fiscal year 2015 as previously discussed.

Timely and Accurate Recording of NTAs Could Help EOIR Better Track and Report Case Completion Times

EOIR could improve the reliability of its case management data and reports on case completion times by ensuring that court staff accurately record NTAs in a timely manner. As discussed earlier in this report, EOIR has used case completion times to assess its performance since at least 2002 and reports this information publically in DOJ's Annual Performance Report. EOIR does not have guidance or data integrity efforts to ensure the timely and accurate recording of NTAs in its case management system. Federal regulations and EOIR's docketing manual state that cases before the immigration court begin on the date that DHS files an NTA with the court, known as the receipt date.[111] EOIR maintains a policy that court staff enter NTAs received from DHS into its case management system upon receipt. According to guidance EOIR issued in 1987, the timely and accurate entry of NTAs into the case management system is vital to ensuring the accuracy and completeness of the system, as well as the accuracy of data in statistical reports. The guidance requires court staff to update the court's caseload in its case management system on a monthly basis and verify the accuracy of this information on a quarterly basis. However, EOIR officials told us that this guidance is outdated because it is based on a case management system EOIR stopped using in 2007. Further, EOIR has not issued new guidance to ensure the timely and accurate recording of NTAs into its current case management system.

We found that at least 16 percent of cases entered into EOIR's case management system from fiscal year 2006 through 2015 had NTA receipt dates that may be unreliable. Specifically, our analysis showed that 16 percent of cases had NTA receipt dates that occurred after the input date—the date automatically generated when court staff enter the respondent's NTA into the case management system. An input date cannot occur prior to the receipt date because the receipt date reflects the

[111]Federal regulations state that every formal removal proceeding begins with the filing of an NTA with the immigration court, see 8 C.F.R. §§ 239.1,1239.1(a).

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date the NTA was first received by the court.[112] Both EOIR officials and DHS attorneys identified the timely recording of NTAs as a challenge for immigration courts. EOIR officials told us that the agency has used temporary duty assignments and added resources to assist courts that are the least timely in recording NTAs. Nonetheless, EOIR officials told us that they recognize that court personnel often enter NTAs for priority cases before non-priority cases due to limited resources. For example, three of the five EOIR court administrators we interviewed stated that they do not always have sufficient personnel to enter NTAs in a timely manner or that they have a backlog of NTAs waiting to be recorded at their courts. Additionally, EOIR officials reported that the receipt date is more susceptible to human error since it is manually inputted rather than automatically generated by the case management system.

Standards for Internal Control in the Federal Government require that management establish internal controls and develop policies and procedures to ensure their implementation.[113] These standards also call for agencies to communicate quality information with external parties, such as other government entities, to make informed decisions and evaluate the entity's performance in achieving key objectives. EOIR officials stated that its guidance on docketing priority cases, as well as the agency's case completion goals, provide timeframes for the entering of NTAs. Specifically, EOIR officials stated that its guidance that detained cases must be scheduled on the earliest possible date and its expedited timeframe goals for completing detained cases, credible fear reviews, and asylum cases ensures that staff are entering NTAs in a timely manner. However, this guidance does not instruct staff to ensure the reliability of NTA data and further, as previously described, cases with case completion goals account for a minority of cases EOIR adjudicates. Also as discussed earlier in this report, EOIR has not met its goals for these three case types since fiscal year 2012, suggesting that the existence of these goals alone does not ensure the timely completion, including NTA entry, for the minority of cases that do have completion goals. Updating

[112]While logically the input date must fall on or after the receipt date, this does not guarantee that the remaining 84 percent of NTAs in which the input date fell on or after the receipt date were accurately entered. Rather, we were unable to employ a similar logic test on their accuracy.

[113]GAO/AIMD-00-21.3.1. The update to the Standards, GAO-14-704G, effective beginning fiscal year 2016 further states that management implement control activities through documented policies and procedures to ensure the objectives of the agency will be achieved.

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policies and procedures to remind staff about the importance of, and guide them in, timely and accurate recording of all NTAs would provide EOIR greater assurance that its case management data are accurate—including the size of its case backlog. Further, improving the reliability of these data would allow EOIR to provide more accurate information in DOJ's Annual Performance Report, which would give external stakeholders, including Congress and the public, a more accurate understanding of case completion times.

Experts and Stakeholders Have Proposed Restructuring EOIR's Immigration Court System

Experts and Stakeholders Have Proposed Establishing a Court System Independent of the Executive Branch, an Administrative Agency, or a Hybrid System

Some immigration court experts and stakeholders have recommended restructuring EOIR's administrative review and appeals functions within the immigration court system—immigration courts and BIA—and OCAHO, with the goal of seeking to improve the effectiveness and efficiency of the system or, among other things, to increase the perceived independence of the system and professionalism and credibility of the workforce. To enhance these areas, these experts and stakeholders, such as individuals affiliated with professional legal organizations and former EOIR immigration judges, have proposed changing the immigration court system's structure, location among the three branches of government, and aspects of its operations. In order to identify restructuring scenarios that experts and stakeholders have proposed, we reviewed publications and interviewed individuals affiliated with eight entities, as well as two former immigration judges selected based on their expertise in immigration court issues. See appendix I for more information on the ten expert and stakeholder entities and individuals we selected. We found that these experts and stakeholders generally supported one of the

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following scenarios for restructuring the immigration court system, all of which would require a statutory change to implement:[114]

- a court system independent (i.e., outside) of the executive branch to replace EOIR's immigration court system (immigration courts and the BIA), including both trial and appellate tribunals;[115]
- a new, independent administrative agency within the executive branch to carry out EOIR's quasi-judicial functions with both trial-level immigration judges and an appellate level review board;[116] or
- a hybrid approach, placing trial-level immigration judges in an independent administrative agency within the executive branch, and an appellate-level tribunal outside of the executive branch.[117]

Six of the 10 experts and stakeholders we interviewed also discussed a range of other court systems and administrative agencies within the U.S.

[114]These scenarios generally focus on restructuring EOIR's immigration courts and the BIA; however, in seeking experts' and stakeholders' perspectives on restructuring the immigration court system, we also inquired about potential placement options for OCAHO, as discussed further below.

[115]One of the experts and stakeholders we contacted proposed a similar scenario in which a consolidated immigration court system would be responsible for all immigration-related review and appeals functions across the federal government, including adjudicative functions for which other agencies, such as DHS's U.S. Citizenship and Immigration Services and the Department of State are currently responsible. Another one of the experts and stakeholders proposed a study in 2014 to examine the feasibility of such a consolidation of all immigration-related adjudications, including those currently carried out by DOJ, DHS, Department of State, and Department of Labor, in a restructured immigration court independent of the executive branch. The scenarios we considered experts and stakeholders to support reflect those they identified to us during our review and not any different positions they may have previously held. In this report, we also use the term "independent court system" in reference to a court that is structurally independent or outside of the executive branch.

[116]The term "quasi-judicial" generally characterizes the adjudicatory function(s) of an administrative agency, such as EOIR, involving the exercise of discretion, judicial in its nature, in connection with the resolution of matters presided over by its officers or employees through the consideration of evidence and application of law to fact(s) on a case-by-case basis, thus exercising independent judgment and discretion consistent with relevant legal authorities. Throughout this report we generally use the term "administrative agency" in reference to one which carries out such adjudicatory functions.

[117]Our literature review identified a fourth scenario that was not raised by the experts and stakeholders we interviewed in which trial level adjudicators would be placed in an independent administrative agency and the appellate level tribunal in an Article III immigration court. This fourth scenario is largely similar to the hybrid approach, but the Article III immigration court would replace the BIA and U.S. Courts of Appeals review with one appellate review versus solely replacing the BIA's administrative review.

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government that could serve as examples of these potential court structures, including, but not limited to, the:

- U.S. Bankruptcy Courts, which are units of the U.S. District Courts made up of bankruptcy judges who are judicial officers appointed to hear bankruptcy cases;[118]
- Social Security Administration's (SSA) Office of Disability Adjudication and Review (ODAR), which is the component responsible for overseeing SSA's administrative hearings and appeals process; [119] and
- Board of Veterans' Appeals (BVA) and Court of Appeals for Veterans Claims (CAVC), a hybrid system consisting of an administrative agency within the Department of Veterans Affairs (VA) and an appellate court outside of the executive branch.[120]

There are various characteristics related to the structure, location among the three branches of government, and operations of the current court systems, as described in table 6, that are not inherent to the proposed structural scenarios. However, these characteristics are relevant to consider in deciding whether and how to restructure the immigration courts and the BIA. For instance, the role of the courts and the types of cases they adjudicate, their caseloads, and the processes for appointing judges are characteristics that vary widely across court systems. Specifically, in regard to appointment processes, bankruptcy court judges are appointed by the U.S. Court of Appeals for the circuit in which the district is located after considering recommendations of the circuit court's judicial council.[121] In contrast, the Office of Personnel Management manages and oversees the hiring process for SSA judges, known as administrative law judges, and all other administrative law judges federal

[118]See 28 U.S.C. § 151.

[119]For additional information on the SSA's administrative law judges, see GAO, *Results-Oriented Cultures: Office of Personnel Management Should Review Administrative Law Judge Program to Improve Hiring and Performance Management*, GAO-10-14, (Washington, D.C.: Jan.15, 2010).

[120]The Board of Veterans' Appeals is established under 38 U.S.C. § 7101; and, pursuant to 38 U.S.C. § 7251, the Court of Appeals for Veterans Claims is established under Article I of the U.S. Constitution. See U.S. CONST. art. I, § 8. For additional information on the BVA, see GAO, *VA Disability Benefits: Additional Planning Would Enhance Efforts to Improve the Timeliness of Appeals Decisions,* GAO-17-234, (Washington D.C.: Mar. 23, 2017).

[121]See 28 U.S.C. § 152.

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government-wide. SSA hires its judges from the Office of Personnel Management's register, which is comprised of candidates that have satisfied certain qualification requirements and been rated based on an Office of Personnel Management-administered administrative law judge examination.[122] Meanwhile, the President appoints CAVC judges and the BVA Chairman with the advice and consent of the Senate and the Secretary of Veterans Affairs appoints the other members of the BVA, known as veterans law judges, from a list of recommendations of the Chairman, which are approved by the President.[123] For additional information on the characteristics of these court systems, see appendix IV.

Table 4: Characteristics of the Current Immigration Courts and Board of Immigration Appeals (BIA) and Selected Systems Similar to Scenarios Supported by Experts and Stakeholders

Scenario	Court system independent of the executive branch	Administrative agency	Hybrid of independent court system and administrative agency	Immigration courts and the BIA
Selected court and adjudicatory systems exemplifying the proposed scenarios[a]	U.S. Bankruptcy Courts	Social Security Administration's (SSA) Office of Disability Adjudication and Review (ODAR)	Board of Veterans' Appeals (BVA) and Court of Appeals for Veterans Claims (CAVC)	Not applicable
Role	Interpret, hold hearings, and apply a broad range of state and federal law from contract and property to environmental, labor, and tax law in concert with the provisions of the Bankruptcy Code.	Hold hearings, issue decisions, and review appeals related to the benefit programs that SSA administers.	BVA: Conduct hearings and decide appeals related to benefits for veterans, their dependents, or their survivors.	Under delegated authority from the Attorney General, conduct immigration court proceedings, appellate reviews, and administrative hearings.
Number of actual trial-level judges	Approximately 349 bankruptcy judgeships as of August 2016.	Approximately 1,663 judges as of February 2017.	BVA: Approximately 95 judges as of February 2017.	Approximately 289 judges as of January 2017.
Annual case completions	2,608 cases closed per judge in fiscal year 2016.	423 decisions per judge in fiscal year 2016.	BVA: 662 decisions per judge in fiscal year 2016.	584 case completions per judge in fiscal year 2015.

[122]See 5 U.S.C. § 3105; 5 C.F.R. § 930.204.

[123]See 38 U.S.C. §§ 7101, 7101A, 7253.

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Scenario	Court system independent of the executive branch	Administrative agency	Hybrid of independent court system and administrative agency	Immigration courts and the BIA
Judge appointment process	Appointed by the U.S. Court of Appeals for the Circuit in which the district is located after considering recommendations of the circuit court's judicial council.	SSA may appoint an individual to serve as an Administrative Law Judge (ALJ) only with prior approval of the Office of Personnel Management (OPM) except if the selection is from OPM's list of eligible persons, and subject to certain qualification requirements including passing an OPM-administered ALJ exam.	BVA: President nominates and the Senate confirms the BVA Chairman. The Secretary of VA appoints other members of the BVA from a list of recommendations of the BVA Chairman, which are approved by the President.	Executive Office for Immigration Review (EOIR) reviews applicants and recommends candidates to the Department of Justice's (DOJ Office of the Deputy Attorney General, where a panel reviews the applicants and selects candidates for appointment by the Attorney General.
Judge removal process	May only be removed for incompetence, misconduct, neglect of duty, or physical or mental disability by the judicial council of the circuit in which they are appointed.	May only be removed for good cause established and determined by the Merit Systems Protection Board on the record and after opportunity for a hearing before the Board.	BVA: Chairman may only be removed by the President, after notice and opportunity for hearing, for misconduct, inefficiency, neglect of duty, or engaging in the practice of law or for physical or mental disability which prevents proper execution of Chairman's duties. BVA members may be removed by the Secretary of Veterans' Affairs, based upon the Chairman's recommendation, if the Secretary determines that a member should be noncertified due to inadequate job performance or for any other reason as determined by the Secretary.	May be removed by the Attorney General for cause.
Length of judges' terms	14-year term.	Indefinite term.	BVA: BVA Chairman has a 6-year term, and may be appointed to more than one term. Veterans' law judges have indefinite terms.	Indefinite term.

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Scenario	Court system independent of the executive branch	Administrative agency	Hybrid of independent court system and administrative agency	Immigration courts and the BIA
Appellate and judicial review	A bankruptcy judge ruling may be initially appealed to a federal district court, or, where established by the relevant court of appeals, a bankruptcy appellate panel consisting of three bankruptcy judges. In either case, subsequent appeal lies with the courts of appeals.	ODAR's Appeals Council, as SSA's last level of administrative review, may grant, deny, or dismiss a request for review of a Social Security claim and issue SSA's final action for claims. Subsequent appeal lies with the federal district courts.	BVA and CAVC: CAVC is the appellate body for BVA decisions appealed by claimants and CAVC decisions can be appealed to the U.S. Court of Appeals for the Federal Circuit.	The BIA hears all appeals of immigration judge decisions and certain Department of Homeland Security decisions. The BIA's decisions can be reviewed by the Attorney General. An individual may appeal a final order of removal to the appropriate U.S. Court of Appeals.

Source: GAO analysis of expert, stakeholder, and federal agency information. | GAO-17-438

[a]The U.S. Tax Court is an additional example of an independent court outside of the executive branch. See 26 U.S.C. § 7441. The National Labor Relations Board and the Occupational Safety and Health Review Commission are also examples of administrative agencies with quasi-judicial functions.

The potential effects of restructuring on immigration court system costs could also be examined when considering restructuring scenarios. Under the current system, EOIR's largest expense is its personnel and compensation, which constituted approximately 53 percent of its fiscal year 2015 expenditures and averaged approximately $181 million annually from fiscal years 2012 through 2015. Accordingly, this cost category could be significantly affected by changes in personnel and compensation costs resulting from a restructuring of the immigration court system. Therefore, it is important to consider how, if at all, immigration judge compensation may potentially change under a restructuring, particularly if the job series and classification of immigration judges were adjusted under a new structure. For instance, according to data on judge pay rates, in 2014 bankruptcy judges' compensation—approximately $183,000—was higher than the compensation of the most senior immigration judges at approximately $167,000.

The costs associated with how a restructuring is specifically carried out are another relevant factor to consider. For instance, a restructuring of the immigration court system would likely result in different facility and IT costs depending on whether the restructured system preserved existing facilities or occupied new ones, and whether it adopted new IT systems or used existing ones. One of the experts and stakeholders we interviewed also stated that it would be important to focus on the immigration courts' support functions and staff under a restructuring since the immigration

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courts support staff would be critical in managing the transition to a newly restructured court with potentially new facilities and administrative practices.

