

## JUSTICE NEWS

### **Executive Office of Immigration Review Director James McHenry Testifies Before the Senate Committee on Homeland Security and Governmental Affairs**

Washington, DC ~ Wednesday, November 13, 2019

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#### ***Hearing Titled “Unprecedented Migration at the U.S. Southern Border: The Year in Review”***

##### ***Remarks as prepared for delivery***

Mr. Chairman, Ranking Member Peters, and other distinguished Members of the Committee, thank you for the opportunity to speak with you today. As the Director of the Executive Office for Immigration Review (EOIR) at the Department of Justice (Department), I welcome this opportunity to share with you the progress that EOIR has made in adjudicating cases in Fiscal Year (FY) 2019, the continuing challenges it faces, and the overall impact of the unprecedented levels of illegal immigration on its operations.

The primary mission of EOIR is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. This mission is carried out professionally and diligently every day by EOIR's approximately 2,000 employees across seven components, including 68 immigration courts and adjudication centers, the Board of Immigration Appeals, and the Office of the Chief Administrative Hearing Officer. EOIR's employees are firmly committed to this mission, they have performed commendably in improving the functioning of our immigration courts, and I am honored to lead them.

To be sure, EOIR continues to face a significant pending caseload at the immigration court level, one that nearly tripled between FY 2009 and FY 2017 and is now approaching one million cases. Nevertheless, EOIR has made considerable progress in the past 29 months in restoring its reputation as a fully-functioning, efficient, and impartial administrative court system fully capable of rendering timely decisions consistent with due process.

After eight consecutive years of declining or stagnant productivity between FY 2009 and FY 2016, EOIR recently concluded its third consecutive year of increased immigration court case completions. In FY 2019, EOIR completed 275,552 cases at the immigration court level, the second-highest total in its history, an increase of roughly 80,000 case completions from FY 2018, and nearly double the number of cases EOIR completed just three years ago. Even considering the government shutdown, hiring recency, supervisory status, and any relevant factors under the collective bargaining agreement, 150 immigration judges completed at least 700 cases each in FY 2019, and 38 immigration courts nationwide had at least one immigration judge who completed that number. Excluding new immigration judges (those hired in the past fiscal year), immigration judges who were supervisors during the entire fiscal year, immigration judges on detail or otherwise not adjudicating cases for a significant period during the fiscal year, and immigration judges who retired, separated, or otherwise left EOIR prior to September 2019, the average immigration judge completed 708 cases in FY 2019, despite losing five weeks to the government shutdown. Perhaps most importantly, the increases in productivity did not lead to increased allegations of judicial misconduct. To the contrary, despite notable increases in the number of immigration judges, the number of hearings, and the number of completed cases, the number of complaints against immigration judges fell for the second consecutive fiscal year.

These results are a testament to the professionalism and dedication of our immigration judge corps. These results unequivocally prove that immigration judges have the integrity and competence required to resolve cases in the timely and impartial manner that is required by law.

EOIR has also reduced the time it takes to hire a new immigration judge from an average of 742 days to as little as 195 days, a reduction of 74 percent. As a result, EOIR has hired more immigration judges since January 20, 2017, than it hired in the seven prior fiscal years combined. As of September 30, 2019, EOIR had 442 immigration judges onboard with another class of new judges expected to begin working later this month.

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EOIR is also striving to modernize and digitize its critical information systems. EOIR's Office of Information Technology has worked tirelessly to finally make a fully electronic filing and case management system a reality after years of little to no progress. In 2018, EOIR piloted its new electronic filing system, EOIR Courts and Appeals System (ECAS), at five immigration courts and the Board of Immigration Appeals with encouraging results. Over 40,000 electronic case files have been created, and nearly 16,000 attorneys have registered to use ECAS so far. EOIR is beginning the nationwide rollout of ECAS this week, and it will proceed in phases over the next two to three years.

Each of these accomplishments is critical to EOIR's continued success as it addresses the pending caseload, and EOIR has solved some of its most intractable problems of the past decade regarding hiring, productivity, and technology. But, EOIR's progress is threatened by challenges emanating from the continued surge of illegal immigration along the southern border.

