

United States Department of Justice Administrative Review and Appeals



**FY 2018 Performance Budget
Congressional Budget Submission**

Table of Contents

	Page No.
I. Overview	3
A. Executive Office for Immigration Review	3
B. Office of the Pardon Attorney.....	6
II. Summary of Program Changes	9
III. Appropriations Language and Analysis of Appropriation Language	10
IV. Program Activity Justification.....	11
A. Executive Office for Immigration Review	
1. Program Description	11
2. Performance Tables	18
3. Performance, Resources, and Strategies	23
B. Office of the Pardon Attorney	
1. Program Description	25
2. Performance Tables	26
3. Performance, Resources, and Strategies	28
V. Program Increases	29
VI. Exhibits	32
A. Organizational Chart	
B. Summary of Requirements	
C. FY 2018 Program Increases/Offsets by Decision Unit	
D. Resources by DOJ Strategic Goal/Objective (not applicable)	
E. Justification for Technical and Base Adjustments	
F. Crosswalk of 2016 Availability	
G. Crosswalk of 2017 Availability	
H. Summary of Reimbursable Resources	
I. Detail of Permanent Positions by Category	
J. Financial Analysis of Program Changes	
K. Summary of Requirements by Object Class	
L. Status of Congressional Requested Studies, Reports, and Evaluations (not applicable)	

I. Overview

A. Executive Office for Immigration Review

Introduction

To support the mission of the agency, EOIR requests a total of \$500.4 million, 2,588 permanent positions, and 1,892 full-time equivalents (FTE). The request includes a \$4 million transfer from the Department of Homeland Security's (DHS) Immigration Examination Fee Account and a program increase for 75 new Immigration Judge (IJ) Teams.

Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <http://www.justice.gov/02organizations/bpp.htm>.

The primary mission of the Executive Office for Immigration Review (EOIR) is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. Under delegated authority from the Attorney General, EOIR conducts immigration court proceedings, appellate reviews, and administrative hearings. EOIR's role in the Nation's immigration system is critical, as statute and regulation require, in many situations, immigration judge review before removals can occur. To address the growing case backlog, which now exceeds a half a million cases, EOIR's adjudicatory capacity must increase in order to stop the increase due to new filings and to substantially decrease or eliminate the existing backlog.

Budget Summary:

EOIR assesses caseload volumes, trends, and geographic concentration of cases to appropriately adjust resource allocations to meet mission requirements. EOIR is currently working to further improve its analytic capacity so that these assessments can better inform the effective and efficient allocation of judicial resources. The FY 2018 budget request provides the necessary and appropriate resources to continue the execution of EOIR's mission into the future.

Program Overview

1. Organization of EOIR

EOIR administers the nation's immigration court system. EOIR primarily decides whether foreign-born individuals charged by DHS with violating immigration law should be a) ordered removed from the United States or b) granted relief or protection from removal and allowed to remain. To make these critical determinations, EOIR operates 58 immigration courts throughout the country and has a centralized Board of Immigration Appeals located at EOIR Headquarters.

EOIR also adjudicates cases involving illegal hiring and employment eligibility verification violations, document fraud, and employment discrimination. EOIR Headquarters, located in Falls Church, VA, provides centralized operational, policy, and administrative support to EOIR immigration proceedings and programs conducted throughout the United States.

EOIR's 2018 Budget Strategy

EOIR's immigration courts represent the Department's front-line presence with respect to the application of immigration law. EOIR does not initiate any immigration cases. Rather, cases start when DHS files charging documents with the immigration courts seeking the removal of undocumented immigrants from the United States. It remains critically important that EOIR has sufficient adjudicative resources to keep pace with DHS's enforcement efforts.

The largest challenge facing the immigration courts is the growing pending caseload. As of March 30, 2017, there were more than 560,000 cases pending in immigration courts around the country, by far the largest pending caseload before the agency. The agency's FY 2018 strategy is a sustained focus on increasing adjudicative capacity in order to meet EOIR's mission to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws.

In order to meet the agency's mission, EOIR plans to take steps to use existing resources to improve agency efficiencies while continuing to increase its adjudicatory capacity. The agency expects to continue to take steps to make docket adjustments, prioritizing certain case types, and refocusing EOIR's immigration court resources so as to best meet the need in the immigration courts. For example, EOIR maintains a focus the cases of those individuals that are detained by DHS pending their removal proceedings. EOIR will continue discussions with federal partners to gauge the impact of enforcement activities and other potential factors that affect the immigration courts and to adjust dockets and resource allocations accordingly.

Although EOIR makes every effort to address the caseload using current resources, given the size of the pending caseload, EOIR requests additional funding for adjudication support. EOIR's focus will remain on hiring all authorized positions to support its adjudicatory mission, including the reduction of the pending caseload before the immigration courts. While EOIR is also assessing where the agency can make case processing improvements, the agency recognizes that an increase in personnel and other resources is crucial to decreasing the pending caseload in a timely manner. EOIR anticipates that an increase in resources, combined with continued efforts to use existing resources efficiently and to plan effectively will allow EOIR to better manage its caseload.

To implement EOIR's strategy, this request includes a program increase of \$75 million for 75 new Immigration Judge Teams. Each team consists of one IJ with five support staff. This would increase EOIR's IJ corps to 449 and provide 225 additional FTE for mission support.

Challenges

1. *Internal Challenges*

EOIR continues to face challenges associated with reaching its FY 2016 authorized adjudicative capacity of 374 IJs. The Department-wide hiring freeze between January 2011 and February 2014, as well as normal attrition, negatively impacted EOIR, resulting in a reduction of the IJ corps from a high of 272 in December 2010 to 235 in April 2015. The combined decrease in IJs and increase in the pending caseload put more of a strain on immigration courts across the country. Without staffing increases, this effect will only grow. An individual immigration judge has a finite amount of time on his or her calendar. As pending caseload, and therefore docket sizes, increase, the time between hearings must also increase. Thus without additional staffing, cases will take longer to be heard before an immigration judge, further exacerbating the pending caseload.

At this time, over one-third of the IJ corps is eligible to retire. EOIR has hired 107 IJs since FY 2015, however there has also been attrition during this time, providing a net increase of 71 IJs between the end of FY 2015 and April 30, 2017. While EOIR recognizes these staffing improvements, hiring must continue unabated to backfill existing vacancies and to fill the remaining allocated immigration judge positions.

EOIR is intently focused on hiring. However, the immigration judge hiring process is complex and multifaceted. As IJ appointees carry the Attorney General's delegated authority to exercise his discretion independently in the cases that come before them, EOIR and the Department must exercise the due diligence required to identify and appoint highly capable immigration judges. Thus, immigration judge candidates are vetted through a careful and thorough process, which includes several Departmental components and background check prior to the Attorney General appointment. While EOIR has taken and continues to take steps to reduce the amount of time an application is pending before the agency, the time it takes from announcement of an immigration judge vacancy to entrance on duty is often more than a year.