The placement of OCAHO within a restructured immigration court system could also be examined when considering restructuring scenarios. In seeking experts' and stakeholders' perspectives, we solicited their views on placement options for OCAHO. The experts and stakeholders we interviewed recommended a range of potential locations for OCAHO, with some suggesting the office be independent of, and others suggesting that it be included within, a restructured system. For example, experts and stakeholders that suggested OCAHO be independent of a restructured immigration court system recommended that it be instead placed within DOJ's Civil Rights Division, the Department of Labor, or DHS. Two of the experts and stakeholders explained that since OCAHO provides a very different function—adjudication of immigration-related employment and document fraud cases—from that of the immigration courts and the BIA that it does not need to be placed within the same organization as the courts and the BIA. Similarly, another one of the experts and stakeholders stated that OCAHO's mission is more compatible with that of DHS and the Department of Labor. In contrast, one of the experts and stakeholders recommended that OCAHO be merged with a restructured immigration court system and that OCAHO's administrative law judges become immigration judges who, in addition to hearing immigration-related employment and document fraud cases, also adjudicate removal and other proceedings that presently fall within the jurisdiction of immigration judges. This individual offered several advantages to merging OCAHO functions with the immigration court system. For example, according to this individual, under this proposal EOIR could potentially reduce travel-related costs for OCAHO judges who as immigration court judges would

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no longer be centrally located and would instead be assigned to immigration courts nationwide.[124]

Restructuring Benefits Cited Include Enhancing Perceptions of Independence, but Concerns Exist Regarding Whether Restructuring Could Resolve Existing Management Challenges

Six of the ten experts and stakeholders we interviewed, including individuals affiliated with professional legal organizations, academia, and the private immigration bar, supported restructuring the immigration court system into a court independent of the executive branch. Two of the experts and stakeholders we contacted supported a new independent administrative agency within the executive branch. One of the experts and stakeholders supported the hybrid scenario, placing trial-level immigration judges in an independent, administrative agency within the executive branch, and an appellate-level tribunal outside of the executive branch.[125] As summarized in table 7 and further described below, experts and stakeholders offered several reasons for each of the proposed scenarios, such as potentially increasing the perceived independence of the immigration court system; as well as provided reasons against restructuring options, such as potentially complicating the appointment of immigration judges. We are not taking a position on any of these restructuring proposals, or on any of the reasons offered for or against them. We present the information we obtained from the experts and stakeholders to inform policymakers about proposals that have been put forth regarding restructuring the immigration court system.

[124]According to EOIR officials, EOIR, including OCAHO, was intentionally separated from DHS to make it more independent from the parties, such as DHS attorneys, appearing before it. Specifically, EOIR officials explained that DHS appears as a complainant in two categories of OCAHO cases. This rationale, according to EOIR officials, also applies to the expert and stakeholder recommendation that OCAHO be placed in DOJ's Civil Rights Division, since the Immigrant and Employee Rights Section of the Civil Rights Division can also be a complainant in another type of OCAHO case. Regarding the expert and stakeholder recommendation that OCAHO merge its functions with the immigration court, OCAHO's cases, according to EOIR officials, require very little travel due to the infrequency of full evidentiary hearings by OCAHO. EOIR officials also stated that because there is currently only one OCAHO administrative law judge, moving this judge to an immigration court in the field would not save costs associated with this judge traveling to other locations to conduct hearings.

[125]Two of the ten experts and stakeholders we contacted stated that they support more than one of the three proposed scenarios; therefore, the results are not mutually exclusive.

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Table 5: Number of Experts and Stakeholders Citing Reasons for and Against Each Proposed Immigration Court Restructuring Scenario

Reasons for and against each scenario as cited by experts and stakeholders	Scenario: court system independent of the executive branch	Scenario: administrative agency	Scenario: hybrid of court outside of the executive branch and an administrative agency
Reasons for			
May increase the perceived independence of the immigration court	6	1	1
May give immigration judges more judicial autonomy over their courtrooms or dockets	4	-	-
May improve workforce professionalism or credibility	4	1	-
May enhance organizational capacity or accountability	2	1	-
Reasons against			
May not resolve existing management challenges or case backlog	2	1	-
May complicate the appointment of immigration judges	2	-	-
May result in administrative challenges	2	2	1
May impede the immigration court system's ability to procure resources	3	1	1
Trial level may become more disconnected from the appellate level	-	-	1

Source: GAO analysis of expert and stakeholder testimony and documentation. | GAO-17-438

Note: The reasons for and against each of the scenarios represent our synthesis of expert and stakeholder perspectives on the advantages and disadvantages of the scenarios.

The experts and stakeholders we interviewed cited several reasons for the proposed restructuring scenarios, as described in table 7 and below.

- **Independence:** Six of the ten experts and stakeholders we contacted stated that establishing a court system independent (i.e., outside) of the executive branch could increase the perceived independence of the system. For example, one of the experts and stakeholders explained that the public's perception of the immigration court system's independence might improve with a restructuring that removes the quasi-judicial functions of the immigration courts and the BIA from DOJ because DOJ is also responsible for representing the government in appeals to the U.S. Circuit Courts of Appeals by individuals seeking review of final orders of removal. This same expert and stakeholder noted that removing the immigration court system from the executive branch may help to alleviate this perception that

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the immigration courts are not independent tribunals in which the respondents and DHS attorneys are equal parties before the court. Another one of the experts and stakeholders explained that under the existing immigration court system, respondents may perceive, due to the number of immigration judges who are former DHS attorneys and the co-location of some immigration courts with ICE's OPLA offices, that immigration judges and DHS attorneys are working together. Two of the ten experts and stakeholders we interviewed also proposed that an immigration court system independent of the executive branch would be less susceptible to political pressures within the executive branch. Experts and stakeholders cited similar independence-related reasons for supporting the administrative agency and hybrid scenarios.

- **Judicial autonomy:** Four of the ten experts and stakeholders we interviewed stated that a court system independent of the executive branch might give immigration judges and BIA members more judicial autonomy over their courtrooms and dockets. For example, one of the experts and stakeholders stated that immigration judges in an independent court system would be able to file complaints against private bar attorneys directly with the state bar authority instead of filing the complaint with DOJ first, as presently required for immigration judges acting in their official capacity.[126] EOIR officials explained that while immigration judges cannot directly file a complaint with the state bar authority, EOIR's Disciplinary Counsel, which is charged with investigating these complaints, can file a complaint with the state bar on behalf of the immigration judge.
- **Workforce professionalism or credibility:** Four of the ten experts and stakeholders we contacted stated reasons why a court system independent of the executive branch might also improve the professionalism or credibility of the immigration court system's workforce. For example, one of the experts and stakeholders explained that placing judges in an independent immigration court system could elevate their stature in the eyes of stakeholders, and by extension, enhance the perceived credibility of their decisions. Additionally, one of the experts and stakeholders explained that if the judge career path was improved under a restructuring such that immigration judges were able to advance to more prestigious judgeships, this could assist in attracting candidates to the immigration bench. Regarding the hybrid scenario, one of the experts

[126] 8 C.F.R. § 1003.104(a)(1).

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and stakeholders noted that this proposal may attract a more diverse and balanced pool of candidates for immigration judge positions.

- **Organizational capacity or accountability:** Two of the ten experts and stakeholders who supported a court system independent of the executive branch cited enhanced organizational capacity or accountability as a reason for adopting this scenario. One of the experts and stakeholders explained that this type of restructuring may allow the immigration court system to improve its organizational capacity by changing the way it staffs its managerial and supervisory positions. For example, this expert and stakeholder explained that instead of placing immigration judges in managerial positions, EOIR could, as an independent court system, more easily attract and fill managerial positions with individuals who have experience in court management and public administration. Similarly, this same expert and stakeholder also noted that if the restructured immigration court system was placed within the purview of the Administrative Office of the U.S. Courts, which provides a wide range of support services to the federal judiciary (including administrative, technological and legal services), it could use its expertise in court management to assist with managing the system.[127]

In terms of enhancing organizational accountability, this expert and stakeholder explained that an independent court system could also increase the transparency of the performance evaluation system for immigration judges by incorporating feedback from court stakeholders, such as DHS and private bar attorneys, on the judges' performance. Similarly, EOIR might be better-positioned under an independent court system, according to this expert and stakeholder, to increase the transparency of the process for making complaints against immigration judges. Specifically, the complaint process for other federal judges, according to this individual, is more transparent and the judges are given an opportunity to address the complaint and appeal any decisions that resulted from the complaint. In addition, according to this same expert and stakeholder, a court outside of the executive branch would allow for

[127]In November 2016, the Judicial Conference of the United States informed GAO of its long-standing position that if Congress determines there is a need to create an Article I Immigration Court, such court be established in the executive branch; and stated that it opposes placement of an Article I Immigration Court in the federal judiciary or the administration of an Article I immigration court by the federal judiciary. The Judicial Conference noted that it does not take a position on whether or not Congress should create such a court; rather, its comments relate to the placement of the court, if it were to be established.

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more flexibility to address physical space and hiring issues without the involvement of another executive agency or department. One of the experts and stakeholders who supported the independent administrative agency scenario and explained that this proposal might increase EOIR's administrative efficiency by allowing for the appointment of one full-time, high-level person responsible for administering the immigration courts, as well as attracting highly-qualified managerial talent.

The experts and stakeholders we interviewed also cited several reasons against the proposed restructuring scenarios, as described in table 7 and below.

- **Resolution of existing management challenges or case backlog:** Two of the ten experts and stakeholders we contacted stated that a court system independent of the executive branch may not address the immigration courts' management challenges, such as the case backlog. For example, one of the experts and stakeholders stated that the immigration court system would likely have a large caseload regardless of how it is structured. Another one of the experts and stakeholders explained that issues related to how EOIR supports respondents without legal representation and—in this individual's opinion—the poor quality of foreign language interpretation in some cases could persist even with a restructuring of the system.[128] One of the experts and stakeholders stated that restructuring the immigration court system into an independent administrative agency would not address EOIR's systemic issues, such as its case backlog.
- **Appointment of immigration judges:** Two of the ten experts and stakeholders we interviewed noted that requiring the presidential nomination and senate confirmation of immigration judges under an independent court system could further complicate and delay the hiring of new judges by making the appointment of additional judges more dependent on external parties.[129]
- **Administrative challenges:** Two of the ten experts and stakeholders we interviewed stated that it may be difficult to establish and administer a court system independent of the executive branch. Specifically, these experts and stakeholders expressed concern that

[128]For more information on how EOIR provides legal resources to respondents without legal representation, see GAO-17-72.

[129]One of the experts and stakeholders explained that the appointment of judges to staggered 15-year terms could help alleviate this potential challenge.

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the Administrative Office of the U.S. Courts may be reluctant to assume the vast responsibility of administering a newly created court system.[130] Regarding administrative challenges associated with the establishment of an independent administrative agency, one of the experts and stakeholders explained that this scenario might be overly complicated to implement since EOIR would need to develop its own administrative functions outside of DOJ. Further, this same expert and stakeholder stated that this scenario could also result in, to a large extent, a duplication of the existing immigration court system. According to one of the experts and stakeholders, creating a hybrid court system may further complicate the administration of the immigration court system and potentially result in difficulties for respondents.

- **Procurement of resources:** Five of the ten experts and stakeholders we interviewed expressed the concern that a restructured immigration court system, regardless of the scenario, would not be able to procure sufficient resources outside of DOJ. For example, one of the experts and stakeholders noted that a restructured independent court or administrative agency might have less leverage outside of DOJ to compete for resources. One of the experts and stakeholders noted that the existing immigration court system must compete with other DOJ funding priorities for resources.
- **Trial level disconnection from the appellate level:** One of the experts and stakeholders stated that if the hybrid scenario were to be adopted, the trial level may become more disconnected from the appellate level, due to the placement of the immigration courts within the executive branch and the appellate body outside of the executive branch.

Officials from existing court and adjudicatory systems that, according to experts and stakeholders, could serve as potential examples for restructuring also cited reasons for and against adopting characteristics from each of their respective systems. For instance, according to the Secretary of the Judicial Conference of the United State—which makes administrative policies for the U.S. Bankruptcy Courts, among other duties—the bankruptcy courts may not be a useful model for restructuring the immigration court system due to, among other factors, the complexity

[130]As previously noted, while the Judicial Conference of the United States does not take a position on whether or not Congress should restructure the immigration court system, it opposes efforts to require the federal judiciary to administer such a court.

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of their jurisdiction.[131] Under law, the federal district court has original and exclusive jurisdiction of all bankruptcy cases, but each district court may refer bankruptcy cases and proceedings to the bankruptcy judges of its district and retains the authority to withdraw referral to the bankruptcy court and handle a bankruptcy case itself.[132] In terms of establishing an independent immigration court system outside of the executive branch, the Judicial Conference of the United States also cautioned that placing immigration courts within the judiciary would strain the judiciary's financial and administrative resources and ability to focus on existing criminal and civil adjudication.

An official from SSA's ODAR—the component responsible for overseeing the administrative hearings and appeals process—stated that they have experienced success using, among other practices, regional and national case assistance centers that assist local hearing offices with case preparation and decision writing. However, these officials also cited challenges with increasingly lengthy case files due to significant increases in the submission of medical evidence, staffing shortages, and the timely selection of administrative law judges through the Office of Personnel Management's appointment process.[133] Regarding the third type of court system—a hybrid of an independent court system and an administrative agency—CAVC officials explained that it is beneficial for the CAVC to have its budget reviewed by appropriators within the veterans community of interest instead of as part of the judiciary appropriations process. However, CAVC officials also cited challenges with its independent structure in that it is not directly supported by the Administrative Office of the U.S. Courts—the judiciary's organization for assisting courts with administrative and managerial functions. As a result, the CAVC is responsible for many of its management functions, such as information technology support, procuring facility space, and hiring personnel, which can be challenging, according to these same officials. Additionally, one of

[131] For purposes of this report, we highlighted the bankruptcy courts as one example of a court system independent of the executive branch.

[132] 28 U.S.C. §§ 157(a), 1334.

[133] According to SSA ODAR officials, the Office of Personnel Management maintains a register of individuals who have applied for the position of administrative law judge and who meet the minimum eligibility requirements according to the Office of Personnel Management's qualifications and criteria. When a federal agency wants to hire administrative law judges, the agency requests a list of eligible candidates from the Office of Personnel Management, which then prepares a certificate of eligible candidates and then issues it to the agency, according to SSA ODAR officials.

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the experts and stakeholders familiar with the BVA explained that its dual appellate structure with the CAVC reviewing BVA decisions and, in instances in which CAVC decisions are appealed, the U.S. Court of Appeals for the Federal Circuit reviewing CAVC decisions, can delay the decision-making process, among other challenges. This form of judicial review creates, according to this individual, redundancies in the review of BVA decisions. However, BVA officials explained that much of the delay may be attributed to the multiple layers of review within the VA before the appeal is heard at the BVA level. For instance, the VA must issue a new decision each time a veteran provides additional evidence for the appeal, which delays the VA's certification of the appeal for a BVA hearing and can result in lengthy wait times for veterans, according to BVA officials.[134]

Conclusions

The doubling of the immigration courts' backlog over the last decade to more than 437,000 cases at the beginning of fiscal year 2015 poses challenges to EOIR in meeting its mission to adjudicate immigration cases by fairly, expeditiously, and uniformly administering and interpreting federal immigration laws. The effects of the case backlog are significant and wide-ranging, from some respondents waiting years to have their cases heard to immigration judges being able to spend less time considering cases. Taking steps to improve its workforce planning, hiring, technology utilization, and performance assessment could better position EOIR to address its case backlog and help improve the agency's overall effectiveness and efficiency in carrying out its important mission.

EOIR has begun to address its workforce needs through its contract for workforce planning support and other recently-initiated efforts. However, EOIR could be better positioned to address its current and future staffing

[134]In the VA appeals system, a veteran initiates an appeal of a decision of a claim for VA benefits by filing a notice of disagreement. The agency of original jurisdiction then determines whether additional development of the claim is needed and, if so, undertakes that development and provides the veteran with a statement of the case, which contains a summary of the evidence, applicable laws and regulations, and a discussion of how such laws and regulations affect the determination. The veteran can then complete the appeal by filing a substantive appeal. If, after issuance of the statement of the case and before a case is certified to the BVA, the VA obtains additional evidence, the agency of original jurisdiction will generally issue a new decision known as a supplemental statement of the case. If the VA obtains more evidence prior to certifying the appeal to the BVA, the VA may require and issue additional supplemental statements. According to BVA officials, the VA submitted a legislative proposal to Congress in 2016 that would eliminate the redundant layers of review and provide a single-track appeals process with three options for a veteran to pursue following the decision on a VA benefits claim.

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needs by developing and implementing a strategic workforce plan that addresses key principles for effective strategic workforce planning, such as the determination of critical skills and competencies. Furthermore, assessing its hiring process, developing a hiring strategy, and taking actions to increase its efficiency could allow EOIR to hire judges more quickly and address immigration judge staffing gaps, which in turn could improve EOIR's overall operations and help reduce the immigration courts' case backlog.

EOIR could improve accountability and further empower the immigration courts to address the case backlog and strengthen operations by improving how the agency leverages technology. Specifically, identifying and establishing an oversight body and documenting and implementing a plan that is consistent with best practices for exercising oversight over ECAS until it is fully implemented would better position the agency to implement ECAS, thus providing efficiencies to assist the courts with addressing the backlog. Further, as EOIR takes steps that may result in increased use of VTC for hearings, which EOIR management officials cited as beneficial to addressing the agency's caseload, collecting and analyzing data, such as data on appeals in which the use of VTC formed some basis for the appeal, could provide EOIR with further assurance that its use of VTC in immigration hearings is outcome-neutral. Additionally, soliciting feedback from respondents could help EOIR better ensure that its VTC program meets the needs of all users, including respondents whose cases are heard and decided through VTC.

Taking steps to improve how it assesses performance could also help EOIR identify effective management approaches that could help address the backlog. In particular, establishing comprehensive case completion goals would help EOIR more effectively monitor its performance. In addition, systematically analyzing the cause of certain continuances, particularly operational continuances, could provide EOIR with valuable information about potential challenges the immigration courts may be experiencing or areas that may merit additional guidance and training. Updating policies and procedures to ensure the timely and accurate recording of NTAs would provide EOIR greater assurance that its case management data are accurate—including the size of its case backlog. Further, improving the reliability of these data would allow EOIR to provide more accurate information in DOJ's Annual Performance Report, which would give external stakeholders, including Congress and the public, a more accurate understanding of case completion times.

