U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

July 24, 2018

Via USPS
Michelle Mendez
Catholic Legal Immigration Network, Inc. (CLINIC)
8757 Georgia Ave., Suite 850
Silver Spring, MD 20910

Re: FOIA 2018-24768

Dear Ms. Mendez,

This letter is in response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) dated April 2, 2018 in which you seek documents related to immigration judge performance metrics and implementation thereof.

Responsive documents are enclosed. There will be no charge for processing your request.

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(c) (2006 & Supp. IV 2010). 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. *See* http://www.justice.gov/oip/foiapost/2012foiapost9.html.

You may contact our FOIA Public Liaison at the telephone number 703-605-1297 for any further assistance and to discuss any aspect of your request. 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 (OIP), 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 by creating an account on the following web

site: https://foiaonline. regulations.gov/foia/action/public/home. Your appeal must be postmarked or electronically transmitted within 90 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,

J.R. Schaaf
Chief Counsel for Administrative Law

Enclosure:

EOIR FOIA# 2018-24768

Office of the Attorney General

Washington, D. C. 20530

December 5, 2017

MEMORANDUM FOR THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

FROM: THE ATTORNEY GENERAL

SUBJECT: Renewing Our Commitment to the Timely and Efficient Adjudication of Immigration Cases to Serve the National Interest

Our primary mission at the Department of Justice—as reflected in the first clause of our mission statement—is to "enforce the law and defend the interests of the United States according to the law." Under my delegated authority, you, the men and women of the Executive Office for Immigration Review (EOIR), accomplish this objective by adjudicating immigration cases and interpreting and administering the immigration laws. Together, we have made significant progress since the beginning of the Trump Administration, but we want to build on this success to enshrine what the law contemplates and what the people desire—an end to unlawfulness in our immigration system.

We have brought on 50 new immigration judges since January 20, and expect to add over 60 more in the next six months. We surged resources to the border at the direction of the President—and completed approximately 2,800 more cases than we were projected to have otherwise completed. We are actively developing a long overdue e-filing system to pilot in mid-2018. Initial case completions rose in FY 2017 to the highest level since FY 2012. In accordance with the law, we are prioritizing the completion of cases and developing performance measures to ensure that EOIR's mission of fairly, expeditiously, and uniformly administering the immigration laws is fulfilled.

But as you know, tremendous challenges lie before us. There are approximately 650,000 cases pending before the immigration courts. Although we showed signs of leveling off the increase in the non-detained portion of the backlog at the end of FY 2017, we nevertheless face a steady stream of criticism that we are overwhelmed and that the backlog is intractable. I strongly disagree—this challenge is not insurmountable, but it does require a concerted effort to address it.

While we continue to hire additional immigration judges and support personnel to address these challenges, we must all work to identify and adopt—consistent with the law—additional procedures and techniques that will increase productivity, enhance efficiencies, and ensure the timely and proper administration of justice. Whether you are an immigration judge who has a unique way to better handle dockets, or an administrative assistant who has a better process for handling the distribution of files in the office, we can all contribute something to improve the system. I, too, anticipate clarifying certain legal matters in the near future that will remove recurring impediments to judicial economy and the timely administration of justice.

It is imperative that we all recognize our extraordinary role in ensuring the faithful application of our duly enacted immigration laws while simultaneously ensuring the timely and

impartial administration of justice. Indeed, the manner in which cases are adjudicated has a direct impact on the sovereign interests of our nation. It not only affects the flow of illegal entries into the United States and the number of visa overstays, but also our national security, public safety, and the employment prospects and wages of the American people. It also furthers the national interest by ensuring that meritorious cases receive timely consideration while baseless cases are concluded expeditiously.

