

GAO

Report to the Chairman, Committee on
Finance, U. S. Senate

August 2006

**EXECUTIVE OFFICE
FOR IMMIGRATION
REVIEW**

**Caseload Performance
Reporting Needs
Improvement**





Highlights of [GAO-06-771](#), a report to the Chairman, Committee on Finance, United States Senate

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Caseload Performance Reporting Needs Improvement

Why GAO Did This Study

Within the Department of Justice’s (DOJ) Executive Office for Immigration Review (EOIR), the Office of the Chief Immigration Judge (OCIJ) is responsible for managing the 53 immigration courts located throughout the United States where over 200 immigration judges adjudicate individual cases involving alleged immigration law violations. This report addresses: (1) in recent years, what has been the trend in immigration courts’ caseload; (2) how does OCIJ assign and manage the immigration court caseload; and (3) how does EOIR/OCIJ evaluate the immigration courts’ performance? To address these issues, GAO interviewed EOIR officials; reviewed information on caseload trends, caseload management, and court evaluations; and analyzed caseload data, case completion goal data, and OCIJ court evaluation reports.

What GAO Recommends

To more accurately and consistently reflect immigration courts’ progress in the timely adjudication of immigration cases, GAO recommends that the Director of EOIR maintain appropriate documentation to demonstrate the accuracy of case completion goal reports; and clearly state what cases are being counted in the reports. EOIR agreed with GAO’s recommendations and provided technical comments, which were included as appropriate.

www.gao.gov/cgi-bin/getrpt?GAO-06-771.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Paul L. Jones at (202) 512-8777 or jonespl@gao.gov.

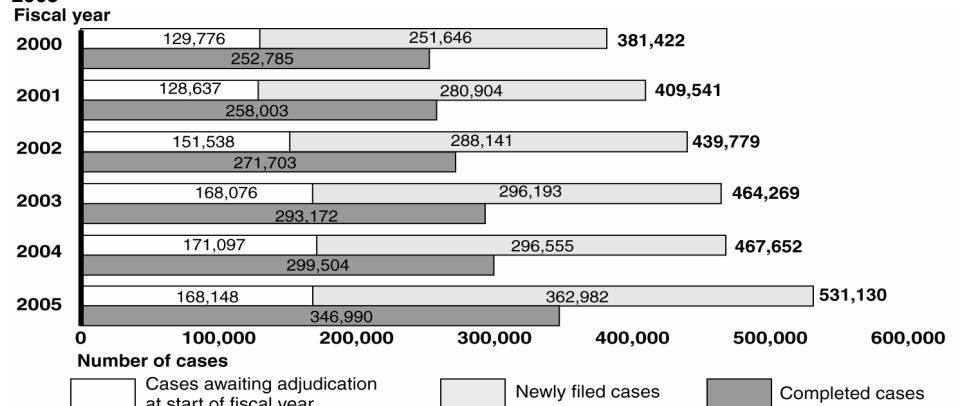
What GAO Found

From fiscal years 2000 to 2005, despite an increase in the number of immigration judges, the number of new cases filed in immigration courts outpaced cases completed. During this period, while the number of on-board judges increased about 3 percent, the courts’ caseload climbed about 39 percent from about 381,000 cases to about 531,000 cases. The number of completed cases increased about 37 percent while newly filed cases grew about 44 percent. EOIR attributes this growth in part to enhanced border enforcement activities. The courts reduced the number of proceedings awaiting adjudication for more than 4 years, but did not meet their goal to complete all proceedings more than 3 years old by December 31, 2005.

OCIJ relies primarily on an automated system to assign cases to immigration judges within a court. To balance the judges’ caseload, OCIJ considers the number of newly filed cases and cases awaiting adjudication from prior years, historical data, and the type and complexity of cases. To manage its growing caseload, OCIJ, among other means, details judges from their assigned court to a court in need of assistance and uses available technology such as video conferencing. According to OCIJ, if it recognizes a pattern of sustained need, it recommends that EOIR establish a court in a new location.

EOIR evaluates the performance of the immigration courts based on the immigration courts’ success in meeting case completion goals. GAO’s review of EOIR’s quarterly reports on these goals identified a recurring inconsistency between reports as well as other inconsistencies. EOIR explained that these inconsistencies were due to a variety of factors, including the exemption of different categories of cases from the goals in different quarters, delays in data entry, and programming errors in the calculation of the data. Because EOIR has changed its criteria for cases covered by these goals and only maintained the queries for its current reporting process, GAO could not replicate past case completion reports to determine their accuracy. The inconsistencies indicate that EOIR should maintain appropriate documentation to demonstrate the reports’ accuracy.

Immigration Court Caseload versus Completed Cases, All Courts, Fiscal Years 2000 through 2005



Source: GAO analysis of EOIR data.

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Abbreviations

ACIJ	Assistant Chief Immigration Judge
BIA	Board of Immigration Appeals
CEU	Court Evaluation Unit
DHS	Department of Homeland Security
DOJ	Department of Justice
EOIR	Executive Office for Immigration Review
ICEP	Immigration Court Evaluation Program
INS	Immigration and Naturalization Service
OCIJ	Office of the Chief Immigration Judge

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United States Government Accountability Office
Washington, DC 20548

August 11, 2006

The Honorable Charles E. Grassley
Chairman
Committee on Finance
United States Senate

Dear Mr. Chairman:

The former U.S. Immigration and Naturalization Service (INS) estimated that about 7 million unauthorized immigrants resided in the United States as of January 2000 and a recent study¹ estimated that the unauthorized immigrant population was about 11.5 to 12 million in 2006. These totals include those who entered the United States illegally and those who entered legally but overstayed their authorized period of stay. Identifying this increased number of unauthorized immigrants and adjudicating their cases has placed enormous demands on federal agencies responsible for enforcing and administering immigration laws. This demand continues to grow as an estimated 700,000 to 850,000 immigrants enter illegally or overstay their authorized period in this country each year.

The Department of Homeland Security (DHS) is responsible for identifying and removing unauthorized immigrants who are in the United States in violation of immigration laws. Immigrants identified by DHS as subject to removal from the United States are charged by DHS with immigration violations and given notice that they are to appear before an immigration judge to address the charges.² The Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) through its immigration

¹Jeffrey S. Passel, *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.: Estimates Based on the March 2005 Current Population Survey*, Pew Hispanic Center (Washington, D.C.: March 2006).

²Immigration judges are appointed by the Attorney General for the purpose of conducting formal, quasi-judicial proceedings involving the rights of immigrants to enter or remain in the United States.

courts is responsible for administering and interpreting immigration laws and regulations in the cases that come before the courts.³

Within EOIR, the Office of the Chief Immigration Judge (OCIJ) is responsible for managing the 53 immigration courts located throughout the United States, where over 200 immigration judges adjudicated about 350,000 individual cases⁴ involving alleged immigration law violations in fiscal year 2005. The immigration courts are faced with the challenge of adjudicating their caseload (all cases awaiting adjudication) in a timely manner while at the same time ensuring that the rights of the immigrants appearing before them are protected.

In your request, you expressed interest about the management and performance of the immigration courts. In this report, we address the following questions:

1. In recent years, what has been the trend in immigration courts' caseload?
2. How does OCIJ assign and manage immigration court caseload?
3. How does EOIR/OCIJ evaluate the immigration courts' performance?

To address these objectives, we met with officials from DOJ's EOIR headquarters to obtain information and documentation on caseload trends, caseload management, and evaluation of immigration courts. To gain a better understanding of the operations and management of immigration courts, we also visited four immigration courts—Arlington in Arlington, Virginia; Newark in Newark, New Jersey; and two courts in New York City, New York. We selected these four courts to include courts

³Until March 1, 2003, there were two DOJ components with immigration responsibilities: INS and EOIR. Under the Homeland Security Act of 2002, signed into law on November 25, 2002, INS was transferred to the new DHS as of March 2003. The Attorney General retained authority over EOIR, within DOJ, with no immediate changes to EOIR's components or jurisdiction. At DHS, the INS enforcement functions became part of the U.S. Immigration and Customs Enforcement and the U.S. Customs and Border Protection. The immigration services function of the former INS is housed in the U.S. Citizenship and Immigration Services at DHS.

⁴For this report, the term "cases" refers to proceedings, bond redeterminations, and motions to reopen or reconsider (for definitions of these terms see the glossary in app. II).

varying in size,⁵ based on the number of immigration judges. At these locations, we observed court proceedings and met with immigration judges, court administrators, and attorneys that litigate cases before the immigration courts—attorneys from the Office of Chief Counsel of DHS’s Immigration and Customs Enforcement and private bar attorneys. We also interviewed representatives of the National Association of Immigration Judges, the American Immigration Lawyers Association, and the American Bar Association, Commission on Immigration. For the first objective, we obtained and analyzed caseload data contained in EOIR’s case management system. To assess the reliability of those data needed to answer this objective, we (1) performed electronic testing for obvious errors in accuracy and completeness, (2) reviewed related documentation about the data and the systems that produced them, including a contractor’s report on data verification of the case management system, and (3) interviewed agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for the purposes of our report. For the second objective, we obtained and reviewed policies, procedures, and other documents about caseload management, as well as staffing data for fiscal years 2000 through 2005. For the third objective, we obtained and reviewed policies, procedures, and other documents about the evaluation of immigration courts’ performance. We also obtained and analyzed EOIR’s case completion goal reports for fiscal years 2001 through 2005 (as discussed later in this report, our review raised questions about these reports) and reviewed the relevant internal control standards for such reports. We also reviewed OCIJ’s reports for court evaluations conducted in fiscal years 2000 and 2004 and EOIR’s data on complaints against immigration judges for fiscal years 2001 through 2005.