EOIR also has significant space and facilities projects that pose challenges. EOIR has allotted all existing space to currently-allocated positions and is in the process of acquiring new space for the positions received in FY 2016. EOIR will now need to acquire new space each time increases in IJs or other staff are authorized. Therefore, EOIR's request includes costs of acquiring new space. The space acquisition or construction process is lengthy, requiring coordination with external entities and is likely to consistently pose challenges for EOIR.

2. *External Challenges*

Growth in the caseload represents an additional challenge. Each new case in immigration court begins upon DHS's filing of a charging document following an encounter with an illegal alien. It remains critically important to balance EOIR's adjudicative capacity with DHS's enforcement efforts. EOIR continues to seek process improvements and to increase the staffing level to work towards improving adjudicative capacity, striving to reach a balance where incoming cases are appropriately addressed while the pending caseload is also decreased.

The number of cases pending adjudication rose from over 298,000 at the end of FY 2011 to over 560,000 at the end of March 2017, an increase of over 260,000 cases. This is an increase of 87 percent in cases pending adjudication in six and a half years. The pending caseload remains the key challenge for EOIR as courts continue to receive hundreds of thousands of cases for

adjudication each year. While the number of cases is rising, so is the length of proceedings. A significant factor in this increase in pending caseload is the uptick in the number of cases with applications for relief or protection. Cases with applications for relief or protection can be more complex, requiring time to gather evidence and witnesses, resulting in longer processing times. Additionally, the BIA's sustained level of approximately 30,000 appeals per year is an extremely large volume for any appellate body. With the sizeable increase in the number of immigration judges being hired, the BIA will likely face a volume increase in the number of appeals and filings before it, which means a proportional increase in its challenging caseload.

B. Office of the Pardon Attorney

For FY 2018, the Office of the Pardon Attorney (OPA) requests a total of \$5 million, 19 positions, and 19 FTE, including 11 attorneys, to achieve its mission of advising and assisting the President in the exercise of the executive clemency power conferred on him by Article II, Section 2 of the Constitution. This request supports current services needs.

Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <http://www.justice.gov/02organizations/bpp.htm>

Introduction

For over 100 years, the President has requested and received the assistance of the Attorney General and his/her designees in the Department of Justice in exercising clemency power with regard to persons who have committed offenses against the United States. Within the Department, OPA is the component assigned to carry out this function under the direction of the Deputy Attorney General. The long-standing role of Department officials advising the President on clemency matters is reflected in various public record documents dating to the late 19th century. Moreover, since at least 1898, presidents have adopted advisory rules to describe their programs for processing clemency applications and their directions to the Attorney General in carrying out the Department's clemency advisory functions. The rules, which govern OPA's work but do not bind the President, are approved by the President and published by the Attorney General. The current version of the administrative rules was promulgated in October 1993 and amended in August and September 2000. They are published in 28 C.F.R. §§ 1.1 to 1.11 and available on OPA's web site at <http://www.justice.gov/pardon/clemency.htm>.

The two principal forms of clemency sought by applicants are pardon after completion of sentence and commutation (reduction) of a sentence being served. The traditional standards by which clemency applications are evaluated in connection with the preparation of the Department's letters of advice to the President have been utilized for decades and are publicly available on OPA's web site at <http://www.justice.gov/pardon/petitions.htm>.

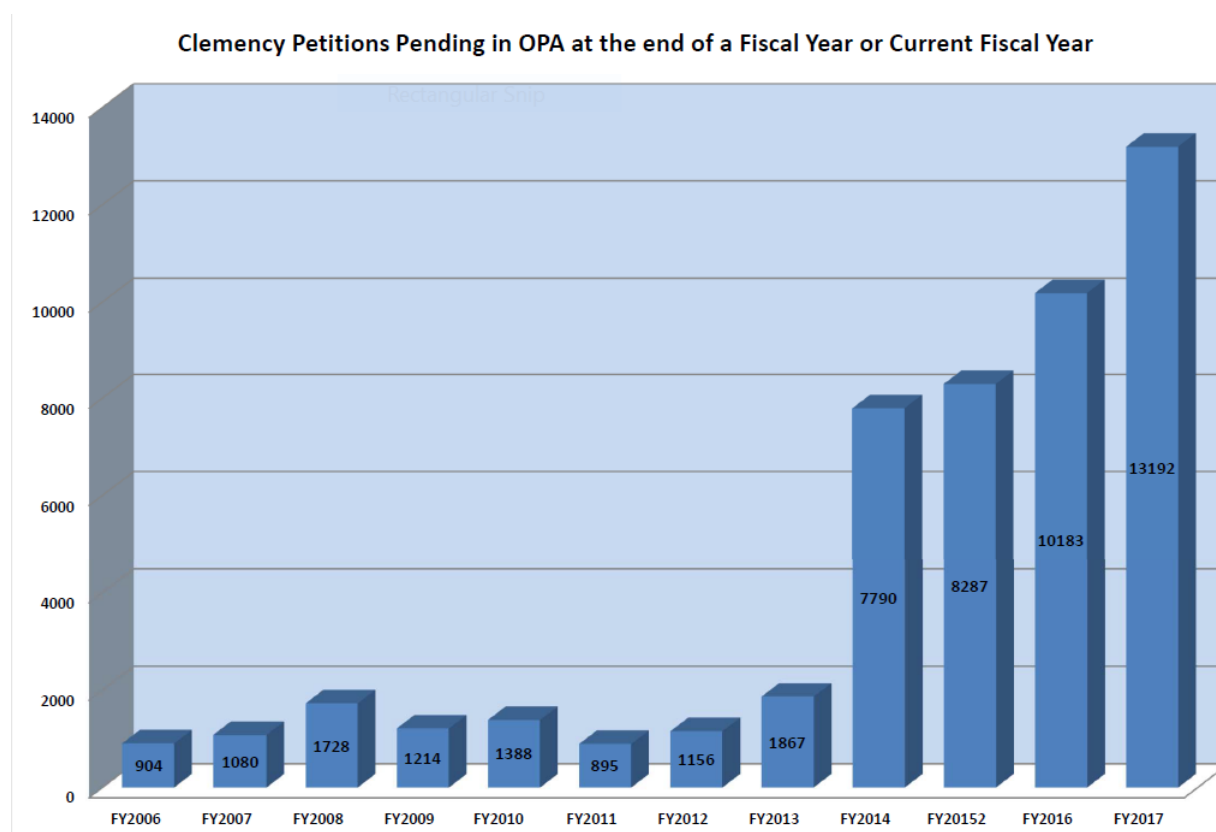
Program Description

The primary function of OPA is to receive, evaluate, and investigate clemency applications and prepare the recommendation of the Department of Justice as to the appropriate disposition of each application for the signature of the Deputy Attorney General. In addition, OPA responds to inquiries concerning executive clemency petitions and the clemency process from applicants,

their legal representatives, members of the public, Members of Congress, and various federal, state, and local officials and agencies; prepares all necessary documents to effect the President’s decision to grant clemency; and notifies each clemency applicant of the President’s decision concerning his or her clemency request. When asked to do so, OPA also provides general advice to the White House concerning executive clemency procedures and the historical background of clemency matters.