To that end, I expect you to ensure that the adjudication of immigration cases serves the national interest by supporting and adhering to the following principles:

- The immigration courts, the Board of Immigration Appeals, and the Office of the Chief Administrative Hearing Officer within EOIR are responsible for adjudicating cases and administering the immigration laws. We serve the national interest by applying those laws as enacted, irrespective of our personal policy preferences.
- The timely and efficient conclusion of cases serves the national interest. Unwarranted delays and delayed decision making do not. The ultimate disposition for each case in which an alien's removability has been established must be either a removal order or a grant of relief or protection from removal provided for under our immigration laws, as appropriate and consistent with applicable law.
- Meritless cases or motions pending before the immigration courts or the Board of Immigration Appeals should be promptly resolved consistent with applicable law.
- The efficient and timely completion of cases and motions before EOIR is aided by the use of performance measures to ensure that EOIR adjudicates cases fairly, expeditiously, and uniformly in accordance with its mission.
- The attempted perpetration of fraud upon the United States government in our immigration court system can lead to delays, inefficiencies, and the improper provision of immigration benefits. Therefore, any and all suspected instances of fraud should be promptly documented and reported to EOIR management, and any other agency with an interest in the identification of and response to such fraud (including the appropriate state bar(s) in cases of attorney misconduct), consistent with applicable law.

I expect all of you will carry out these principles capably and professionally in performing your duties, including in the preparation, adjudication, and completion of pending cases. Further, I am confident that, together, we will uphold the mission of the Department of Justice, we will maintain respect for the rule of law, and we will serve the national interest by ensuring the timely administration of justice in immigration proceedings.

This guidance is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. The Deputy Attorney General or the Director of EOIR may issue further guidance, as appropriate, to ensure the achievement of the principles set forth in this memorandum.

U.S. Department of Justice

Executive Office for Immigration Review

Office of the Director

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Director

January 17, 2018

MEMORANDUM TO: The Office of the Chief Immigration Judge
All Immigration Judges
All Court Administrators
All Immigration Court Staff

FROM: James R. McHenry III JM
Director

SUBJECT: Case Priorities and Immigration Court Performance Measures

This memorandum is effective immediately, applies prospectively to all new cases filed and to all immigration court cases reopened, recalendared, or remanded, and serves to rescind the January 31, 2017, memorandum entitled "Case Processing Priorities" and all other prior memoranda establishing case processing or docketing priorities.

I. Background

On December 6, 2017, the Attorney General issued a memorandum to all Executive Office for Immigration Review (EOIR) employees outlining several principles to follow to ensure that the adjudication of immigration court cases serves the national interest. It also provided that the Director of EOIR may issue further guidance to ensure the achievement of those principles. Pursuant to 8 C.F.R. § 1003.0(b)(1)(ii) and (iv), the EOIR Director has the authority to "[d]irect the conduct of all EOIR employees to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases and otherwise to manage the docket of matters to be decided by the immigration judges" and to "[e]valuate the performance of the Office of the Chief Immigration Judge (OCIJ) and take corrective action where needed."

Accordingly, pursuant to that authority and in accordance with the Attorney General's principles, this memorandum lays out EOIR's specific priorities and goals in the adjudication of immigration court cases.

II. Case Prioritization

EOIR has always designated detained cases as priorities for completion. In 2014, EOIR began designating other types of "priority" cases for docketing and processing purposes, and those priority designations have been subsequently modified three times—most recently on January 31, 2017.

The repeated changes in case prioritization have caused confusion and created difficulty in comparing and tracking case data over time. But, most importantly, the frequent shifting priority designations did not enhance docket efficiency. Not only were cases repeatedly moved to accommodate new priorities without a clear plan for resolving both the new and older cases, but also the designations did not adequately stress the importance of completing all cases in a timely manner.

For example, less than 10% of cases currently pending meet the definition of "priority" outlined in the January 31, 2017, memorandum—a statistic that conveys a potentially mistaken impression regarding the importance of completing the other 600,000-plus pending cases that do not bear a "priority" designation.

Accordingly, to address concerns and confusion, it is appropriate to clarify EOIR's priorities and goals to ensure that the adjudication of cases serves the national interest consistent with the principles outlined by the Attorney General.

All cases involving individuals in detention or custody, regardless of the custodian, are priorities for completion.[1] Likewise, cases subject to a statutory or regulatory deadline, cases subject to a federal court-ordered deadline, and cases otherwise subject to an established benchmark for completion, including those listed in Appendix A, are also priorities. As developments warrant, other priority designations may be established as appropriate, and other categories of cases may be tracked regardless of whether they reflect a priority designation.

