



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

December 19, 2018

Ms. Laura Lynch
American Immigration Lawyers Association
1331 G Street NW, Suite 300
Washington, DC 20005
llynch@aila.org

Re: DOJ-2019-000841 (DAG)
VRB:DRH:ERH

Dear Ms. Lynch:

While processing your Freedom of Information Act (FOIA) request dated December 13, 2017, for, *inter alia*, a copy of the Executive Office for Immigration Review's (EOIR) Strategic Caseload Reduction Plan, EOIR referred nine pages of material to this Office for processing and direct response to you on behalf of the Office of the Deputy Attorney General. For your information, the material was received by this Office on November 13, 2018. The EOIR administrative tracking number associated with your request is EOIR FOIA 2018-9762.

I have determined that the material referred to this Office by EOIR is appropriate for release with excisions made pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), which pertains to certain inter- and intra-agency communications protected by the deliberative process privilege.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552 (2012 & Supp. V 2017). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Douglas Hibbard, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001; telephone at 202-514-3642; or facsimile at 202-514-1009.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of

Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal at <https://foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



Vanessa R. Brinkmann
Senior Counsel

Enclosure



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Director

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Director

October 23, 2017

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

THROUGH: THE PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL ^{RKH}

FROM: James R. McHenry III ^{JM}
Acting Director

SUBJECT: Executive Office for Immigration Review's Strategic Caseload Reduction Plan

PURPOSE: To submit for the Deputy Attorney General's approval the Executive Office for Immigration Review's Strategic Caseload Reduction Plan

TIMETABLE: At the Deputy Attorney General's earliest convenience.

DISCUSSION: The pending caseload for the Executive Office for Immigration Review (EOIR) has almost doubled since 2011. Indeed, as of September 22, 2017, EOIR's pending caseload at the immigration judge (IJ) level exceeded 634,000. (b) (5)

[REDACTED]

(b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Therefore, this memorandum outlines five initiatives that EOIR is implementing to address and reduce the pending caseload.

I. BACKGROUND AND GOAL

Both extrinsic and intrinsic factors have contributed to EOIR's immigration court caseload growth, including changes in immigration policies, sluggish hiring of new IJs prior to 2017, and decreased IJ productivity. Therefore, EOIR has devised a multi-front plan grounded in five initiatives that address the caseload growth from different perspectives and provide a comprehensive strategy for significantly reducing the caseload by 2020.

The purpose of EOIR's caseload reduction strategy is to reduce the overall number of pending cases while maintaining due process. Three independent variables drive the pending non-detained caseload: (1) the number of IJs adjudicating cases; (2) the productivity rate of each individual IJ; and, (3) the number of new cases filed by the Department of Homeland Security (DHS). Consequently, to reverse the caseload growth, EOIR has designed a strategy to increase the first and second variables while working with DHS on accommodating any sudden changes in the third.

In short, to reduce the pending caseload, EOIR must increase its number of IJs, increase their productivity, and manage incoming case receipts from DHS. To those ends, EOIR has developed five strategic initiatives that each encompass multiple processes for confronting the pending caseload by addressing one or more of the three independent variables identified above. None of the initiatives are mutually exclusive, and all can—and will—be pursued simultaneously.

II. INITIATIVES TO REDUCE THE PENDING CASELOAD

Initiative 1: Increasing Adjudicatory Capacity

EOIR will increase adjudicatory capacity by increasing allocations of IJs, support staff, and space. (b) (5)

Since FY 2016, EOIR has increased its IJ corps from 273 to 332, and is in an ongoing process of hiring more IJs up to its current authorization of 384.

If implemented as intended, the Attorney General's new streamlined IJ hiring process should reduce the amount of time to hire new IJs from an average of 742 days under the prior process to six months or less. Thus, EOIR anticipates that it will significantly increase its IJ corps within the next year.

To support this increase to its cadre of IJs, EOIR must hire additional support staff. Therefore, it is also requesting funding for FY 2019 to set the IJ/law clerk ratio at 1:1. The presence of a dedicated law clerk for each IJ to assist with routine motions, bond memoranda, and other types of legal work would make IJs more efficient by increasing the amount of time IJs spend hearing and deciding cases.

Finally, EOIR must also increase space allocations to support its increase in new personnel. Although EOIR is authorized for 384 IJs, it only has courtroom space for 370. EOIR is working with the General Services Administration (GSA) to identify new space and to expedite build-outs of existing space. Increasing space to increase adjudicatory capacity includes not only traditional courtrooms, but video teleconferencing (VTC) facilities as well. Within the next year, EOIR is planning to pilot VTC immigration hearing centers (IHCs), centralized locations where IJs will adjudicate cases by VTC from locations around the country.

Initiative 2: Maximizing the Use of Available Adjudicatory Capacity

In order to reduce the pending caseload, EOIR must also maximize its current adjudicatory capacity. EOIR's existing capacity is not being utilized to its fullest extent and underutilized resources create significant opportunity costs for adjudicating more cases. Overall, a combination of docket inefficiency and unused capacity are exacerbating the growth of the pending caseload, and this initiative addresses both prongs of the problem.

First, EOIR must improve its scheduling, docketing, and adjudicatory efficiency practices. For example, the time from the filing of the charging document to the first hearing varies significantly from court to court, as does the number of cases IJs hear per day. Therefore, to ensure that cases timely and appropriately move throughout the adjudicatory pipeline, EOIR is establishing and implementing nationwide scheduling and docketing standards that have clear goals for each stage of a case.

