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IMMIGRATION

Progress and Challenges in the Management of Immigration Courts and Alternatives to Detention Program

Statement of Rebecca Gambler, Director, Homeland
Security and Justice

GAO Highlights

Highlights of [GAO-18-701T](#), a testimony before the Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

The Department of Justice's EOIR is responsible for conducting immigration court proceedings, appellate reviews, and administrative hearings to fairly, expeditiously, and uniformly administer and interpret U.S. immigration laws. The Department of Homeland Security's ICE manages the U.S. immigration detention system, which houses foreign nationals, including families, whose immigration cases are pending or who have been ordered removed from the country. ICE implemented the ATD program in 2004 to be a cost-effective alternative to detention that uses case management and electronic monitoring.

This statement addresses (1) EOIR's caseload, including the backlog, and how EOIR manages immigration court operations, including hiring, workforce planning, and technology use; and (2) participation in and the cost of the ATD program and the extent to which ICE has measured the performance of the ATD program. This statement is based on two reports and a testimony GAO issued from November 2014 through April 2018, as well as actions agencies have taken, as of September 2018, to address resulting recommendations. For the previous reports and testimony, GAO analyzed EOIR and ICE data, reviewed documentation, and interviewed officials.

What GAO Recommends

GAO previously made recommendations to EOIR to improve its hiring process, among other things, and to ICE to improve ATD performance assessment. EOIR and ICE generally agreed and implemented or reported actions planned to address the recommendations.

View [GAO-18-701T](#). For more information, contact Rebecca Gambler at (202) 512-8777 or gambler@gao.gov.

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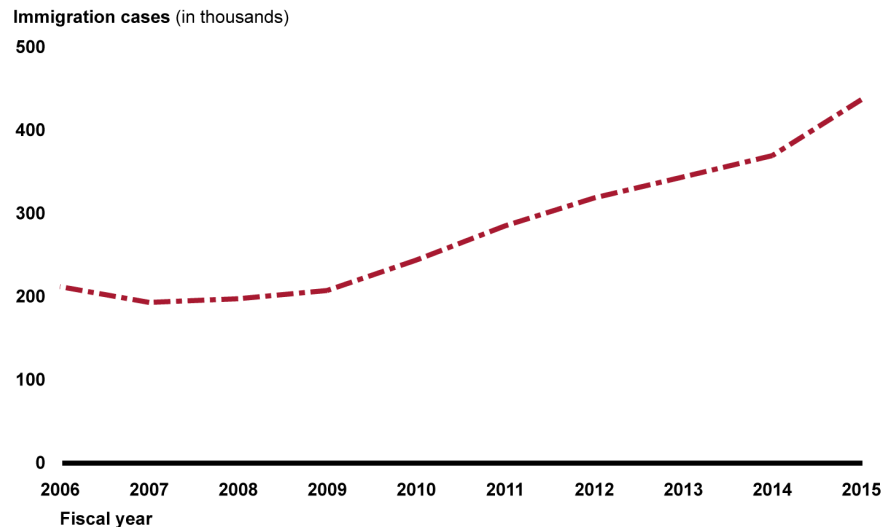
IMMIGRATION

Progress and Challenges in the Management of Immigration Courts and Alternatives to Detention Program

What GAO Found

In June 2017, GAO reported that the Executive Office for Immigration Review's (EOIR) immigration court case backlog—cases pending from previous years still open at the start of a new fiscal year—more than doubled from fiscal years 2006 through 2015 (see figure), primarily due to declining cases completed per year.

Immigration Courts' Case Backlog, Fiscal Years 2006 through 2015



Source: GAO analysis of Executive Office for Immigration Review caseload data. | GAO-18-701T

GAO also reported in June 2017 that EOIR could take several actions to address management challenges related to hiring, workforce planning, and technology utilization, among other things. For example, EOIR did not have efficient practices for hiring immigration judges. EOIR data showed that on average from February 2014 through August 2016, EOIR took more than 21 months to hire a judge. GAO also found that EOIR was not aware of the factors most affecting the length of its hiring process. GAO recommended that EOIR assess its hiring process to identify efficiency opportunities. As of January 2018, EOIR had made progress in increasing its number of judges but remained below its fiscal year 2017 authorized level. To better ensure that it accurately and completely identifies opportunities for efficiency, EOIR needs to assess its hiring process.

In November 2014, GAO reported that the number of aliens who participated in U.S. Immigration and Customs Enforcement's (ICE) Alternatives to Detention (ATD) program increased from 32,065 in fiscal year 2011 to 40,864 in fiscal year 2013. GAO also found that the average daily cost of the program—\$10.55—was significantly less than the average daily cost of detention—\$158—in fiscal year 2013. Additionally, ICE established two performance measures to assess the ATD program's effectiveness, but limitations in data collection hindered ICE's ability to assess program performance. GAO recommended that ICE collect and report on additional court appearance data to improve ATD program performance assessment, and ICE implemented the recommendation.