The designation of a category of cases as priority is an indication of an expectation that such cases should be completed expeditiously and without undue delay consistent with due process. Because the designations outlined in this memorandum apply prospectively, it is not intended to require the rescheduling of currently-docketed cases. The designation of priority cases is also not intended to diminish or reduce the significance of other cases. Indeed, the timely completion of *all* cases consistent with due process remains a matter of the utmost importance for the agency. Finally, the designation of a case as a priority is not intended to limit the discretion afforded an immigration judge under applicable law, nor is it intended to mandate a specific outcome in any particular case.

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[1] Cases of aliens in the custody of the Department of Homeland Security and aliens in the care and custody of the Department of Health and Human Services who do not have a sponsor identified were priorities under prior policy and remain so under this new policy.

III. Immigration Court Benchmarks and Performance Metrics

Apart from designated case priorities, EOIR's case processing has also involved other types of evaluative measures over time, such as statutory or regulatory deadlines for the completion of certain types of cases, including under the Immigration and Nationality Act (INA), the Government Performance and Results Act (GPRA) of 1993, and the GPRA Modernization Act of 2010. Although these case completion goals have not previously denoted case priorities *per se*, they do serve as indicators of the importance of completing certain classes of cases in a timely manner.

Historically, EOIR also utilized case completion measures for non-detained cases from FY 2002 to FY 2009, but it eliminated those measures in FY 2010, leading to confusion regarding the extent to which the timely completion of non-detained cases was perceived as a priority for the agency. The abolition of non-detained case completion benchmarks was also subsequently criticized by both the Department of Justice (DOJ) Office of Inspector General and the Government Accountability Office, both of whom recommended that EOIR reinstate goals for the completion of non-detained cases. In 2016 and 2017, the House Committee on Appropriations also directed EOIR to establish a goal that the median length of detained cases be no longer than 60 days and the median length of non-detained cases be no longer than 365 days.

Although EOIR has previously stated that case completion goals are statements of agency priorities and has tracked performance relative to those goals, it has not expressly designated cases subject to such measures as priorities, unless they happened to fall into another category that was a priority (*e.g.* detained cases). This has led to even further confusion regarding the interaction between case priorities and case resolution goals, especially because the overwhelming majority of pending cases in recent years were neither designated as a priority nor subject to a performance goal.

Almost every trial court system utilizes performance measures or case completion metrics to ensure that it is operating efficiently and appropriately. Some of these are established by statute or regulation whereas others are set by policy; nevertheless, trial court performance measures are an essential and widely-recognized tool for ensuring healthy and effective court operations.

In the federal system, for example, the Civil Justice Reform Act of 1990 requires semiannual reporting of the number of certain types of civil cases and motions pending beyond a particular date with the intent of reducing litigation delays in federal district courts. Many administrative adjudicatory systems also feature case processing time standards, either by statute,

regulation, or policy.[2] At the state level, most states have adopted court case processing time standards, many of which follow model standards approved by the American Bar Association (ABA).[3]

In fact, over 25 years ago, the ABA recognized the importance of establishing court performance standards to ensure effective case management and to avoid undue delay; in doing so, it outlined seven essential elements for managing cases, including several that are now being implemented by EOIR such as "[p]romulgation and monitoring of time and clearance standards for the overall disposition of cases," "[a]doption of a trial-setting policy which schedules a sufficient number of cases to ensure efficient use of judge time while minimizing resettings caused by overscheduling," "[c]ommencement of trials on the original date scheduled with adequate advance notice," and "[a] firm, consistent policy for minimizing continuances."[4] In short, court performance measures and case completion goals are common, well-established, and necessary mechanisms for evaluating how well a court is functioning at performing its core role of adjudicating cases.

EOIR is no exception to the rule that court performance measures are a necessary accountability tool to ensure that a court is operating at peak efficiency, nor is there anything novel or unique about applying performance measures to EOIR's immigration courts.[5] Rather, a review of such measures is vital to ensure that the immigration court system is performing strongly, that EOIR is adjudicating cases fairly, expeditiously, and uniformly consistent with its mission, and that it is addressing its pending caseload in support of the principles established by the Attorney General.