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Recommendations for Executive Action

To better address current and future staffing needs, we recommend that the Director of EOIR develop and implement a strategic workforce plan that addresses, among other areas, key principles of effective strategic workforce planning, including (1) determining critical skills and competencies needed to achieve current and future programmatic results; (2) developing strategies that are tailored to address gaps in number, deployment, and alignment of human capital approaches for enabling and sustaining the contributions of all critical skills and competencies; and (3) monitoring and evaluation of the agency's progress toward its human capital goals and the contribution that human capital results have made toward achieving programmatic results.

To better address EOIR's immigration judge staffing needs, we recommend that the Director of EOIR: (1) assess the immigration judge hiring process to identify opportunities for efficiency; (2) use the assessment results to develop a hiring strategy that targets short- and long-term human capital needs; and (3) implement any corrective actions related to the hiring process resulting from this assessment.

To help ensure that EOIR meets its cost and schedule expectations for ECAS, we recommend that the EOIR Director:

- identify and establish the appropriate entity for exercising oversight over ECAS through full implementation, and
- document and implement an oversight plan that is consistent with best practices for overseeing IT projects, including (1) establishing how the oversight body is to monitor program performance and progress toward expected cost, schedule, and benefits; (2) ensuring that corrective actions are identified and assigned to the appropriate parties at the first sign of cost, schedule, or performance slippages; and (3) ensuring that corrective actions are tracked until the desired outcomes are achieved.

To provide further assurance that EOIR's use of VTC in immigration hearings is outcome-neutral, we recommend that the Director of EOIR:

- Collect more complete and reliable data on the number and type of hearings it conducts through VTC;
- Collect data on appeals in which the use of VTC formed some basis for the appeal, and the number of in-person hearing motions filed; and

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- Use these and other data to assess any effects of VTC on immigration hearings and, as appropriate, address any issues identified through such an assessment.

To further ensure that EOIR's VTC hearings meet all user needs and help EOIR identify and address technical issues with VTC hearings, we recommend that the Director of EOIR develop and implement a mechanism to solicit and monitor feedback from respondents regarding their satisfaction and experiences with VTC hearings, including the audio and visual quality of the hearing.

To better assess court performance and use data to identify potential management challenges, we recommend that the Director of EOIR take the following actions:

- Establish and monitor comprehensive case completion goals, including a goal for completing non-detained cases not currently captured by performance measures, and goals for cases it considers a priority;
- Systematically analyze immigration court continuance data to identify and address any operational challenges faced by courts or areas for additional guidance or training; and
- Update policies and procedures to ensure the timely and accurate recording of NTAs.

Agency Comments and Our Evaluation

We provided a draft of this report to DOJ, including EOIR; ACUS; the Administrative Office of the U.S. Courts; VA; CAVC; SSA; and DHS for their review and comment. EOIR provided written comments, which are reproduced in appendix V; the remainder of the agencies did not provide written comments. DOJ, EOIR, the Administrative Office of the U.S. Courts, VA, SSA, and DHS provided technical comments, which we incorporated as appropriate.

In its written comments, EOIR stated that it agrees with most of our 11 recommendations and has begun to address them. However, the steps EOIR described taking do not fully address our recommendations. In addition, EOIR did not specifically state whether or not it agrees with individual recommendations. Rather, EOIR provided comments on the recommendations in five areas: (1) strategic workforce planning, (2) immigration judge staffing, (3) ECAS (EOIR's new comprehensive e-filing effort), (4) VTC, and (5) court performance and management.

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Recommendation Areas

With regard to the first area, strategic workforce planning, which includes our recommendation that EOIR implement a strategic workforce plan that addresses key principles of effective strategic workforce planning, EOIR stated that it recognizes the importance and benefits of strategic workforce planning, including the need to monitor and evaluate results. To this end, EOIR stated that it has a contract in place to determine the critical skills and competencies used in the immigration courts, particularly at the legal assistant level, and to then produce a workforce staffing model to achieve current and future operational and programmatic results. As discussed in this report, EOIR's initial contract for the workforce planning report requires the development of a method or formula for assessing the need for additional immigration judges and staff. However, the contract documentation EOIR provided to us does not specifically require the contractor to identify critical skills and competencies or tailor identified requirements to current or future programmatic results. We agree with EOIR that this contract is a positive step, but we continue to believe that EOIR would further benefit from developing and implementing a strategic workforce plan that addresses, among other areas, key principles of effective strategic workforce planning.

Regarding the second area, immigration judge staffing, which includes our recommendation that EOIR assess the immigration judge hiring process, EOIR stated that it has assessed this process, is implementing a hiring streamlining plan announced by the Attorney General on April 11, 2017, and is committed to assessing the immigration judge hiring process on an ongoing basis. Specifically, EOIR stated that it has continually assessed its hiring process and made significant improvements. As discussed in this report, we found that while EOIR has undertaken efforts to improve aspects of its hiring process, it has not assessed its hiring process or developed a hiring strategy that is targeted to fill short- and long-term human capital needs consistent with best practices. For example, EOIR did not provide documentation demonstrating that it has systematically assessed its hiring process to identify opportunities for efficiency. Further, with regard to the recent hiring streamlining plan, this plan will, according to EOIR, change how it announces immigration judge positions, evaluates the files of candidates at both the agency- and department-levels, and approves candidates to enter on duty. EOIR expects, according to its comments, that it will reduce the amount of time it takes to hire immigration judges in the future. EOIR's development of a hiring plan is a positive step toward addressing our recommendation;

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however, to fully address the intent of our recommendation, the agency needs to provide documentation demonstrating that it has assessed the immigration judge hiring process, developed a hiring strategy that targets short- and long-term human capital needs, and implemented any necessary corrective actions.

With respect to the third area, ECAS, regarding our recommendation that EOIR identify and establish the appropriate entity for exercising oversight over ECAS through full implementation, EOIR stated that it established an ECAS Executive Committee to provide effective oversight through the development and implementation of the ECAS solution. EOIR further stated that it established the Investment Review Board to review proposals for major IT investments exceeding $1 million and believes that in the future the ECAS Executive Committee, its subgroups, and the Investment Review Board will serve as vital institutions within EOIR to help ensure the effective oversight of ECAS implementation. EOIR also stated that it is committed to establishing the appropriate oversight body and while it fully intends to do so, it is not yet at the stage where this oversight body could make resource allocation decisions to implement a comprehensive e-filing system. As discussed in this report, according to the ECAS Executive Committee charter, the committee will dissolve after 1 year when the ECAS roadmap for eventually determining the solution is identified. Additionally, as discussed in this report, EOIR OIT officials stated that the EOIR Investment Review Board was never intended to oversee ECAS implementation due to the detailed nature of this system's implementation, and EOIR has not yet designated an oversight entity or documented a plan for overseeing ECAS during critical stages of its development and implementation. Given the ambiguity in EOIR's plans for overseeing ECAS through full implementation and its need to better manage its longstanding efforts to develop a comprehensive e-filing system, we continue to believe that the agency would benefit from (1) identifying the appropriate entity for exercising oversight over ECAS through full implementation and (2) documenting and implementing an oversight plan that is consistent with best practices for overseeing IT projects.

With regard to the fourth area, EOIR's use of VTC to conduct hearings, which includes our four recommendations that the agency, among other things, collect more complete and reliable data on its use of VTC in hearings and develop a mechanism to solicit feedback from respondents on these hearings, EOIR stated that it is committed to the effective utilization of VTC in immigration court proceedings. Specifically, EOIR stated that although the U.S. Courts of Appeals have repeatedly upheld

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the use of VTC in immigration hearings as comporting with due process requirements, EOIR is amenable to collecting additional data on the number and type of hearings conducted by VTC, as well as identifying appeals that raise the use of VTC as a basis for appeal. EOIR agreed that such data collection may assist the agency in identifying and addressing technical issues associated with VTC, as well as any possible effects on case outcomes that may relate to the use of VTC in immigration proceedings. If effectively implemented, this additional data collection should help address the intent of our recommendations focused on collecting more complete and reliable VTC hearing data. To fully address the intent of our recommendations for EOIR to collect data on the number of in-person hearing motions filed and how the agency might use these and other data to assess any effects of VTC on immigration hearings, EOIR needs to take additional actions focusing on the collection and analysis of VTC data.

In response to our other VTC-related recommendation that EOIR develop and implement a mechanism to solicit and monitor feedback from respondents on their VTC hearings, EOIR stated that while EOIR is committed to making additional improvements to its VTC program, it is not feasible to solicit accurate and useful feedback concerning VTC from respondents in removal proceedings, which are inherently adversarial. As discussed in this report, to mitigate the concern that immigration hearings are inherently adversarial, EOIR could collect respondent feedback after a hearing, but not necessarily after the immigration judge has decided the case. Specifically, because some cases entail multiple hearings, EOIR could collect feedback after a VTC hearing but prior to the conclusion of the case and respondents knowing the outcome. Therefore, we continue to believe that developing and implementing a mechanism to solicit and monitor feedback from respondents regarding their satisfaction and experiences with VTC hearings could help EOIR further ensure that its VTC hearings meet all user needs and identify and address technical issues.

With regard to the fifth area related to court performance, EOIR stated that it agrees with the recommendations to establish and monitor comprehensive case completion goals, analyze continuance data, and update guidance for recording NTAs. Specifically, EOIR stated that it should measure case completions in all categories and the agency will study whether to refine its current capabilities. EOIR also stated that it supports conducting additional analysis of immigration court continuance data and recognizes that additional guidance or training regarding continuances may be beneficial to ensure that immigration judges use

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continuances appropriately in support of EOIR's mission to adjudicate immigration cases in a careful and timely manner.

Methodology and Findings

In addition to providing comments on our recommendations, EOIR also took issue with certain aspects of our methodology and findings. In particular, EOIR stated that the report would benefit from additional context and information in four areas: (1) pending caseload; (2) workforce planning; (3) electronic case management, e-filing, and VTC; and (4) performance measurements.

First, in regard to pending caseload, EOIR stated that the report is missing a contextualized discussion of why its caseload has grown. Specifically, EOIR stated that the report does not discuss various factors affecting its pending caseload, such as increasing case complexity; growth in the number of applications for relief, bond hearings, and detained cases; changing case priorities; and a decrease in immigration court staff. However, this report discusses EOIR's perspective on factors that contributed to increases in the case backlog along with perspectives from DHS attorneys and other experts and stakeholders. For example, this report discusses EOIR's perspective that a surge in new cases, beginning in 2014, contributed to the case backlog. Additionally, this report notes that EOIR officials and immigration judges highlighted increasing legal complexity as a contributing factor to longer cases and a growing case backlog. Further, this report states that EOIR officials cited Supreme Court decisions in 2013 and 2016, which define analytical steps a judge must complete in determining whether a criminal conviction renders a respondent removable and ineligible for relief. In regard to the effect of immigration court staffing on the case backlog, this report discusses the number of case completions per judge from fiscal year 2006 through 2015 and found that the number of immigration judges increased during this period.

Second, in regard to workforce planning, EOIR stated that our report did not sufficiently account for changes in the immigration judge hiring process, such as those due to a hiring freeze, and that our methodology and results in assessing the length of the hiring process, including the background investigation phase, were unclear and differed from EOIR's own analysis. Specifically, EOIR stated that our analysis covered a period during which the agency was subject to a hiring freeze—January 2011 through February 2014. However, this report both discusses EOIR officials' perspective that this hiring freeze prolonged the hiring process

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and includes our analysis of the time it took EOIR to hire immigration judges after the hiring freeze ended. Specifically, as discussed in this report, when we only included hires initiated after the hiring freeze ended in February 2014, we found that EOIR took an average of 647 days to hire an immigration judge.

Regarding our methodology, we describe in this report how we determined the overall length of the hiring process, as well as phases of the hiring process. For instance, as discussed in this report, to calculate the average time it took EOIR to hire an immigration judge, we calculated the average number of calendar days between the day EOIR posted a vacancy announcement for the position and the day the judge started in the position. In regard to our hiring analysis results, EOIR stated that, according to its own hiring analysis, for the 87 judge positions filled since the start of fiscal year 2016, the average number of days it took EOIR to hire these judges was 485 days, which differs from our result of 647 days. We would expect our results to differ from EOIR's because we analyzed data for a different and longer period of time—February 2014 to August 2016 instead of only fiscal year 2016.

EOIR also raised concerns with our analysis of the time it took the department to complete background investigations during the hiring process. Specifically, EOIR stated that it could not replicate our finding of 41 days to complete this phase of the hiring process. EOIR may not have been able to replicate our analysis because it assessed data for a different period of time than we did. Our sample included all judges who had entered on duty by August 2016, whereas EOIR's sample included judges who had only completed background investigations—but had not necessarily entered on duty—by August 2016. Additionally, EOIR stated that that it is likely that the sample we used provides an inaccurate reflection of the length of this phase because it likely represents federal employees who already had a background investigation in place or being processed and, as a result, does not accurately reflect the time it takes to complete an investigation for non-federal employees. However, our analysis of the hiring process, including the background investigation phase, included all judges—both federal and non-federal employees—and thus proportionately considered the time it took to conduct background investigations for non-federal employees hired during the period we examined.

Third, EOIR raised concerns regarding our approaches for assessing EOIR's electronic case management, e-filing, and VTC program efforts. Specifically, EOIR stated that the report focuses on its prior electronic

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case management initiatives only as they relate to the agency's ability to fully implement a comprehensive e-filing system and does not acknowledge that these initiatives were critical in operating the courts and positioning the agency to be able to implement an e-filing system. However, this report describes several systems which, according to EOIR, are foundational to a comprehensive e-fling system, such as the case management, digital audio recording, eInfo, and eRegistration systems. For instance, as discussed in this report, the digital audio recording system EOIR implemented that allows the immigration courts to digitally record immigration hearings and provide an electronic transcript of the hearings was, according to EOIR OIT officials, a key capability they needed to develop before implementing a comprehensive e-filing system.

Additionally, EOIR disputed our finding that it could further ensure that Its VTC program meets user needs by collecting feedback from respondents on their VTC hearings because it believes the finding relied almost exclusively on anecdotal statements from interviews with immigration court officials, experts, and stakeholders. We did, in part, base our finding on interviews with judges, administrators, and DHS attorneys assigned to a non-probability sample of six immigration courts, and our interviews with 10 immigration court experts and stakeholders identified through a detailed selection process, as described in appendix I. However, as described in this report, we primarily assessed EOIR's implementation of its VTC program against ACUS best practices for using VTC in hearings, along with evidence from EOIR officials responsible for implementing the VTC program that the agency does not systematically collect feedback on VTC immigration hearings from respondents. Specifically, the ACUS best practices recommend that agencies maintain open lines of communication with participants to receive feedback about the use of VTC for the hearing, and that agencies use post-hearing surveys or other appropriate methods to collect information about participants' experiences and satisfaction with the VTC hearing. The information from our interviews with immigration court officials, experts, and stakeholders provided insights and examples into some of the circumstances and challenges associated with the use of VTC in hearings and why it could be important for EOIR to solicit and monitor feedback from respondents regarding their VTC hearings.

Fourth, in regard to performance measurement, EOIR stated that we conflated performance measurements and case completion goals and that the 11 case completion goals that the agency previously had were a hindrance to the efficient processing of cases. *Standards for Internal Control in the Federal Government* define a performance measure as a

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means of evaluating the entity's performance in achieving objectives and quantitative objectives are those where performance measures may be a targeted percentage or numerical value.[135] Since case completion goals, as described in this report, measure whether immigration judges are completing a specific percentage of cases within a specified time frame and thus meet the definition of a performance measure, we viewed case completion goals as performance measures. As discussed in this report, in fiscal year 2010 EOIR eliminated and condensed several of its 11 performance goals, leaving five total performance goals for case completion times. We acknowledge in this report EOIR's perspective that when all cases are subject to case completion goals, EOIR staff do not know which cases to prioritize. For example, as discussed in this report, EOIR officials stated that tracking case completion goals for non-priority cases, such as non-detained cases, would limit the agency's ability to focus on meeting case completion goals for prioritized cases. However, as discussed in this report, EOIR does not have case completion goals for some of the cases it considers priorities, such as individuals who have been released from detention pursuant to a *Rodriguez* bond hearing. Further, as discussed in this report, such goals would not preclude EOIR from reflecting agency priorities by assigning priority cases a shorter case completion goal, a larger percentage goal, or both.

EOIR also raised concerns regarding how we describe case completion goals for prioritized cases in the report. Specifically, EOIR stated that while it acknowledges that it has not recently met the case completion goals for its top priority—detained cases—this is due, in part, to the addition of new priorities in 2014. We acknowledge in this report that, while detained cases were a priority prior to 2014, EOIR began in 2014 to also prioritize the cases of detained recent border crossers, unaccompanied children, and families held in detention or released on alternatives to detention. Additionally, EOIR stated that, contrary to what we described in this report, it had case completion goals for its 2014 priorities and that it met all of these goals, which were to schedule these cases within specified timeframes. However, as discussed in this report, EOIR identified certain types of cases as priorities for adjudication and issued guidance to courts on how to prioritize these cases through their scheduling of hearings, but EOIR has not established goals to ensure the timely completion for all of these cases. EOIR also clarified in its written comments that, contrary to what we described in our draft report, it

[135] GAO-14-704G.