Chairman Johnson, Ranking Member McCaskill, and Members of the Committee:

I am pleased to be here today to discuss our work on the immigration court system and the Alternatives to Detention (ATD) program. Each year, the Department of Homeland Security (DHS) initiates hundreds of thousands of cases with the U.S. immigration court system to decide whether respondents—foreign nationals charged on statutory grounds of inadmissibility or deportability—are removable as charged; and, if so, should be ordered removed from the United States or granted any requested relief or protection from removal and permitted to lawfully remain in the country. Within DHS, U.S. Immigration and Customs Enforcement (ICE) operated on a budget of nearly \$3 billion in fiscal year 2017 to manage the U.S. immigration detention system, which houses foreign nationals, including families, whose immigration cases are pending or who have been ordered removed from the country.¹

With regards to the immigration court system, the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) is responsible for conducting immigration court proceedings, appellate reviews, and administrative hearings to fairly, expeditiously, and uniformly administer and interpret U.S. immigration laws and regulations. Within EOIR, immigration judges at 58 immigration courts located nationwide preside over removal proceedings for respondents detained by ICE or released pending the outcome of their proceedings, to determine their removability and eligibility for any relief being sought. In addition to removal proceedings, immigration judges also conduct certain other types of hearings, such as to review negative credible fear determinations and ICE custody and bond decisions, as well as make decisions on motions, such

¹GAO, *Immigration Detention: Opportunities Exist to Improve Cost Estimates*, [GAO-18-343](#) (Washington, D.C., Apr. 18, 2018). The Immigration and Nationality Act, as amended, provides DHS with broad discretion (subject to certain legal standards) to detain, or conditionally release aliens on bond, terms of supervision, or other alternatives to detention depending on the circumstances and statutory basis for detention or release. The law requires DHS to detain particular categories of aliens, such as those deemed inadmissible for certain criminal convictions or terrorist activity or ordered removed, during the removal period. See 8 U.S.C. §§ 1225, 1226, 1226a, 1231. For the purpose of this statement, we generally refer to aliens (i.e., persons who are not U.S. citizens or nationals) as foreign nationals.

as motions to reopen cases or reconsider prior decisions.² Members of EOIR’s Board of Immigration Appeals hear and issue decisions regarding appeals of immigration judges’ decisions and certain DHS decisions.

With regards to the ATD program, ICE is responsible for the oversight of foreign nationals who, if not detained in a detention facility, were released into the community. In November 2014, we reported that ICE uses one or more release options when it determines that a foreign national is not to be detained in ICE’s custody—including bond, order of recognizance, order of supervision, parole, or on condition of participation in the ATD program.³ ICE implemented the ATD program in 2004 to be a cost-effective alternative to detention that uses case management and electronic monitoring to ensure adult foreign nationals released into the community comply with their release conditions—including requirements to appear at immigration court hearings—and comply with final orders of removal from the United States.

The ATD program seeks to provide an enhanced monitoring option for those foreign nationals for whom ICE, or an immigration judge, has determined that detention is neither mandated nor appropriate, yet may need a higher level of supervision than that provided by the less restrictive release conditions, such as being released on bond. Foreign nationals enrolled in the ATD program may be subject to various types of supervision, including office visits, unscheduled home visits, and electronic monitoring—Global Positioning System (GPS) equipment or a telephonic reporting system.⁴ ICE generally makes all decisions about the appropriate level of supervision and type of technology with which a foreign national should be monitored. However, a private contractor carries out the case management for foreign nationals enrolled in one of

²If a DHS asylum officer determines that a foreign national in expedited removal proceedings has not established a credible fear of persecution or torture in their country of origin, the individual may request review of that negative determination by an immigration judge. See 8 U.S.C. §§ 1182(a)(6)(C), (a)(7), 1225(b); 8 C.F.R. §§ 1208.30, 208.30.

³GAO, *Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness*, [GAO-15-26](#) (Washington, D.C., Nov. 13, 2014).

⁴A foreign national enrolled in the telephonic reporting voice verification program will receive an automated telephone call at periodic intervals, which will require the foreign national to call the system back within a certain time frame; the computer will recognize the biometric voiceprint and register the “check-in.” It is not the purpose of the voice verification system to locate a foreign national.

the two components of the ATD program that were available at the time of our November 2014 report.