Accordingly, to ensure that EOIR is meeting these goals, the court-based performance measures outlined in Appendix A to this memorandum will be tracked by EOIR, and court

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[2] *See, e.g.*, 42 U.S.C. § 1395ff (establishing hearing deadlines for cases before administrative law judges at the Department of Health and Human Services); Fed. Energy Regulatory Comm'n, Summary of Procedural Time Standards for Hearing Cases, https://www.ferc.gov/legal/admin-lit/time-sum.asp (last updated Mar. 10, 2017) (outlining time standards for administrative law judges hearing cases at the Federal Energy Regulatory Commission).

[3] *See Case Processing Time Standards*, Nat'l Ctr. for State Courts, http://www.ncsc.org/cpts (last visited January 9, 2018); *Model Time Standards for State Trial Courts* (Nat'l Ctr. for State Courts 2011), http://www.ncsc.org/Services-and-Experts/Technology-tools/~/media/Files/PDF/CourtMD/Model-Time-Standards-for-State-Trial-Courts.ashx.

[4] *See* Judicial Admin. Div., Am. Bar Ass'n, *Standards Relating to Trial Courts* § 2.51 (vol. II 1992), *available at* https://www.americanbar.org/content/dam/aba/migrated/divisions/Judicial/MO/MemberDocuments/trialcourtstandards.authcheckdam.pdf.

[5] EOIR's other adjudicatory components, the Board of Immigration Appeals and the Office of the Chief Administrative Hearing Office, are also subject to performance measures.

performance in meeting them will be regularly audited. These goals are intended to help determine which courts are operating in a healthy and efficient manner, and which courts may be in need of more specialized attention in the form of additional resources, training, court management, creative thinking and planning, and/or other action as appropriate.

As published here in Appendix A, these court-based goals are not intended to apply specifically to any individual employee; rather, these goals apply to the court as a whole, and all court employees accordingly share responsibility for working together to successfully meet them.[6]

OCIJ will provide additional "not-to-exceed" guidelines for each goal, as appropriate. Further, some cases may be subject to more than one goal. EOIR will also track the clearance rate (the ratio of new cases filed to cases completed) and the age of existing cases at each court and may announce future goals for those statistics at a later date.

Many of these measures derive from statutory or regulatory mandates, including the INA; others derive from EOIR's goals developed under GPRA. Still others, such as a goal of ensuring file completion and accuracy, are simply reflections of the standard that a professional administrative court system should endeavor to attain. Although many of these goals have already existed for several years at EOIR, their current designation clarifies that cases subject to a goal should be considered priority cases and reiterates that the goals themselves reflect considered policy judgments regarding optimal court performance and functioning that EOIR's immigration courts should strive to achieve.

EOIR is already meeting, or close to meeting, some of these goals; for instance, the median length of time a detained case is pending at the immigration court level is currently less than 60 days. For other goals, they may appear merely aspirational at first, and the agency is cognizant that it may take time for them to be fully realized. Nevertheless, as a professional administrative court system within the DOJ exercising the Attorney General's delegated authority, EOIR should strive to become the preeminent administrative adjudicatory agency in the federal government and to fulfill its mission at the highest level possible. Further, by making you aware of these goals, you can begin thinking about how, with these goals in mind, EOIR's day-to-day activities can be streamlined to improve efficiency while maintaining due process. Moreover, there is no doubt that as the agency puts into place additional resources, training, and

[6] In autumn 2017, following collective bargaining, EOIR and the National Association of Immigration Judges jointly agreed to remove language from Article 22 of their labor agreement that had limited EOIR's ability to measure and evaluate immigration judge performance. Although many of the policy considerations relevant for setting court performance goals are also relevant for setting performance metrics for individual immigration judges, especially regarding goals that have existed in some form at EOIR already for several years, the implementation of those metrics specifically for immigration judges is subject to an ongoing process and is beyond the scope of this memorandum.

more efficient processes, you will continue impress with your dedication to our mission. As the Attorney General indicated, every employee at EOIR can contribute something to improve the system, and your creative suggestions regarding more effective case management are welcome.