We conducted our work from March 2005 through August 2006 in accordance with generally accepted government auditing standards. (See app. I for more details on our scope and methodology.)

Results in Brief

From fiscal year 2000 to fiscal year 2005, despite an increase in the number of immigration judges and the number of cases completed by the immigration courts, the number of newly filed cases outpaced cases completed. During the same time period when the number of on-board

⁵EOIR categorizes courts according to the number of judges. While some courts only have a single judge, small courts have 2 to 4 judges; medium courts, 5 to 14 judges; and large courts, 15 or more judges.

judges increased about 3 percent, the courts' caseload increased 39 percent from about 381,000 cases at the end of fiscal year 2000 to about 531,000 cases at the end of fiscal year 2005. The average number of cases per on-board immigration judge increased about 35 percent, from 1,852 in fiscal year 2000 to 2,505 in fiscal year 2005. The number of completed cases increased by about 37 percent, from about 253,000 cases in fiscal year 2000 to about 347,000 cases in fiscal year 2005. During the same period, the number of newly filed cases grew about 44 percent from about 252,000 to about 363,000. According to EOIR, the increase in the number of newly filed cases may be attributed to several factors, including enhanced border and interior enforcement actions and changes in immigration laws and regulations. Starting in fiscal year 2003, the immigration courts set a series of goals aimed at completing all proceedings older than 3 years by December 31, 2005. At the end of fiscal year 2003, the courts had 13,031 proceedings awaiting adjudication 3 or more years. The courts reduced the number of proceedings awaiting adjudication for more than 4 years, but did not meet their goal to complete all proceedings more than 3 years old by December 31, 2005. On December 31, 2005, 9,412 proceedings were 3 or more years old.

OCIJ relies primarily on an automated system to assign cases to immigration judges within a court. To balance the caseload among judges, OCIJ considers the number of newly filed cases and cases awaiting adjudication from prior years, historical data, and the nature of the caseload, such as the type of cases prevalent in the court and their complexity. To manage its growing caseload, OCIJ, among other means, details judges from their assigned court to a court in need of assistance and uses available technology such as videoconferencing. According to OCIJ, if it recognizes a pattern of sustained need, it recommends that EOIR establish a court in a new location. During fiscal years 2000 through 2005, EOIR established three new immigration courts.

EOIR/OCIJ evaluates the performance of the immigration courts based on the immigration courts' success in meeting case completion goals and through peer evaluations. EOIR documents the case completion goal data for the courts' 11 case types in internal quarterly reports; the courts' success in meeting 4 of the 11 case types that have been identified as adjudication priorities is published in DOJ's annual budget report and "Performance and Accountability Report," which tracks DOJ's performance as required by the Government Performance and Results Act of 1993. Our review of EOIR's internal quarterly reports identified a recurring inconsistency between reports as well as other inconsistencies. EOIR cited several factors to explain the inconsistencies: the "live,"

constantly changing nature of the EOIR data base; the exemption of different categories of cases from the case completion goals in different quarters; deletions of cases double entered by DHS in the automated scheduling system; reconciliations due to changes to date fields to update cases in the data base; delays in data entry; and programming errors in the calculation of the data. Over time EOIR has changed the criteria for cases covered by case completion goals and only maintained the queries for its current reporting process. Consequently, we could not replicate EOIR's past reports to determine the accuracy of the case completion goal data. The inconsistencies indicate that EOIR should maintain appropriate documentation to demonstrate the accuracy of data reported by EOIR. A second means EOIR uses to evaluate the courts' performance is peer evaluation—its Immigration Court Evaluation Program (ICEP). The ICEP team conducts an onsite visit where it evaluates court operations including the court's organizational structure and workflow processes and prepares a report of its findings and recommendations.

To more accurately and consistently reflect immigration courts' progress in the timely adjudication of immigration cases, we recommend that the Director of EOIR (1) maintain appropriate documentation to demonstrate the accuracy of case completion goal reports and (2) clearly state what cases are being counted in the reports.

After reviewing a draft of this report, EOIR responded in an e-mail that it concurred with GAO's recommendations. EOIR also provided technical comments, which we have included as appropriate.

Background

Under the authority of the Attorney General, EOIR interprets and administers federal immigration laws by conducting formal quasi-judicial proceedings, appellate reviews, and administrative hearings. EOIR consists of three primary components: OCIJ, which is responsible for managing the immigration courts located throughout the United States where immigration judges⁶ adjudicate individual cases; the Board of Immigration Appeals (BIA), which primarily conducts appellate reviews of

⁶As attorneys, immigration judges are appointed under Schedule A in the excepted service. To be minimally qualified, an applicant must have a Bachelor of Laws or a Juris Doctor degree and be duly licensed and authorized to practice law as an attorney under the laws of a state, territory, or the District of Columbia; be a U.S. citizen; and have a minimum of 7 years relevant post-bar admission legal experience at the time the application is submitted, with one year experience equivalent to the GS-15 level in the federal service.

immigration judge decisions;⁷ and the Office of the Chief Administrative Hearing Officer, which adjudicates immigration-related employment cases such as employer sanctions for employment of unauthorized immigrants. EOIR was established on January 9, 1983, as a result of an internal DOJ reorganization. This reorganization combined the BIA with the immigration judge function previously performed by the former INS. The Office of the Chief Administrative Hearing Officer was added in 1987. A Director who reports directly to the Deputy Attorney General heads EOIR.

EOIR's mission is to provide for the fair, expeditious, and uniform interpretation and application of immigration law. In support of this mission, one of EOIR's strategic goals is to adjudicate all cases in a timely manner while assuring due process and fair treatment for all parties. According to its strategic plan for fiscal years 2005 through 2010, EOIR plans to accomplish this goal by, among other things, (1) eliminating case backlog by the end of fiscal year 2008,⁸ (2) implementing improved caseload management practices, and (3) adjudicating cases within specified time frames.

As of October 1, 2005, EOIR had 1,182 authorized full-time permanent positions. OCIJ was the largest of the three primary components with 789 positions. The majority of these 789 positions (745) were in the immigration courts located throughout the nation. Of these 745 positions,⁹ 225 were immigration judges.¹⁰ The remaining court staff included 45

⁷BIA also hears appeals of certain decisions made by DHS district directors or other immigration officials.

⁸According to EOIR, it plans to systematically reduce the number of cases pending longer than 1 year in the immigration courts.

⁹In fiscal year 2005, the immigration courts also had 31 judicial law clerks who assisted immigration judges by researching case law and providing other legal support as required.

¹⁰As of May 1, 2006, there were 230 authorized immigration judges.

court/deputy court administrators, 367 assistants/clerks,¹¹ and 108 court interpreters.¹²

OCIJ provides overall program direction, articulates policies and procedures, and establishes priorities for the immigration courts. OCIJ is headed by a Chief Immigration Judge who carries out these responsibilities with the assistance and support of two Deputy Chief Immigration Judges and nine Assistant Chief Immigration Judges (ACIJ).¹³ The ACIJs serve as the principal liaison between OCIJ headquarters and the immigration courts and have supervisory authority over the immigration judges, the court administrators, and judicial law clerks.¹⁴ At the court level, court administrators manage the daily court operations as well as the administrative staff. Currently there are 53 immigration courts including 17 courts that are co-located with a detention center, correctional facility, or service processing center and a court located at EOIR headquarters in Falls Church, Virginia,¹⁵ and numerous other hearing locations.¹⁶ The sizes of the immigration courts vary. In fiscal year 2005, the smallest of the 53 immigration courts (Fishkill in New York) consisted of 2 authorized legal assistants.¹⁷ In contrast, the largest court (New York

¹¹The following staff is included: clerks, legal technicians, supervisory legal technicians, and administrative assistants.

¹²The primary function of the interpreters is to interpret in a manner that allows the immigrant, immigration judge, and attorneys to understand the proceedings as if no language barrier existed. However, according to EOIR, most interpreters perform clerical tasks when they are not interpreting. In addition to the authorized interpreters, the immigration courts use contract interpreters to provide language translation. EOIR estimates that about 85 percent of the courts' cases require the use of an interpreter.

¹³As of May 1, 2006, three of the nine ACIJ positions were vacant.

¹⁴While the ACIJs have supervisory authority for the immigration judges, the judges are not subject to a performance appraisal system (excluded by the Office of Personnel Management pursuant to 5 C.F.R. § 430.202(c)). The ACIJs also do not review the immigration judges' decisions, which are reviewed only on appeal before the BIA.

¹⁵Unlike the other immigration courts, the headquarters immigration court does not accept the filing of charging documents. Charging documents are filed at the other immigration courts. The headquarters court assists the other courts by adjudicating some of their cases.

¹⁶In addition to the immigration courts, EOIR has designated other locations where hearings can take place. EOIR refers to these locations as hearing locations.

¹⁷The Fishkill immigration court does not have an immigration judge authorized. Rather, the judge in the Ulster immigration court in New York normally hears cases from that court. However, the Ulster judge position is currently vacant; therefore, cases from both the Fishkill and Ulster courts are heard by judges from the New York City immigration court. In addition, the Fishkill court shares a court administrator with two other courts.

City in New York) consisted of the following authorized staff: 27 immigration judges, 1 court administrator, 1 deputy court administrator, 46 assistants/clerks, and 8 court interpreters.