My statement today addresses: (1) EOIR's caseload, including the backlog, and how EOIR manages immigration court operations, including workforce planning, hiring, and technology utilization; and (2) participation in and the cost of the ATD program and the extent to which ICE has measured the performance of the ATD program. This statement is based on two reports and one testimony that we issued between November 2014 and April 2018, as well as actions agencies have taken, as of September 2018, to address our recommendations from the reports.⁵ To perform the work for our previous reports and testimony on the immigration courts, we analyzed data on immigration case receipts and completions from EOIR's case management system for fiscal years 2006 through 2015; examined documentation, such as contracts for workforce planning services; and interviewed EOIR and DHS officials from headquarters and six immigration courts. To perform the work for our previous report on ATD, we reviewed agency documents, analyzed ATD program data from fiscal years 2011 through 2013, and interviewed ICE officials responsible for the ATD program. More detailed information about our scope and methodology can be found in our reports and testimony. To determine actions the agencies have taken to address recommendations we made in these reports as of September 2018, we collected documentation and testimony from ICE and EOIR officials.

The work upon which this testimony is based was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁵GAO, *Immigration Courts: Observations on Restructuring Options and Actions Needed to Address Long-Standing Management Challenges*, [GAO-18-469T](#) (Washington D.C.: April 18, 2018); *Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges*, [GAO-17-438](#) (Washington D.C.: June 1, 2017); and [GAO-15-26](#).

The Immigration Court Backlog Grew and EOIR Has Faced Long-Standing Management Challenges

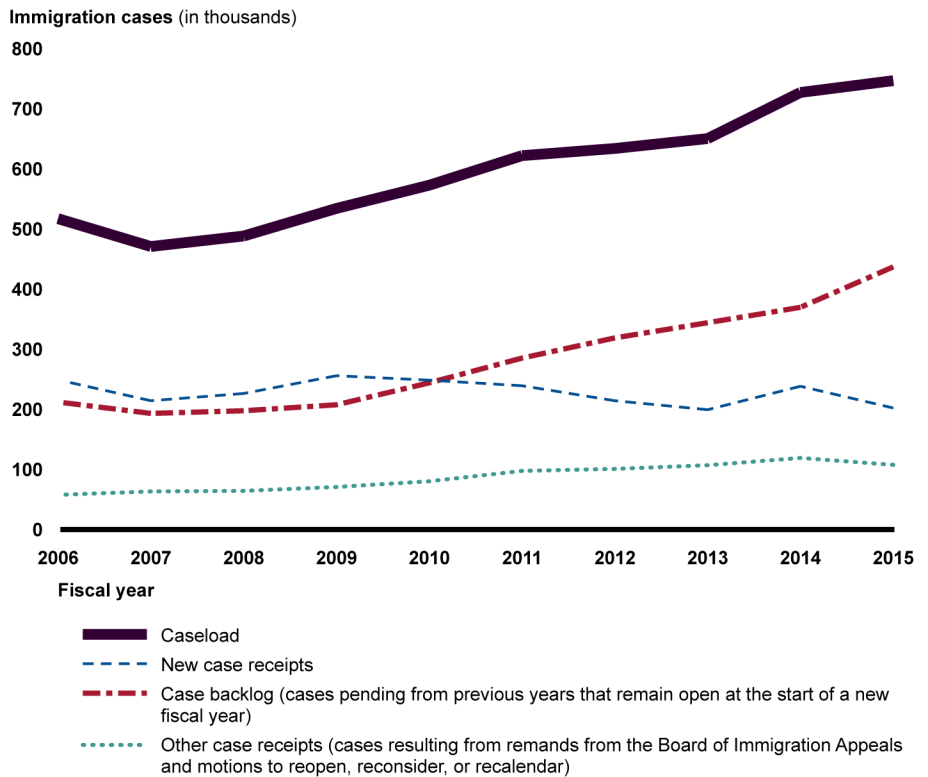
The Immigration Courts' Caseload and Case Backlog Grew As Immigration Courts Completed Fewer Cases

We reported in June 2017 that our analysis of EOIR's annual immigration court system caseload—the number of open cases before the court during a single fiscal year—showed that it grew 44 percent from fiscal years 2006 through 2015 due to an increase in the case backlog, while case receipts remained steady and the immigration courts completed fewer cases.⁶ For the purpose of our analysis, the immigration courts' annual caseload was comprised of three parts: (1) the number of new cases filed by DHS; (2) the number of other case receipts resulting from remands from the Board of Immigration Appeals and motions to reopen cases, reconsider prior decisions, or recalendar proceedings; and (3) the case backlog—the number of cases pending from previous years that remain open at the start of a new fiscal year.⁷ During this 10-year period, the immigration courts' overall annual caseload grew from approximately 517,000 cases in fiscal year 2006 to about 747,000 cases in fiscal year 2015, as shown in figure 1.

⁶See [GAO-17-438](#). Data for fiscal years 2006 through 2015 were the most current available at the time of our June 2017 review.