For many years, the immigration court caseload increased due to factors primarily within EOIR's control, namely declining productivity by immigration judges, insufficient hiring, and a lack of institutional emphasis on the importance of completing cases in a timely manner. Those factors are now being successfully addressed. More recent increases to the caseload, however, have been driven largely by external factors, including increased numbers of asylum claims in immigration proceedings and increased law enforcement efforts by the Department of Homeland Security (DHS).

More specifically, in FY 2019, DHS filed more than 443,000 new cases with the immigration courts, which is the highest number in a single year in EOIR's history. Statistically, the vast majority of these cases may not involve a viable claim allowing an alien to lawfully remain in the United States, but their presence on EOIR's already-crowded dockets diverts resources from more effectively addressing those claims that are meritorious. In particular, significant increases in recent years in cases involving asylum applications, unaccompanied alien children (UAC), credible fear claims, and aliens who fail to appear at their hearings have taxed EOIR's resources to an unprecedented degree.

Nearly half of EOIR's pending caseload, approximately 482,000 cases, involves applications for asylum, and EOIR received over 200,000 asylum applications in FY 2019, its highest total ever. Compared to FY 2013, asylum applications received in immigration proceedings have increased by over 165,000, whereas asylum grants have increased by only slightly over 9,000. Even considered as a percentage, the increase in applications has not been accompanied by an increase in meritorious claims; to the contrary, only 20 percent of asylum applications were granted in FY 2019, compared to nearly 25 percent in FY 2013. Moreover, although Congress established a clear 180-day deadline for the adjudication of asylum claims absent exceptional circumstances, the sheer volume of claims means that goal is rarely achieved.

The number of credible fear review cases heard by immigration judges doubled from FY 2018 to FY 2019 and has increased 600 percent since FY 2013. This increase, too, has not been accompanied by an increase in meritorious claims, as the affirmance rate of a negative credible fear determination has remained at 72 percent or higher for nearly two decades. Further, many aliens who successfully pass the credible fear screening never actually file for asylum after they enter the United States, yet their cases take important docket space away from other, potentially meritorious cases.

The number of pending UAC cases has increased by over 1,200 percent since FY 2013 and currently exceeds 90,000. Over 30 percent of those cases have been pending for more than three years. Only 431 UAC cases resulted in a grant of relief in FY 2019, and less than 20 percent of UAC cases end with an order of relief or termination.

The number of *in absentia* removal orders resulting from an alien's failure to appear at a hearing nearly doubled in FY 2019 from FY 2018, and roughly 45 percent of all non-detained cases completed in FY 2019 ended with an alien not appearing for a court proceeding. Further, in FY 2019, EOIR began tracking "family unit" cases at certain court locations, and over 25 percent of those cases have ended with an *in absentia* order of removal.

On average, four out of every five removal cases filed in immigration court will conclude with the alien required to leave the United States, through either an order of removal or voluntary departure.

Our immigration system faces numerous challenges, and the current level of illegal immigration is foremost among them. EOIR shoulders significant downstream effects of surges of illegal immigration at the border, and those effects in recent years have placed a significant strain on its resources. To combat these effects, the Attorney General has

brought important clarity to the law through case adjudications, and the Department of Justice is actively defending against challenges that would otherwise erode the integrity of our immigration laws. EOIR continues to adjudicate cases fairly and expeditiously at unprecedented levels, but fair and efficient adjudication alone will not resolve the crisis at the border—it is imperative that Congress act as well. The Department has proposed numerous changes that would strengthen the immigration system as a whole, including consolidating federal appeals in one circuit, clarifying the so-called categorical approach, and revising statutory language that the Supreme Court has found unconstitutionally vague. We stand ready to continue to work with Congress to strengthen existing laws and more effectively address the many challenges facing our immigration system today.

I would be pleased to answer any questions the Committee may have.

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**Speaker:**

James McHenry, Director

**Topic(s):**

Immigration

**Component(s):**

Executive Office for Immigration Review

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