The immigration judges are responsible for hearing all cases that come before them, and act independently in deciding the cases. They hear a wide range of immigration related cases that consist primarily of removal proceedings¹⁸ conducted to determine whether certain immigrants are subject to removal from the country.¹⁹ If DHS alleges a violation of immigration law(s) that is subject to adjudication by the immigration courts, it serves the immigrant with a charging document, ordering the individual to appear before an immigration judge. The charging document is also filed with the immigration court having jurisdiction over the immigrant,²⁰ and advises the immigrant of, among other things, the nature of the proceeding; the alleged act(s) that violated the law; the right to an attorney at no expense to the government; and the consequences of failing to appear at scheduled hearings.²¹ Removal proceedings generally require an immigration judge to make: (1) a determination of the immigrant's removability from the United States and (2), thereafter, if the immigrant applies, a decision whether the immigrant is eligible for a form(s) of relief from removal such as asylum, adjustment of status, cancellation of removal, or other remedies, or voluntary departure, which is an alternative

¹⁸In fiscal year 2005, proceedings accounted for about 93 percent of all cases, with bond redeterminations and motions accounting for about 5 and 2 percent, respectively. About 99 percent of the proceedings were removal proceedings. See the glossary in app. II for definitions of proceedings, bond redeterminations, and motions to reopen or reconsider.

¹⁹Beginning April 1, 1997, the distinction between exclusion and deportation proceedings was eliminated, and immigrants subject to removal from the United States were all placed in removal proceedings. Thus, according to EOIR, the removal proceeding is generally the sole procedure for determining whether an immigrant is inadmissible, deportable, or eligible for relief from removal. Certain cases are subject to pre-April 1, 1997, legal standards and are therefore still referred to as exclusion or deportation proceedings.

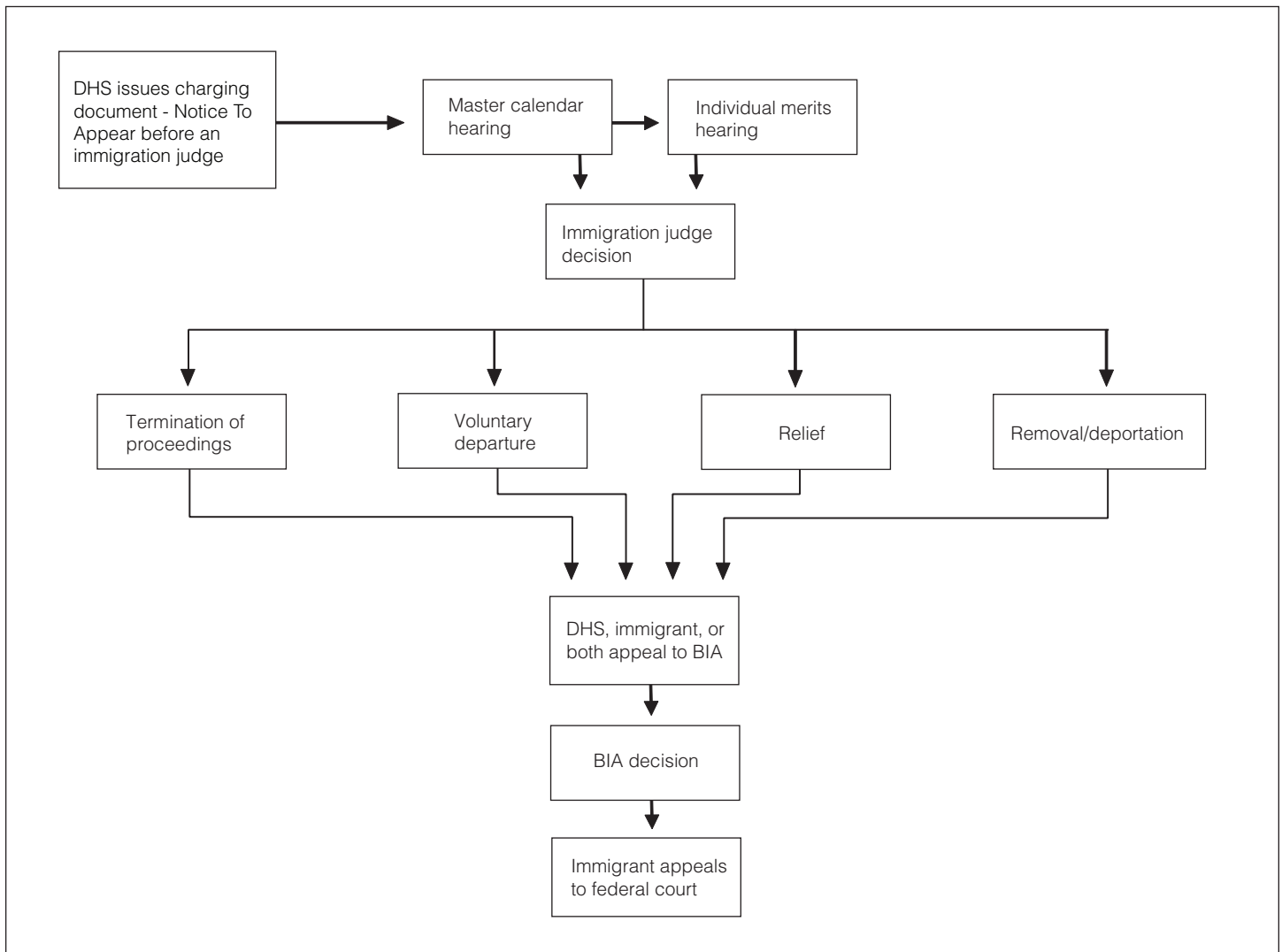
²⁰The immigration court that receives the case has jurisdiction over the case unless a change of venue has been requested by the immigrant or DHS. Once a case has been assigned to an immigration judge, only the assigned judge may rule on a motion for a change of venue, unless the judge is unavailable to complete his or her duties.

²¹EOIR does not have jurisdiction over an immigrant's case unless DHS files a charging document with EOIR.

to removal.²² Once an immigration judge orders the removal of an immigrant, DHS is responsible for carrying out the removal.

²²According to EOIR, in most removal proceedings, immigrants concede that they are removable, but then apply for one or more forms of relief from removal. Immigration law provides relief from removal to immigrants who meet specific eligibility criteria. The immigrant has the burden of proving that he or she is eligible for relief under the law, and usually that he or she deserves such relief as an exercise of discretion. For definitions of asylum, adjustment of status, cancellation of removal, and voluntary departure, see the glossary in app. II.

Figure 1: Steps in the Immigration Court Removal Proceedings Process.



Source: GAO analysis of EOIR data.

As shown in figure 1, immigration court removal proceedings generally involve an initial master calendar hearing and, subsequently, an individual merits hearing. During the master calendar hearing, the immigration judge is to ensure that the immigrant understands the immigration violation charges and provide the immigrant information on available free of charge or low-cost legal representation in the area. During the individual merits hearing, the merits of the case are presented before the immigration judge by the immigrant, or the immigrant’s legal representative, and the DHS

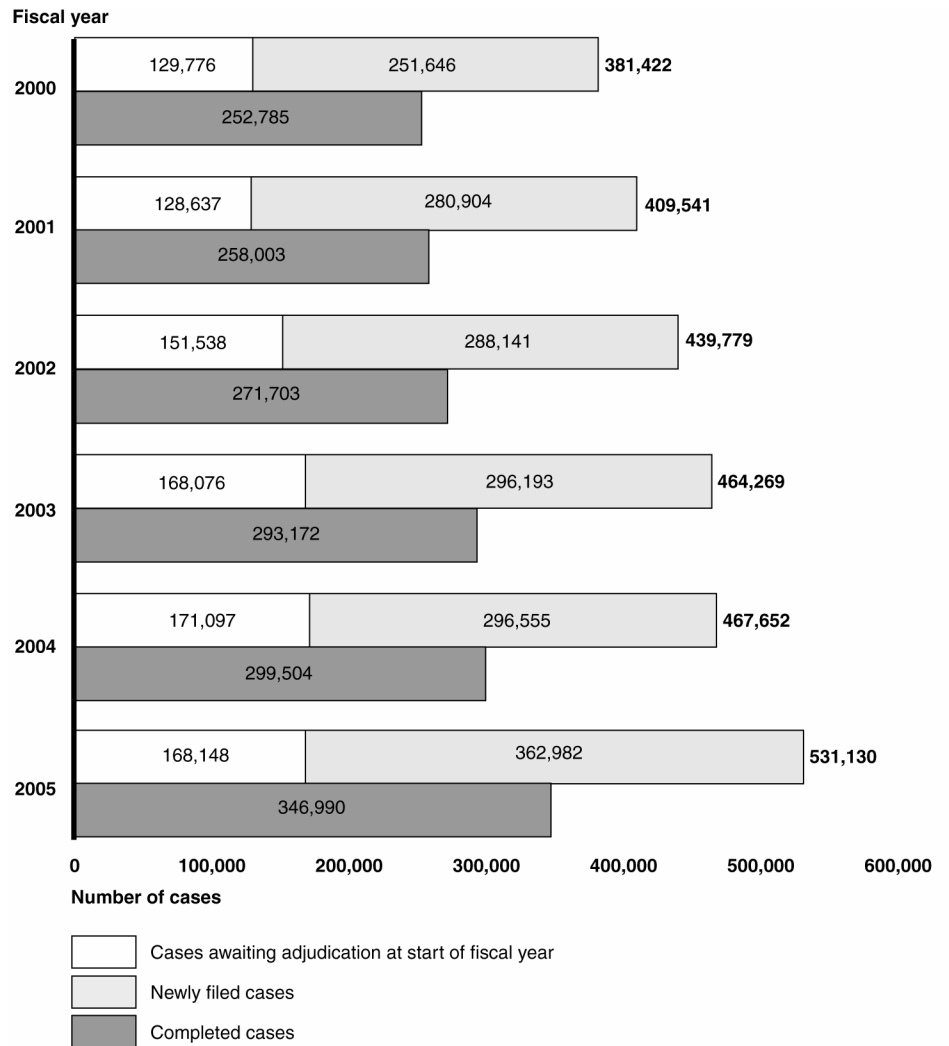
attorney who is prosecuting the case. DHS must prove that an immigrant is in the United States unlawfully and should be removed. In most cases, the immigration judge issues an oral decision at the conclusion of the individual merits hearing. The immigration judge may order the alien removed or may grant relief. If the immigration judge decides that removability has not been established by DHS, he or she may terminate the proceedings. Once a case is completed, if the immigrant or DHS disagrees with the immigration judge's decision, either party or both parties may appeal the decision to the BIA. If the BIA ruling is adverse to the immigrant, the immigrant generally may file an appeal in the federal court system. According to EOIR, if DHS disagrees with the BIA's ruling, in rare instances, the case may be referred to the Attorney General for review.