⁷We use the term caseload to denote the workload or volume of open cases before the courts during a given time period. These cases may or may not have been adjudicated by the courts during the time period. This definition may be different from how EOIR uses the term in its annual statistics yearbook or other publications. Cases that remain open at the start of a new fiscal year—pending cases—are cases that have not yet received an initial completion. An initial completion is an initial ruling on the case by an immigration judge. This does not include later motions to reopen, reconsider, or remand a case as those actions can occur many years after the initial decision and are out of the control of immigration court judges. See [GAO-17-438](#).

Figure 1: Immigration Courts' Annual Caseload and Component Parts, Fiscal Years 2006 through 2015



Source: GAO analysis of Executive Office for Immigration Review caseload data. | GAO-18-701T

We further reported in June 2017 that, according to our analysis, total case receipts remained about the same in fiscal years 2006 and 2015 but fluctuated over the 10-year period, with new case receipts generally decreasing and other case receipts generally increasing. Over the same period, EOIR's case backlog more than doubled. Specifically, immigration courts had a backlog of about 212,000 cases pending at the start of fiscal year 2006 and the median pending time for those cases was 198 days. By the beginning of fiscal year 2009, the case backlog declined slightly to 208,000 cases. From fiscal years 2010 through 2015, the case backlog grew an average of 38,000 cases per year. At the start of fiscal year 2015, immigration courts had a backlog of about 437,000 cases pending and the median pending time for those cases was 404 days.

The increase in the immigration court case backlog occurred as immigration courts completed fewer cases annually. In particular, the number of immigration court cases completed annually declined by 31

percent from fiscal year 2006 to fiscal year 2015—from about 287,000 cases completed in fiscal year 2006 to about 199,000 completed in 2015. According to our analysis, while the number of cases completed annually declined, the number of immigration judges increased between fiscal year 2006 and fiscal year 2015. This resulted in a lower number of case completions per immigration judge at the end of the 10-year period.

Additionally, we reported in June 2017 that initial immigration court case completion time increased more than fivefold between fiscal year 2006 and fiscal year 2015.⁸ Overall, the median initial completion time for cases increased from 43 days in fiscal year 2006 to 286 days in fiscal year 2015. However, case completion times varied by case type and detention status. For example, the median number of days to complete a removal case, which comprised 97 percent of EOIR's caseload for this time period, increased by 700 percent from 42 days in fiscal year 2006 to 336 days in fiscal year 2015. However, the median length of time it took to complete a credible fear case, which comprised less than 1 percent of EOIR's caseload during this period, took 5 days to complete in fiscal year 2006 as well as in fiscal year 2015. Initial case completion times for both detained and non-detained respondents more than quadrupled from fiscal year 2006 through fiscal year 2015.⁹ The median case completion time for non-detained cases, which comprised 79 percent of EOIR's caseload from fiscal year 2006 to fiscal year 2015, grew more than fivefold from 96 days to 535 days during this period. Similarly, the median number of days to complete a detained case, which judges are to prioritize on their dockets, quadrupled over the 10-year period, increasing from 7 days in fiscal year 2006 to 28 days in fiscal year 2015.

EOIR officials, immigration court staff, DHS attorneys, and other experts and stakeholders we interviewed provided various potential reasons why the case backlog may have increased and case completion times slowed in recent years. These reasons included:

- a lack of court personnel, such as immigration judges, legal clerks, and other support staff;
- insufficient funding to appropriately staff the immigration courts;

⁸Initial completion time refers to the time period between the date EOIR received the charging document from DHS and the date an immigration judge issued an initial ruling on the case.

⁹We include cases in which the respondent was originally detained and then later released among the non-detained cases.

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- a surge in new unaccompanied children cases, beginning in 2014, which may take longer to adjudicate than other types of cases;
 - frequent use of continuances—temporary case adjournments until a different day or time—by immigration judges; and
 - issues with the availability and quality of foreign language translation.

EOIR Has Initiated Actions to Improve Its Management of the Immigration Courts, but Has Faced Long-Standing Challenges

We also reported in June 2017 that EOIR has faced long-standing management and operational challenges. In particular, we identified challenges related to EOIR's workforce planning, hiring, and technology utilization, among other things. We recommended actions to improve EOIR's management in these areas. EOIR generally concurred and has initiated actions to address our recommendations. However, EOIR needs to take additional steps to fully implement our recommendations to help strengthen the agency's management and reduce the case backlog.

Workforce planning. In June 2017, we reported that EOIR estimated staffing needs using an informal approach that did not account for long-term staffing needs, reflect EOIR's performance goals, or account for differences in the complexity of court cases. For example, in developing its staffing estimate, EOIR did not calculate staffing needs beyond the next fiscal year or take into account resources needed to achieve the agency's case completion goals, which establish target time frames in which immigration judges are to complete a specific percentage of certain types of cases. Furthermore, we found that, according to EOIR data, approximately 39 percent of all immigration judges were eligible to retire as of June 2017, but EOIR had not systematically accounted for these impending retirements in its staffing estimate.