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includes cases involving unaccompanied children in the care and custody of the Department of Health and Human Services, Office of Refugee Resettlement who do not have a sponsor in the detained case category for case completion goal purposes. We amended the report to reflect this clarification.

We are sending copies of this report to the appropriate congressional committees, the Attorney General, the Secretary of Homeland Security, and other interested parties. In addition, the report is available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or gamblerr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VI.

Rebecca Gambler
Director, Homeland Security and Justice

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Appendix I: Objectives, Scope, and Methodology

This report addresses (1) what Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) data indicate about its caseload, including the backlog of cases, and potential contributing factors and effects of the backlog according to stakeholders; (2) how EOIR manages and oversees immigration court operations, including workforce planning, hiring, and technology utilization; (3) the extent to which EOIR has assessed immigration court performance, including analyzing relevant information, such as data on case continuances; and (4) scenarios that have been proposed for restructuring EOIR's immigration court system and the reasons that have been offered for or against these proposals.

To address all four objectives, we analyzed agency documentation, consulted with immigration court system experts and stakeholders, and interviewed headquarters officials from EOIR and the Department of Homeland Security (DHS). Specifically, we reviewed, among other documentation: policies and procedures for immigration court operations; manuals describing EOIR's case management system; contractual documents, such as contractual documents for EOIR's workforce planning study; EOIR's plans for implementing a comprehensive electronic filing system; and reports related to the agency's performance assessment system and case completion goals. We also interviewed selected experts and stakeholders on the immigration court system and reviewed publications related to the effects of the case backlog on court stakeholders, EOIR's management and oversight of the immigration court system, and proposals for restructuring the immigration court system. Additionally, we interviewed EOIR headquarters officials from the Office of the Chief Immigration Judge (OCIJ), which oversees the immigration courts, and the Offices of Administration; General Counsel; Information Technology; and Planning, Analysis, and Statistics. We also interviewed headquarters officials from the U.S. Immigration and Customs Enforcement (ICE) Office of the Principal Legal Advisor (OPLA), the office responsible for overseeing the DHS attorneys who represent the government in immigration proceedings at the courts, to obtain their perspectives regarding any effects of the case backlog on DHS and EOIR management and oversight of the immigration courts.

Additionally, we visited a non-probability sample of six immigration courts in Baltimore, Maryland; Chicago, Illinois; Houston, Texas; Port Isabel, Texas; San Francisco, California; and Seattle, Washington to interview immigration court staff and observe immigration hearings. Toward maximizing the diversity of the sites we visited, we selected them to include courts with relatively large and small case backlogs; relatively high and low case completions per judge; a large number of detained

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cases, which are deemed a priority by EOIR; and that have experienced staffing shortfalls. We also selected courts in different geographic regions and courts that are proximate to other courts. At each court we conducted semi-structured interviews with immigration judges and DHS attorneys assigned to OPLA's Offices of the Chief Counsel proximate to each immigration court and observed a variety of hearings, including master calendar and individual merits hearings. We interviewed court administrators in five immigration courts and observed hearings conducted by video-teleconferencing (VTC) in three of the immigration courts we visited. In total, we interviewed 12 judges, 4 court administrators, and 12 DHS attorneys from six offices. Because immigration judges have large caseloads and constrained schedules, we interviewed judges who were available to speak with us during our scheduled visits. For the immigration court staff interviews, we asked questions about (1) the court's case receipts, completions, backlog of cases over time, and any causes or effects of the backlog on stakeholders; (2) EOIR's management and oversight of the court, including court staffing, hiring, and technology utilization; and (3) how EOIR assesses the court's performance. For the DHS attorney interviews, we asked questions about any effects case backlogs have had on their work; their views on the court's case management practices, including the use of technology and coordination between the immigration courts and DHS; and scenarios proposed by experts and stakeholders for restructuring the immigration court system. Since we selected a non-probability sample of courts to visit, the information we obtained cannot be generalized more broadly to all immigration courts. However, it provides important context and insights into EOIR's case backlog, particularly effects of the backlog on court stakeholders, EOIR's management and oversight of the immigration court system, and expert proposals for restructuring the immigration court system.

To address our first objective, what EOIR data indicate about its caseload, including the backlog of cases, and potential contributing factors and effects of the backlog according to stakeholders, we first obtained and analyzed data on immigration case receipts and completions from EOIR's case management system from fiscal years 2006 through 2015 which covers the period of time since our previous report on the subject in August 2006 until the last full fiscal year of data available at the time we began our review in November 2015.[1] We

[1]GAO, *Executive Office For Immigration Review: Caseload Performance Reporting Needs Improvement,* GAO-06-771 (Washington, D.C.: Aug. 11, 2006).

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assessed the reliability of these data by reviewing system documentation, interviewing knowledgeable officials about system controls, and conducting electronic testing. We determined that the data were sufficiently reliable for the purposes of our reporting objectives. We included in our analysis all immigration court cases received or completed that were adjudicated by EOIR immigration judges in EOIR immigration courts or at the Board of Immigration Appeals (BIA).[2] We used these data to determine the number of new Notices to Appear (NTAs) received from DHS each fiscal year and the number of cases each court completed within a fiscal year. We determined the case backlog for each court by calculating the number of cases that were opened in previous fiscal years that remained open at the start of the new fiscal year. We also determined the time immigration courts took to complete cases each fiscal year by calculating the number of calendar days between the date EOIR received the NTA from DHS and the date the case was initially completed, and computed the median of these durations. We further calculated case completion times for different types of cases, such as removal, credible fear, and asylum cases, and cases in which the respondent was detained or not detained. Since later motions to reopen, remand or redetermine a case can occur many years after the initial decision and are out of the control of immigration court judges, we considered a case complete when the judge made an initial ruling on the case and excluded these later actions from our analysis of case completions times.

We used the same procedures described above to calculate the case backlog for appeals cases. To determine the time the BIA took to complete cases each fiscal year, we calculated the number of calendar days between the date the appeal was filed and the date the appeal was completed, and computed the median of these durations. We also calculated appeal completion times for different types of appeals such as appeals of removal cases, appeals of other decisions by immigration judges such as appeals of bond redeterminations, motions to reopen when the original case was held in absentia, and interlocutory appeals, and DHS decisions.

In addition, during our interviews with immigration court judges, court administrators, DHS attorneys, and 10 experts and stakeholders, the

[2]We did not analyze data from the Office of the Chief Administrative Hearing Officer because its caseload is small in comparison to that of the immigration courts and the BIA and, as a result, would not significantly affect our case backlog analysis.

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selection of which we describe further below, we obtained their perspectives on potential contributing factors for the case backlog as well as the effects of the backlog on respondents, attorneys, and immigration staff.

To address our second objective, how EOIR manages and oversees the immigration court system, we identified and analyzed relevant literature addressing EOIR's management of the immigration courts. Specifically, a GAO research librarian conducted searches of scholarly and peer reviewed publications; trade and industry articles; association, nonprofit, and think tank publications; congressional hearings and transcripts; government reports; dissertations; and general news articles from January 2000 through November 2015 pertinent to the immigration court system.[3] The literature search produced 363 related publications, of which we determined 22 were relevant to this objective by reviewing each publication's content for relevancy to EOIR's management and oversight of the immigration court system. Following an initial review to further refine the scope of publications most relevant to this objective, an additional GAO analyst then independently reviewed these reports to identify the most commonly cited management issues affecting the immigration court system. Any differences between their assessments were reconciled to reach agreement on the management issues. This process identified workforce planning and hiring, technology utilization, and performance assessment—the focus of our third objective—as the most prominent issues raised by these publications related to EOIR's management and oversight of the immigration court system.

To assess EOIR's workforce planning efforts, we analyzed documents related to its workforce planning initiatives and contract, such as the contractor-provided blanket purchase agreement describing the deliverables, and interviewed EOIR headquarters OCIJ and Office of Administration officials about how it determines its workforce needs. We then assessed EOIR's workforce planning and hiring processes against GAO's key principles for effective strategic workforce planning and human capital self-assessment checklist, which provides human capital

[3]We selected this time period to capture both recent and historical perspectives on EOIR's management of the immigration court system as well as changes to immigration law and court operations.

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guidance for agencies.[4] We also reviewed EOIR's most recent Strategic Plan, which covered 2008-2013, to understand the agency's workforce planning goals.[5]

To assess EOIR's hiring efforts, we analyzed data on the number of immigration judges it was authorized by Congress to hire and the number of immigration judges who had entered on duty for fiscal years 2006 through 2015. We also analyzed data related to timeframes for hiring immigration judges from fiscal years 2011 through August 2016 to determine the length of the hiring process. Specifically, through interviews with EOIR officials, we identified two sources of data on the agency's hiring timeframes for new immigration judges: (1) hard copy personnel files for all immigration judges hired since fiscal year 2011; and (2) a spreadsheet tracking key dates for hiring immigration judges that the agency developed in fiscal year 2015. Through reviewing these sources we observed that EOIR's personnel files generally included the date a judge applied for a position and entered on duty, but not detailed interim dates, such as those associated with background checks. In contrast, the agency's spreadsheet included such detailed information. To capture both the longer time period encompassed by the personnel files and more detailed dates in EOIR's spreadsheet, we collected and analyzed data from both sources. Specifically, for judges hired from fiscal year 2011 through February 2016, we reviewed hard copy personnel files and collected available dates in the hiring process using a data collection instrument. To ensure sufficient data reliability, two GAO staff independently reviewed each hiring file and then reconciled any discrepancies between the data collected. For judges hired from fiscal year 2015 until August 2016, we used the tracking spreadsheet as the primary source of hiring data. We assessed the reliability of data in this spreadsheet by comparing a sample of dates in it to those in corresponding personnel files. We also gathered information on the reliability of the hiring data through interviews with EOIR headquarters officials and determined that the data in both the personnel files and tracking spreadsheet were sufficiently reliable for the purposes of our reporting objectives.

[4]GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning,* GAO-04-39 (Washington, D.C.: Dec. 11, 2013); and *Human Capital: A Self-Assessment Checklist for Agency Leaders,* GAO/OCG-00-14G (Washington, DC: September 2000).

[5]EOIR, *Strategic Plan: Fiscal Years 2008-2013,* (Washington, D.C.: January 2008).

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Using the results of our file review and the tracking spreadsheet, we developed a consolidated file with all available dates in the hiring process for immigration judges who were hired and entered on duty from fiscal years 2011 through August 2016. We then analyzed these data to determine average total hiring time for all judges as well as average time for interim steps in the hiring process for judges who were hired and entered on duty from fiscal year 2015 through August 2016.

We also interviewed EOIR headquarters officials to obtain information on the agency's hiring process for immigration judges, including reasons for any delays, and any efforts to assess the process. We assessed EOIR's hiring process against GAO's human capital self-assessment checklist, a diagnostic tool for managers to use in assessing their agencies' human capital policies and practices.[6]

To assess how EOIR utilizes technology in the immigration courts, particularly its efforts to implement a comprehensive electronic-filing (e-filing) system and its use of VTC for immigration hearings, we reviewed pertinent agency documentation, interviewed EOIR headquarters and immigration court officials from the six courts we visited, and observed technology use during these site visits. We analyzed available documentation related to EOIR's e-filing efforts since 2001—when the agency initiated efforts to implement an e-filing system—such as a 2001 executive staff briefing and a 2005 alternatives analysis. For EOIR's most recent comprehensive e-filing effort, the EOIR Court and Appeals Systems (ECAS), we analyzed, among other documents, the ECAS project plan, business requirements, and ECAS Executive Committee Charter. Regarding VTC use, we reviewed documentation such as the *Immigration Judge Benchbook* and VTC training materials, to determine how immigration judges are to use VTC for immigration hearings.[7]

Additionally, we interviewed EOIR officials from its Office of Information Technology—responsible for implementing technology at EOIR—and immigration court staff at the six immigration courts we visited to obtain information on EOIR's efforts to implement a comprehensive e-filing system, including their perspectives on how an e-filing system would

[6]GAO, *Human Capital: A Self-Assessment Checklist for Agency Leaders,* GAO/OCG-00-14G (Washington, DC: September 2000).

[7]EOIR's *Immigration Judge Benchbook* is a web-based tool to assist immigration judges with the adjudication of immigration cases.

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affect immigration court operations. To understand how EOIR manages it VTC program, including any efforts to assess and collect feedback on this program, we interviewed the OCIJ official responsible for implementing the program. We also interviewed immigration court officials at all six immigration courts and observed a range of hearings held by VTC at three of the courts we visited to gather information on the audio and visual quality and other operational aspects of VTC hearings. Additionally, we interviewed DHS attorneys from OPLA's Offices of the Chief Counsel assigned to each immigration court we visited and selected experts and stakeholders on the immigration court system to obtain their perspectives on EOIR's ongoing development of a comprehensive e-filing system and the benefits and challenges of VTC hearings.[8] We assessed EOIR's effort to implement a comprehensive e-filing system against best practices for developing and acquiring technology, including oversight of information technology projects.[9] In addition, we assessed EOIR's implementation of its VTC program against best practices established by the Administrative Conference of the United States (ACUS) that provide technical, operational, and environmental guidance on how agencies may implement or improve their use of VTC in administrative hearings and related proceedings.[10]

To address our third objective on the extent to which EOIR has assessed immigration court performance, we analyzed EOIR's performance monitoring activities and measures from fiscal year 2006 through fiscal year 2015. Specifically, we reviewed internal and external documentation related to performance measures and goals, such as internal quarterly reports on case completion times, to determine the extent to which EOIR has established performance measures, met its goals, and has

[8]Our process for selecting these experts is explained below.

[9]Project Management Institute, Inc., The Standard for Program Management–Third Edition, 2013; Software Engineering Institute/Carnegie Mellon, Capability Maturity Model® Integration (CMMI®) for Development, Version 1.3, CMU/SEI-2010-TR-033 (Hanscomb AFB, Massachusetts: November 2010) and CMMI® for Acquisition, Version 1.3, CMU/SEI-2010-TR-032 (Hanscomb AFB, Massachusetts: November 2010); GAO, *Information Technology Investment Management: A Framework for Assessing and Improving Process Maturity*, GAO-04-394G (Washington, D.C.: March 2004); and GAO, *Immigration Benefits System: Better Informed Decision Making Needed on Transformation Program,* GAO-15-415 (Washington, D.C.: May 18, 2015).

[10]Center for Legal and Court Technologies and the Administrative Conference of the United States, *Report to the Administrative Conference of the United States: Best Practices for Using Video Teleconferencing for Hearings and Related Proceedings* (Washington D.C.: 2014).

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performance measures in place that reflect the majority of its caseload and case priorities. Furthermore, we reviewed DOJ documents, such as a DOJ Office of Inspector General report and DOJ's Annual Performance Reports, to gain additional context for how DOJ uses EOIR's performance information to assess agency and departmental efforts to meet its strategic objective of adjudicating all immigration cases promptly and impartially.[11] We also interviewed EOIR officials, including OCIJ officials, on EOIR performance measures and goals, and other performance monitoring activities, such as the Immigration Court Evaluation Program. We further analyzed data from EOIR's case tracking and management system to determine how these data support EOIR's performance monitoring activities. As previously mentioned, we determined that these EOIR data were sufficiently reliable for the purposes of this report. Specifically, we calculated the percentage of EOIR's caseload that may or may not be subject to performance goals, and determined the number of priority cases for which EOIR has received NTAs for which it does and does not have case completion goals. We assessed EOIR's performance monitoring activities and measures against *Standards for Internal Control in the Federal Government,* EOIR's most recent strategic plan covering fiscal years 2008 through 2013, and best practices on using performance information for management decisions.[12]

To assess EOIR's use of continuance data to guide court operations, we also analyzed EOIR's data on case continuances from fiscal years 2006 through 2015 to determine the number and type of case continuances that judges have issued. We analyzed EOIR's guidance to judges on the use of continuances as well as EOIR's practices related to these data and EOIR's practices against *Standards for Internal Control in the Federal Government.*[13]

We further used EOIR's data on NTAs to determine the extent to which EOIR is recording NTAs in a timely and accurate manner. Specifically, we compared the date EOIR received the NTA from the DHS to the date that

[11]Department of Justice Office of Inspector General*, Management of Immigration Cases and Appeals by the Executive Office for Immigration Review,* I-2013-001 (Washington, D.C.: October 2012).

[12]GAO, *Standards for Internal Control in the Federal Government,* GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 10, 1999); and GAO, *Managing for Results: Enhancing Agency use of Performance Information for Management Decision Making*, GAO-05-927 (Washington, D.C.: Sept.9, 2005).

[13]GAO/AIMD-00-21.3.1.