Immigration Court Caseload Continues to Increase; Some Progress Has Been Made in Completing Oldest Proceedings Awaiting Adjudication

Immigration Courts' Caseload Increases as More Newly Filed Cases Are Received than Cases Completed

From fiscal year 2000 through fiscal year 2005, the number of newly filed cases outpaced cases completed. Consequently, the immigration courts' caseload increased about 39 percent, from about 381,000 cases at the end of fiscal year 2000 to about 531,000 cases at the end of fiscal year 2005. During the same period, in 4 of 6 years, the number of newly filed cases received was greater than the number of cases completed. The number of newly filed cases grew about 44 percent, from about 252,000 in fiscal year 2000, to about 363,000 in fiscal year 2005. On the other hand, the number of completed cases increased about 37 percent, from about 253,000 cases in fiscal year 2000, to about 347,000 cases in fiscal year 2005. (See fig. 2.)

Figure 2: Immigration Court Caseload versus Completed Cases, All Courts, Fiscal Years 2000 through 2005



Source: GAO analysis of EOIR data.

According to EOIR officials, the annual increase in newly filed cases can be driven by several factors. These factors include enhanced border and interior enforcement actions, changes in immigration laws and regulations, and emerging or special situations.

The greatest increase (about 47,000 or 16 percent) in the number of cases completed by the immigration courts occurred between fiscal years 2004 and 2005. This increase is in large part because of an increase in the

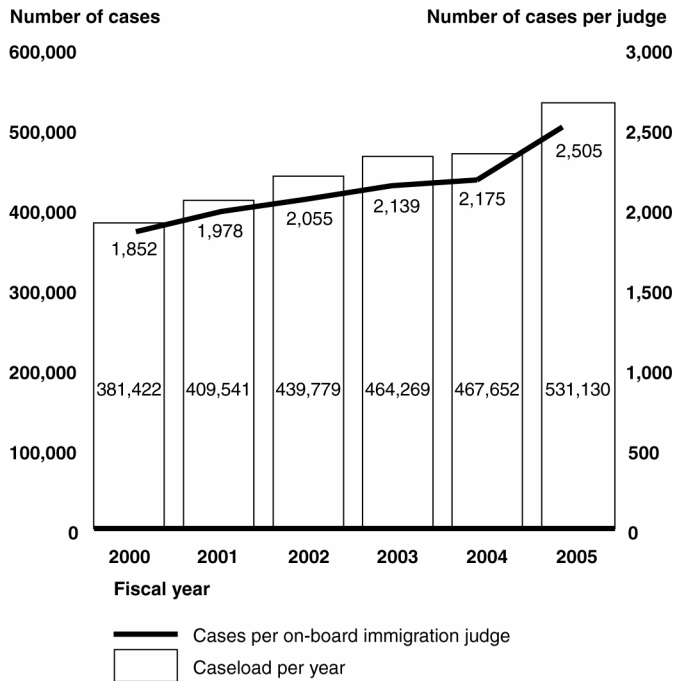
number of *in absentia* decisions—in cases where a judge orders an immigrant removed from the United States when the immigrant has not appeared for a scheduled removal hearing.²³ The number of *in absentia* cases increased about 80 percent from about 70,000 cases in fiscal year 2004 to about 126,000 cases in fiscal year 2005. According to EOIR officials, *in absentia* cases require less time to complete because there is limited or no conflicting evidence for the court to hear and review when the immigrant does not appear to respond to the charge of removability.

While there has been an increase in the number of immigration judges since fiscal year 2000, the immigration court caseload has grown at a much more rapid pace. The number of on-board immigration judges increased by 6 (about 3 percent), from 206 to 212²⁴ between fiscal years 2000 and 2005, while the immigration courts' caseload increased about 39 percent during the same period. As a result, the average number of cases per on-board immigration judge has increased slightly more than 35 percent, from 1,852 in fiscal year 2000 to 2,505 in fiscal year 2005 (see fig. 3). In particular, the case-per-judge ratios were generally higher in southwestern border courts where the proportion of *in absentia* cases is also among the highest in the country. For example, in fiscal year 2005, the Harlingen and San Antonio immigration courts in Texas each had a case-per-judge ratio of over 8,000 compared to the average for all courts of 2,505.

²³According to EOIR, there was an increase in the number of DHS charging documents that did not have the address of the immigrant, which, in turn, resulted in an *in absentia* decision. By regulation, if the immigrant fails to provide his or her address as required by law, actual written notice is not required for an immigration judge to proceed with an *in absentia* hearing.

²⁴During the same period, the number of authorized immigration judges increased about 7 percent, from 211 to 225.

Figure 3: Immigration Court Caseload Compared to Average Number of Cases per On-board Immigration Judge, Fiscal Years 2000 through 2005



Source: GAO analysis of EOIR data.

OCIJ Set Goals to Reduce the Age of Proceedings Awaiting Adjudication; despite Some Progress, OCIJ Had Not Met Its Goals

OCIJ has taken steps to reduce the age of proceedings awaiting adjudication. According to an OCIJ memorandum, in March 2003, the immigration courts established a priority for completing its older proceedings. The courts set a series of goals to complete all proceedings older than 4 years; since then, they have introduced additional goals targeting proceedings older than 3 years. OCIJ’s goals are summarized in table 1.

Table 1: OCIJ Goals to Eliminate Proceedings Awaiting Adjudication over 3 Years Old

Age of proceeding	Completion deadline
Greater than 6 years	September 30, 2003
Greater than 5 years	March 31, 2004
Greater than 4 years	November 30, 2004
Greater than 3 and ½ years	June 30, 2005
Greater than 3 years	December 31, 2005

Source: GAO based on EOIR data.

Our analysis of the immigration courts' proceedings data shows that while the courts have achieved success in reducing the number of proceedings older than 4 years between fiscal year 2003 and December 31, 2005, the courts did not meet their goal of completing all proceedings more than 3 years old by December 31, 2005 (see table 2). At the end of fiscal year 2003, the courts had 13,031 proceedings awaiting adjudication 3 or more years. Between fiscal year 2003 and December 31, 2005, the number of proceedings 6 or more years old was cut about 48 percent, from 1,058 to 547; the number of proceedings between 5 and 6 years old dropped to about a quarter of its fiscal year 2003 level from 2,375 to 547; and the number of proceedings between 4 and 5 years old decreased about 37 percent (3,185 to 2,010). However, at the end of December 2005, 9,412 proceedings remained open after 3 or more years.²⁵

Table 2: Number of Proceedings Awaiting Adjudication 3 or More Years, by Age, All Courts, End of Fiscal Years 2003 through 2005 and as of December 31, 2005

	Age of proceeding					Total
	3 - 3.5 years	3.5 - 4 years	4 - 5 years	5 - 6 years	6 or more years	
September 30, 2003	3,914	2,499	3,185	2,375	1,058	13,031
September 30, 2004	5,878	2,959	2,122	742	619	12,320
September 30, 2005	5,607	3,246	2,395	625	621	12,494
December 31, 2005	3,945	2,363	2,010	547	547	9,412

Source: GAO analysis of EOIR data.

²⁵ According to EOIR, there has been an increase in the number of visa petitions pending at DHS for beneficiaries who are also in removal proceedings. An immigration judge cannot proceed on the immigrant's request for relief from removal in the form of adjustment of status until the visa petition has been adjudicated by DHS.

OCIJ Monitors Caseload to Assign Cases to Judges Accordingly, and Uses a Variety of Means to Address Growing Caseload

OCIJ Monitors Caseload and Assigns Cases to Judges within Courts

OCIJ monitors immigration courts' caseload to assign cases to judges within a court. According to OCIJ, in general, the need for court personnel is driven by the immigration courts' caseload. Specifically, OCIJ considers the number of newly filed cases and cases awaiting adjudication from prior years, historical data, and the nature of the caseload, such as the type of cases prevalent in the court and their complexity. As newly filed cases are received, OCIJ said that it evaluates the impact of these cases on the allocation of resources at the immigration courts. For example, according to OCIJ, through experience, it has learned that the immigration courts will have difficulty meeting and maintaining its case adjudication time goals when immigration judges have more than 1,050 and 1,500 newly filed cases involving non-detained and detained immigrants, respectively. Therefore, OCIJ attempts to keep the list of cases that appears on the judges' calendars under these levels. In addition, on the basis of feedback from the courts, the responsible ACIJ notifies OCIJ headquarters of any unexpected increases in newly filed cases in a given court due to emerging or special situations, such as mass migration or enhanced border enforcement actions. According to OCIJ, if a pattern of need emerges, it reassigns personnel or provides other assistance, if available.