At the time of our review, EOIR had begun to take steps to account for long-term staffing needs, such as by initiating a workforce planning report and a study on the time it takes court staff to complete key activities. However, we found that these efforts did not align with key principles of strategic workforce planning that would help EOIR better address current and future staffing needs.¹⁰ EOIR officials also stated that the agency had begun to develop a strategic plan for fiscal years 2018 through 2023 that

¹⁰Strategic workforce planning focuses on developing long-term strategies for acquiring, developing, and retaining an organization's total workforce to meet the needs of the future. Key principles of strategic workforce planning include, for example, determining critical skills and competencies needed to achieve current and future programmatic results.

could address its human capital needs. We recommended that EOIR develop and implement a strategic workforce plan that addresses key principles of strategic workforce planning.

EOIR agreed with our recommendation. In February 2018, EOIR officials told us that they had established a committee and working group to examine the agency's workforce needs and would include workforce planning as a key component in EOIR's forthcoming strategic plan. Specifically, EOIR officials stated that the agency had established the Immigration Court Staffing Committee in April 2017 to examine how to best leverage its existing judicial and court staff workload model to address its short- and long-term staffing needs, assess the critical skills and competencies needed to achieve future programmatic results, and develop strategies to address human capital gaps, among other things. In February 2018, EOIR officials stated that the agency replaced this committee, which had completed its work, with a smaller working group of human resource employees charged with addressing the agency's strategic workforce planning. These are positive steps, but to fully address our recommendation, EOIR needs to continue to develop, and then implement a strategic workforce plan that: (1) addresses the agency's short- and long-term staffing needs; (2) identifies the critical skills and competencies needed to achieve future programmatic results; and (3) includes strategies to address human capital gaps. Once this strategic workforce plan is completed, EOIR needs to monitor and evaluate the agency's progress toward its human capital goals.

Hiring. Additionally, in our June 2017 report, we found that EOIR did not have efficient practices for hiring new immigration judges, which has contributed to immigration judges being staffed below authorized levels and to staffing shortfalls. For example, in fiscal year 2016, EOIR received an appropriation supporting 374 immigration judge positions but had 289 judges on board at the end of the fiscal year.¹¹ EOIR officials attributed

¹¹EOIR's fiscal year 2016 appropriation included funds for 55 new Immigration Judge Teams to be hired and on board by November 2016. See Explanatory Statement, 161 Cong. Rec. H9693, H9738 (daily ed. Dec. 17, 2015), accompanying Division B—Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016 (Pub. L. No. 114-113, div. B, 129 Stat. 2242, 2286-2333 (2015)). In December 2015, EOIR's Director indicated that the authorization of 55 new immigration judges for fiscal year 2016 would result in about 374 immigration judges nationwide if all such positions were filled. See Oversight of the Executive Office for Immigration Review: Hearing Before the Subcomm. on Immigration and Border Security of the H. Comm. on the Judiciary, No. 114-57, 114th Cong. 1st Sess., pg.15 (Dec. 3, 2015).

these gaps to delays in the hiring process. Our analysis of EOIR hiring data supported their conclusion. Specifically, we found that from February 2014 through August 2016, EOIR took an average of 647 days to hire an immigration judge—more than 21 months. As a result, we recommended that EOIR (1) assess the immigration judge hiring process to identify opportunities for efficiency; (2) use the assessment results to develop a hiring strategy that targets short- and long-term human capital needs; and (3) implement any corrective actions related to the hiring process resulting from this assessment.

In response to our report, EOIR stated that it concurred with our recommendation and was implementing a new hiring plan as announced by the Attorney General in April 2017 intended to streamline hiring. Among other things, EOIR stated that the new hiring plan sets clear deadlines for assessing applicants moving through different stages of the process and for making decisions on advancing applicants to the next stage, and allows for temporary appointments for selected judges pending full background investigations. In February 2018, EOIR indicated to us that it had begun to use the process outlined in its hiring plan to fill judge vacancies. The Attorney General also announced in April 2017 that the agency would commit to hire an additional 50 judges in 2018 and 75 additional judges in 2019. In January 2018, EOIR officials told us that the agency had a total of 330 immigration judges, an increase of 41 judges since September 2016. However, EOIR remained below its fiscal year 2017 authorized level of 384 immigration judges based on funding provided in fiscal years 2016 and 2017.¹² Additionally, the Consolidated Appropriations Act, 2018 provided funding for EOIR to hire at least 100 additional immigration judge teams, including judges and supporting staff, with a goal of fielding 484 immigration judge teams nationwide by 2019.¹³

¹²EOIR's fiscal year 2017 appropriation included funds for at least 10 new Immigration Judge Teams. See Explanatory Statement, 163 Cong. Rec. H3327, H3370 (daily ed. May 3, 2017), accompanying Division B—Commerce, Justice, Science, and Related Agencies Appropriations Act, 2017 (Pub. L. No. 115-31, div. B, 131 Stat. 135, 182-229). In November 2017, EOIR's then Acting Director stated that OCIJ was authorized 384 immigration judge positions. See Overview of the Executive Office for Immigration Review: Hearing Before the Subcomm. on Immigration and Border Security of the H. Comm. on the Judiciary, 115th Cong., 1st Sess., pg. 1 (Nov. 1, 2017).