Challenges

OPA’s workload has increased significantly since FY 2007, which was the last fiscal year in which new cases received numbered fewer than approximately 2,000. In the eight fiscal years between FY 2008 and FY 2015, OPA received more than 24,797 new petitions for processing, of which 21,563 were petitions for commutation of sentence. The case filings in FY 2014, consisting of 273 pardon applications and 6,561 commutation applications, constituted a historic 6,834 new filings in one fiscal year. Throughout this period, OPA’s authorized staffing level was 15 positions - a level that was established for the office in the mid-1990s, when OPA received approximately 600 new cases per fiscal year. The current services level requested in the FY 2018 budget will allow OPA to continue to address the significant backlog in case processing that resulted from the greatly-increased workload in previous years. ¹

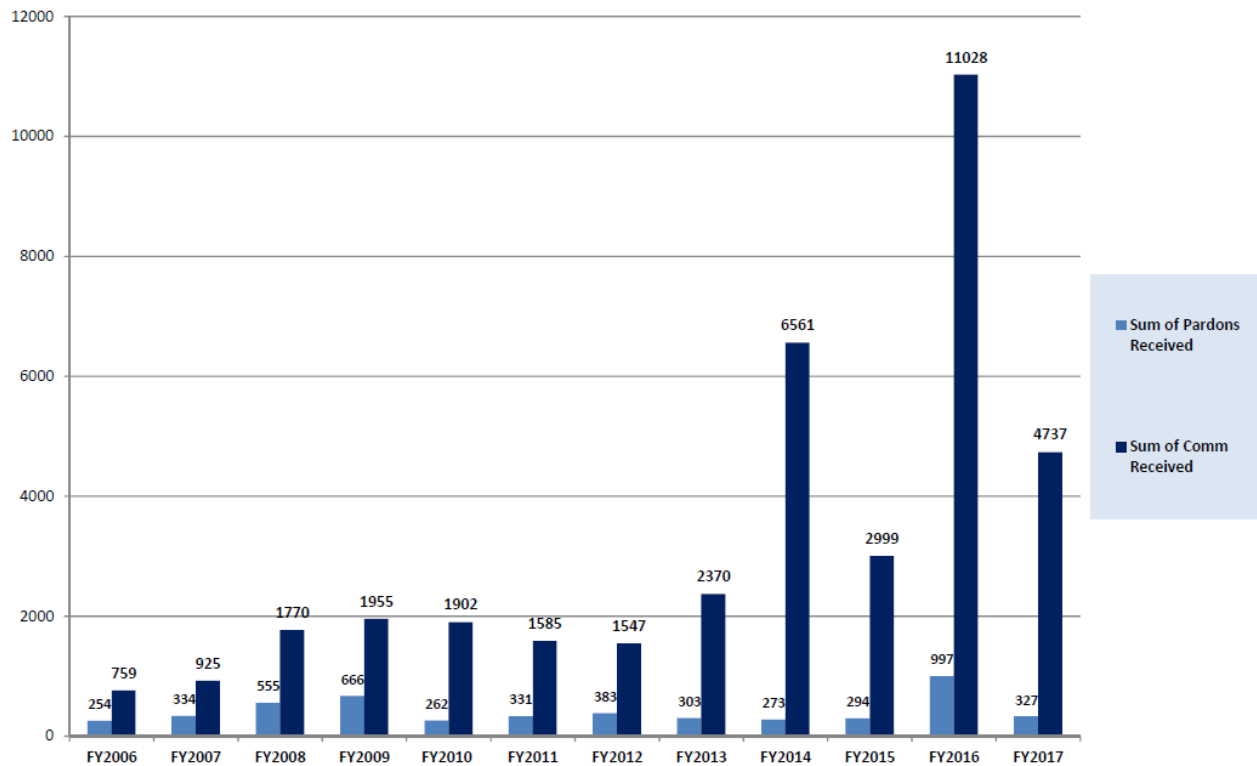


The announcement of the Department’s Clemency Initiative in FY 2014 resulted in an exponential increase in new clemency case filings for OPA. As of the end of January 2014,

¹ The chart entitled **Clemency Petitions Pending in OPA at the end of a Fiscal year or Current Fiscal Year** shows the backlog of cases OPA had on the last day of each fiscal year for the past eleven years. This data is unavailable prior to FY 2006.

when the Deputy Attorney General first outlined plans for the Initiative in a speech to the New York Bar Association, OPA had received only 676 clemency applications for the fiscal year, including 608 commutation petitions. By the end of July 2014, that number had multiplied nearly 10 times to 6,105 clemency petitions, of which 5,916 were commutation requests. Given that trend, OPA expected that its new filings would meet or exceed 7,000 petitions by the end of that fiscal year, driven principally by the submission of requests for commutation of sentence. At the end of FY 2014, OPA’s estimation was only short by 166 petitions. OPA is required to process, analyze, and make recommendations on all applications it receives, regardless of whether they are from persons who are eligible to seek executive clemency from the President, and thus has no control over the size of its caseload. The impact of this massive influx of new cases will continue to be felt by the office for many years to come, so maintaining the current roster of staff and resources requested for FY 2018 are essential to enable OPA to continue to address the significantly increased workload.²

Clemency Petitions Received from FY2006 to FY2017



² The chart entitled **Clemency Petitions Received from FY 2006 to FY 2017** shows the successive increase of commutation petitions received over the past eleven years, including the huge influx after the Department’s announcement of the 2014 Clemency Initiative.

II. Summary of Program Changes

Executive Office for Immigration Review

Item Name	Description				Page
	Executive Office for Immigration Review	Pos.	FTE	Dollars (\$000)	
75 Immigration Judge Teams	Increase the number of immigration judges and mission-support staff to reduce the pending caseload. Provide funds for building space for new staff.	450	225	74,950	29
Total		450	225	\$74,950	

Office of the Pardon Attorney

No program changes.

III. Appropriations Language and Analysis of Appropriations Language

The FY 2018 budget request includes proposed changes in the appropriations language set forth and explained below. Language proposed for deletion is bracketed. New language is italicized and underlined.