OCIJ noted that the judges' calendar of cases might vary among courts due to the type and complexity of the cases received. Thus, the case-per-judge ratios will be higher in some courts than others. Courts with a high number of change of venue cases (cases that are transferred from one court to another court) and/or *in absentia* cases that require less time to complete have a higher volume of cases per judge than courts with more merits asylum cases and other complex cases awaiting adjudication. For example, judges in the Harlingen and San Antonio immigration courts located in Texas are assigned a higher number of cases because these courts have a high number of change of venue and *in absentia* cases adjudicated in a given year compared to the San Francisco, California, New York City, New York, and Miami, Florida, immigration courts, where

most cases are merits asylum hearings that require more time to complete. In fiscal year 2005, judges in the Harlingen and San Antonio immigration courts had, on average, over 8,000 cases compared to judges in San Francisco, New York City, and Miami immigration courts who had, on average, about 1,200, 1,500, and 2,400 cases, respectively.

Within each immigration court, newly filed cases are generally assigned to immigration judges through an automated process; however, some flexibility exists. After a charging document has been filed, either DHS through an interactive scheduling system or immigration court staff are to enter data on newly filed cases in EOIR's case management system.²⁶ The case management system automatically assigns newly filed cases within each court on the basis of the next available judge's calendar, rotating through all of the judges to equalize the number of cases assigned to each immigration judge. In addition, OCIJ stated that court staff has the flexibility to manually assign newly filed cases to a specific immigration judge rather than use the automated system. For example, the court administrator may manually schedule some cases to correct inequities that occurred in the number and type of cases that were assigned to a judge by the automated system. Also, cases that are re-entering the immigration court system are generally manually assigned to the immigration judge who had initially adjudicated the case.²⁷ Further, if a judge already has a heavy caseload, OCIJ officials said that an ACLJ, through authority delegated by the Chief Immigration Judge, may decide to exclude a judge from assignment of newly filed cases through the automated system.

EOIR's Strategic Plan for fiscal years 2005 through 2010 states that it intends to consider changes in workload, establish better methods to project future workload, and adjust resources accordingly. Additionally, EOIR proposes to refine its current caseload management practices to ensure that cases move through the system as efficiently as possible. For example, EOIR plans to study the rates at which immigrants are failing to appear at their court proceedings and to schedule cases so that court time is used more efficiently. EOIR officials stated they are in the early stages of implementing the objectives outlined in the Strategic Plan.

²⁶With the exception of two courts, the same case management system is used. Courts in Arlington, Virginia, and Seattle, Washington, are piloting a new case management system.

²⁷A case that has a motion to reopen or a case remanded from the BIA is usually assigned to the immigration judge that had initially adjudicated the case.

OCIJ Details Judges, Uses Technology, Transfers Responsibility for Hearing Locations, and Recommends Establishing New Courts to Address Growing Caseload

OCIJ's process for managing court caseload is to monitor the caseload of each immigration court to identify those courts that are unable to meet their established goals for timely case adjudication, and provide assistance to these courts in meeting their goals. According to OCIJ, it primarily addresses immigration judge staff shortages at immigration courts through detailing judges from their assigned court to a court in need of assistance. Details usually occur to cover situations such as emerging needs that result in a surge of newly filed cases; staff shortages in a court due to illness, retirements, or annual leave; or the need to hear cases in other designated hearing locations. OCIJ advertises the detail opportunities to solicit volunteers. In selecting from the judges that volunteer,²⁸ OCIJ said that it considers the needs of these immigration judges' respective assigned courts. Volunteers from courts that have heavy caseloads and are not meeting their goals for timely case adjudication will usually not be selected. According to EOIR, it does not maintain readily available data on the number and duration of immigration judge details.

OCIJ also uses available technology to address staff shortages. Many courts have the capability to use videoconferencing to conduct immigration hearings in other courts and locations such as detention centers and correctional facilities throughout the country. As of May 1, 2006, EOIR had videoconferencing capability at 47 of the 53 immigration courts, and 77 other locations where immigration hearings were conducted. According to OCIJ, videoconferencing allows immigration judges in one court to assist another immigration court with an unusually heavy caseload, on an ad hoc basis. For example, the two immigration judges in the court located at EOIR headquarters in Falls Church, Virginia, use videoconferencing to address short-term resource needs as they arise in the other immigration courts nationwide. OCIJ said that it will use this technology where available and feasible until this remedy is deemed insufficient to meet the needs of the courts. OCIJ also said that it has used videoconferencing as an interim measure while it assesses the ongoing need to establish a new immigration court. According to EOIR's fiscal year 2005 performance work plans, ACIJs were expected to increase the usage of video technology to address case requirement needs of immigration courts.

In addition, EOIR transfers responsibility for some hearing locations among immigration courts to more evenly distribute the caseload among

²⁸OCIJ will select judges for details if it does not get volunteers.

immigration judges. For example, in July 2003, EOIR redistributed the Detroit, Michigan, immigration court's caseload by transferring cases from Cincinnati and Cleveland, Ohio, to the Arlington, Virginia, court; and cases from Louisville, Kentucky, to the Memphis, Tennessee, court.²⁹ According to EOIR, unless the parties are notified otherwise, immigration hearings continue to be conducted at the same hearing locations in each of these states, with immigration judges traveling to those locations or holding hearings by videoconference when appropriate. EOIR stated that these transfers are infrequent.

When a pattern of sustained need emerges, OCIJ officials said that they recommend to EOIR establishing a court in a new location, usually a previous hearing location—especially if there is a significant distance to travel, along with significant travel costs. A permanent court is usually recommended if the hearing location can no longer be effectively covered by an existing immigration court (e.g., if a court fails to meet its goals for timely case adjudication). However, according to OCIJ, whether a new court can be established depends on the available resources. During fiscal years 2000 through 2005, EOIR established three new immigration courts.³⁰ For example, in July 2005, EOIR established the newest immigration court in Salt Lake City, Utah, which was previously a hearing location of the Denver immigration court in Colorado. EOIR recently said that it will open a new court in Cleveland, Ohio, in August 2006 and is requesting funds to open four additional courts in fiscal year 2007.

²⁹According to EOIR, in fiscal year 2003, the Detroit immigration court had 5,916 newly filed cases including 603 for Cincinnati, 1,385 for Cleveland, and 553 for Louisville. The Detroit court, which had three immigration judges, lacked the physical facilities to expand beyond the three judges. To address the Detroit court's large caseload, OCIJ added an additional judge to the Arlington court and transferred the Cincinnati and Cleveland cases to the Arlington court. The Louisville cases were transferred to the Memphis court, which had two judges with 1,420 newly filed cases.

³⁰According to EOIR, if a new immigration court opens, the Chief Immigration Judge will announce transfer opportunities and set a deadline for transfer requests. The Chief Immigration Judge will consider the transfer requests in order of seniority. EOIR said that it also closed two immigration courts during this period.

**EOIR’s Case
Completion Goal
Reports Contain
Some Inconsistencies;
Peer Evaluations
Used to Evaluate
Court Operations**

EOIR/OCIJ evaluates the immigration courts’ performance based on their success in meeting case completion goals and through peer evaluations of court operations. In addition, EOIR/OCIJ monitors complaints against immigration judges.

**EOIR’s Case Completion
Goal Reports Contain
Some Inconsistencies**

To assist in ensuring that the immigration courts adjudicate cases fairly and in a timely manner—one of the agency’s stated strategic objectives³¹—EOIR has established target time frames for each of OCIJ’s 11 case types.³² Each case type has an associated case completion goal (the percentage of cases to be completed within the established time frame). (See table 3 for a list of case types and their corresponding goals.) The case completion goals were formulated beginning in June 2000, when EOIR’s Director recognized that not all case types had completion time frames. Some case types had completion time frames established by law; others had long-standing agency completion time frames, while some had none. Consequently, EOIR’s Director solicited input from OCIJ regarding the impact and feasibility of establishing completion goals across all case types. OCIJ, in turn, solicited input from the immigration judges and court administrators. Over a 2-year period, EOIR collaborated with OCIJ to develop case completion goals for immigration courts covering the 11 case types. In May 2002, OCIJ formally implemented these goals. The courts’ success in meeting the goals for 4 of the 11 case types have been identified as adjudication priorities and are published in DOJ’s annual budget report and “Report on Performance and Accountability.”³³ The “Report on

³¹The goals were also established to assist management in identifying areas that need improvement and in allocating resources better.

³²The case types are based on the status of the immigrant, for example, whether the immigrant is detained or non-detained and whether the immigrant has filed an application for relief.

³³In these reports, EOIR combined two of the four case types.

