

The Department of Justice Office of the Inspector General (OIG) today released a report that examines the processing and management of immigration cases and appeals by the Department of Justice's Executive Office for Immigration Review (EOIR). The OIG found that EOIR's performance reporting for both the immigration courts (where immigration judges adjudicate alien removal cases) and the Board of Immigration Appeals (BIA) (which handles appeals from those decisions) is flawed and precludes the Department of Justice from accurately assessing how well these bodies are processing immigration cases and appeals, or identifying needed improvements. The OIG's analysis also showed that some immigration cases and appeals took long periods of time to complete.

The OIG found that EOIR's performance reports for the immigration courts are incomplete and overstate actual accomplishments of the immigration courts. EOIR has put in place timeliness goals for handling cases; however, EOIR does not accurately report the total time it takes to complete the cases. EOIR reports a case as completed within the timeliness goal when an immigration court transfers a case to another venue even though a decision has not yet been made as to whether to remove the alien from the United States. Further, EOIR does not count the total time to resolve every case in its performance reports. For example, a case with a timeliness goal of 60 days that spent 50 days at one court and 50 days at another court would be reported by EOIR as two cases that were each completed in 50 days. In actuality, it would have taken 100 days until an immigration judge rendered a decision on whether the alien should be removed in such a case, thereby exceeding the 60-day goal. As a result, the total number of cases resolved by the immigration courts each year and the total time such cases remained in the court system overall are not readily apparent in EOIR's performance reports.

In addition, EOIR reports administrative events, such as changes of venue and transfers, as completions even though the immigration courts have made no decisions on whether to remove aliens from the United States. As a result, a case may be "completed" multiple times. In our sample of 1,785 closed cases, 484 administrative events were counted as completions by EOIR. Reporting these administrative actions as completions overstates the accomplishments of the immigration courts. Similarly, those same administrative events result in a case being reported as a "receipt" when the case is opened at the receiving court. As a result, the same case may be reported as a "receipt" multiple times, thereby overstating the total number of matters opened by the immigration courts during a particular period.

Even with these inaccuracies, EOIR's immigration court data still showed that it was not able to process the volume of work. From FY 2006 through FY 2010, the overall efficiency of the courts did not improve even though there was an increase in the number of judges. The OIG's analysis showed that some types of cases take long periods to complete. For example, cases for non-detained aliens took on average 17½ months to adjudicate, with some cases taking more than 5 years. While we credited EOIR with prioritizing and improving its timeliness in completing cases with detained aliens, we concluded that EOIR also could improve its timeliness in completing cases involving non-detained aliens.

The OIG found that in addition to the volume of new cases, a significant contributing factor to case processing times, especially in cases with non-detained aliens, was the number and length of continuances immigration judges granted. In the 1,785 closed cases we examined, 953 cases (53 percent) had one or more continuances. Each of these cases averaged four continuances. The average amount of time granted for each continuance was 92 days (about 3

months), which results in an average of 368 days for continuances per case. The review also found weaknesses in EOIR's resource planning and staff allocations of immigration judges to the immigration courts, which can affect the system's capability to process immigration cases.

In contrast to the immigration courts, the BIA completed more appeals of immigration court decisions than it received from FY 2006 to FY 2010. However, similar to the immigration courts, the OIG found that non-detained aliens' appeals took long periods to complete. In an OIG sample, appeals of immigration judge decisions for non-detained aliens averaged over 16 months -- almost five times longer than the 3½ month average for appeals involving detained aliens. The review also found that the BIA is underreporting the time it takes to process an appeal because it does not always start counting the period from when a notice of appeal is filed. Instead, in some cases EOIR begins tracking the time period from when a staff member is assigned to work on the appeal. We calculated processing times from the day the appeal was filed until the BIA issued a decision, and found that cases were pending up to 636 days longer than reported by EOIR in our sample.

The OIG made nine recommendations to help EOIR improve its processing and management of immigration cases and appeals. EOIR concurred with six recommendations and partially concurred with three recommendations.

The report can be found at the following link: <http://www.justice.gov/oig/reports/2012/e1301.pdf>.