IV. Conclusion

Thank you for your dedication and professionalism as we work together as a team to ensure that the adjudication of immigration court cases serves the national interest in accordance with the principles outlined by the Attorney General.

Please contact your Assistant Chief Immigration Judge with any questions you may have concerning this memorandum.

This guidance is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum should be construed as mandating a particular outcome in any specific case.

Attachment

APPENDIX A

IMMIGRATION COURT PERFORMANCE MEASURES

1. Eighty-five percent (85%) of all non-status[7] detained removal[8] cases should be completed[9] within 60 days of filing of the Notice to Appear (NTA), reopening or recalendaring of the case, remand from the Board of Immigration Appeals (BIA), or notification of detention.

2. Eighty-five percent (85%) of all non-status non-detained removal cases should be completed within 365 days (1 year) of filing of the NTA, reopening or recalendaring of the case, remand from the BIA, or notification of release from custody.

3. Eight-five percent (85%) of all motions should be adjudicated within 40 days of filing.

4. Ninety percent (90%) of all custody redeterminations should be completed within 14 days of the request for redetermination.

5. Ninety-five percent (95%) of all hearings should be completed on the initial scheduled individual merits hearing date.

6. One hundred percent (100%) of all credible fear reviews should be completed within seven (7) days of the initial determination by an asylum officer that an alien does not have a credible fear of persecution. *See* INA § 235(b)(1)(B)(iii)(III). One hundred percent (100%) of all reasonable fear reviews should be completed within 10 days of the filing of the negative reasonable fear determination as reflected in Form I-863. *See* 8 C.F.R. § 1208.31(g).

7. One hundred percent (100%) of all expedited asylum cases should be completed within the statutory deadline and consistent with established EOIR policy. *See* INA 208(d)(5)(A)(iii); OPPM 13-02.

8. Eighty-five percent (85%) of all Institutional Hearing Program (IHP) removal cases should be completed prior to the alien's release from detention by the IHP custodian.

9. One hundred percent (100%) of all electronic and paper records should be accurate and complete.

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[7] A status case is (1) one in which an immigration judge is required to continue the case pursuant to binding authority in order to await the adjudication of an application or petition by U.S. Citizenship and Immigration Services, (2) one in which the immigration judge is required to reserve a decision rather than completing the case pursuant to law or policy, or (3) one which is subject to a deadline established by a federal court order.

[8] A "removal" case includes a case in removal proceedings, in addition to any reopened, recalendared, or remanded cases in exclusion or deportation proceedings.

[9] A completed removal case is one in which a final decision has been rendered concluding the case at the immigration court level and encompasses an order of removal, an order of voluntary departure, an order terminating proceedings, or an order granting protection or relief from removal. For other types of cases, a completed case is one in which a final decision has been rendered appropriate for the specific type of case proceeding.

Schaaf, Joseph R. (EOIR)

Attachments: PWP Element 3 new.pdf

From: EOIR Director (EOIR)
Sent: Friday, March 30, 2018 5:27 PM
To: All of Judges (EOIR) <All_of_Judges@EOIR.USDOJ.GOV>
Subject: Immigration Judge Performance Metrics

Good afternoon,

As you have likely heard, EOIR has established new performance metrics for immigration judges. In advance of implementing these new metrics on October 1, 2018, I am happy to share them with you today (attached). The new metrics will be added to the current immigration judge Performance Work Plan at Job Element 3: Accountability for Organizational Results.

At the outset, I would like to encourage you to review the metrics in conjunction with Article 22 of the Collective Bargaining Agreement between EOIR and NAIJ. For example, Article 22.3.h. contains a number of relevant factors that will be taken into consideration when evaluating an immigration judge's performance against these metrics. Similarly, Article 22.5.d. requires the Agency to give an immigration judge the opportunity to provide input regarding his or her performance prior to rating the judge below Satisfactory in any element.