Performance and Accountability” presents DOJ’s performance progress as required by the Government Performance and Results Act of 1993.³⁴

Table 3: Current Targeted Case Completion Goals and Completion Rates

Case type	Definition	Time goal	Percent of cases to be completed within the time goal
Detained without applications for relief	A detained immigrant does not request relief from the removal.	30 days ^a	90
Non-detained without applications for relief	A non-detained immigrant does not request relief from the removal.	240 days ^b	90
Credible fear review	An immigrant seeking to enter the United States does not have any documents or valid documents to enter but expresses a “credible fear” of persecution or torture or an intention to apply for asylum; the immigrant is referred for an interview with a DHS asylum officer. If the asylum officer believes that the immigrant has not established a credible fear and a supervisory asylum officer concurs, the immigrant may request a review of that determination by an immigration judge. If the immigration judge determines there is “credible fear,” the immigrant will be placed in removal proceedings to apply for asylum.	7 days ^c	100
Claimed status review	An immigrant claims to be a U.S. citizen, to have been lawfully admitted for permanent residence, to have been admitted as a refugee, or to have been granted asylum, and DHS determines that the immigrant has no such claim; the immigrant can obtain a review by the immigration judge.	120 days ^b	90
Detained with applications for relief other than expedited asylum	A detained immigrant requests relief from removal for reasons other than that of expedited asylum.	120 days ^a	90
Non-detained with applications for relief other than expedited asylum	A non-detained immigrant requests relief from removal for reasons other than expedited asylum.	240 days ^b	60
Institutional hearing program	The removal process for an immigrant incarcerated by federal, state, or municipal correctional authorities as a result of a conviction for a criminal offense. The hearings are held inside correctional institutions prior to the immigrant completing his or her criminal sentence.	Prior to release ^a	90

³⁴The four case types identified as adjudication priorities for OCLJ are immigration court cases involving (1) detained immigrants that do not file an application for relief, (2) immigrants seeking expedited asylum affirmatively as a form of relief, (3) immigrants seeking expedited asylum defensively as a form of relief, and (4) the Institutional Hearing Program.

Case type	Definition	Time goal	Percent of cases to be completed within the time goal
Motions to reopen	Either the immigrant or DHS requests the reopening of a case previously heard by an immigration judge. The motion asks the judge to consider newly filed or previously unavailable facts or evidence in a case.	60 days ^b	90
Custody hearings bonds	A detained immigrant's release from custody is contingent on posting a bond to ensure the immigrant's appearance at the immigration hearing. The immigrant asks the immigration judge to reconsider the bond set by DHS.	3 business days ^b	100
Expedited asylum affirmative	An immigrant requests asylum by filing an asylum application with DHS Asylum Office. If the asylum application is not approved by DHS, the asylum application is referred to EOIR within 75 days of filing.	180 days ^c	90
Expedited asylum defensive	An immigrant requests asylum by filing an asylum application directly to EOIR in removal proceedings.	180 days ^c	90

Source: GAO based on EOIR data.

^aA long-standing agency goal established prior to the formal implementation of the case completion goals.

^bAn internal agency goal established during the formal case completion goal implementation process.

^cA goal established by statute and/or regulation.

EOIR documents the immigration courts' success in meeting the case completion goals for the 11 case types in internal quarterly reports. According to EOIR, the case completion goal reports are intended to measure whether the courts are meeting their completion goals, not to define the total caseload of the courts (all cases awaiting adjudication).³⁵ In developing these reports, EOIR management decided to exclude from the measurement certain categories of cases that, due to extenuating circumstances, are not expected to be completed within the established goals. For example, DHS is responsible for conducting background and security checks on all immigrants in immigration court proceedings. Since

³⁵EOIR's Office of Planning Analysis and Technology uses data from its case management system to calculate how well the courts are meeting the case completion goals. The office uses a structure query language to convert data from its case management system and to generate the case completion goal data. Structure query language is a standardized language for retrieving and updating data in relational databases and tables, which allows a user to generate counts and statistics, select records or fields, and merge tables. For each of the 11 case types, EOIR's queries count the total number of cases awaiting adjudication at the start of a quarter, the total number of newly filed cases, the total number of completions (both cases awaiting adjudication at the start of a quarter and newly filed cases), the total number of cases that were completed within goal, and the total number of cases awaiting adjudication at the end of a quarter.

the courts cannot grant an applicant relief from removal until all checks have been favorably completed, these cases are exempted from case completion goals. As a result, the number of cases covered by the quarterly reports is less than the total court caseload. Additionally, depending on what cases are excluded from the case completion goals, the makeup of the cases included in the reports can change from one quarter to the next. These facts are not clearly reflected in the reports themselves.

Our preliminary review of EOIR's quarterly reports identified inconsistencies in some reports. For example, we noted a recurring inconsistency between reports: the number of cases awaiting adjudication at the end of a quarter was not the same as the number of cases awaiting adjudication at the beginning of the following quarter. EOIR provided several reasons for the inconsistency, as follows: (1) the EOIR case management system is a live data base that is constantly changing as events occur to immigration cases in the courts; (2) changes occur to the number of cases awaiting adjudication from one quarter to another when categories of cases are exempted from the case completion goals, since once a case is exempted it is no longer included in the reports; (3) cases double entered by DHS in the automated scheduling system were deleted; (4) reconciliations were necessary due to changes to date fields to update cases in the data base; (5) delays in data entry occurred; and (6) programming errors occurred in the calculation of the data.

We could not evaluate the reasonableness of EOIR's explanation; however, EOIR's reasons did not appear to explain completely the inconsistency between the number of cases awaiting adjudication at the end of the quarter and the number of cases awaiting adjudication at the beginning of the following quarter. EOIR said that the agency does not use the quarterly reports to monitor and report on cases awaiting adjudication; rather, other comprehensive reports serve that purpose. According to EOIR, the case completion goal reports have a specific purpose: to report solely on the percentage of cases completed within the goals for the appropriate reporting period. EOIR stated that it evaluates the case completion goal data against other sources of data to ensure the accuracy of the case completion goal data prior to release within the agency, following established protocols.

We also identified inconsistencies in a 2002 report where the reported total number of completions did not equal the sum of its components. EOIR responded to our inquiry about this inconsistency that a programmer had used the wrong end date for a quarter and therefore retrieved more cases than should have been included.

EOIR has changed its criteria for compiling the case completion goal reports over time, as EOIR management has established new specifications to identify the cases to be included in the case completion goals. When the agency approves categories of cases to be excluded from the reports, the queries used to run the reports are updated accordingly. EOIR reported that it maintains the historical documentation of the changes it has made to the reports through memos approved by EOIR management outlining each change in the case completion goal criteria. However, EOIR does not maintain the individual queries used to run each of the prior quarterly reports; it only maintains the current set of queries. As a result, we could not replicate the past reports to determine the accuracy of the case completion goal data. The inconsistencies indicate that EOIR should maintain appropriate documentation to demonstrate the accuracy of data reported by EOIR.

Peer Evaluations Used to Evaluate Court Operations

Another means that EOIR/OCIJ uses to evaluate its courts' performance is peer evaluation—its Immigration Court Evaluation Program (ICEP). The ICEP was established in July 1997 to evaluate court operations based on objectives established by OCIJ, identify challenges to achieving agency goals, and recommend appropriate corrective measures.³⁶ The evaluation program seeks to make recommendations for improving court operations by evaluating the courts' organizational structure, caseload, and workflow processes to assess the efficiency of the court in accomplishing its mission. Judges' individual hearing decisions are the only aspect of court operations that are not evaluated.

OCIJ established a Court Evaluation Unit (CEU) to manage the coordination and operation of the court evaluation program. The CEU selects courts to be evaluated, notifies the courts being selected, prepares an evaluation schedule, and sends out pre-evaluation questionnaires. While the Chief Immigration Judge selects the evaluation team members, the CEU is responsible for training the evaluation team as well as identifying a team leader. The evaluation team is comprised of volunteers of one or more immigration judge(s), court administrator(s), court

³⁶Its predecessor was the Field Office Case Management Review Program, which was primarily a file review that had been in existence since 1988. According to EOIR, the Chief Immigration Judge determined that this evaluation program was insufficient in scope to adequately fulfill his responsibility for evaluating the performance of the courts, making appropriate reports and inspections, and taking corrective action where indicated. As such, the ICEP program was developed to give the Chief Immigration Judge increased oversight of the courts.

interpreter(s), and legal technician(s). The participation of team members from diverse courts and positions is intended to facilitate the exchange of information regarding best practices of court operations. The size of the evaluation team depends on the size of the court being evaluated. For example, in fiscal year 2004, the team that evaluated the Bradenton immigration court in Florida, a small court with 2 authorized full-time permanent immigration judges, consisted of 3 team members, while the team that evaluated the Miami immigration court in Florida, a large court with 21 authorized full-time permanent immigration judges, had 13 members. OCIJ has established an evaluation program cycle in which approximately 10 to 12 courts have been evaluated per year. Each court has typically been evaluated approximately once every 4 years.

During the onsite visit, the evaluation team gathers information about the court under review in a variety of ways. The evaluation team conducts interviews with local court personnel, DHS officials, and members of the private bar. Evaluation team members select and review a random sample of court files and administrative records maintained by the court. While conducting interviews and reviewing court documentation, the evaluation team assesses aspects of court operations: immigration court initiatives, security, case management and case processing, DHS/immigration bar relations, administrative operations, and database management.

