Department of Justice

STATEMENT OF

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BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY

HEARING ON
"BORDER SECURITY OVERSIGHT,
PART III: BORDER CROSSING CARDS AND B1/B2 VISAS"

PRESENTED

NOVEMBER 14, 2013

Introduction

Mr. Chairman, Representative Tierney, and other distinguished Members of the Subcommittee, thank you for the opportunity to speak with you today about the Department of Justice's Executive Office for Immigration Review (EOIR). While maintaining the largest caseload the immigration system has ever seen, EOIR continues to effectively and efficiently carry out its adjudicatory mission.

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

Overall there are now 252 immigration judges in 59 courts around the country. Many of our courts are located near or along the southern border, including in San Diego, California; El Paso, Texas; and Harlingen, Texas. Some courts are located within DHS detention centers, including the border locations of East Mesa, California; Eloy, Arizona; and Port Isabel, Texas.

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

EOIR's third adjudicatory component is the Office of the Chief Administrative Hearing Officer (OCAHO). The Chief Administrative Hearing Officer heads a tribunal comprised of administrative law judges, who handle and adjudicate cases related to illegal hiring and employment eligibility verification violations, document fraud, and unfair immigration-related employment practices. Although there is a much smaller volume of these cases relative to the immigration courts, OCAHO case receipts doubled between FY 2008 and FY 2012.

Each immigration court's caseload is tied directly to DHS enforcement and detention activities. DHS determines both detention space allocations and the filing of charging documents. As such, EOIR is in regular and continuing contact with DHS to anticipate and respond to caseload trends. Through this close coordination, our two

departments are able to explore additional ways of handling the removal adjudication process more efficiently. In turn, we can focus our resources on those case involving detained aliens, our highest priority cases.

Pending Caseload

We recognize the continuing public interest in EOIR's pending caseload. At the end of FY 2012, EOIR's immigration courts had 327,431 proceedings pending, marking an increase of more than 29,000 proceedings pending over the end of FY 2011. In FY 2013, that pending caseload grew by approximately 21,000 proceedings, reaching 348,343 proceedings pending, our highest caseload to date. The pending caseload is directly tied to both the number of cases that DHS files in the immigration courts and EOIR's ability to complete those cases with available resources.

As I noted above, EOIR's highest priority cases are those involving detained aliens. These individuals are often detained by DHS because they have criminal convictions that may make them removable from the United States. Others are detained because they pose a danger to the community or are a flight risk. As such, the agency prioritizes the efficient and timely adjudication of these cases.

Asylum and Convention Against Torture (CAT)

Placing a high priority on the adjudication of detained cases has implications for the non-detained side of the docket, including some cases initiated as a result of persons seeking asylum in the United States. EOIR understands the importance of providing a meaningful process for those seeking protection from persecution and preserving the integrity of the asylum process.

All EOIR staff understand the importance of asylum claims, and of the need to decide these life-changing cases quickly while still taking the appropriate time to consider all of the relevant facts and applicable law. While we take seriously our responsibility to decide cases in an expeditious manner, the utmost priority for every type of case is ensuring that every fact is considered and every application of law is correct.

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

DHS is authorized to utilize expedited removal for aliens at the border who are without proper immigration documents or who have engaged in fraud or misrepresentation, when certain conditions exist. Generally, aliens subject to expedited removal do not have a hearing before an immigration judge. To ensure that those who may qualify for asylum or Torture Convention protection are not returned to countries where they would be subject to persecution or torture, USCIS asylum officers conduct non-adversarial screening interviews, known as "credible fear" interviews, of aliens subject to expedited removal who, while in DHS custody, express a fear of persecution or torture if they return to their home country. On the basis of that interview, USCIS asylum officers determine, in accordance with the statutorily-defined standard, whether there is a "significant possibility" the alien can establish eligibility for asylum or Torture Convention protection. EOIR has a very limited role in the expedited removal process. If DHS finds that an alien has established a credible fear of persecution or torture at the credible fear interview, the alien is taken out of the expedited removal process and referred for removal proceedings before EOIR, during which the alien can pursue asylum. If DHS finds that the alien does not have a credible fear of persecution or torture, the alien may request that the screening decision be reviewed by an EOIR immigration judge, who may either agree with DHS, in which case the alien is removed without any further EOIR involvement, or find that the alien has a credible fear of persecution or torture, in which case the alien is taken out of the expedited removal process and referred for further proceedings before EOIR.