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EOIR entered the NTA into its case management system. We also reviewed EOIR guidance related to entering NTAs and interviewed EOIR and DHS attorneys about practices related to the recording of NTAs in a timely and accurate manner. We then compared this information to *Standards for Internal Control in the Federal Government* governing information and communication.[14]

To address the fourth objective, what scenarios have been proposed for restructuring the immigration court system, we obtained information on restructuring scenarios, including reasons for and against these proposals, from experts and stakeholders on the immigration court system. To select the experts and stakeholders, we first reviewed relevant literature on the immigration court system, particularly proposals for restructuring the system. Similar to the search we conducted for literature on EOIR's management of the immigration courts, a GAO research librarian conducted searches of scholarly and peer reviewed publications; trade and industry articles; association, nonprofit, and think tank publications; congressional hearings and transcripts; government reports; dissertations; and general news articles from 2000 through January 2016 pertinent to proposals for immigration court system restructuring.[15] We also reviewed literature identified as relevant by GAO's Office of General Counsel as well as individuals affiliated with academia and legal associations.

This literature search produced 21 related publications, which we reviewed for relevance to this objective and methodological quality, and determined that 9 publications were appropriate to use to identify experts and stakeholders. Specifically, through this review, we identified an initial list of experts and stakeholders who had published at least one publication examining one or more aspects of a potential restructuring of the immigration court system in a refereed medium, such as journal

[14] 8 C.F.R. § 1239.1(a). These federal regulations state that formal removal proceedings begin with the filing of an NTA with the immigration court. GAO/AIMD-00-21.3.1. These Standards state, among other things, that federal managers should implement control activities through documented policies and procedures to ensure the objectives of the agency will be achieved and also call for agencies to communicate quality information with external parties, such as other government entities to make informed decisions and evaluate the entity's performance in achieving key objectives.

[15] We considered work published over this 15-year period to both capture recent publications and maximize the number of publications resulting from the search given the limited number of publications addressing proposals for restructuring the immigration court system.

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articles and think tank studies. These experts and stakeholders included individuals, such as law professors, and groups, such as the American Bar Association. To assess the methodological quality of the selected expert's and stakeholder's studies, we reviewed the analytical methods used in the research, eliminated some research if we felt the methods were not appropriate or rigorous, and then summarized the research findings. After selecting experts and stakeholders based on their published work, we also considered their type and depth of experience with the immigration court system. Specifically, we gathered information on the experts' and stakeholders' affiliations with any organizations, such as professional associations or nonprofit groups, and their years of experience studying or working with the immigration court system, and if a group, the source of funding for this group.[16] We also considered those individuals and groups recommended by EOIR as experts on the immigration court system and by the experts and stakeholders themselves. We evaluated these recommendations based on the number of times an individual or organization was cited as a credible expert or stakeholder and the type of experience and background of the cited expert or stakeholder to help ensure diversity and inclusiveness among our selected experts and stakeholders. Toward maintaining EOIR's impartiality as an office within DOJ, EOIR officials elected not to provide perspectives on how, if at all, the immigration courts should be restructured or associated advantages and disadvantages. To mitigate the absence of EOIR officials' perspectives on restructuring, we also considered whether experts and stakeholders recommended by other experts and stakeholders had formerly worked for EOIR in selecting our sample of experts and stakeholders.

[16]We assessed potential biases in our experts and stakeholders and consider biases a possibility given some of their affiliations. We mitigated the impacts of these potential biases by: selecting experts and stakeholders with a wide range of affiliations, including federal agency officials, academics, non-profit representatives, immigrant rights advocates, and immigration attorneys or judges; disclosing their affiliations in our report; and attributing their views.

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We selected the following 10 individuals and organizations as experts and stakeholders to interview:

1. American Bar Association: Established in 1878, the bar is a voluntary organization whose mission is to support the legal profession by providing resources to attorneys and accrediting law schools, among other things.
2. American Immigration Lawyers Association: Non-partisan national association of attorneys and law professors who practice and teach immigration law.
3. Appleseed Network and the Chicago Appleseed Fund for Justice: Research, education, and advocacy organization that works to achieve reform by addressing policies and practices that relate to social justice and government effectiveness issues.
4. Lenni Benson and Russell Wheeler: Lenni Benson—a Professor of Law at New York Law School—and Russell Wheeler, President of the Governance Institute and Visiting Fellow at the Brookings Institution, co-authored a report on the immigration court system for ACUS.[17] The views and opinions they expressed were their own, and not those of the ACUS. We considered them as one of our experts and stakeholders.
5. Federal Bar Association: Dedicated to the advancement of the science of jurisprudence and to promoting the welfare, interests, education, and professional development of all attorneys involved in federal law.
6. Heartland Alliance's National Immigrant Justice Center: Provides direct legal services to, and advocates for, immigrants, refugees, and asylum seekers through policy reform, impact litigation, and public education.
7. Eliza Klein: Former immigration judge who served on the Miami, Florida; Boston, Massachusetts; and Chicago, Illinois immigration courts from 1994 to 2015.

[17]Lenni B. Benson & Russell R. Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication,* (Washington, D.C.: June 7, 2012). ACUS is an independent executive branch agency charged with convening expert representatives from the public and private sector to investigate, deliberate, and recommend improvements to administrative process and procedure.

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8. National Association for Immigration Judges: Designated as the recognized representative for collective bargaining for all U.S. immigration judges.
9. Angelo Paparelli: Private bar immigration attorney and partner in the Business Immigration Practice Group of Seyfarth Shaw LLP.
10. Paul Wickham Schmidt: BIA Chairman and member from 1995 to 2001 and former immigration judge from 2003 to 2016.

We used semi-structured interview questions to gather information from these experts and stakeholders on scenarios for restructuring the immigration court system, including reasons for and against various restructuring proposals. We provided relevant excerpts from our draft report to these experts and stakeholders to confirm the accuracy of the information they provided. These entities may not be representative of the universe of experts and stakeholders on the immigration court system and therefore may not represent all views on this topic; however, their views provide insights on proposals for restructuring the immigration court system.

In addition, we interviewed officials and reviewed related documentation from existing court and adjudicatory systems that could, according to the experts and stakeholders we interviewed, serve as examples of the possible court structures. The existing systems were the U.S. Bankruptcy Courts, the Social Security Administration's Office of Disability Adjudication and Review, and the Board of Veterans' Appeals and Court of Appeals for Veterans Claims.

To identify the potential effects of restructuring on immigration court system costs, we analyzed EOIR budget data from fiscal years 2005 through 2016. Specifically, we obtained and analyzed data regarding EOIR budget requests and appropriations for this time period, as well as expenditures for fiscal years 2012 through 2015. In particular, we determined EOIR's primary cost categories, such as personnel compensation and benefits, and expenditures among the immigration courts, the BIA, and the Office of the Chief Administrative Hearing Officer.

We conducted this performance audit from November 2015 to June 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that

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the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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Appendix II: Immigration Court Case Backlog, Case Receipts, and Case Completions, Fiscal Years 2012 through 2015

The Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) conducts immigration hearings at 58 immigration courts located nationwide. For each court from fiscal years 2012 through 2015, the following tables provide:

- Case backlog—the number of cases pending at the start of the fiscal year in that court;
- New case receipts—the number of new Notices to Appear (NTA) that the court received from the Department of Homeland Security within the fiscal year;
- Other case receipts—the number of other case receipts that the court received within the fiscal year, such as cases that were administratively closed and then reopened or cases remanded from the Board of Immigration Appeals;
- Case completions—the number of cases each court completed within the fiscal year;
- Change of venue or transfer proceedings—the number of Change of Venue or Transfer proceedings that the court held within the fiscal year; and
- Total caseload—the total number of cases pending at the start of the fiscal year and new and other cases referred to the court during the year.

Table 6: Case Backlog, Receipts, Completions, Changes of Venue or Transfers, and Caseload by Immigration Court, Fiscal Year 2012

Court name	Case backlog	New case receipts	Other case receipts	Case completions	Change of venue or transfer	Total annual caseload
Adelanto, California	1,216	7,036	871	4,613	3,354	**9,123**
Arlington, Virginia	9,225	4,729	4,211	5,299	1,916	**18,165**
Atlanta, Georgia	7,198	4,623	2,644	4,062	884	**14,465**
Aurora, Colorado	364	2,966	206	1,799	1,395	**3,536**
Baltimore, Maryland	5,748	2,172	1,955	4,073	277	**9,875**
Batavia, New York*	270	1,208	167	960	514	**1,645**
Bloomington (St. Paul), Minnesota	3,121	2,738	961	2,678	812	**6,820**
Boston, Massachusetts	9,681	4,337	2,954	5,889	1,111	**16,972**
Buffalo, New York	2,081	994	843	944	555	**3,918**
Charlotte, North Carolina	4,281	2,628	1,453	3,298	248	**8,362**
Chicago, Illinois	16,778	9,866	3,583	8,240	3,264	**30,227**

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Court name	Case backlog	New case receipts	Other case receipts	Case completions	Change of venue or transfer	Total annual caseload
Cleveland, Ohio	4,010	2,958	1,220	2,811	866	**8,188**
Dallas, Texas	5,917	6,872	2,731	6,841	1,527	**15,520**
Denver, Colorado	7,776	1,158	1,978	3,045	355	**10,912**
Detroit, Michigan	3,144	2,399	827	2,917	575	**6,370**
El Paso, Texas*	413	2,364	181	1,422	1,005	**2,958**
El Paso, Texas	5,483	4,779	1,966	3,423	2,285	**12,228**
Elizabeth Detention Center, New Jersey	853	2,559	380	1,581	1,882	**3,792**
Eloy, Arizona	1,318	5,921	421	3,802	2,682	**7,660**
Fishkill, New York	181	223	49	225	63	**453**
Florence, Arizona*	863	4,565	315	2,616	2,336	**5,743**
Guaynabo (San Juan), Puerto Rico	831	479	150	827	194	**1,460**
Harlingen, Texas	4,681	4,965	2,708	2,763	5,778	**12,354**
Hartford, Connecticut	1,618	843	572	1,335	115	**3,033**
Honolulu, Hawaii	509	380	239	699	98	**1,128**
Houston, Texas*	1,287	9,702	1,462	7,215	3,712	**12,451**
Houston, Texas	9,396	3,144	4,750	2,808	1,795	**17,290**
Imperial, California	984	1,191	615	1,145	546	**2,790**
Kansas City, Missouri	3,958	2,799	1,087	3,203	811	**7,844**
Krome North, Florida*	1,267	6,732	644	5,082	2,539	**8,643**
Las Vegas, Nevada	3,097	2,129	841	2,185	207	**6,067**
Los Angeles, California	50,657	13,931	10,801	16,094	5,345	**75,389**
Los Fresnos (Port Isabel), Texas*	594	3,732	258	2,127	2,112	**4,584**
Memphis, Tennessee	5,716	1,820	1,445	2,233	384	**8,981**
Miami, Florida	11,715	4,754	4,458	7,200	1,287	**20,927**
New Orleans, Louisiana	2,282	794	1,874	663	537	**4,950**
New York City, New York	45,657	12,049	7,690	17,775	1,667	**65,396**
Newark, New Jersey	9,909	3,623	3,745	4,595	819	**17,277**
Oakdale Federal Detention Center, Louisiana	1,163	6,566	1,090	5,571	2,673	**8,819**
Omaha, Nebraska	5,357	2,802	1,725	2,496	1,401	**9,884**
Orlando, Florida	5,745	2,114	2,005	3,610	382	**9,864**
Otay Mesa, California	375	1,722	202	1,251	711	**2,299**
Pearsall, Texas	611	4,925	260	2,565	2,813	**5,796**
Philadelphia, Pennsylvania	5,167	1,185	1,344	2,322	367	**7,696**
Phoenix, Arizona	9,896	3,253	2,777	1,819	2,026	**15,926**

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Court name	Case backlog	New case receipts	Other case receipts	Case completions	Change of venue or transfer	Total annual caseload
Portland, Oregon	3,457	681	830	1,461	321	**4,968**
Saipan, Northern Mariana Islands	79	104	30	135	11	**213**
Salt Lake City, Utah	1,285	1,732	243	1,836	58	**3,260**
San Antonio, Texas	7,982	6,920	5,955	4,727	5,785	**20,857**
San Diego, California	4,501	2,085	1,300	2,135	1,125	**7,886**
San Francisco, California	18,717	6,675	5,370	6,993	3,093	**30,762**
Seattle, Washington	5,614	1,022	2,139	2,482	810	**8,775**
Stewart Detention Facility, Georgia	966	9,007	208	8,299	1,082	**10,181**
Tacoma, Washington	774	5,063	330	3,008	2,208	**6,167**
Tucson, Arizona	1,301	1,666	675	1,768	187	**3,642**
Ulster, New York	209	399	78	416	85	**686**
Varick, New York*	925	1,716	398	1,498	756	**3,039**
York, Pennsylvania	629	4,483	646	3,478	1,770	**5,758**
All	**318,832**	**214,282**	**100,860**	**206,357**	**83,516**	**633,974**

Source: GAO analysis of Executive Office for Immigration Review data. | GAO-17-438

Note: Total caseload excludes changes of venue or transfer.

*Indicates an immigration court co-located with a Department of Homeland Security Service Processing Center

Table 7: Case Backlog, Receipts, Completions, Changes of Venue or Transfers, and Caseload by Immigration Court, Fiscal Year 2013

Court name	Case backlog	New case receipts	Other case receipts	Case completions	Change of venue or transfer	Total annual caseload
Adelanto, California	1,156	3,228	1,016	2,397	1,979	**5,400**
Arlington, Virginia	10,950	5,930	4,862	5,528	2,308	**21,742**
Atlanta, Georgia	9,519	3,518	2,929	3,881	803	**15,966**
Aurora, Colorado	342	2,077	225	1,388	1,005	**2,644**
Baltimore, Maryland	5,525	1,881	2,663	4,067	340	**10,069**
Batavia, New York*	171	727	151	484	449	**1,049**
Bloomington (St. Paul), Minnesota	3,330	2,181	969	2,859	494	**6,480**
Boston, Massachusetts	9,972	3,080	3,291	5,657	1,198	**16,343**
Buffalo, New York	2,419	819	645	954	557	**3,883**
Charlotte, North Carolina	4,816	2,129	1,859	4,246	209	**8,804**
Chicago, Illinois	18,723	8,673	3,622	8,167	4,008	**31,018**
Cleveland, Ohio	4,511	2,093	1,260	2,227	709	**7,864**

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Court name	Case backlog	New case receipts	Other case receipts	Case completions	Change of venue or transfer	Total annual caseload
Dallas, Texas	7,152	4,823	3,007	6,903	1,670	**14,982**
Denver, Colorado	7,512	1,119	1,665	2,619	353	**10,296**
Detroit, Michigan	2,878	2,246	873	1,990	705	**5,997**
El Paso, Texas*	531	3,408	174	2,404	1,230	**4,113**
El Paso, Texas	6,520	2,765	1,797	2,012	1,906	**11,082**
Elizabeth Detention Center, New Jersey	329	2,088	211	978	1,292	**2,628**
Eloy, Arizona	1,176	5,738	384	2,649	3,305	**7,298**
Fishkill, New York	165	187	34	204	51	**386**
Florence, Arizona*	791	4,775	218	1,471	3,100	**5,784**
Guaynabo (San Juan), Puerto Rico	439	472	147	615	207	**1,058**
Harlingen, Texas	3,813	8,570	3,657	2,047	5,924	**16,040**
Hartford, Connecticut	1,583	814	738	1,245	114	**3,135**
Honolulu, Hawaii	331	238	201	487	82	**770**
Houston, Texas*	1,524	8,582	1,621	6,014	4,085	**11,727**
Houston, Texas	12,687	5,905	5,981	2,728	4,188	**24,573**
Imperial, California	1,099	965	521	873	499	**2,585**
Kansas City, Missouri	3,830	1,553	986	2,368	603	**6,369**
Krome North, Florida*	1,022	5,258	574	3,451	2,618	**6,854**
Las Vegas, Nevada	3,675	1,641	720	2,015	219	**6,036**
Los Angeles, California	53,950	12,844	8,969	20,629	4,598	**75,763**
Los Fresnos (Port Isabel), Texas*	345	4,406	307	1,442	2,978	**5,058**
Memphis, Tennessee	6,364	1,474	1,807	2,638	351	**9,645**
Miami, Florida	12,440	5,473	5,314	7,477	1,496	**23,227**
New Orleans, Louisiana	3,750	435	2,978	834	1,012	**7,163**
New York City, New York	45,954	12,118	9,615	16,755	1,937	**67,687**
Newark, New Jersey	11,863	3,926	3,970	4,219	689	**19,759**
Oakdale Federal Detention Center, Louisiana	575	5,555	968	3,632	2,723	**7,098**
Omaha, Nebraska	5,987	1,576	1,168	2,383	741	**8,731**
Orlando, Florida	5,872	2,341	2,235	4,264	429	**10,448**
Otay Mesa, California	337	1,554	155	979	621	**2,046**
Pearsall, Texas	418	5,051	281	1,942	3,182	**5,750**
Philadelphia, Pennsylvania	5,007	1,038	1,644	2,190	410	**7,689**
Phoenix, Arizona	12,081	4,284	2,134	2,603	3,133	**18,499**
Portland, Oregon	3,186	672	849	1,550	284	**4,707**

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Court name	Case backlog	New case receipts	Other case receipts	Case completions	Change of venue or transfer	Total annual caseload
Saipan, Northern Mariana Islands	67	81	19	129	3	**167**
Salt Lake City, Utah	1,366	1,076	273	1,185	57	**2,715**
San Antonio, Texas	10,345	11,172	7,421	5,902	8,234	**28,938**
San Diego, California	4,626	1,924	1,051	3,094	1,127	**7,601**
San Francisco, California	20,676	8,088	5,122	7,885	2,461	**33,886**
Seattle, Washington	5,483	1,145	1,704	2,775	632	**8,332**
Stewart Detention Facility, Georgia	800	6,043	227	6,020	704	**7,070**
Tacoma, Washington	951	3,670	271	2,149	1,783	**4,892**
Tucson, Arizona	1,687	675	572	846	152	**2,934**
Ulster, New York	185	299	73	291	78	**557**
Varick, New York*	785	1,402	285	1,202	714	**2,472**
York, Pennsylvania	510	3,538	566	2,075	1,988	**4,614**
All	**344,101**	**199,343**	**106,979**	**192,018**	**88,727**	**650,423**

Source: GAO analysis of Executive Office for Immigration Review data. | GAO-17-438

Note: Total caseload excludes changes of venue or transfer.