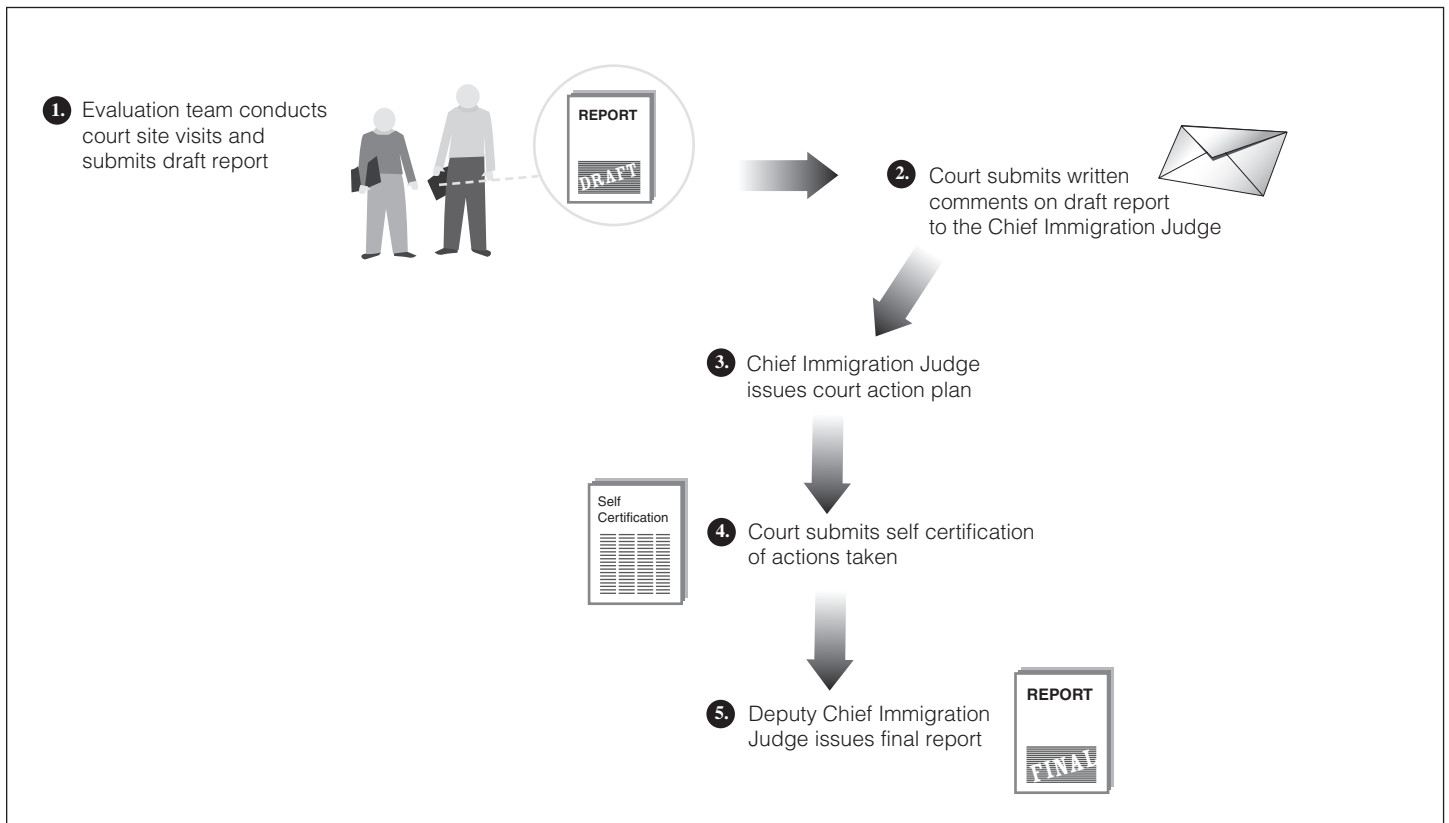
As shown in figure 5, the ICEP is comprised of a five-stage process. Following the week long onsite visit, the evaluation team summarizes the evaluation findings and recommendations and prepares a draft report for the Chief Immigration Judge's review. Within 10 business days of receipt of the draft report, the evaluated court is to submit written comments on the draft report.³⁷ After reviewing the draft report and court's comments, the Chief Immigration Judge prepares an action plan addressing the draft report's specific recommendations—the action plan clarifies which corrective actions will be taken, who will be responsible for completing that action, and the date by which the action must be completed. Approximately 3 months after completion of the action plan, the court must submit a written "Self-Certification" attesting to the actions taken to

³⁷The court response is prepared by the court administrator and the liaison immigration judge for the court being evaluated. Judges serve on a rotational basis as the liaison judge to act as the point of contact regarding topics and issues between the immigration judges and the responsible ACLJ, the court administrator, the local private bar, the local DHS office, and other appropriate local contacts such as local law schools. Liaison judges do not have any supervisory responsibilities.

implement the action plan.³⁸ After receipt of the self-certification, the CEU drafts a final report for the Deputy Chief Immigration Judge's signature. After the court evaluation process is complete, the final evaluation report is distributed to the EOIR Director and Deputy Director, the Chief Immigration Judge, the Deputy Chief Immigration Judges, the responsible ACIJ, the liaison immigration judge and court administrator for the evaluated court, the chief clerk of the immigration court, all evaluation team members, and the CEU program analyst.

³⁸Prior to fiscal year 2003, the evaluation team leader conducted a follow-up visit to assess progress made in implementing the recommendations and prepared a report. However, due to budgetary constraints, this practice was discontinued. Beginning in fiscal year 2003, the court administrator, liaison immigration judge, and the ACIJ were required to submit the self-certification of actions taken.

Figure 5: OCIJ Immigration Court Evaluation Process



Source: GAO.

EOIR/OCIJ Monitors Complaints against Immigration Judges

EOIR/OCIJ also monitors complaints against immigration judges, a practice that began in October 2003, at the direction of the EOIR Director. Since then, complaint reports have been generated on a monthly basis for internal use only. According to EOIR, the goal of the reports is to provide a centralized and comprehensive compilation of written and oral complaints to EOIR management regarding immigration judges' conduct on the bench, as well as the status of those complaints. OCIJ sends the reports to the EOIR Director on a monthly basis.

Complaints against immigration judges are received from a variety of sources, including immigrants, the immigrants' attorneys, DHS trial attorneys, other immigration judges, other court staff, OCIJ headquarters staff, and others. They are raised to OCIJ management either orally or in

writing, primarily from the ACIJ with supervisory responsibility over the affected immigration judge.³⁹ In meetings with the DHS components and the American Immigration Lawyers Association, EOIR said that it has advised them that their employees or members should raise complaints, as issues arise, to the appropriate ACIJ. According to EOIR, OCIJ is to immediately notify the EOIR Director when a complaint is filed against an immigration judge, even if OCIJ has not had an opportunity to verify the accuracy of the allegation.

According to EOIR, the ACIJ with supervisory responsibility over the affected immigration judge is the responsible party for addressing the complaint, unless a referral to DOJ's Office of Professional Responsibility is deemed warranted. The Office of Professional Responsibility, which reports directly to the Attorney General, is responsible for investigating allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice. Once a referral is deemed warranted, either OCIJ, through EOIR's Office of General Counsel, or the Office of General Counsel can refer a matter to the Office of Professional Responsibility for investigation. Matters involving criminal or serious administrative misconduct such as an allegation that a judge had a business relationship with an immigration attorney are referred to the DOJ's Office of the Inspector General.

According to its complaint reports, OCIJ received 129 complaints against immigration judges during fiscal years 2001 through 2005. As of September 30, 2005, OCIJ had taken action on 121 of these complaints; the remaining 8 were still under review. In response to the 121 complaints, OCIJ took 134 actions.⁴⁰ The actions taken were as follows: about 25 percent (34) were found to have no merit; about 25 percent resulted in disciplinary actions against the judges that included counseling (18), written reprimand (9), oral reprimand (3), and suspension (4); about 22 percent (29) were referred to DOJ's Office of Professional Responsibility or Office of the Inspector General or EOIR's Office of General Counsel for further

³⁹According to EOIR, the ACIJ's routinely deal with operational issues that fall short of a complaint.

⁴⁰A complaint may be associated with more than one action.

review;⁴¹ and the remaining 28 percent (37) resulted in various other actions such as informing complainants of the Office of Professional Responsibility process or their appeal rights to BIA.

In January 2006, the Attorney General requested a comprehensive review of the immigration courts, to include the quality of work as well as the manner in which it is performed. According to DOJ officials, the review was initiated in part in response to complaints about the professionalism of immigration judges, including their treatment of the people appearing before them and the quality of their work. The review included, among other things, interviews with selected court personnel, private attorneys and immigration organizations, observations of court hearings, and on-line surveys of other court personnel and DHS trial attorneys. On August 9, 2006, the Attorney General announced the completion of the review and a number of reforms to improve the performance and quality of the immigration court system. They include, among other reforms, the establishment of performance evaluations for immigration judges; the development of an immigration law examination for newly appointed immigration judges; the hiring of more immigration judges and judicial law clerks; and improvements in technology and support to strengthen the courts' ability to record, transcribe, and interpret court proceedings.

Conclusions

EOIR and its immigration courts play a critical role in upholding immigration law. Immigrants depend upon the courts to ensure the timely and fair adjudication of their cases, and U.S. residents depend upon the courts to order the removal of individuals from the United States who lack a legal right to be here. If the increase in caseload continues to outpace the growth in the number of immigration judges, the strain on the immigration courts will likely intensify. Given these conditions, EOIR will be challenged to judiciously manage its caseload and improve its courts' performance. EOIR has taken steps to improve the immigration courts' performance. As part of this process, EOIR has used quarterly case completion goal reports that contained inconsistencies. However, EOIR's lack of historical data on the individual queries used to run each quarterly

⁴¹According to OCIJ's complaint reports, of the 29 complaints that were referred to these offices, 17 were still pending. In closing the other 12 complaints, these offices found 8 complaints to have no merit. However, for three of these complaints, OCIJ counseled or gave a written warning to the immigration judges despite finding no ethical violations. In response to the remaining 4 closed complaints, OCIJ took disciplinary actions against the judges that included counseling (2), written reprimand (2), and suspension (1).

report precluded our ability to replicate the data and determine the accuracy of the reports. By better documenting its case completion goal data, EOIR would enable users of the data, including members of its management, to better understand exactly what is being measured and the data's implications for the courts' efficiency.