Article 22.4.c. requires the Agency to "make available on a routine basis reports necessary for the Judge to assess his or her performance based on any numerical standards imposed by the Agency." In an effort to ensure that you are able to track your performance against the metrics in real time, we are in the process of creating a performance dashboard that will enable each of you to see how you are performing in relation to the metrics. We anticipate that the dashboard will be available in April, and we will provide additional information about it at that time.

As for evaluating immigration judge performance, please note that we are changing the performance rating period to align with the fiscal year. This change is being made across the Agency for all employees. As a result of this realignment, the current rating period for immigration judges that began on July 1, 2017, will now end on September 30, 2019.

The purpose of announcing the metrics now is to give you an opportunity to become familiar with them and the performance dashboard, when it becomes available. On October 1, 2018, the Agency plans to begin reviewing immigration judge performance in accordance with the new metrics. Subject to the terms of Article 22, when appraising performance for the 2017-2019 rating period, rating officials will take into consideration immigration judge performance as compared to the metrics from October 1, 2018, through September 30, 2019.

The impact and implementation of the metrics are subject to bargaining with NAIJ, so further details regarding the application of the metrics may be forthcoming.

Using metrics to evaluate performance is neither novel nor unique to EOIR. The purpose of implementing these metrics is to encourage efficient and effective case management while preserving immigration judge discretion and due process. I am confident that you will meet and surpass our high expectations. As always, I thank you for your hard work and dedication to the mission of EOIR.

Sincerely,

James McHenry
Director

EOIR PERFORMANCE PLAN
Adjudicative Employees

3. Job Element: Accountability for Organizational Results

X	Critical		Non-critical

Definition: Exercises effort to ensure the integrity of the organization. Holds self accountable for organizational goals and objectives. Ensures cases are completed in a timely, efficient, and effective manner that meets objectives. Focuses on established organizational goals, results, and attainment of outcomes. Specific goals are attached.

Performance Standards:

Satisfactory:

Performance at this level is satisfactory when the applicable standards stated below are achieved in a timely and correct manner.

3.1 Acts consistently with the goals and priorities established by the Agency. (See attached goals)

3.2 Makes rulings and decisions in a timely manner, consistent with available resources.

3.3 Manages the immigration judge calendar efficiently, monitoring pending caseload, as needed.

3.4 Cooperates to achieve a productive work environment with other judges, court administrators, and staff members.

3.5 As assigned, performs special assignments and details, including conducting hearings of various types, at times on short notice, based on the needs of the agency.

3.6 Demonstrates appropriate use of courtroom technology.

Unsatisfactory:

Performance at this level shows a serious deficiency in one or more factors of this element.

Performance Goals
Immigration Judge

All goals are measured annually, from October 1 to September 30.

Satisfactory performance:

Case Completions: 700 cases per year.

and

Remand Rate (including BIA and Circuit Courts): less than 15%.

and

The immigration judge meets at least half of the following Benchmarks that are applicable to the judge's work during the rating period, as long as the judge's performance in each Benchmark is above the "Unsatisfactory" performance level.

Benchmarks:

- In 85% of non-status detained removal cases, no more than three days elapse from merits hearing to immigration judge case completion.
- In 85% of non-status, non-detained removal cases, no more than 10 days elapse from merits hearing to immigration judges case completion, unless completion is prohibited by statute (e.g. a cap on grants of relief) or completion is delayed due to a need for completion of background checks.
- In 85% of motions matters, no more than 20 days elapse from immigration judge receipt of the motion to adjudication of the motion.
- In 90% of custody redetermination cases, case is completed on the initial scheduled custody redetermination hearing date unless DHS does not produce the alien on the hearing date.
- In 95% of all cases, individual merits hearing is completed on the initial scheduled hearing date, unless, if applicable, DHS does not produce the alien on the hearing date.
- In 100% of credible fear and reasonable fear reviews, case is completed on the initial hearing date unless DHS does not produce the alien on the hearing date.

Needs improvement:

Case Completions: More than 560 but fewer than 700 cases per year.

or

Remand Rate (including BIA and Circuit Courts): between 15% and 20%.

or

The immigration judge fails to perform to the Satisfactory level in more than half of the applicable Benchmarks, as long as the judge's performance in each Benchmark is above the "Unsatisfactory" performance level.