*Indicates an immigration court co-located with a Department of Homeland Security Service Processing Center

Table 8: Case Backlog, Receipts, Completions, Changes of Venue or Transfers, and Caseload by Immigration Court, Fiscal Year 2014

Court name	Case backlog	New case receipts	Other case receipts	Case completions	Change of venue or transfer	Total annual caseload
Adelanto, California	1,024	3,275	811	2,382	1,971	**5,110**
Arlington, Virginia	13,906	9,238	6,019	4,984	2,469	**29,163**
Atlanta, Georgia	11,282	4,106	2,752	3,828	662	**18,140**
Aurora, Colorado	251	1,966	140	1,044	1,126	**2,357**
Baltimore, Maryland	5,662	3,972	3,360	3,688	417	**12,994**
Batavia, New York*	116	1,622	134	617	1,082	**1,872**
Bloomington (St. Paul), Minnesota	3,127	2,318	1,101	2,500	544	**6,546**
Boston, Massachusetts	9,488	3,873	3,832	4,319	1,603	**17,193**
Buffalo, New York	2,372	1,177	1,188	804	609	**4,737**
Charlotte, North Carolina	4,349	4,672	2,136	5,317	260	**11,157**
Chicago, Illinois	18,843	8,512	4,389	6,757	6,533	**31,744**
Cleveland, Ohio	4,928	2,145	1,266	1,962	643	**8,339**
Dallas, Texas	6,409	7,925	3,754	7,414	2,233	**18,088**

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Court name	Case backlog	New case receipts	Other case receipts	Case completions	Change of venue or transfer	Total annual caseload
Denver, Colorado	7,324	2,409	1,590	2,332	481	**11,323**
Detroit, Michigan	3,302	2,379	1,074	1,617	1,214	**6,755**
El Paso, Texas*	479	3,389	165	2,652	1,032	**4,033**
El Paso, Texas	7,164	2,491	1,450	2,202	1,710	**11,105**
Elizabeth Detention Center, New Jersey	358	3,068	180	867	2,332	**3,606**
Eloy, Arizona	1,344	4,887	295	2,286	3,128	**6,526**
Fishkill, New York	131	159	36	147	44	**326**
Florence, Arizona*	1,213	4,103	198	1,682	3,292	**5,514**
Guaynabo (San Juan), Puerto Rico	236	393	100	359	118	**729**
Harlingen, Texas	8,069	9,799	4,538	2,197	10,902	**22,406**
Hartford, Connecticut	1,776	1,126	1,018	1,219	364	**3,920**
Honolulu, Hawaii	201	235	177	339	45	**613**
Houston, Texas*	1,628	8,870	1,115	6,055	3,793	**11,613**
Houston, Texas	17,657	14,032	7,214	2,913	6,738	**38,903**
Imperial, California	1,213	1,227	845	818	808	**3,285**
Kansas City, Missouri	3,398	1,929	1,031	2,044	531	**6,358**
Krome North, Florida*	785	5,540	451	3,265	2,930	**6,776**
Las Vegas, Nevada	3,802	1,776	833	1,999	359	**6,411**
Los Angeles, California	50,536	14,925	9,031	17,752	4,099	**74,492**
Los Fresnos (Port Isabel), Texas*	638	6,377	268	2,992	3,819	**7,283**
Memphis, Tennessee	6,656	3,038	2,632	2,987	829	**12,326**
Miami, Florida	14,254	7,630	5,817	8,591	1,008	**27,701**
New Orleans, Louisiana	5,317	1,936	3,090	1,023	1,270	**10,343**
New York City, New York	48,995	15,500	11,250	16,471	2,750	**75,745**
Newark, New Jersey	14,851	4,128	5,462	3,473	1,108	**24,441**
Oakdale Federal Detention Center, Louisiana	743	4,501	449	3,115	2,097	**5,693**
Omaha, Nebraska	5,607	1,732	1,293	2,461	739	**8,632**
Orlando, Florida	5,755	2,876	2,435	4,392	535	**11,066**
Otay Mesa, California	446	2,012	158	999	1,166	**2,616**
Pearsall, Texas	626	4,954	269	2,212	2,688	**5,849**
Philadelphia, Pennsylvania	5,089	1,869	1,799	2,131	1,157	**8,757**
Phoenix, Arizona	12,763	2,849	2,054	3,868	2,339	**17,666**
Portland, Oregon	2,873	866	717	1,447	344	**4,456**
Saipan, Northern Mariana Islands	35	20	22	57	3	**77**

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Court name	Case backlog	New case receipts	Other case receipts	Case completions	Change of venue or transfer	Total annual caseload
Salt Lake City, Utah	1,473	1,406	317	1,225	247	**3,196**
San Antonio, Texas	14,802	11,889	8,265	4,675	9,745	**34,956**
San Diego, California	3,380	1,645	1,384	2,419	1,009	**6,409**
San Francisco, California	23,540	9,883	5,809	8,314	2,713	**39,232**
Seattle, Washington	4,925	1,317	1,697	2,394	632	**7,939**
Stewart Detention Facility, Georgia	346	5,053	233	4,650	548	**5,632**
Tacoma, Washington	960	3,678	222	2,102	1,847	**4,860**
Tucson, Arizona	1,936	658	464	1,182	167	**3,058**
Ulster, New York	188	266	48	277	83	**502**
Varick, New York*	556	1,341	283	1,139	464	**2,180**
York, Pennsylvania	551	3,388	448	1,814	2,025	**4,387**
All	**369,678**	**238,350**	**119,108**	**184,771**	**105,404**	**727,136**

Source: GAO analysis of Executive Office for Immigration Review data. | GAO-17-438

Note: Total caseload excludes changes of venue or transfer.

*Indicates an immigration court co-located with a Department of Homeland Security Service Processing Center

Table 9: Case Backlog, Receipts, Completions, Changes of Venue or Transfers, and Caseload by Immigration Court, Fiscal Year 2015

Court name	Case backlog	New case receipts	Other case receipts	Case completions	Change of venue or transfer	Total annual caseload
Adelanto, California	757	3,326	505	2,257	1,357	**4,588**
Arlington, Virginia	21,710	7,143	6,068	5,989	4,264	**34,921**
Atlanta, Georgia	13,650	3,696	2,786	6,782	803	**20,132**
Aurora, Colorado	187	1,661	189	1,056	768	**2,037**
Baltimore, Maryland	8,889	5,861	2,654	4,438	605	**17,404**
Batavia, New York*	173	1,269	122	562	817	**1,564**
Bloomington (St. Paul), Minnesota	3,502	1,808	1,356	2,452	658	**6,666**
Boston, Massachusetts	11,271	3,997	3,406	4,717	1,239	**18,674**
Buffalo, New York	3,324	252	730	981	979	**4,306**
Charlotte, North Carolina	5,580	3,936	1,630	5,277	565	**11,146**
Chicago, Illinois	18,454	7,160	3,817	6,176	3,624	**29,431**
Cleveland, Ohio	5,734	2,030	1,044	2,183	602	**8,808**
Dallas, Texas	8,441	7,806	3,327	9,489	2,375	**19,574**
Denver, Colorado	8,510	2,332	1,372	1,386	2,158	**12,214**

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Court name	Case backlog	New case receipts	Other case receipts	Case completions	Change of venue or transfer	Total annual caseload
Detroit, Michigan	3,924	1,459	702	1,676	528	**6,085**
El Paso, Texas*	349	2,927	138	2,137	804	**3,414**
El Paso, Texas	7,193	1,115	983	2,342	1,105	**9,291**
Elizabeth Detention Center, New Jersey	407	1,733	469	739	1,310	**2,609**
Eloy, Arizona	1,112	4,174	420	2,174	2,362	**5,706**
Fishkill, New York	135	104	41	121	49	**280**
Florence, Arizona*	540	2,777	164	1,126	1,622	**3,481**
Guaynabo (San Juan), Puerto Rico	252	486	115	318	359	**853**
Harlingen, Texas	9,307	1,505	2,506	2,607	5,514	**13,318**
Hartford, Connecticut	2,337	941	864	1,673	449	**4,142**
Honolulu, Hawaii	229	231	271	441	32	**731**
Houston, Texas*	1,765	5,807	836	4,581	2,746	**8,408**
Houston, Texas	29,252	7,073	5,526	6,088	2,414	**41,851**
Imperial, California	1,659	1,749	1,262	768	1,445	**4,670**
Kansas City, Missouri	3,783	1,813	955	1,764	519	**6,551**
Krome North, Florida*	581	3,523	315	2,364	1,253	**4,419**
Las Vegas, Nevada	4,053	1,504	821	2,029	328	**6,378**
Los Angeles, California	52,641	13,635	9,197	20,793	3,879	**75,473**
Los Fresnos (Port Isabel), Texas*	472	3,859	146	2,278	1,979	**4,477**
Memphis, Tennessee	8,510	3,179	2,889	4,009	1,153	**14,578**
Miami, Florida	18,102	9,497	4,929	8,866	3,127	**32,528**
New Orleans, Louisiana	8,050	2,473	2,684	3,303	2,833	**13,207**
New York City, New York	56,524	15,334	9,898	17,730	1,530	**81,756**
Newark, New Jersey	19,860	5,118	4,348	3,476	1,542	**29,326**
Oakdale Federal Detention Center, Louisiana	481	4,702	438	2,897	2,068	**5,621**
Omaha, Nebraska	5,432	1,673	1,311	2,492	629	**8,416**
Orlando, Florida	6,139	3,061	1,973	5,483	595	**11,173**
Otay Mesa, California	451	1,747	165	914	970	**2,363**
Pearsall, Texas	949	5,799	216	2,323	2,921	**6,964**
Philadelphia, Pennsylvania	5,469	1,863	1,575	2,548	637	**8,907**
Phoenix, Arizona	11,459	1,728	1,762	4,114	970	**14,949**
Portland, Oregon	2,665	1,238	894	1,392	280	**4,797**
Saipan, Northern Mariana Islands	17	15	12	39	0	**44**
Salt Lake City, Utah	1,724	1,043	540	1,373	409	**3,307**

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Court name	Case backlog	New case receipts	Other case receipts	Case completions	Change of venue or transfer	Total annual caseload
San Antonio, Texas	20,536	8,048	8,495	3,686	10,496	**37,079**
San Diego, California	2,981	2,173	1,328	2,233	995	**6,482**
San Francisco, California	28,205	10,727	6,258	10,619	3,258	**45,190**
Seattle, Washington	4,913	2,741	1,686	2,343	411	**9,340**
Stewart Detention Facility, Georgia	434	4,209	182	3,894	424	**4,825**
Tacoma, Washington	911	2,913	161	1,640	1,195	**3,985**
Tucson, Arizona	1,709	533	345	1,324	164	**2,587**
Ulster, New York	142	191	51	189	69	**384**
Varick, New York*	577	1,057	281	870	494	**1,915**
York, Pennsylvania	548	2,469	432	1,773	1,255	**3,449**
All	**436,961**	**202,223**	**107,590**	**199,294**	**87,936**	**746,774**

Source: GAO analysis of Executive Office for Immigration Review data. | GAO-17-438

Note: Total caseload excludes changes of venue or transfer.

*Indicates an immigration court co-located with a Department of Homeland Security Service Processing Center.

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Appendix III: Immigration Court Proceedings Continuances, Fiscal Years 2006 through 2015

Judges may continue a case—issue a temporary adjournment of case proceedings until a different day or time—for a variety of reasons, either at their own instance or, for good cause shown by the respondent or the Department of Homeland Security (DHS).[1] For example, an immigration judge has discretionary authority to grant a motion for continuance to allow respondents to obtain legal representation or DHS to complete required background investigations and security checks.[2] The Executive Office for Immigration Review (EOIR) tracks the extent to which judges issue continuances and reasons for continuances within its case management system. EOIR categorizes reasons for case continuances into approximately 70 different categories, including:

- Respondent-related continuances, such as illness of a respondent or their witness or attorney;
- DHS-related continuances, such as the need for more time to prepare for a case;
- Immigration judge–related continuances, such as unplanned leave or insufficient time to complete a hearing; and
- Operational continuances, such as a lack of a foreign language interpreter, a video- teleconference (VTC) malfunction, or to allow a priority case to be heard instead.

Table 10 provides the percentage of completed immigration court cases by the number of continuances for fiscal years 2006 through 2015, and table 11 provides the average days to case completion by number of continuances for fiscal years 2006 through 2015. Table 12 represents the number of continuances by overall category for each year, as well the percentage of total continuances and the percentage change of each category.

[1]8 C.F.R. § 1240.6.

[2]See 8 C.F.R. § 1003.29. See also Aliens and Nationality; Rules of Procedure for Proceedings Before Immigration Judges, 52 Fed. Reg. 2931 (Jan. 29, 1987). Immigration judges cannot grant applications for relief subject to identity, law enforcement, or security investigations or examinations until after DHS has completed, and reported to the immigration judge any relevant information from, the appropriate background investigations and security checks. 8 C.F.R. § 1003.47(g).

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Additionally, the following tables provide an overview of immigration judges' use of continuances from fiscal years 2006 through 2015:

- Table 13 represents the number of respondent-related continuance reasons, the percentage of total continuances, and the percentage change of each continuance reason.
- Table 14 represents the number of DHS-related continuance reasons, the percentage of total continuances, and the percentage change of each continuance reason.
- Table 15 represents the number of immigration judge-related continuance reasons, the percentage of total continuances, and the percentage change of each continuance reason.
- Table 16 represents the number of operational-related continuance reasons, the percentage of total continuances, and the percent change of each continuance reason.

Table 10: Percentage of Completed Immigration Court Cases by Number of Continuances, Fiscal Years 2006 through 2015

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Percentage of completed cases with no continuances	64	60	63	62	57	52	44	34	36	32
Percentage of completed cases with one continuance	13	14	13	14	15	15	16	17	19	21
Percentage of completed cases with two continuances	8	9	8	7	9	10	11	13	14	16
Percentage of completed cases with three continuances	6	6	5	5	6	7	8	10	10	11
Percentage of completed cases with four or more continuances	9	11	11	11	14	16	21	25	21	20
Total number of completed cases	**181,130**	**162,771**	**174,985**	**187,012**	**180,398**	**177,907**	**156,109**	**139,177**	**140,186**	**155,858**

Source: GAO analysis of Executive Office for Immigration Review data. | GAO-17-438

Note: Percentages may not sum to 100 percent due to rounding.