Appropriations Language:

Administrative Review and Appeals (Including Transfer of Funds)

For expenses necessary for the administration of *executive* [pardon and] clemency petitions and immigration-related activities, [\$437,444,000] *\$505,367,000*, of which \$4,000,000 shall be derived by transfer from the Executive Office for Immigration Review fees deposited in the “Immigration Examinations Fee” account. *Provided*, that, of the amount available for the Executive Office for Immigration Review, not to exceed [\$15,000,000] *\$35,000,000* shall remain available until expended.

Analysis of Appropriations Language

OPA requests inclusion of the word *executive* and exclusion of the word *pardon* because Presidential “pardons” are a form of executive clemency; therefore, it is more accurate to describe the work of the Office of the Pardon Attorney as “the administration of executive clemency petitions.”

IV. Program Activity Justification

A. Executive Office for Immigration Review

<i>Executive Office for Immigration Review</i>	Direct Pos.	Estimate FTE	Amount (\$\$\$)
2016 Enacted	2,138	1,392	422,295
2017 Continuing Resolution	2,138	1,667	421,492
Adjustments to Base and Technical Adjustments	0	0	3,965
2018 Current Services	2,138	1,667	425,457
2018 Program Increases	450	225	74,950
2018 Request	2,588	1,892	500,407
Total Change 2017-2018	450	225	78,915
<i>Executive Office for Immigration Review- Information Technology Breakout (of Decision Unit Total)</i>	Direct Pos.	Estimate FTE	Amount (\$\$\$)
2016 Enacted	39	39	56,768
2017 Continuing Resolution	39	39	46,681
Adjustments to Base and Technical Adjustments			0
2018 Current Services	39	39	47,765
2018 Program Increases			10,344
2018 Request	39	39	58,109
Total Change 2017-2018	0	0	11,428

1. Program Description

Under the direction of the EOIR Director and Deputy Director, the following components conduct adjudicative proceedings:

a. Adjudicative Components

- Board of Immigration Appeals (BIA) –The BIA hears appeals of decisions of immigration judges (IJs) and certain decisions of officers of DHS in a wide variety of proceedings in which the Government of the United States is one party and the other party is an alien, a citizen, permanent resident, or a transportation carrier. The BIA exercises independent judgment in hearing appeals for the Attorney General and provides a nationally uniform application of the immigration laws. The majority of cases before the BIA involve appeals from orders of EOIR’s immigration judges entered in immigration proceedings.

Appeals of decisions of DHS officers, reviewed by the BIA, principally involve appeals from familial visa petition denials and decisions involving administrative fines on transportation carriers. The BIA also issues decisions relating to the EOIR Attorney Discipline Program.

BIA decisions are binding on immigration judges and all DHS officers unless modified or overruled by the Attorney General or a federal court. Certain BIA decisions that the BIA designates as precedent decisions apply to immigration cases nationwide. Through precedent decisions, the BIA provides guidance to immigration judges, DHS, and the general public on the proper interpretation and administration of the immigration laws and regulations. The BIA is the highest administrative tribunal for interpreting and applying U.S. immigration law.

The BIA plays the major role in interpreting the immigration laws of the country in an area of law the courts have characterized as uniquely complex. A challenge for the BIA is to maintain a high-volume administrative caseload while addressing the differing issues associated with the law of eleven different circuits and the Supreme Court.

- Office of the Chief Immigration Judge (OCIJ) – The OCIJ oversees the administration of 58 immigration courts located throughout the United States and exercises administrative supervision over EOIR employees, including immigration judges, assigned to those courts. The OCIJ develops policies and procedures for immigration proceedings throughout the immigration court system. The IJs in OCIJ preside over administrative court proceedings, called removal proceedings, to determine whether foreign-born individuals, who are charged by DHS with violating immigration law, should be ordered removed from the United States or should be granted relief or protection from removal and be permitted to remain in this country. Generally, IJs determine removability and adjudicate applications for relief from removal such as cancellation of removal, adjustment of status, asylum, or waivers of removability. Custody redetermination hearings are held when an alien in DHS custody seeks a reduction in the bond amount set by DHS, or a release on his or her own recognizance.

With respect to criminal alien adjudications, the Institutional Hearing Program (IHP)¹ provides the framework for hearings to determine the immigration status of aliens convicted of offenses who are incarcerated in federal, state and local prisons across the United States. EOIR's IHP is designed to expedite the removal of criminal aliens and involves close coordination with DHS, the Bureau of Prisons, and state and local corrections authorities.

The Chief Immigration Judge provides overall program direction, articulates policy, and establishes priorities for the immigration judges located in courts throughout the United States. The Chief Immigration Judge carries out these responsibilities with the assistance of Deputy and Assistant Chief Immigration Judges; offices such as the Chief Clerk's Office and Language Services Unit assist with coordinating management and operation of the immigration courts.

- Office of the Chief Administrative Hearing Officer (OCAHO) – The OCAHO adjudicates cases involving illegal hiring and employment eligibility verification violations ("employer sanctions"), document fraud, and employment discrimination under the Immigration and Nationality Act (INA). The OCAHO is headed by a Chief Administrative Hearing Officer (CAHO) who provides overall program direction and

¹ Note, the Department of Homeland Security refers to this same program as the "Institutional Hearing and Removal Program."

management, articulates and develops policies and procedures, establishes priorities, assigns cases, and administers the hearing process presided over by Administrative Law Judges (ALJs). The CAHO also reviews decisions and orders issued by OCAHO ALJs in employer sanctions and document fraud cases, and may modify, vacate, or remand those decisions and orders.

OCAHO employs ALJs appointed pursuant to 5 U.S.C. § 3105 to adjudicate cases arising under Sections 274A, 274B and 274C of the INA. Section 274A provides for sanctions (civil penalties and injunctive relief) against employers or entities who: (1) knowingly hire, recruit, or refer for a fee, or continue to employ, unauthorized aliens; (2) fail to comply with employment eligibility verification requirements; or (3) require the execution of an indemnity bond by employees to protect the employer or entity from potential liability for unlawful employment practices. Section 274B prohibits employment discrimination based on national origin or citizenship status and provides for civil penalties and various equitable remedies. Section 274C provides civil penalties for immigration-related document fraud. Adjudicative proceedings are initiated by complaints filed with OCAHO by DHS (in Section 274A and Section 274C cases), or the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) in the Civil Rights Division, and/or aggrieved private parties and entities (in section 274B cases).

Parties may seek administrative reviews of ALJ decisions in INA Sections 274A and 274C cases, or the CAHO may review such decisions on his or her own initiative, and may affirm, modify, vacate, and/or remand such decisions. Unless the case is certified to the Attorney General, the CAHO's decision on review constitutes the final agency action with respect to these cases. Appeals from final OCAHO decisions are brought before the U.S. circuit courts of appeal.