Second, EOIR is committed to eliminating dark (*i.e.* unused) courtrooms, which represent significant lost opportunities to hear additional cases. Dark courtrooms occur when an IJ is unavailable due to leave or an alternate work schedule (AWS) day off. For example, every Friday there are at least 100 dark courtrooms nationwide which are not used because of an IJ's AWS day off. As part of this "no dark courtrooms" initiative, EOIR is working with the IJ union, the National Association of Immigration Judges (NAIJ), to reassign AWS days off in order to ensure that courts are not left unoccupied when IJs are out and to restrict AWS days for new IJs who need to accumulate as much bench experience as possible. EOIR is also hiring new IJs for the VTC courtrooms at EOIR HQ and using retired IJs as rehired annuitants to cover other dark courtrooms on a sporadic or as-needed basis.

Improvements in process efficiencies and the elimination—or, at the least, significant reduction—of dark courtrooms will maximize EOIR's current adjudicatory capacity and, thus, help reduce the pending caseload by increasing productivity.

Initiative 3: Transforming EOIR's Institutional Culture and Infrastructure

Since 2011, EOIR has not consistently focused on efficiently adjudicating non-detained cases. Consequently, it has developed an institutional culture that does not fully prioritize the expeditious adjudication of those cases. (b) (5)

[REDACTED]

EOIR does not have any performance metrics or goals regarding completion of non-detained cases because its current collective bargaining agreement with the NAIJ prohibits the use of any type of performance metrics in evaluating an IJ's performance. But, such metrics can be effective tools for providing IJs with insight into their case management. Therefore, EOIR is developing reasonable caseload management goals and negotiating their implementation with the NAIJ. (b) (5)

[REDACTED] Similarly, EOIR lacks any type of evaluative mechanisms or benchmarks for determining whether a court is operating efficiently. Thus, it is working to develop uniform standards for courts regarding case processing, including standards for support staff, to more effectively assess which courts are functioning properly.

(b) (5)

[REDACTED]

(b) (5)

In addition to changing its institutional culture, changes to EOIR's infrastructure will also combat the growth in the pending caseload. On this front, EOIR is pursuing two significant changes to its infrastructure that will improve efficiency and enhance productivity. With respect to the first, EOIR is transforming its operations at the IJ level from a paper-based system to an electronic file system. Second, EOIR will establish an Office of Policy for its analytics, strategy, and policy processes. Currently, policies related to the pending caseload run through several different EOIR sub-components without any centralized coordination, which complicates and impedes effective implementation of efforts to address the pending caseload. The establishment of an Office of Policy will permit closer management of EOIR's caseload reduction efforts discussed in this memorandum.

Initiative 4: Enhancing Partnerships with DHS

A significant aspect of EOIR's pending caseload has been driven by the policy choices of DHS. DHS is solely responsible for new case inputs; its three immigration-related components each file cases with EOIR and directly control both the timing and the amount of new cases filed with EOIR each year.

For example, there are almost 349,000 pending cases administratively closed by EOIR which are potentially subject to a motion to recalendar by DHS. DHS also has its own adjudicatory backlog of cases that may be transferred to EOIR over the next two years, and receipts of new cases from DHS overall are already up significantly since January 2017. In short, DHS case receipts are expected to continue to increase, and any burst of case initiation by a DHS component could seriously compromise EOIR's ability to address its caseload and greatly exacerbate the current state of the backlog.

(b) (5)

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(b) (5)

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Initiative 5: Improving Existing Laws and Policies

Changes to existing law, especially regarding issues such as continuances and (b) (5) would have a profound impact on EOIR's pending caseload. Although some of the most efficacious changes would require legislation, EOIR is pursuing other means of improving law and policy in an effort to address its pending caseload without compromising due process.

For instance, EOIR's regulatory authority provides one avenue to address cases more expeditiously. EOIR recently submitted a proposed final rule that would permit IJs to deny certain types of non-meritorious applications for relief even after the cap for grants for that relief have been reached. (b) (5)

Additionally, EOIR periodically issues Operating Policies and Procedures Memoranda (OPPMs) related to the adjudication of cases in immigration courts. EOIR has rescinded many OPPMs that have become outdated or superseded and is reviewing others that may need revision. It is also evaluating ways in which cases can be processed more efficiently, while maintaining due process, through policy guidance contained in an OPPM.

(b) (5) [REDACTED]


III. CONCLUSION

The size of EOIR's pending caseload will not reverse itself overnight, and as DHS increases its enforcement activities and works to address its own backlog of pending cases, the caseload will likely get worse before it improves. Nevertheless, based on EOIR's analytics, there are effective ways to address the pending caseload consistent with maintaining due process. The five steps above will increase the number of immigration judges, enhance IJ efficiency, and ensure that DHS actions do not offset EOIR's work to reduce the caseload. In fact, EOIR has already seen a notable slowdown in the growth of the size of the pending caseload since April as some of these initiatives have been tentatively implemented. If these initiatives are fully realized, EOIR can realistically expect not only a reversal of the growth of the caseload, but a significant reduction in it— (b) (5)

(b) (5) [REDACTED] Accordingly, EOIR recommends that the Deputy Attorney General approve its Strategic Caseload Reduction Plan.

RECOMMENDATION: That the Deputy Attorney General approve the Executive Office for Immigration Review's Strategic Caseload Reduction Plan

APPROVE: _____

 10/31/17

Concurring components

None

DISAPPROVE _____

Nonconcurring components

None

OTHER _____