Unsatisfactory performance:

Case Completions: fewer than 560 cases per year.

or

Remand Rate (including BIA and Circuit Courts): greater than 20%.

or

The immigration judge's performance in one or more of the following Benchmarks is Unsatisfactory.

Unsatisfactory Performance Benchmarks:

- In greater than 35% of non-status detained removal cases, more than three days elapse from merits hearing to immigration judge case completion.
- In greater than 35% of non-status, non-detained removal cases, more than 10 days elapse from merits hearing to immigration judge case completion, excepting cases where completion is prohibited by statute (e.g. a cap on grants of relief) or completion is delayed due to a need for completion of background checks.
- In greater than 35% of motions matters, more than 20 days elapse from immigration judge receipt of the motion to adjudication of the motion.
- In greater than 30% of custody redetermination cases, case is not completed on the initial scheduled custody redetermination hearing date excluding cases where DHS does not produce the alien on the hearing date.
- In greater than 25% of all cases, individual merits hearing is not completed on the initial scheduled hearing date, excluding cases where DHS does not produce the alien on the hearing date.
- In greater than 20% of credible fear and reasonable reviews, case is not completed on the initial hearing date, excluding cases where DHS does not produce the alien on the hearing date.

Immigration Judge Performance Measures Overview

Katherine H. Reilly, Deputy Director

1

IJ Performance Measures
2018 Executive Office for Immigration Review
Legal Training Program

PERFORMANCE GOALS

- Case Completions: 700 cases per year, *and*
- Remand Rate (including BIA and Circuit Courts): less than 15%, *and*
- The immigration judge meets at least half of the following **Benchmarks** that are applicable to the judge's work during the rating period, as long as the judge's performance in each Benchmark is above the "Unsatisfactory" performance level.

2

JUDICIAL BENCHMARKS

- In 85% of non-status detained removal cases, no more than three days elapse from merits hearing to immigration judge case completion.
- In 85% of non-status, non-detained removal cases, no more than 10 days elapse from merits hearing to immigration judges case completion, unless completion is prohibited by statute (e.g. a cap on grants of relief) or completion is delayed due to a need for completion of background checks.
- In 85% of motions matters, no more than 20 days elapse from immigration judge receipt of the motion to adjudication of the motion.
- In 90% of custody redetermination cases, case is completed on the initial scheduled custody redetermination hearing date unless DHS does not produce the alien on the hearing date.
- In 95% of all cases, individual merits hearing is completed on the initial scheduled hearing date, unless, if applicable, DHS does not produce the alien on the hearing date.
- In 100% of credible fear and reasonable fear reviews, case is completed on the initial hearing date unless DHS does not produce the alien on the hearing date.

3

IJ Performance Measures
2018 Executive Office for Immigration Review
Legal Training Program

What is a "Case Completion"?

- A **dispositive** IJ decision on the following types of cases: removal (RMV), deportation (DEP), exclusion (EXC), asylum only (AOC), withholding only (WHO), or rescission (REC).
- Dispositive immigration judge decisions include the following: Relief Granted, Grant, Conditional Grant, Final Grant of EOIR 42B/SUSP, Deny, Abandonment, Remove, Terminate/Terminated, Voluntary Departure, Admit, Withdraw, Exclude, and Deport.
- Subsequent completions are counted.
- Lead and riders are each counted as a completion.

4

*What a "Case Completion" is **NOT***

– change of venue, transfer, decision on a bond or "zero bond," administrative closure, or other administrative decision.

5

IJ Performance Measures
2018 Executive Office for Immigration Review
Legal Training Program

Remand Rate

Remands to the Immigration Judge

_____

Total Appeals*

* Total appeals includes appeals to the Board and Circuit Court. Interlocutory appeals, appeals on motions, and appeals on bonds are included.