Map of the Immigration Courts



b. Non-Adjudicative Components

A number of other Headquarters offices also provide EOIR-wide mission support:

- Office of the Director – In addition to the Director, Deputy Director, and senior advisors, the Office of the Director includes the Office of Communications and Legislative Affairs, the Equal Employment Opportunity Office, the Office of Legal Access Programs (OLAP), and the Office of Planning, Analysis, and Statistics (OPAS). These offices provide mission support to the Office of the Director by promoting strong communication, ensuring equality and diversity in the work place, providing oversight of certain pilot programs and initiatives, and providing strategic planning and data analysis.
- Office of the General Counsel (OGC) provides legal advice on a wide variety of matters involving EOIR employees in the performance of their official duties. OGC staff handle employee labor relations issues, review and prosecute complaints involving attorney misconduct, and coordinate and respond to requests for assistance involving immigration fraud. OGC also coordinates development of agency regulations and forms; provides litigation support to U.S. Attorneys, the Civil Division’s Office of Immigration Litigation, and the Solicitor General’s Office; coordinates inter-agency activities; and responds to all Freedom of Information Act and Privacy Act requests.
- Office of Administration (OA) provides administrative and managerial support in several areas concerning financial management or special emphasis and compliance programs. Specifically, OA supports the following areas: appropriations, budget and financial management, contracts and procurement, human resources, security, space and facilities management, and logistics.
- Office of Information Technology (OIT) is responsible for the design, development, operations, and maintenance of the complete range of information technology systems supporting EOIR’s day-to-day operations. OIT manages programs such as EOIR’s current multi-year effort to modernize the case management and related electronic systems that support EOIR’s mission. The EOIR Court and Appeals Systems (ECAS) program has been established to modernize these systems and reduce maintenance costs through phased elimination of paper filings and processing and retaining all records and documents in electronic form. OIT has also improved EOIR’s IT security posture by leveraging staff resources and refining internal change management processes, positioning EOIR as one of the Department’s cybersecurity leaders.

2. Adjudication of Immigration Cases

Immigration Court Proceedings Overview: DHS initiates virtually all cases before the immigration courts by charging an individual with potential grounds of removability and issuing a Notice to Appear (NTA) in Immigration Court under §240 of the Immigration and Nationality Act (INA) (8 U.S.C. 1229a).

Immigration judges (IJs) are responsible for conducting formal immigration court proceedings. In removal proceedings, IJs determine whether an individual from a foreign country (an alien)

should be allowed to enter or remain in the United States or should be removed. IJs also have jurisdiction to consider various forms of relief from removal. If the IJ finds the individual to be removable as charged, the individual can then request several different forms of relief from removal such as asylum and withholding of removal (including protection under the Convention Against Torture), cancellation of removal, voluntary departure, or other forms of relief from removal. IJ decisions are administratively final unless appealed or certified to the BIA.

Some removal proceedings are conducted in prisons and jails as part of the Institutional Hearing Program. In coordination with DHS and correctional authorities across the country, IJs conduct hearings to adjudicate the immigration status of alien inmates while they are serving sentences for criminal convictions.

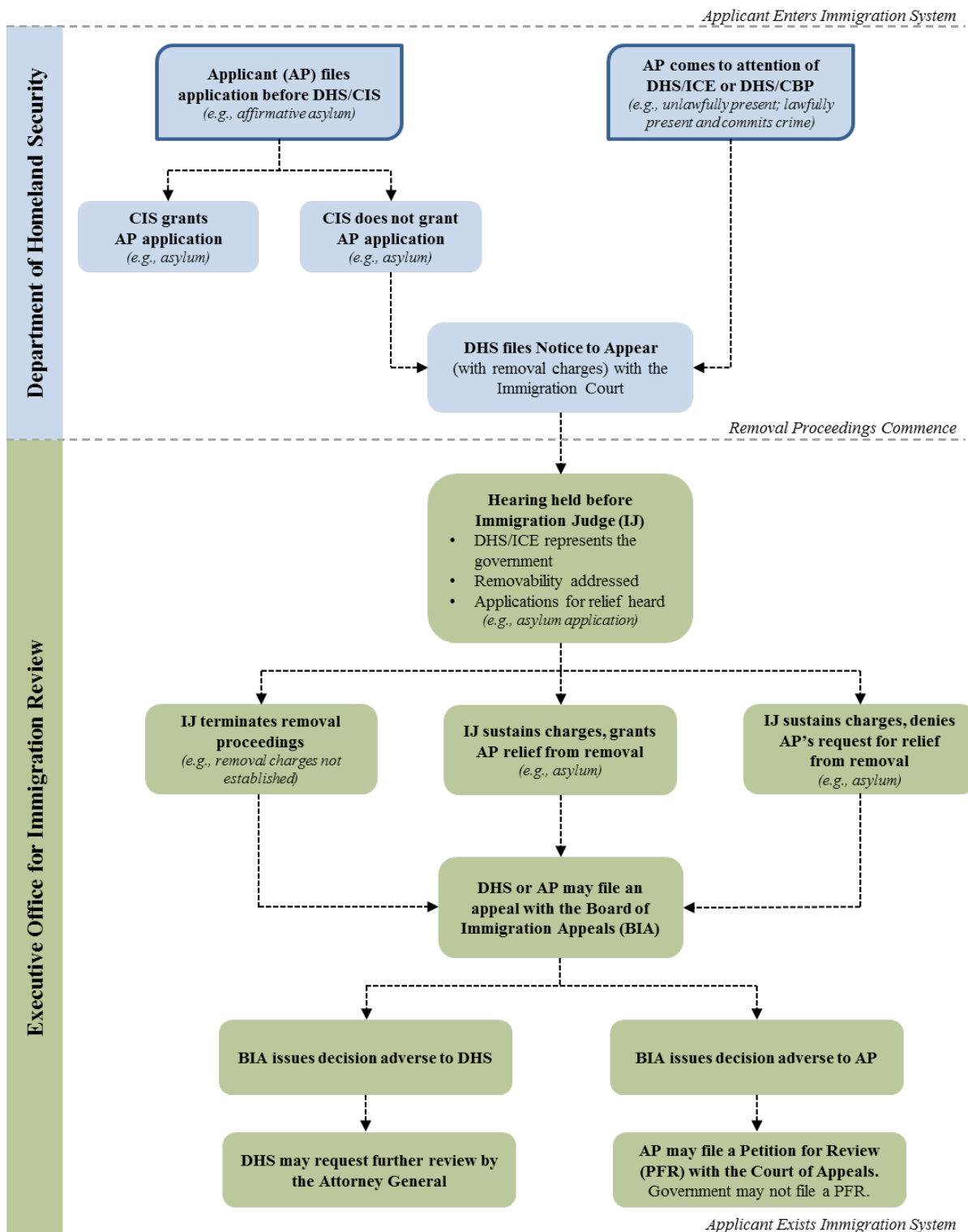
Appellate Review: In most appeals to the BIA, the process begins with filing a notice of appeal challenging an IJ decision. The appeal can be filed either by the alien or the Government (represented by DHS's Immigration and Customs Enforcement (ICE)).