¹³See Explanatory Statement, 164 Cong. Rec. H2045, H2090 (daily ed. March 22, 2018), accompanying Division B—Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018 (Pub. L. No. 115-141, div. B). The President's fiscal year 2019 budget proposed funding to allow EOIR to hire 75 new immigration judge teams.

In September 2018, EOIR reported it had a total of 351 immigration judges and was continuing to hire additional judges.

Hiring additional judges is a positive step; however, EOIR has not assessed its hiring process to identify opportunities for efficiency, and we found in our June 2017 report that EOIR was not aware of the factors most affecting its hiring process. For example, we reported that EOIR officials attributed the length of the hiring process to delays in the Federal Bureau of Investigation background check process, which is largely outside of EOIR's control. However, our analysis found that while background checks accounted for an average of 41 days from fiscal year 2015 through August 2016, other processes within EOIR's control accounted for a greater share of the total hiring time. For example, for the same period our analysis found that an average of 135 days elapsed between the date EOIR posted a vacancy announcement and the date EOIR officials began working to fill the vacancy.¹⁴ By assessing its hiring process, EOIR could better ensure that it is accurately and completely identifying opportunities for efficiency. To fully address our recommendation, EOIR will need to continue to improve its hiring process by (1) assessing the prior hiring process to identify opportunities for efficiency; (2) developing a hiring strategy targeting short- and long-term human capital needs; and (3) implementing corrective actions in response to the results of its assessment of the hiring process.

Technology utilization. In June 2017 we also reported on EOIR's technology utilization, including the agency's oversight of the ongoing development of a comprehensive electronic-filing (e-filing) capability—a means of transmitting documents and other information to immigration courts through an electronic medium, rather than on paper. EOIR identified the implementation of an e-filing system as a goal in 2001, but had not, as of September 2018, fully implemented this system. In 2001, EOIR issued an executive staff briefing for an e-filing system that stated that only through a fully electronic case management and filing system

¹⁴During this period of time, EOIR's Office of Human Resources reviews and prepares the applications for a subsequent review by hiring officials in the Office of the Chief Immigration Judge. According to EOIR officials, EOIR's vacancy announcements do not necessarily correspond to vacant positions. Rather, EOIR issues annual hiring announcements that cover a large number of immigration courts before they have determined whether those courts have open vacancies. When EOIR seeks to fill a vacancy or a new judge position, officials begin by determining where the judge should be located. Then, EOIR officials use the previously-issued vacancy announcements to begin identifying candidates for the positions.

would the agency be able to accomplish its goals. This briefing also cited several benefits of an e-filing system, including, among other things, reducing the data entry, filing, and other administrative tasks associated with processing paper case files; and providing the ability to file court documents from private home and office computers.

As we reported in June 2017, EOIR initiated a comprehensive e-filing effort in 2016—the EOIR Court and Appeals System (ECAS)—for which EOIR had documented policies and procedures governing how its primary ECAS oversight body—the ECAS Executive Committee—would oversee ECAS through the development of a proposed ECAS solution. However, we found that EOIR had not yet designated an entity to oversee ECAS after selection of a proposed solution during critical stages of its development and implementation. We recommended that in order to help ensure EOIR meets its cost and schedule expectations for ECAS, the agency identify and establish the appropriate entity to oversee ECAS through full implementation. EOIR concurred and stated that it had selected and convened the EOIR Investment Review Board to serve as the ECAS oversight body with the EOIR Office of Information Technology directly responsible for the management of the ECAS program.

EOIR officials told us in February 2018 that the board convened in October 2017 and January 2018 to discuss, among other things, the ECAS program. However, as we reported in June 2017, EOIR officials previously told us that the EOIR Investment Review Board was never intended to oversee ECAS implementation due to the detailed nature of this system’s implementation. As of September 2018, EOIR has not demonstrated its selection of, or how the EOIR Investment Review Board is to serve as the oversight body for ECAS. Additionally, we recommended in June 2017 EOIR develop and implement a plan that is consistent with best practices for overseeing ECAS to better position the agency to identify and address any risks and implement ECAS in accordance with its cost, schedule, and operational expectations. As of September 2018, EOIR has not indicated that it has developed such a plan.