6

Benchmark 1

- In 85% of non-status detained removal cases, no more than three days elapse from merits hearing to immigration judge case completion.
- "Status Case" = (1) one in which an immigration judge is required to continue the case pursuant to binding authority in order to await the adjudication of an application or petition by U.S. Citizenship and Immigration Services, (2) one in which the immigration judge is required to reserve a decision rather than completing the case pursuant to law or policy, or (3) one which is subject to a deadline established by a federal court order.
  - A status case: (1) has a 42B application with a reserved decision or an "RD" case identifier, (2) has a Franco Litigation ('FL') or Status Docket ('DS') case identifier, and/or (3) has a hearing with an accurately-used "7A" or "7B" adjournment code.

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Benchmark 2

- In 85% of non-status, non-detained removal cases, no more than 10 days elapse from merits hearing to immigration judges case completion, unless completion is prohibited by statute (e.g. a cap on grants of relief) or completion is delayed due to a need for completion of background checks.
  - Excluded if final hearing had an adjournment code of "24" (DHS to provide records/fingerprint check) or "36" (records check/fingerprints/overseas investigation).

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Benchmark 3

- In 85% of motions matters, no more than 20 days elapse from immigration judge receipt of the motion to adjudication of the motion.
- Because CASE does not track the date the judge receives the motion, the dashboard currently allows 35 days for the completion of the motion.

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Benchmark 4

- In 90% of custody redetermination cases, case is completed on the initial scheduled custody redetermination hearing date unless DHS does not produce the alien on the hearing date.
  - Hearings with adjournment code of "09" (alien in DHS custody not presented for hearing) or "59" (court closure) are not counted.

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Benchmark 5

- In 95% of all cases, individual merits hearing is completed on the initial scheduled hearing date, unless, if applicable, DHS does not produce the alien on the hearing date.
  - Hearings with an adjournment code of "09" (alien in DHS custody not presented for hearing) or "59" (court closure) are not counted.

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Benchmark 6

- In 100% of credible fear and reasonable fear reviews, case is completed on the initial hearing date unless DHS does not produce the alien on the hearing date.

Article 22

- 22.3.e. All aspects of each performance standard, including, if requested, specific examples of what is required to meet each element of each performance standard will be communicated preferably through a face-to-face meeting or tele-video conference with the affected Judge at the time the Judge receives the PWP.

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Article 22

- 22.4.a. The Agency shall appraise performance on a continuing basis, keep Judges informed of how they are measuring up to performance standards, and provide regular feedback that is constructive and meaningful, including identifying performance strengths and areas for improvement.

Article 22

- 22.4.d. In the event the supervisor has concerns about Judge performance, the supervisor should counsel the Judge in relation to his/her performance. The Agency will provide assistance to any employee whose work is below the Satisfactory level to improve his/her performance, including providing advice, identifying and providing supplemental training, and providing additional coaching, monitoring, mentoring, and other developmental activities, as appropriate, to help improve Judge performance. Such counselling and assistance will normally take place when a supervisor notices a decrease in performance.

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Article 22

- 22.5.d. Prior to rating a Judge below Satisfactory in any element, the rating official will give the Judge an opportunity to provide input regarding his/her performance, including any relevant factors that should be considered as described in subsection 22.3.h. of this Article.

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Article 22

- 22.3.h. When evaluating individual Judge performance with respect to numerical-based performance standards, the Agency will take into account relevant factors that may affect the Judge's ability to meet such performance standards, including:
  - availability of resources;
  - approved leave;
  - changes in the law that substantially increase the time required for adjudication of cases;
  - official duties that do not involve the adjudication of cases;
  - approved official time in accordance with Article 5;
  - that the Judge has been on the bench 24 months or less; and
  - other factors not in the control of the Judge (including, but not limited to, the availability of interpreters, respondents in detained settings, and security).

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Article 22

- 22.4.c. At the request of the Judge, the Agency will make available on a routine basis reports necessary for the Judge to assess his or her performance based on any numerical standards imposed by the Agency.

. . .

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The IJ Performance Dashboard

- The dashboard is data, NOT your performance rating.
- Data is pulled from CASE.
- Certain reports are available to show cases, by A number, that did or did not meet the goal.

- Dashboard demonstration.

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QUESTIONS?