When an appeal is filed by either party, the BIA acknowledges receipt of the appeal, transcribes the proceedings (where appropriate), and sets a briefing schedule to allow both parties to present their arguments. Once briefing concludes, the appeal is adjudicated by a panel of one, three, or all Board Members.

If the decision is not published, the decision is binding only on the parties. If the BIA elects to publish the decision, it becomes legal precedent and is binding nationwide. The BIA's decision will stand unless and until modified or overruled by the Attorney General, a federal court, or the BIA itself.

The following flow chart details examples of paths to and through removal proceedings.

EXAMPLE PATHS TO AND THROUGH REMOVAL PROCEEDINGS



OCAHO Administrative Hearings: OCAHO cases begin with the filing of a complaint, either by the DHS, Immigration and Customs Enforcement, in employer sanctions and document fraud cases under INA §§ 274A and 274C, respectively, or by private individuals or entities and/or the Civil Rights Division's Office of Special Counsel for Immigration Related Unfair Employment Practices in immigration-related employment discrimination cases under INA § 274B. After the complaint is filed, the respondent is given an opportunity to file an answer. Following the answer, the parties typically file prehearing statements, undertake discovery, and participate in one or more telephonic prehearing conferences with the ALJ. Parties may also engage in settlement negotiations and file dispositive motions with the ALJ. Cases that are not resolved or dismissed proceed to a formal evidentiary hearing, typically held near where the parties reside or the alleged violation(s) occurred. Final decisions and orders issued by the ALJ in employer sanctions and document fraud cases are reviewable by the CAHO and/or the Attorney General. Once a final agency decision has been issued, a party may file an appeal with the appropriate federal circuit court of appeals. Final ALJ decisions in immigration-related employment discrimination cases are not reviewable by the CAHO or the Attorney General; rather, these decisions may be appealed directly to the appropriate federal circuit court of appeals.

2. Performance and Resources Tables

(Tables begin next page)

PERFORMANCE AND RESOURCES TABLE

Decision Unit: Executive Office for Immigration Review

RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		FY 2016		FY 2016		FY 2017		Current Services Adjustments and FY 2018 Program Changes		FY 2018 Request	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		1,667	420,283	1,392	422,295	1,667	421,492	225	74,950	1,892	500,407
TYPE	PERFORMANCE	FY 2016		FY 2016		FY 2017		Current Services Adjustments and FY 2018 Program Changes		FY 2018 Request	
Program Activity	Adjudicate Immigration Cases¹	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		1,667	420,283	1,392	[422,295]	1,667	[421,492]	225	[74,950]	1,892	[500,407]
		Office of the Chief Immigration Judge									
Performance Measure: Output	Total Initial Case Completions	195,540		186,434		228,247		9,187		237,434	
Performance Measure: Output	Detained² Initial Case Completions	54,947		51,849		64,137		2,582		66,719	
Performance Measure: Output	Non-Detained Initial Case Completions	140,593		134,585		164,110		6,605		170,715	
Performance Measure: Outcome	no estimate³										
Performance Measure: Efficiency	Institutional Hearing Program (IHP) Cases	0.85		72%		85%				85%	

	Completed Before Release					
Performance Measure: Efficiency	Detained Cases Completed within 60 days	80%	67%	80%		80%
	Board of Immigration Appeals					
Performance Measure: Output	Appellate Case Completions	34,020	33,240	36,120	4,620	40,740
Performance Measure: Output	Detained Appellate Case Completions	7,757	7,309	8,235	1,054	9,289
Performance Measure: Outcome	no estimate³					
Performance Measure: Efficiency	Detained Case Appeals Completed within 150 days	90%	98%	90%		90%
<p>Definition: The Executive Office for Immigration Review (EOIR) has identified two types of immigration court cases (Institutional Hearing Program (IHP) and detained cases) and one type of Board of Immigration Appeals (BIA) case (detained appeals) as case types for performance measurement. The IHP is a collaborative effort between EOIR, the Department of Homeland Security (DHS) and various federal, state, and local corrections agencies. The IHP permits immigration judges to hold removal hearings while an alien is completing his or her criminal sentence.</p> <p>Data Validation, Verification, and Limitations: Data are collected from the Case Access System for EOIR (CASE), a nationwide case tracking system at the trial and appellate levels. Court and Appellate staff enters data, which is electronically transmitted and stored at EOIR headquarters, allowing for timely and complete data collection. Data are verified by on-line edits of data fields. Headquarters and field office staff use routine daily, weekly, and monthly reports that verify data. Data validation is also performed on a routine basis through data comparisons between EOIR and DHS databases. There are no data limitations known at this time</p> <p>¹A case before the immigration courts is a proceeding that begins when the Department of Homeland Security (DHS) files a charging document. Before the Board of</p>						

Immigration Appeals, a case is an appeal from an immigration judge decision, an appeal from certain DHS decisions, and motions to reopen, reconsider, or reinstate proceedings. This does not include change of venue requests or transfers from one immigration court to another. In addition, initial case completions do not include cases that have been reopened or remanded from the Board of Immigration Appeals.

²Detained cases are cases involving individuals under the custodial supervision of DHS or other entities.

³As an adjudicatory body charged with fairly, expeditiously, and uniformly interpreting the Nation's immigration laws, it is inappropriate to develop case outcome measurements.

PERFORMANCE MEASURE TABLE

Decision Unit: Executive Office for Immigration Review

Performance Report and Performance Plan Targets		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016		FY 2017	FY 2018
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measure	Total Initial Case Completions ¹	188,223	173,176	168,140	181,575	195,540	186,434	228,247	237,434
Performance Measure	Detained Initial Case Completions ²	89,621	63,331	61,590	51,005	54,947	51,849	64,137	66,719
Performance Measure	Non-Detained Initial Case Completions	98,602	109,845	99,550	130,570	140,593	134,585	164,110	170,715
Performance Measure	Appellate Case Completions	39,549	36,689	30,823	34,244	34,020	33,240	36,120	40,740
Performance Measure	Detained Appellate Case Completions	8,052	7,446	8,138	7,810	7,757	7,309	8,235	9,289
Efficiency Measure	Institutional Hearing Program (IHP) Cases Completed Before Release	87%	88%	79%	79%	85%	72%	85%	85%
Efficiency Measure	Detained Cases Completed within 60 days	86%	82%	74%	71%	80%	67%	80%	80%
Efficiency Measure	Detained Case Appeals Completed within 150 days	97%	97%	93%	95%	90%	98%	90%	90%
OUTCOME Measure	no estimate ³								

¹A case before the immigration courts is a proceeding that begins when the Department of Homeland Security (DHS) files a charging document. Before the Board of Immigration Appeals, a case is an appeal from an immigration judge decision, an appeal from certain DHS decisions, and motions to reopen, reconsider, or reinstate proceedings. This does not include change of venue requests or transfers from one immigration court to another. In addition, initial case completions do not include cases that have been reopened or remanded from the Board of Immigration Appeals.