ATD Participation Increased and Costs Less than Detention; ICE Established Program Performance Measures

Participation in the ATD Program Increased and Average Daily Cost of the Program Was Lower than the Average Daily Cost of Detention

In November 2014 we reported that the number of foreign nationals who participated in the ATD program increased from 32,065 in fiscal year 2011 to 40,864 in fiscal year 2013 in part because of increases in either enrollments or the average length of time foreign nationals spent in one of the program's components.¹⁵ For example, during this time period, the number of foreign nationals enrolled in the component of the program that was run by a contractor who maintained in-person contact with the foreign national and monitored the foreign national with either GPS equipment or a telephonic reporting system, increased by 60 percent. In addition, the average length of time foreign nationals spent in the other component of the program, which offered a lower level of supervision at a lower contract cost but still involved ICE monitoring of foreign nationals using either telephonic reporting or GPS equipment provided by a contractor, increased by 80 percent—from about 10 months to about 18 months. ICE officials stated that how long a foreign national is in the ATD program before receiving a final decision on his or her immigration proceedings depends on how quickly EOIR can process immigration cases.

We also found in our November 2014 report that the average daily cost of the ATD program was \$10.55 in fiscal year 2013, while the average daily

¹⁵These numbers include all foreign nationals in the ATD program for each of these years—regardless of the year in which they were initially enrolled. See [GAO-15-26](#).

cost of detention was \$158.¹⁶ While our analyses showed that the average daily cost of the ATD program was significantly less than the average daily cost of detention, the length of immigration proceedings affected the cost-effectiveness of the ATD program to varying extents under different scenarios. As previously discussed, immigration judges are to prioritize detained cases, and our June 2017 report found that EOIR data showed that median case completion times for non-detained cases were greater than for detained cases. Accordingly, the length of immigration proceedings for foreign nationals in detention may be shorter than those in the ATD program.

Specifically, in our November 2014 report, we conducted two analyses to estimate when the cost of keeping foreign nationals in the ATD program would have surpassed the cost of detaining a foreign national in a facility. Under our first analysis, we considered the average costs of ATD and detention and the average length of time foreign nationals in detention spent awaiting an immigration judge's final decision. We found that the ATD program would have surpassed the cost of detention after a foreign national was in the program for 1,229 days in fiscal year 2013—significantly longer than the average length of time foreign nationals spent in the ATD program in that year (383 days).¹⁷ In our second analysis, we considered the average costs of ATD and detention and the average length of time foreign nationals spent in detention—regardless of whether they had received a final decision from an immigration judge—since some foreign nationals may not be in immigration proceedings or may not have

¹⁶We found in our November 2014 report that the cost estimate for ATD was higher than what ICE reported, as ICE's estimate was based upon the contract costs for ATD divided by the total number of participation days and did not include personnel costs. Our estimate incorporated both the cost of ATD personnel, as well as the cost of the ATD contract. Further, ICE reported the official average daily cost for detention was \$118 a day, but this cost did not include personnel costs. The detention personnel costs included in our analysis included personnel who work at detention facilities, as well as support staff who support detention-related activities but were not working at the detention facilities. The ATD program and detention cost per day estimates did not include expenditures paid toward agency-wide overhead activities, such as rent or information technology services.

¹⁷Our analysis took into consideration the average daily cost of \$10.55 for the ATD program and the average daily cost of \$158 for placing a foreign national in a detention facility. Our analysis also considered the average time EOIR reported it took between DHS filing a charging document and an immigration judge issuing a final decision. For foreign nationals detained at the time of the final decision—but who may not have been detained for the entire time leading up to the completion of their case—the average was 82 days in fiscal year 2013. Specifically, we multiplied the average cost of detention with the average time foreign nationals detained at the time of the final decision waited for his or her final decision, and divided this number by the average cost of ATD.

reached their final hearing before ICE released them from detention.¹⁸ ICE reported that the average length of time that a foreign national was in detention in fiscal year 2013 was 29 days. Using this average, we calculated the average length of time foreign nationals could have stayed in the ATD program before they surpassed the cost of detention would have been 435 days in fiscal year 2013.¹⁹

ICE Established ATD Performance Measures, and Took Actions to Ensure the Measures Monitored All Foreign Nationals Enrolled in the Program

We found in our November 2014 report that ICE established two program performance measures to assess the ATD program's effectiveness in (1) ensuring foreign national compliance with court appearance requirements and (2) ensuring removals from the United States, but limitations in data collection hindered ICE's ability to assess overall program performance.²⁰

Compliance with court appearances. For the component of the ATD program managed by the contractor, data collected by the ATD contractor from fiscal years 2011 through 2013 showed that over 99 percent of foreign nationals with a scheduled court hearing appeared at their scheduled court hearings while participating in the ATD program. The court appearance rate dropped slightly to over 95 percent of foreign nationals with a scheduled final hearing appearing at their hearing. However, we reported that ICE did not collect similar court compliance data for foreign nationals in the component of the ATD program that ICE was responsible for managing—which accounted for 39 percent of the overall ATD program in fiscal year 2013. As a result, we recommended that ICE collect and report data on foreign national compliance with court appearance requirements for participants in this component of the ATD program.