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Table 11: Average Days to Complete Cases by the Number of Continuances, Fiscal Years 2006 through 2015

Number of continuances before case completion	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
No continuances	49	43	28	29	39	49	65	115	118	175
One continuance	171	172	149	128	160	184	228	296	305	315
Two continuances	314	285	273	260	286	302	356	430	468	464
Three continuances	413	370	360	359	382	402	473	534	594	576
Four or more continuances	615	564	598	652	698	712	807	917	959	929

Source: GAO analysis of Executive Office for Immigration Review data. | GAO-17-438

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Table 12: Continuances by Category, Fiscal Years 2006 through 2015

Continuance Category	Fiscal Year 2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Category total	Percentage of total	Percentage change, fiscal years 2006 through 2015
Respondent-related	214,232	212,313	217,842	224,528	250,360	261,249	282,543	295,686	245,089	252,317	2,456,159	66	18
Immigration judge-related	25,337	31,156	38,762	50,217	56,344	52,157	49,213	43,678	29,999	24,770	401,633	11	-2
Department of Homeland Security-related	46,790	41,025	39,822	39,454	46,426	52,690	61,412	72,008	67,479	71,966	539,072	14	54
Operational-related	35,248	25,776	25,738	23,655	25,860	31,722	37,889	42,302	42,665	46,839	337,694	9	33
Total continuances	**321,607**	**310,270**	**322,164**	**337,854**	**378,990**	**397,818**	**431,057**	**453,674**	**385,232**	**395,892**	**3,734,558**	**100**	**23**

Source: GAO analysis of Executive Office for Immigration Review data. | GAO-17-438

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Table 13: Respondent-Related Continuance Reasons, Fiscal Years 2006 through 2015

Continuance Reason	Fiscal Year										Category total	Percentage of total	Percentage change, fiscal years 2006 through 2015
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015			
Respondent to seek representation	51,269	50,126	46,793	45,484	49,607	51,151	52,922	54,910	50,887	57,427	510,576	21	12
Preparation—respondent or respondent's legal representative[a]	37,899	40,710	40,251	40,770	48,623	54,104	58,947	62,722	51,633	52,376	488,035	20	38
Department of Homeland Security (DHS) adjudication of respondent-initiated petition[b]	17,905	20,681	26,897	32,732	40,752	42,997	44,349	43,355	30,769	26,256	326,693	13	47
Respondent or respondent's legal representative request for continuance for other reason	30,952	25,587	22,318	21,218	24,641	26,415	31,398	36,702	30,148	30,423	279,802	11	-2
Preparation of records or biometrics check or overseas investigation by respondent	9,764	17,166	28,797	33,463	35,064	33,641	31,272	24,746	14,645	11,332	239,890	10	16
Respondent to file other application[c]	10,046	10,409	11,080	11,519	14,046	15,551	19,334	22,434	19,449	17,781	151,649	6	77
Respondent to file for asylum in immigration court	9,997	10,132	8,386	7,217	7,366	9,366	11,102	12,627	15,061	19,082	110,336	4	91

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Continuance Reason	Fiscal Year 2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Category total	Percentage of total	Percentage change, fiscal years 2006 through 2015
Respondent or legal representative rejected earliest possible asylum hearing	21,213	15,425	12,501	9,754	7,678	6,192	6,197	6,368	5,478	5,010	95,816	4	-76
No-show by respondent or respondent's legal representative	6,364	6,138	5,252	5,272	5,771	6,539	6,545	7,281	6,565	11,917	67,644	3	87
Supplement asylum application	6,532	5,180	4,246	3,390	3,451	3,195	4,213	4,028	2,680	3,515	40,430	2	-46
Joint request to continue by both parties	1,319	1,618	1,360	985	949	1,401	5,700	8,789	8,615	8,148	38,884	2	518
Asylum application withdrawn or reset for other issues	6,972	4,144	2,661	2,717	2,305	2,086	2,386	2,999	2,757	2,564	31,591	1	-63
Consolidation with family member[d]	906	1152	2855	5597	4041	3278	2917	2928	1951	2435	28,060	1	169
Contested charges	1,189	1,578	1,832	2,165	2,945	2,532	2,576	2,912	2,266	2,069	22,064	1	74
Illness of respondent, legal representative, or witness	950	929	1080	1018	1513	1356	1618	1842	1433	1440	13,179	1	52
Respondent claim to U.S. citizenship	360	541	762	681	735	648	638	628	422	347	5,762	0	-4

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Continuance Reason	Fiscal Year 2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Category total	Percentage of total	Percentage change, fiscal years 2006 through 2015
Respondent request for an in-person hearing	527	723	698	484	814	771	374	370	307	169	5,237	0	-68
Respondent requested forensic analysis	72	69	50	26	39	22	21	18	9	17	343	0	-76
DHS vertical prosecution date not accommodated[e]	1	0	17	30	15	5	14	16	9	4	111	0	300
Jurisdiction rests with Board of Immigration Appeals	3	6	8	6	12	6	20	12	6	5	84	0	67
Total respondent-related continuances	**214,240**	**212,314**	**217,844**	**224,528**	**250,367**	**261,256**	**282,543**	**295,687**	**245,090**	**252,317**	**2,456,186**	**100**	**18**

Source: GAO analysis of Executive Office for Immigration Review data. | GAO-17-438

[a]These cases were continued to allow the respondent or respondent's legal representative time to prepare the case, including allowing time to file an additional relief application not initially requested or take witness testimony outside of a corrections facility (e.g., at the immigration court for a witness in a cancellation of removal hearing).

[b]These cases were continued to allow for the adjudication of a petition or application pending with DHS. This includes, but is not limited to: petitions to remove conditions on residence (I-751); petitions of a refugee relative (I-730), and pending naturalization of petitioning relative, as well applications for adjustment to lawful permanent residency under the Cuban Refugee Adjustment Act of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161, as amended.

[c]These cases were continued to allow the respondent to submit an additional application for relief beyond that already submitted—i.e., a respondent who has previously applied for asylum and, at a hearing on the asylum application, requests time in which to prepare and submit an application for cancellation of removal relief.

[d]These cases were continued to allow the immigration court to consolidate a family under a single case.

[e]According to the Executive Office for Immigration Review, this code was established for a pilot study.

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Table 14: Department of Homeland Security (DHS)-Related Continuance Reasons, Fiscal Years 2006 through 2015

	Fiscal Year												
Continuance Reason	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**Category total**	**Percentage of total**	**Percentage change, fiscal years 2006 through 2015**
DHS to provide biometrics check[a]	8,409	11,894	17,903	27,147	31,696	28,184	26,366	22,157	14,145	10,618	198,519	49	26
Preparation—DHS[b]	6,359	6,681	6,415	6,835	7,963	7,855	8,565	8,591	6,182	5,323	70,769	18	-16
DHS or DHS administrative file not available for hearing	2,726	2,473	2,595	2,300	2,397	2,454	2,383	2,413	2,020	2,243	24,004	6	-18
DHS investigation	2,286	3,088	3,894	4,724	4,826	5,018	4,025	2,984	1,587	1,242	33,674	8	-46
DHS did not present a detained respondent or inmate to a scheduled hearing	2,396	3,088	3,685	3,382	2,191	2,090	1,589	1,383	1,359	1,378	22,541	6	-42
Respondent released from DHS or corrections custody[c]	795	1,101	1,515	1,777	1,886	1,935	1,679	1,809	1,506	1354	15,357	4	70
DHS forensic analysis	669	938	1,151	1,818	2,853	2,516	2,052	1,475	818	402	14,692	4	-40

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Continuance Reason	Fiscal Year 2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Category total	Percentage of total	Percentage change, fiscal years 2006 through 2015
DHS application process—respondent in DHS or corrections custody[d]	525	376	268	220	378	419	598	767	578	973	5,102	1	85
New charge filed by DHS	420	388	513	557	609	614	657	593	458	379	5,188	1	-10
Detained respondent is quarantined due to outbreak of illness in DHS detention facility	143	469	308	818	902	413	325	248	205	199	4,030	1	39
DHS requested a certification of the respondent's mental competency	78	81	65	42	56	169	469	699	805	390	2,854	1	400
Juvenile home study required for final adjudication of case[e]	411	430	261	193	132	117	183	193	111	78	2,109	1	-81
Cooperating witness/law enforcement[f]	76	99	97	152	237	189	98	105	54	45	1,152	0	-41
Vertical prosecution—DHS cause delay[g]	0	1	42	150	133	120	142	144	95	94	921	0	-

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Continuance Reason	Fiscal Year 2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Category total	Percentage of total	Percentage change, fiscal years 2006 through 2015
DHS vertical prosecution date not accommodated	0	0	3	63	13	21	42	65	49	24	280	0	-
DHS request for an in-person hearing	45	49	49	39	73	50	40	52	27	28	452	0	-38
Total DHS-related continuances	**25,338**	**31,156**	**38,764**	**50,217**	**56,345**	**52,164**	**49,213**	**43,678**	**29,999**	**24,770**	**401,644**	**100**	**-2**

Source: GAO analysis of Executive Office for Immigration Review data. | GAO-17-438

[a]These cases were continued to allow DHS to complete biometrics checks, including required database and fingerprint checks.

[b]These cases were continued to allow DHS time for case preparation or to cover other DHS-requested continuances for reasons not otherwise covered on this table.

[c]These cases were continued from a detained calendar to a non-detained calendar because the respondent was released from DHS custody or other incarceration.

[d]These cases were continued to allow for the adjudication of a DHS-initiated application pending with DHS when the respondent is held in DHS or corrections custody.

[e]These cases were continued to allow the Health and Human Services Office of Refugee Resettlement to investigate potential sponsors for unaccompanied alien children.

[f]These cases were continued because the respondent is a cooperating witness or law enforcement has an interest in the respondent.

[g]According to the Executive Office for Immigration Review, this code was established for a pilot study.

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Table 15: Immigration Judge-Related Continuance Reasons, Fiscal Years 2006 through 2015

Continuance Reason	Fiscal Year										Category total	Percentage of total	Percentage change, fiscal years 2006 through 2015
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015			
Master calendar to individual calendar—merits hearing[a]	32,312	26,631	24,317	23,022	24,682	29,246	35,043	43,714	43,302	45,280	327,549	61	40
Unplanned immigration judge leave- sick or annual leave	7,646	7,154	7,989	7,623	9,746	10,422	12,580	14,052	12,554	14,911	104,677	19	95
Unplanned immigration judge leave—detail or other assignment	3,296	3,436	4,205	4,978	7,341	7,290	7,591	7,552	6,255	6,983	58,927	11	112
Insufficient time to complete hearing[b]	3,347	3,549	3,022	3,583	4,368	5,418	5,823	6,240	5,031	4,499	44,880	8	34
Immigration judge request for an in-person hearing	117	196	211	184	197	187	234	289	204	172	1,991	0	47
Reasonable Cause to Special Circumstances merits hearing[c]	5	9	6	9	15	33	39	27	36	25	204	0	400

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Continuance Reason	Fiscal Year										Category total	Percentage of total	Percentage change, fiscal years 2006 through 2015
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015			
Interpreter appeared but immigration judge rejected	67	50	72	55	77	94	102	134	97	96	844	0	43
Total immigration judge-related continuances	**46,790**	**41,025**	**39,822**	**39,454**	**46,426**	**52,690**	**61,412**	**72,008**	**67,479**	**71,966**	**539,072**	**100**	**54**

Source: GAO analysis of Executive Office for Immigration Review data. | GAO-17-438

[a]These cases were continued from a master calendar to an individual calendar for a merits hearing, usually allowing time to file and process applications for relief before the hearing on the merits.

[b]These cases were continued because the case could not be completed in the time allotted, including, among other reasons, the need for additional time for the immigration judge to prepare and deliver the oral decision at the scheduled hearing; to hear the testimony of additional witnesses, such as the arresting officer; other key witnesses not present at the hearing; or to take and present a deposition.

[c]These cases were continued from a Reasonable Cause to a Special Circumstances merits hearing in a continued detention review case, meaning that a final decision by the immigration judge or Board of Immigration Appeals determined that the Department of Homeland Security met the burden to show reasonable cause to proceed with a merits hearing.

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Table 16: Operational-Related Continuance Reasons, Fiscal Years 2006 through 2015

Continuance Reason	Fiscal Year										Category total	Percentage of total	Percentage change, fiscal years 2006 through 2015
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015			
Other operational or security factors[a]	9,140	9,485	13,349	12,632	15,068	19,904	22,296	24,019	21,142	22,715	169,750	50	149
Allow for scheduling of priority case	2,380	1,696	1,814	1,997	2,209	3,447	5,772	7,919	7,281	9,432	43,947	13	296
Case conversion[b]	20,087	10,935	5,668	2,998	1,866	1,083	781	486	104	45	44,053	13	-100
Hearing deliberately advanced[c]	250	741	1,765	2,986	3,372	3,605	4,355	4,094	3,308	2,979	27,455	8	1,092
Notice sent or served incorrectly	1,966	1,410	1,450	1,419	1,400	1,296	1,242	1,480	1,378	2,654	15,695	5	35
Interpreter not ordered	622	739	682	806	982	1,130	1,157	1,368	1,507	1,970	10,963	3	217
October 2013 Government Shutdown[d]	-	-	-	-	-	-	1	12	5,103	2,882	7,998	2	-
Case joined to lead—hearing adjourned[e]	-	-	1	1	1	165	790	1,066	1,395	2,312	5,731	2	-
Concurrent application for relief[f]	23	16	7	12	19	19	229	538	446	643	1,952	1	2,696
Interpreter ordered but failed to appear	321	327	389	398	325	472	458	442	378	391	3,901	1	22

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Continuance Reason	Fiscal Year										Category total	Percentage of total	Percentage change, fiscal years 2006 through 2015
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015			
Video-teleconference malfunction	192	244	507	322	552	453	450	431	312	303	3,766	1	58
State Department response not in file[g]	13	23	48	36	40	46	75	53	49	60	443	0	362
Lack of interpreter[h]	254	160	56	48	24	11	2	3	1		559	0	-100
Forensic competency evaluation[i]	-	-	-	-	-	-	-	-	18	55	73	0	-
Appointment of qualified representative[j]	-	-	-	-	-	-	-	1	15	54	70	0	-
Judicial competency evaluation[k]	-	-	-	-	-	-	-	-	-	62	62	0	-
Case severed from lead—hearing adjourned[l]	-	-	2	-	2	91	281	390	228	282	1,276	0	-
Total operational-related continuances	**35,248**	**25,776**	**25,738**	**23,655**	**25,860**	**31,722**	**37,889**	**42,302**	**42,665**	**46,839**	**337,694**	**100**	**33**

Source: GAO analysis of EOIR data. | GAO-17-438

Note: Cases with a continuance reason labelled “Data entry error” were omitted from this table as these represent errors and not represent case continuances. Additionally, the Executive Office for Immigration Review (EOIR) uses the continuance reason “Immigration Judge completion prior to hearing” to indicate that a case was completed and therefore its use does not represent a case continuance.

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[a]These cases were continued because of other operational problems for reasons not otherwise covered on this table. These reasons may include, but are not limited to, an inoperable recorder; weather or environmental factors; agendas changed by the immigration court; immigration judge was replaced, resigned or retired; and a security risk related to anyone in the court.

[b]These cases were continued to allow for the case file to be converted between EOIR's old and new case management system.

[c]These cases were continued because circumstances dictated that the hearing be moved forward. For example, this could occur if a non-detained respondent was arrested, subsequently needed to be placed on the detained docket, and, due to being placed on the detained docket, the hearing date is set earlier than the previous non-detained hearing date.

[d]These cases were continued based on the October 2013 government shutdown.

[e]These cases were continued because one respondent's case was joined with another, a tool most often used for administrative ease and efficiency when two members a family are seeking relief based on the same claim.

[f]These cases were continued because the respondent or the respondent's legal representative filed an application for relief in addition to suspension of deportation or cancellation of removal.

[g]This continuance reason is to be used only when an immigration judge requests a special case-specific opinion from the Department of State.

[h]This continuance reason is no longer used. Instead, judges can record that an interpreter was ordered but failed to appear or that the court did not order an interpreter for the hearing.

[i]These cases were continued because the immigration ordered that a qualified mental health professional assess the detained respondent's mental health due to unresolved concerns as to a detained respondent's mental competency.

[j]These cases were continued because an immigration judge determined that a detained respondent was not competent to represent him- or herself and, accordingly, would be appointed a qualified representative at government expense.

[k]These cases were continued because either the U.S. Immigration and Customs Enforcement trial attorney or immigration judge determined that a competency evaluation of a detained respondent was necessary.

[l]These cases were continued because, after two respondents' cases were joined, it was determined that one respondent's case should be severed, and heard separately from, the other.

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Appendix IV: Additional Characteristics of Selected Court and Adjudicatory Systems and the Immigration Court System

Table 17 provides additional characteristics of selected court and adjudicatory systems exemplifying the restructuring scenarios proposed by experts and stakeholders and the current immigration courts and Board of Immigration Appeals.

Table 17: Additional Characteristics of Selected Systems Similar to Scenarios Proposed by Experts and Stakeholders and the Current Immigration Courts and Board of Immigration Appeals (BIA)

Scenario	Court system independent of the executive branch	Administrative agency	Hybrid of independent court system and administrative agency	Immigration courts and the BIA
Selected court and adjudicatory systems exemplifying the proposed scenarios	U.S. Bankruptcy Courts	Social Security Administration's Office of Disability Adjudication and Review (ODAR)	Board of Veterans' Appeals (BVA) and Court of Appeals for Veterans Claims (CAVC)	Not applicable
Type of court filing system (paper or electronic)	Electronic filing system	Electronic filing system	BVA and CAVC: Paper appeals to the BVA are scanned and uploaded into an electronic claims file	Paper-based system
Performance assessment for judges	All judges are subject to the Judicial Code of Conduct, which includes the ethics rules that apply to federal judges and provides guidance on their performance of official duties and engagement in a variety of outside activities. An evaluation feedback program for bankruptcy judges provides feedback to the judges for the purpose of helping them improve and strengthen their performance.	Administrative law judges are not rated on their performance, but have benchmarks for self-assessing productivity.	BVA: Veterans law judges' performance standards include a number of elements, including legal writing and analysis, timeliness and productivity of decisions and other work assignments, case management, conduct of hearings, organizational cooperation and support, and customer satisfaction.	Executive Office for Immigration Review (EOIR) assesses immigration court judges and BIA members using a performance plan that addresses three job elements: (1) legal ability, (2) professionalism, and (3) accountability for organizational results, which includes working towards achieving the goals and priorities set by the Office of the Chief Immigration Judge. EOIR also considers judge and BIA member progress towards meeting quantitative case completion goals.
Adversarial nature of proceedings	A bankruptcy case may include adversary proceedings which are lawsuits arising in or related to the main case, commenced by filing a complaint with the court and other motions.	Non-adversarial.	Non-adversarial at the BVA and adversarial before the CAVC.	Adversarial.