²Detained cases are cases involving individuals under the custodial supervision of DHS or other entities.

³As an adjudicatory body charged with fairly, expeditiously, and uniformly interpreting the Nation's immigration laws, it is inappropriate to develop case outcome measurements.

3. Performance, Resources, and Strategies

EOIR's adjudication functions are part of the government's broader immigration and border control programs. As such, EOIR's ability to adjudicate cases involving individuals housed in DHS detention space in a timely fashion allows EOIR to aid in the efficient utilization of DHS detention space. The guarantee of fairness and due process, including for those individuals in detention, remains a cornerstone of our judicial system, and EOIR's role in granting relief from removal in meritorious cases, and in the denial of relief from removal in others, helps assure the integrity of the overall process.

a. Performance Plan and Report for Outcomes

For the immigration courts, EOIR chose two priority case types as performance measures and set the following goals:

- 85% of Institutional Hearing Program (criminal aliens) cases completed before release from incarceration; and
- 80% of detained cases completed within 60 days.

In FY 2016, the immigration courts did not meet these two priority targets but continue to strive to complete these priority cases in a timely fashion. The goal in FY 2017 and FY 2018 will remain the same for both of these measures.

The performance measure for the BIA is:

- 90% of detained appeals adjudicated within 150 days.

In FY 2016, the BIA met this target. This performance measure will continue through FY 2017 and FY 2018.

To summarize, the FY 2018 target is to complete EOIR's priority adjudications within established timeframes.

b. Strategies to Accomplish Outcomes

Case adjudication time to completion remains a key performance indicator for EOIR. In particular, EOIR's performance indicators include a focus on the cases of individuals detained by the DHS, a longstanding agency priority. The agency's focus on detained cases, as well as other more recent priority cases established in response to specific migratory issues along the southwest border, means that the agency will continue to allocate resources as needed to focus on meeting priority case goals. This includes adjusting court dockets to consolidate the amount of hearing time devoted to detained cases and to quickly schedule first hearings for the cases of certain recent border crossers.

EOIR is also concentrating its resources on hiring IJs and associated support staff to increase the agency's capacity to adjudicate cases. EOIR has made significant progress in hiring IJs and expects to continue this effort until all authorized positions are filled. The agency expects that new IJs and their support staff will enable the agency to begin to correct the imbalance between the incoming caseload and the number of judges available to adjudicate it. EOIR also recently reorganized the immigration court management structure to promote efficiency and prepare for expansion. This update of management structure has already made a positive impact on communication between headquarters and field offices, a key step in promoting operational efficiency. EOIR managers are focusing on creative ways to manage the caseload by shifting resources to focus on high priority cases. More generally, EOIR is continually assessing programs to ensure that courts are relying on the most efficient and effective processes.

In addition, the agency is leveraging the creative use of space and technology to improve the efficiency of the immigration courts. EOIR expects to build out new court space to house IJs and support staff. EOIR has fully deployed video conferencing equipment, promoting a more agile environment by increasing the agency's ability to hear cases in remote locations and adjust dockets to meet unexpected challenges. The agency is also investing in additional information technology infrastructure improvements intended to facilitate more efficient and effective internal processes, data sharing, and communications with external partners. In addition, EOIR is actively evaluating how to best update our case management and other electronic databases to enable the agency's adjudicatory components to manage their workload in a more streamlined and efficient manner.

B. Office of the Pardon Attorney

<i>Office of the Pardon Attorney</i>	Direct Pos.	Estimated FTE	Amount
2016 Enacted	22	20	4,496
2017 Continuing Resolution	22	21	4,487
Adjustments to Base and Technical Adjustments	-3	-2	473
2018 Current Services	19	19	4,960
2018 Program Increases	0	0	0
2018 Program Decreases	0	0	0
2018 Request	19	19	4,960
Total Change 2017-2018	-3	-2	473

4. Program Description

OPA's primary function is to receive, evaluate, and investigate clemency applications and prepare the recommendation of the Department as to the appropriate disposition of each application for the signature of the Deputy Attorney General. OPA also responds to inquiries concerning executive clemency petitions and the clemency process from applicants, their legal representatives, members of the public, members of Congress, and various federal, state, and local officials and agencies; prepares all necessary documents to effect the President's decision to grant clemency; and notifies each clemency applicant of the President's decision concerning his or her clemency request. When asked to do so, OPA also provides general advice to the White House concerning executive clemency procedures and the historical background of clemency matters.

5. Performance and Resource Tables

(Tables begin next page)

PERFORMANCE AND RESOURCES TABLE

Decision Unit: Office of the Pardon Attorney

RESOURCES			Target		Actual		Target		Changes		Requested (Total)	
			FY 2016		FY 2016		FY 2017		Current Services Adjustments and FY 2018 Program Changes		FY 2018 Request	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			22	4,496	20	4,496	22	4,487	-2	473	19	4,960
TYPE		PERFORMANCE	FY 2016		FY 2016		FY 2017		Current Services Adjustments and FY 2018 Program Changes		FY 2018 Request	
			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Program Activity		Processing clemency petitions	22	4,496	20	4,496	22	4,487	-2	473	19	4,960
Performance Measure: Output		Number of petitions processed	3,500		8,064		3,500				3,500	
Performance Measure: Outcome		Number petitions pending at OPA	7,000		10,183		7,000				3,500	
Performance Measure: Outcome		Number of correspondence responses	2,400		1,360		2,400				2,400	

Data Definition, Validation, Verification, and Limitations: OPA's automated case tracking and processing system is updated daily and used extensively to track the status of clemency petitions and correspondence. Performance data derived therefrom are cross-referenced with internal reports to ensure accuracy.