Fraud, Abuse, and Attorney Disciplinary Issues

EOIR has a robust and active program for identifying and referring claims of fraud encountered by immigration judges and the BIA. This program serves to protect the integrity of immigration proceedings and to safeguard aliens from falling prey to fraud. EOIR's Fraud and Abuse Program makes referrals for investigation of immigration fraud complaints it receives from EOIR staff and adjudicators, respondents in EOIR proceedings, and members of the public. The complaints and requests for assistance the Fraud and Abuse Program receives each year are almost evenly divided between unauthorized practice of immigration law (UPIL) complaints and fraudulent claims perpetrated against the government.

Because EOIR has no authority to conduct investigations or prosecute, UPIL complaints are referred to federal, state and local law enforcement, and bar associations for investigation and prosecution. EOIR also files complaints of UPIL fraud with the Federal Trade Commission's Consumer Sentinel Network (Sentinel) and collaborates with USCIS's Fraud Detection and National Security Directorate and other government agencies in combating fraudulent immigration activity. EOIR consistently is among the top-ranked government agencies in referring UPIL fraud to Sentinel.

EOIR also regulates the professional conduct of immigration attorneys and representatives in order to protect the public, preserve the integrity of immigration proceedings and adjudications, and maintain high professional standards among

immigration practitioners. EOIR's Disciplinary Counsel investigates complaints involving alleged misconduct associated with practice before EOIR's immigration courts and the BIA to determine whether an attorney or representative has engaged in criminal, unethical, or unprofessional conduct. If the EOIR Disciplinary Counsel determines that a complaint has merit and that disciplinary sanctions should be imposed, the EOIR Disciplinary Counsel can issue confidential discipline or initiate formal disciplinary proceedings. Since the program's inception in 2000, EOIR has disciplined more than 1,100 attorneys.

Budget and Resource Impact

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

Unfortunately, the current partial hiring freeze continues to have a significant negative and worsening impact upon EOIR's core mission, increasing the number of cases pending adjudication and extending court dockets further into the future. More than 100 immigration judges – more than one third of the immigration judge force – are eligible to retire in FY 2014 alone.

The Department continues to seek the resources necessary to hire additional immigration judges, BIA attorneys, and other staff, to provide them with sufficient training and tools, and to continue pursuing other improvements that will benefit the immigration court system and the parties who appear before EOIR. For FY 2013, EOIR was funded at $289.1 million, post-sequestration, which is more than $13 million below the FY 2012 funding level. The resources the President's Budget requests for EOIR for FY 2014 are essential to our ongoing efforts to recruit, train, and equip top-quality immigration judges and court staff.

Immigration Judge Training, Conduct & Professionalism

EOIR has a well-established and effective means of training its judges for the substantive rigors of their jobs. An Assistant Chief Immigration Judge (ACIJ) for training is responsible for enhancing and maintaining adequate training programs for immigration judges and other court staff. EOIR now provides new immigration judges with six weeks of training, in order to ensure that they are ready to hear cases fairly and promptly. Further, they are assigned a mentor immigration judge to assist them throughout their first year on the bench. They are also required to take and pass an immigration law exam before they can begin adjudicating cases. A formalized review process is included as part of a new immigration judge's probationary period, which typically lasts two years. If performance issues arise, EOIR offers counseling, and

additional training and mentoring before more formally disciplining an immigration judge.

EOIR also goes to great lengths to ensure that both new and experienced immigration judges receive continuing education. EOIR continues to rely on many of its established methods of training to bolster and fine-tune the immigration judges' knowledge, such as video and webinar trainings.

EOIR also employs an ACIJ for conduct and professionalism, who serves to promote and preserve the integrity of the immigration judge corps. EOIR continues to monitor immigration judge performance through an official performance work plan and evaluation process, through a corps of 13 ACIJs who oversee the daily operations of the courts. Further, the agency remains committed to ensuring that any allegations of misconduct involving immigration judges are investigated and resolved, promptly and appropriately.

Conclusion

Mr. Chairman, Representative Tierney, and distinguished Subcommittee Members, despite the large caseload that it faces, EOIR continues to make great strides. Our adjudicators and staff are dedicated professionals who work every day to ensure efficient and fair immigration court proceedings, both at the trial and appellate levels. EOIR faces the demands of a large and increasing caseload, but, with Congress's continued support, we are confident that EOIR will effectively meet that challenge.

Thank you for your interest and for the opportunity to speak with you today. I am pleased to answer any questions you might have.