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Scenario	Court system independent of the executive branch	Administrative agency	Hybrid of independent court system and administrative agency	Immigration courts and the BIA
Type of decision rendered (oral or written)	Oral and written.	Written.	BVA and CAVC: Written.	Oral and written.
Workforce planning	The Judicial Conference—the national policy-making body for the federal courts—assesses judgeship needs every 2 years using weighted case metrics, number of cases, and the district court size, among other factors.	ODAR uses the number of pending hearings, projections of future case receipts, and estimates of future productivity to determine the number of judges needed to achieve its target processing time of 270 days.	BVA: evaluates its requirements, such as desired timeframes for issuing decisions, and the resources on-hand and needed to meet these requirements. CAVC: determines the number of judges it needs by assessing its and the BVA's caseload because the CAVC needs to keep pace with the appeals generated by the BVA.	EOIR calculates its immigration judge staffing needs by dividing its entire projected caseload for the upcoming fiscal year by the average number of cases completed per immigration judge in the previous year.
Docket management	The U.S. Bankruptcy Code and the Federal Rules of Bankruptcy Procedure establishes deadlines applicable throughout the case, including while it is pending, that dictate the management of the docket.	Offices assign and process the oldest hearing requests first, with some exceptions made for terminal illness and other critical cases.	BVA: required by statute to consider and decide cases in order according to their place upon the docket, with certain exceptions, such as a serious illness and hardship on the part of the veteran; and to handle claims remanded from the CAVC expeditiously. The priority order in BVA appeals adjudication is based on the date the appeal was received by the VA (not the BVA). The BVA inventories all of its cases on a weekly basis to determine the oldest cases and assigns these cases first to the judges. CAVC: The Clerk of Court and Chief Judge monitor the number of cases on each judge's docket on a monthly basis to ensure that the case flow is maintained.	Uses case prioritization guidance to determine when cases should be scheduled.

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Scenario	Court system independent of the executive branch	Administrative agency	Hybrid of independent court system and administrative agency	Immigration courts and the BIA
Location	Regionally-based.	Regionally-based.	BVA: not regionally-based and any judge can conceivably review cases from any Veterans Affairs regional office. CAVC: Centrally-located.	Regionally-based.
Support staff for judges	The Bankruptcy Courts have a staffing policy that authorizes no more than two in-chamber staff per judge.	ODAR's target ratio of support personnel to judge is 4.5 support personnel per judge.	BVA: tries to maintain a ratio of almost nine staff attorneys per judge and has approximately 120 administrative support personnel who are not directly assigned to the judges. CAVC: Each judge is authorized up to four law clerks and one administrative assistant.[a]	EOIR's target ratio is 3 support personnel per immigration judge.

Source: GAO analysis of expert, stakeholder, and federal agency information. | GAO-17-438

[a]Per 38 U.S.C. § 7281(b), the judges of the Court may appoint law clerks and secretaries, in such numbers as the Court may approve, without regard to the provisions of title 5 governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

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Appendix V: Comments from Department of Justice

U.S. Department of Justice

Executive Office for Immigration Review
Office of the General Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

May 12, 2017

Rebecca Gambler
Director, Homeland Security and Justice Issues
U.S. Government Accountability Office
Washington, DC 20548

Re: Draft Report GAO 17-438, "Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges"

Dear Ms. Gambler:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Justice, Executive Office for Immigration Review (EOIR), appreciates the U.S. Government Accountability Office's (GAO) diligent work in conducting its review of the immigration court system and in issuing this report. EOIR recognizes the GAO's critical mission to investigate and inform Congress about how American tax dollars are spent. EOIR's mission remains focused on adjudicating immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws.

General Response

The GAO report reviewed a broad spectrum of issues related to caseloads and management and proposed 11 recommendations. EOIR agrees with most of the recommendations and indeed has already begun to address these areas. Several areas in the GAO's report would benefit from additional context and information, however, and EOIR provides that here.

Pending Caseload

The report begins with a discussion of EOIR's pending caseload. EOIR agrees that the pending caseload has grown, and recognizes that there are many adverse consequences that flow from this, most of which are thoroughly discussed in the report. What is missing from the report, however, is a contextualized discussion of why EOIR's pending caseload has grown. Some historical perspective is useful; during the time period that the GAO studied – 2006 to

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2015 – there were many forces at work. In particular, immigration cases have become significantly more complex due to Supreme Court decisions and hundreds of decisions by the United States Courts of Appeals, contributing to an increasingly intricate legal landscape in the immigration system.[1] During this time period, the number of applications for relief filed increased, in particular applications for asylum, which bring a unique set of complexities. Similarly, the number of bond proceedings increased, as did the challenges in scheduling those cases given that some such cases have specific timing requirements.[2] The number of cases involving detained aliens also increased, which require more intensive use of judicial resources. Changing priorities in cases in 2014 as noted in the Report, as well as the kind of cases being heard before the courts, also significantly impacted pending caseloads. Meanwhile, a three-year hiring freeze resulted in dramatic decreases in both the immigration judge (IJ) corps and, even more acutely, in support staff. Further, scheduling issues, such as continuances for representatives to attend national conferences, annual training requirements for immigration judges, and the use of alternative work schedules by immigration judges, all of which have reduced the annual number of available hearing dates over the time period of the GAO study, may have contributed, over time, to an increase in pending caseloads.

Workforce Planning

In terms of workforce planning, as noted by the GAO, EOIR recognizes the benefit and utility of more formal and rigorous workforce planning, and EOIR is finalizing a strategic plan and a workforce plan, in addition to streamlining IJ hiring. With regard to IJ hiring, however, EOIR takes issue with the GAO's statement that EOIR has not assessed its IJ hiring process. In fact, EOIR has continuously assessed its hiring process and has made significant improvements. Furthermore, the Attorney General announced on April 11, 2017, that the Department has implemented a new, streamlined hiring plan for immigration judges. This plan will change the way that EOIR announces IJ positions, evaluates the files of candidates received (both at EOIR and the Department), and clears candidates to enter on duty. With these changes, EOIR expects to see reductions in time-to-hire for IJs in the future.

EOIR notes that the GAO did not sufficiently account for the changes in IJ hiring in this report. For instance, as part of the calculation for length of time-to-hire, the GAO counted the period between January 21, 2011, and February 10, 2014, during which the agency was subject to a hiring freeze. Also, it is unclear what methodology the GAO used to interpret days elapsed

[1] *See Mathis v. United States*, 136 S. Ct. 2243 (2016); *Descamps v. United States*, 133 S. Ct. 2276 (2013); *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013); *see also Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015)(*Rodriguez III), cert. granted sub nom. Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016) (respondents detained under INA § 235(a), (b), and (c) are entitled to automatic bond hearings after six months of detention and at six-month intervals thereafter).

[2] For example, in the Ninth Circuit, *Rodriguez v. Robbins* has resulted in a burgeoning caseload of bond hearings for respondents detained longer than six months, and it greatly expanded the number of respondents who are eligible for bond hearings before an Immigration Judge. *See Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) (*Rodriguez II*) (affirming the preliminary injunction from the district court); *Rodriguez III, supra, cert. granted sub nom. Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016). Similar litigation exists in the Second Circuit, *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015), *cert. denied* 136 S. Ct. 2494 (2016).

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in certain phases of the hiring process. According to EOIR's own time-to-hire data analysis, for the 87 IJ positions filled since the start of FY 2016, the average time-to-hire is 485 days, not the 647 days cited by the GAO as the average hiring time post-February 2014.

A second area where EOIR notes concerns is the time attributed in the report to the background investigation (BI) conducted by the Federal Bureau of Investigation (FBI). EOIR cannot replicate the GAO finding of 41 days for this process, but even if EOIR could, it is likely that the particular sample pulled by the auditors — of IJs hired and BIs completed as of August 2016 — provides an inaccurate reflection of the time required for BIs. Specifically, the limited IJ hiring during this time period likely represents federal employees who already had a BI in place or in process, and is not indicative of the true length of time required to complete a BI for a non-federal employee. EOIR examined candidates that would have had completed BIs by the August 2016 date and, of the 20 IJs included in this sample, the average BI completion time was 97.75 days, with a low of 49 days and a high of 191 days to complete the BI. These statistics provide a more accurate reflection of the length of time necessary to complete a BI as part of the IJ hiring process.

As to the GAO's finding that EOIR lacks a strategic workforce plan to estimate and plan for staffing need, the agency has a contract in place to determine what critical skills and competencies are used in the immigration courts, particularly at the legal assistant level, so as to determine how to better attract and retain key staff. A key deliverable of this contract is a workforce staffing model that projects immigration court staffing needs based on numerous variables, including anticipated workload and case processing goals. This model is a strong first step toward creating strategic workforce and human capital plans. In addition, the Office of the Chief Immigration Judge has convened a planning committee to examine this data and, working with the Office of Human Resources, to determine how best to leverage this information to address staffing needs now and in the future through the use of a strategic workforce and human capital plan.

Electronic Case Management, E-Filing, and Video-Teleconferencing

The GAO also recommended identification and establishment of an appropriate entity and plan for implementation of EOIR's new effort to implement an electronic case management and e-filing system. EOIR is committed to putting in place the appropriate structure and oversight body and fully intends to do so. EOIR is simply not yet at the stage where this oversight body could make resource allocation decisions to implement an overarching electronic case management and e-filing system. The Report, however, focuses on EOIR's prior electronic information initiatives, defining those improvements solely by the fact that EOIR did not fully implement e-filing. EOIR emphasizes that its decades-long efforts to modernize its electronic capabilities consisted of a series of incremental changes that were each critical to maintaining a functioning court system. While each of those incremental steps was necessary to position EOIR to be able to implement e-filing, a capability that EOIR has not yet fully realized, the immigration court system would not still remain operational without those changes. For example, without the implementation of digital audio recording, which moved EOIR from

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reliance on tape machines that are no longer manufactured to digital recording and storage of audio hearings, EOIR simply could not achieve its mission. This technology required a series of behind-the-scenes technological changes that all worked together to allow this function. With the advancement of new systems, and the aging of EOIR's technology, EOIR is now again embarking on its next phase of modernization.

In addition, the GAO recommended that EOIR increase collection and analysis of data related to the use of video-teleconferencing (VTC). The GAO expressed concerns that differences in the technical quality of VTC hearings could have an effect on the outcomes of those immigration hearings. The GAO therefore recommended that the agency develop mechanisms to solicit and monitor user feedback on their experiences with VTC technology. EOIR notes that, with respect to due process concerns, multiple circuit courts of appeal have upheld the use of VTC in immigration proceedings as comporting with due process requirements.[3] EOIR further disputes the findings in this section of the report given that they rely almost exclusively on anecdotal statements from interviews with "immigration court officials, experts, and stakeholders." EOIR does not believe that the limited sample of individuals interviewed for this report justifies the broad-sweeping concerns that are raised with regard to the use of VTC technology. In fact, EOIR has made significant enhancements to VTC technology in the last several years to improve the audio and visual quality of VTC in the immigration courts. Further, EOIR believes that it is not feasible to solicit accurate and useful feedback concerning VTC from respondents in removal proceedings, which are inherently adversarial. Going forward, EOIR is committed to making additional improvements to the use of VTC by the agency, to further protect due process interests and to promote a more seamless user experience in immigration hearings conducted by VTC.

Performance Measurements

The GAO further takes issue with EOIR's performance measurements. The GAO conflates performance measurements and case completion goals, however, and it is here that EOIR diverges from the GAO's recommendations. The GAO notes, accurately, that EOIR used to have case completion goals for most of its cases, but in 2009 reduced the number of such goals from 11 to 5. EOIR did so for a reason: EOIR's experience was that the 11 case completion goals were a hindrance to the efficient processing of cases. In a court system as large and complex as EOIR's, particularly where there are many pending cases competing for docket space, the court staff need a clear understanding of which cases to prioritize. When all cases are subject to case completion goals, EOIR's experience was that the staff does not know which cases to give preferential scheduling to and schedules and reschedules cases to try to meet all of the completion goals. While EOIR acknowledges that it has recently not been able to meet the case completion goals for its top priority, detained cases, this is due in part to the addition of new priorities in 2014. However, these priorities recently have been eliminated, and EOIR is again focusing on its top priority, detained cases.

[3] *See e.g.*, *Vilchez v. Holder*, 682 F.3d 1195 (9th Cir. 2012); *Aslam v. Mukasey*, 537 F.3d 110 (2d Cir. 2008); *Eke v. Mukasey*, 512 F.3d 372 (7th Cir. 2008); *Rusu v. INS*, 296 F.3d 316 (4th Cir. 2002).

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EOIR agrees with the GAO that performance measurement and assessments are critical. EOIR tracks numerous performance measurements, including completion times for its cases. EOIR has a performance management system for its IJs and court staff with both quantitative and qualitative goals. Additionally, EOIR is reestablishing a court evaluation team for broader assessments of court performance. EOIR is open to any further suggested improvements to its performance measurements.

As a point of correction, the GAO notes that EOIR did not have completion goals for its 2014 priorities. The GAO misunderstands the direction provided to EOIR by the administration for those cases: the goal was to schedule the cases within certain timeframes. EOIR met those goals. EOIR includes in the detained category for case completion goal purposes unaccompanied children in the care and custody of the Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR), who do not have a sponsor identified. The categories of unaccompanied children in HHS custody without an identified sponsor, as well as individuals released pursuant to *Rodriguez* bond hearings, remain top case processing priorities along with detained cases

Specific Recommendations

With respect to the specific recommendations for executive action contained in the GAO report, EOIR respectfully submits the following response:

Recommendation Area 1 — Strategic Workforce Planning: EOIR recognizes the importance of strategic workforce planning and, as noted above, has a contract in place to determine critical skills and competencies used in the immigration courts, to then produce a workforce staffing model to achieve current and future operational and programmatic results. EOIR therefore fully endorses the benefits of strategic workforce planning. EOIR further concurs that future monitoring and evaluation of progress toward achieving the results identified by strategic workforce planning is essential for the effective operation of the agency.

Recommendation Area 2 — Immigration Judge Staffing: EOIR is committed to continually improving the process for IJ hiring and is implementing the streamlining plan and efficiencies announced by the Attorney General on April 11, 2017. In addition, EOIR recognizes the value of developing hiring strategies that target both short-term and long-term human capital needs to enable the agency to address more holistically IJ staffing needs. Further, EOIR is committed to assessing the IJ hiring process on an ongoing basis and implementing corrective actions to the hiring process when opportunities for improvement are identified.

Recommendation Area 3 — EOIR Courts and Appeals System (ECAS): EOIR recognizes the importance of ensuring that ECAS implementation occurs in a manner that comports with all cost and schedule expectations. To that end, EOIR has established an ECAS Executive Committee, as noted in the GAO report, to provide effective oversight of ECAS throughout the development and implementation of the ECAS solution. In addition, EOIR has established the

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Investment Review Board (IRB) to review and decide on proposals for major information technology (IT) investments exceeding $1 million in cost. The IRB held its first formal meeting on March 2, 2017. EOIR believes that going forward the ECAS Executive Committee, its subgroups, and the IRB will serve as vital institutions within EOIR to help ensure the effective oversight of ECAS implementation as well as future IT projects, including necessary monitoring, identification of corrective actions, and tracking of agency progress in implementing such corrective actions.

Recommendation Area 4 — Video-Teleconferencing (VTC): EOIR is committed to the effective utilization of VTC technology in immigration court proceedings in a manner that fully satisfies due process requirements and also minimizes any technical issues that may impact user satisfaction and experience with VTC. Although EOIR notes that the United States Courts of Appeals repeatedly have upheld the use of VTC in immigration hearings as comporting with due process requirements, EOIR is amenable to collecting additional data on the number and type of hearings conducted by VTC, as well as identifying appeals that raise the use of VTC as a basis for appeal. EOIR agrees that such data collection may assist in identifying and addressing technical issues associated with VTC technology, as well as any possible impacts on case outcomes that may relate to the use of VTC in immigration proceedings.

Recommendation Area 5 — Court Performance and Management: EOIR strives to continually improve court performance and address any management challenges that may affect court performance. To that end, EOIR agrees that it should measure case completions in all categories and will study whether to refine its current capabilities. With regard to data collection and analysis of the issuance of continuances by immigration courts, EOIR supports additional analysis of this source of information about immigration court case processing and performance. EOIR also recognizes that additional guidance or training regarding continuances may be beneficial to ensure that IJs use continuances appropriately in support of EOIR's mission to adjudicate immigration cases in a careful and timely manner. Finally, EOIR appreciates the GAO's recommendation to consider updating policies and procedures to ensure the timely and accurate recording of notices to appear (NTAs). EOIR agrees with the GAO that the timely and accurate entry of NTAs in the agency's case management system is essential to ensuring the accuracy and completeness of immigration court records. Accordingly, EOIR considers this an area worthy of further investigation and process improvements.

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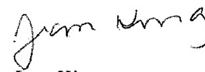
Thank you again for your review and for bringing these important issues to our attention. We appreciate the recommendations that you have offered for future improvements to agency management and operations, and we look forward to working with you again in the future.

Sincerely,



Jean King
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Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

Rebecca Gambler at (202) 512-8777 or GamblerR@gao.gov

Staff Acknowledgments

In addition to the contact named above, Taylor Matheson (Assistant Director), David Alexander, Ashley Davis, Kathleen Donovan, Juan Garcia, Michael Holland, Eric Hauswirth, Benjamin Licht, Grant Mallie, Sasan J. "Jon" Najmi, Robin Nye, Adam Vogt, and Hannah Weigle made key contributions to this report.

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AILA Doc. No 17060260. (Posted 6/2/17)