PERFORMANCE MEASURE TABLE

Decision Unit: Office of the Pardon Attorney

Performance Report and Performance Plan Targets		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016		FY 2017	FY 2018
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measure	Clemency petitions processed	1,669	1,962	1,079	2,781	3,500	8,064	3,500	3,500
Performance Measure	Correspondence processed	N/A	N/A	N/A	N/A	2,400	1,360	2,400	2,400
Efficiency Measure	Performance measure is efficiency measure								
OUTCOME Measure	Petitions pending at OPA	1,156	1,867	7,790	8,287	7,000	10,183	7,000	3,500

6. Performance, Resources, and Strategies

a. Performance Plan and Report for Outcomes

Because OPA's sole mission is to assist the President in the exercise of clemency power, its performance measure is the number of clemency petitions processed during a given fiscal year. Likewise, OPA's outcome measure is the number of clemency petitions that remain pending at the end of the fiscal year. In FY 2009, OPA set its annual targets for both measures at 1,500 cases. OPA exceeded both targets, processing more than 1,500 cases and keeping the number of pending cases under 1,500, through FY 2012. In FY 2013, OPA exceeded its target for petitions processed, but it missed the target for petitions pending at the end of the fiscal year due to the uncommonly large number of new filings it received (2,673 total applications). In light of that historic number of filings, OPA increased its petitions pending target for FY 2014 through FY 2016. However, OPA was unable to meet its outcome measure target for cases pending at the end of each fiscal year due to the large volume of new filings. The degree to which OPA will be able to meet its annual cases pending outcome target will depend significantly on the volume of new petitions filed in upcoming fiscal years and how quickly OPA can work through the high cumulative number of petitions filed in the last few fiscal years.

b. Strategies to Accomplish Outcomes

OPA strives to continue to reduce the overwhelming backlog of clemency cases submitted during the last administration while also processing all new clemency cases submitted under the current administration. OPA intends to maintain the necessary balance between attorneys and administrative support staff to continue efficient processing of both new and pending clemency petitions. Given the volume of OPA's current caseload plus the volume expected in the future, it is critical that the office maintain equal levels of experienced clemency attorneys and support staff to evaluate the merits of incoming petitions and draft cogent, legally correct letters of advice to assist the President's decision-making. OPA's support staff provide crucial assistance in processing clemency petitions by completing cursory reviews, requesting additional information when necessary, drafting screening letters, and completing other necessary correspondence. This facilitates moving petitions through the review process in a timely and cost-effective manner and alleviates the administrative burden on OPA's attorneys, allowing them to focus their expertise on legal analysis. Where possible, OPA will seek cost-effective ways to accomplish the myriad clerical tasks required to process and manage the caseload, including maintaining OPA's electronic case processing and tracking system, while continuing to provide its attorneys with the necessary administrative support to analyze and evaluate the merits of individual applications and prepare the appropriate letters of advice to inform the President.

V. Program Increases by Item

Item Name: Immigration Judge Teams

Budget Decision Unit: Executive Office for Immigration Review

Organizational Program: Immigration Adjudications

Program Increase: Positions 450 Agt/Atty 150 FTE 225 Dollars \$74,950,000

Description of Item

This increase will add 75 new IJ teams. An IJ team consists of one IJ and five full-time positions to support the adjudicatory mission of EOIR. Each IJ team, in addition to the IJ the full time positions will include one attorney position (specifically designated as .5 FTE for a Board of Immigration Appeals attorney and .5 FTE for either a Judicial Law Clerk or other mission support attorney), one legal assistant, and three other FTE made up of a combination of the following positions on an as-needed basis: additional legal assistant, interpreter, and/or other EOIR mission support staff. Additionally, EOIR has now completely filled all usable EOIR courtroom and office space for immigration judges and supporting staff with currently authorized FTE. In order to provide courtrooms and office space for the new adjudicators and support staff in the IJ team, this program increase includes the cost of construction of new space for these additional FTE.

Justification

With the current volume of receipts, the caseload will continue to grow well into the future. This program increase will allow EOIR to hold more hearings annually.

Growth in the caseload represents a major challenge for EOIR that will be addressed by increasing IJ resources. Each new case in immigration court begins upon the Department of Homeland Security's filing of a charging document following an encounter with an illegal alien. It remains critically important to balance EOIR's adjudicative capacity with DHS's enforcement efforts. The number of cases pending adjudication increased 87 percent from the end of FY 2011 through the first two quarters of FY 2017. While the number of cases is rising, so is the length of proceedings. A significant factor in this increase in pending caseload is the uptick in the number of cases with applications for relief or protection. Cases with applications for relief or protection can be more complex, requiring time to gather evidence and witnesses, resulting in longer processing times.

Additionally, pursuant to the President's executive order, EOIR has taken significant steps to assist the Administration in achieving full operational control of the border. EOIR is focusing on hiring additional immigration judges and support staff to better address the backlog of pending cases but this hiring increase must continue unabated. By addressing cases that are scheduled farther into the future so as to adjudicate those cases sooner, EOIR will work to address certain of those factors that lead to higher levels of absconders. We believe that pull factors can be

increased if aliens believe they can come to the U.S. and wait years for a hearing, or disappear in the interior of the U.S. without a need to appear in immigration court. To this end, the budget request for these 450 positions will provide EOIR with a massive personnel increase that will better enable EOIR to adjudicate immigration cases efficiently, ultimately leading to decreased incentives to those individuals seeking to enter or remain in the United States illegally.

It is important to note that the process for on-boarding immigration judges is quite lengthy. The hiring process for immigration judges has often taken more than one year due to the need to adequately vet the qualifications of the hundreds of applicants received for each of these positions. The Department of Justice has implemented a new, streamlined hiring plan, announced by the Attorney General during a speech on April 11, 2017. It requires just as much vetting as before, but aims to reduce the timeline, reflecting the dire need to reduce the backlogs in our immigration courts. EOIR has taken and continues to take steps to reduce the amount of time an application is pending before the agency so as to effectuate the hiring of these key personnel as rapidly as possible.

Impact on Performance

This initiative ties directly to EOIR's efforts to adjudicate immigration cases fairly and expeditiously in accordance with due process. EOIR's adjudicatory capacity must steadily increase in order to provide prompt hearings for individuals in proceedings before the agency. With a sustained commitment to continue hiring immigration judges and Board of Immigration Appeals staff, EOIR believes that it will be able to decrease its pending caseload and reduce the amount of time respondents must wait until their cases are brought to conclusion.

Base Funding

FY 2016 Enacted				FY 2017 Continuing Resolution				FY 2018 Current Services			
Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)
2,138	681	1,667	422,295	2,138	681	1,667	421,492	2,138	681	1,667	425,457

Personnel Increase Cost Summary

Type of Position/Series	Full-year Modular Cost per Position (\$000)	1 st Year Annualization	Number of Positions Requested	FY 2018 Request (\$000)	2 nd Year Annualization	2 nd Year FY 2019 Net Annualization (change from 2018) (\$000)
Clerical and Office Services (0300-0399)	64	48	150	7,200	9,600	2,400
Clerical and Office Services (0300-0399)	107	80	150	12,000	16,050	4,050
Attorneys (0905)	205	154	75	11,550	15,375	3,825
Attorneys (0905)	125	94	75	7,050	9,375	2,325
Total Personnel			450	37,800	50,400	12,600

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2018 Request (\$000)	FY 2019 Net Annualization
75 Immigration Judge Teams			37,150	-33,005
Total Non-Personnel			37,150	-33,005

Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total	FY 2019 Net Annualization
Current Services	2,138	681	1,667			425,457	
Increases	450	150	225	37,800	37,150	74,950	-20,405
Grand Total	2,588	831	1,892			500,407	