As of June 2017, ICE reported that the ATD contractor was collecting data on foreign nationals' court appearance compliance for foreign nationals in both components of the ATD program, and at that time, was

¹⁸For example, a foreign national would not be in immigration proceedings if an immigration judge temporarily removed a case from an immigration judge's calendar (administrative closure). On May 17, 2018, the Attorney General determined that, except as specifically provided in regulation or a judicial settlement, immigration judges and the Board of Immigration Appeals lack general authority to administratively close removal proceedings. See *Matter of CASTRO-TUM*, 27 I. & N. Dec. 271 (AG 2018).

¹⁹Specifically, we multiplied the average cost of detention with the average time foreign nationals spent in detention, and divided this number by the average cost of ATD.

²⁰[GAO-15-26](#).

collecting data for approximately 88 percent of foreign nationals that were awaiting a hearing. ICE officials stated that they did not expect that 100 percent of foreign nationals in the ATD program would be tracked for court appearance compliance by the contractor because there may be instances where ICE has chosen to monitor a foreign national directly, rather than have the contractor track a foreign national's compliance with court appearance requirements. Officials stated that ICE officers may decide to monitor a foreign national directly because they determined that it is in the government's best interest, or it was fiscally responsible when a foreign national's court date was far in the future and court tracking conducted by the contractor would be costly. In July 2017, ICE reported that they assessed whether ICE officers that directly monitor foreign nationals in the ATD program had reliable data to determine court appearance compliance and found no practical or appropriate way to obtain such data without devoting a significant amount of ICE's limited resources. Although ICE is not collecting court appearance compliance data for all foreign nationals in both components of the ATD program, as of July 2017, it has met the intent of our recommendation by collecting and reporting on all available data on the majority of foreign nationals in both components of the ATD program.

Removals from the United States. For this program performance measure, a removal is attributed to the ATD program if the foreign national (1) was enrolled in ATD for at least 1 day, and (2) was removed or had departed voluntarily from the United States in the same fiscal year, regardless of whether the foreign national was enrolled in ATD at the time the foreign national left the country. The ATD program met its goal for removals in fiscal years 2012 and 2013.²¹ For example, in fiscal year 2013, ICE reported 2,901 removals of foreign nationals in the ATD program—surpassing its goal of 2,899 removals.

ATD program performance measures provide limited information about the foreign nationals who are terminated from the ATD program prior to receiving the final disposition of their immigration proceedings, or who

²¹There was no removal goal in fiscal year 2011, as this was the baseline year.

were removed or voluntarily departed from the country.²² Specifically, ICE counts a foreign national who was terminated from the program and was subsequently removed from the United States toward the ATD removal performance measure as long as the foreign national was in the program during the same fiscal year he or she was removed from the country.²³ However, foreign nationals who were terminated from the program do not count toward court appearance rates if they subsequently do not appear for court. ICE officials reported that it would be challenging to determine a foreign national's compliance with the terms of his or her release after termination from the ATD program given insufficient resources and the size of the nondetained foreign national population. In accordance with ICE guidance, staff resources are instead directed toward apprehending and removing foreign nationals from the United States who are considered enforcement and removal priorities.

Chairman Johnson, Ranking Member McCaskill, and Members of the Committee, this completes my prepared statement. I would be happy to respond to any questions you or the members of the committee may have.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Rebecca Gambler at (202) 512-8777 or gablerr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Taylor Matheson (Assistant Director), Tracey Cross, Ashley Davis, Paul Hobart, Sasan J. "Jon" Najmi, and Michele Fejfar. Key contributors for the previous work on which this testimony is based are listed in each product.

²²ICE officers determine when a foreign national's participation in the program should be terminated. ICE terminates foreign nationals from the ATD program who are removed from the United States, depart voluntarily, are arrested by ICE for removal, or receive a benefit or relief from removal. ICE may also terminate a foreign national from the program when foreign nationals are arrested by another law enforcement entity, abscond, or otherwise violate the conditions of the ATD program. Further, ICE may terminate a foreign national from the program if ICE officers determine the foreign national is no longer required to participate. A foreign national terminated from one component of the ATD program could be subsequently enrolled in the other or same component at a later date.

²³According to ICE officials, after a foreign national is terminated from the ATD program, the information obtained while the foreign national was in the program (i.e., contact information) may assist ICE in locating a foreign national, as necessary, and accordingly, this is why these foreign nationals are included in the official removal count.

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