Recommendations for Executive Action

To more accurately and consistently reflect the immigration courts' progress in the timely adjudication of immigration cases, we recommend that the Director of EOIR (1) maintain appropriate documentation to demonstrate the accuracy of case completion goal reports; and (2) clearly state what cases are being counted in the reports.

Agency Comments and Our Evaluation

After reviewing a draft of this report, EOIR responded in an e-mail that it concurred with GAO's recommendations. EOIR also provided technical comments, which we have included as appropriate.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its date. At that time, we will send copies to the Attorney General, the Director of EOIR, and interested congressional committees. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you have any questions about this report or wish to discuss it further, please contact me at (202) 512-8777 or jonespl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report can be found in appendix III.

Sincerely yours,



Paul L. Jones
Director, Homeland Security
and Justice Issues

Appendix I: Scope and Methodology

Our objectives in this report are to answer the following questions: (1) in recent years, what has been the trend in immigration courts' caseload, (2) how does the Office of the Chief Immigration Judge (OCIJ) assign and manage immigration court caseload, and (3) how does the Executive Office for Immigration Review (EOIR)/OCIJ evaluate the immigration courts' performance?

To address these objectives, we met with officials from the Department of Justice's EOIR headquarters to obtain information and documentation on caseload trends, caseload management, and evaluation of immigration courts. To gain a better understanding of the operations and management of immigration courts, we also visited four immigration courts—Arlington in Arlington, Virginia; Newark in Newark, New Jersey; and two courts in New York City, New York. We selected these four courts to include courts varying in size,¹ based on the number of immigration judges. At these locations, we observed court proceedings and met with immigration judges, court administrators, and attorneys that litigate cases before the immigration courts—attorneys from the Office of Chief Counsel of DHS's Immigration and Customs Enforcement and private bar attorneys. Furthermore, we obtained and analyzed case information contained in EOIR's case management system as well as staffing data for fiscal years 2000 through 2005 and OCIJ's reports for court evaluations conducted in fiscal years 2000 and 2004. We also interviewed representatives of the National Association of Immigration Judges, the American Immigration Lawyers Association, and the American Bar Association, Commission on Immigration.

To address the first objective concerning the trend in immigration courts' caseload in recent years, we reviewed data from EOIR's case management system, Automated Nationwide System for Immigration Review, and obtained and reviewed relevant documents, regulations, and policies pertaining to the immigration courts' caseload and factors affecting caseload. We assessed the reliability of those data needed to answer this objective by (1) performing electronic testing for obvious errors in accuracy and completeness, (2) reviewing related documentation about the data and the system that produced them, including a contractor's report on data verification of the case management system, and

¹EOIR categorizes courts according to the number of judges. While some courts only have a single judge, small courts have 2 to 4 judges; medium courts, 5 to 14 judges; and large courts, 15 or more judges.

(3) interviewing agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for the purposes of this report. From this system, we generated immigration court caseload data for fiscal years 2000 through 2005 for all cases—proceedings, bond redeterminations, and motions to reopen or reconsider—and analyzed them for accuracy and completeness. Using SAS software, based on criteria provided by EOIR, we generated and reviewed unique data at both the global and immigration court level, on the number of newly filed cases, cases awaiting adjudication, completed cases, and *in absentia* decisions, as well as the age of proceedings awaiting adjudication.

To address the second objective concerning how OCIJ assigns and manages immigration courts' caseload, we conducted interviews with OCIJ officials, conducted site visits to four immigration courts, and reviewed EOIR's authorized and on-board staffing data for fiscal years 2000 through 2005, as well as their procedures for detailing immigration judges. We also reviewed policies, procedures, and other documents relating to OCIJ's caseload management. According to EOIR, the staffing data are from the Department of Agriculture's National Finance Center database, which handles payroll and personnel data for DOJ and other agencies. While we did not independently verify the reliability of the staffing data, we compared them with other supporting documents, when available, to determine data consistency and reasonableness.

To address the third objective concerning how EOIR/OCIJ evaluates the immigration courts' performance, we obtained and reviewed from EOIR internal quarterly case completion goal reports for fiscal years 2001 to 2005; documents concerning the establishment and refinement of the case completion goals; 22 court evaluation reports and related documents for the 12 immigration courts evaluated in fiscal years 2000 and 2004; and monthly reports containing information on complaints against immigration judges received in fiscal years 2001 to 2005. Further, we reviewed relevant memos and documents prepared by EOIR officials pertaining to EOIR's monitoring and evaluation programs, as well as the Department of Justice's "Report on Performance and Accountability" and budgets for fiscal years 2000 through 2005. To assess the reliability of EOIR's case completion goal reports, we (1) performed logic testing of the data for obvious inconsistencies in accuracy and completeness and (2) interviewed and sent questions to agency officials knowledgeable about the reports. We also reviewed the relevant internal control standards for such reports. When we found inconsistencies in the reports we brought them to the EOIR officials' attention and they provided reasons for the inconsistencies. However, we could not evaluate the reasonableness of EOIR's

explanations of the inconsistencies or the overall reliability of each of its quarterly reports because EOIR has changed its criteria for compiling the reports over time and only maintains documentation on the current set of queries used to run the reports. Therefore, we determined that the data in the quarterly reports were not sufficiently reliable for purposes of this report.

We conducted our work from March 2005 through August 2006 in accordance with generally accepted government auditing standards.

Appendix II: Glossary

Adjustment of status	A type of relief from deportation, removal, or exclusion for an immigrant who is eligible for Lawful Permanent Resident status based on a visa petition approved by the Department of Homeland Security (DHS). The status of an immigrant may be adjusted by the Attorney General, in his discretion, to that of a lawful permanent resident if a visa petition on behalf of the immigrant has been approved, an immigrant visa is immediately available at the time of the immigrant's application for adjustment of status, and the immigrant is not otherwise inadmissible to the United States.
Affirmative asylum application	An asylum application initially filed with DHS's U.S. Citizenship and Immigration Services.
Application for relief	Immigrants may request a number of forms of relief or protection from removal such as asylum, withholding of removal, protection under the Convention Against Torture, adjustment of status, or cancellation of removal. Many forms of relief require the immigrant to fill out an appropriate application.
Asylum	An immigrant may be eligible for protection and immunity from removal if he or she can show that he or she is a "refugee." The Immigration and Nationality Act generally defines a refugee as any person who is outside his or her country of nationality or, in the case of a person having no nationality, is outside any county in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Immigrants generally must apply for asylum within 1 year of arrival in the United States. In the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, must be completed within 180 days after the date the application is filed.

Bond

The DHS may detain an immigrant who is in removal or deportation proceedings and may condition his or her release from custody upon the posting of a bond to ensure the immigrant's appearance at the hearing. The amount of money set by DHS as a condition of release is known as a bond. A bond may be as a condition of voluntary departure at the master calendar, and a bond must be set by an immigration judge as a condition for allowing an immigrant to voluntarily leave the country at the conclusion of proceedings.

Bond redetermination

When DHS has set a bond amount as a condition for release from custody or has determined not to release the immigrant on bond, the immigrant has the right to ask an immigration judge to redetermine the bond. In a bond redetermination hearing, the judge can raise, lower, or maintain the amount of the bond; however, the Immigration and Nationality Act provides that bond of at least \$1,500 is required before an immigrant may be released. In addition, the immigration judge can eliminate the bond; or change any of the bond conditions over which the immigration court has authority. The bond redetermination hearing is completely separate from the removal or deportation hearing. It is not recorded and has no bearing on the subsequent removal or deportation proceeding. The immigrant and/or DHS may appeal the immigration judge's bond redetermination decision to the Board of Immigration Appeals.

Cancellation of removal

There are two different forms of cancellation of removal:

(A) Cancellation of removal for certain lawful permanent residents who were admitted more than 5 years ago, have resided in the United States for 7 or more years, and have not been convicted of an aggravated felony. Application for this form of discretionary relief is made during the course of a hearing before an immigration judge.

(B) Cancellation of removal and adjustment of status for certain nonpermanent resident immigrants who have maintained continuous physical presence in the United States for 10 years and have met all the other statutory requirements for such relief. Application for this form of discretionary relief is made during the course of a hearing before an immigration judge. The status of an immigrant who is granted cancellation of removal for certain nonpermanent resident immigrants is adjusted to that of an immigrant lawfully admitted for permanent residence.

Cases	All proceedings, bond redeterminations, and motions to reopen or reconsider that are before the immigration courts.
Case awaiting adjudication	A case that has not been completed.
Case completion	A case is considered completed once an immigration judge renders a decision. Proceedings may also be completed for other reasons, such as administrative closures, changes of venue, and transfers.
Caseload	All cases awaiting adjudication.
Change of venue	Immigration judges, for good cause shown, may change venue (move the proceeding to another immigration court) only upon motion by one of the parties, after the charging document has been filed with the immigration court. The regulation provides that venue may be changed only after one of the parties has filed a motion to change venue and the other party has been given notice and an opportunity to respond.
Charging document	A written instrument prepared by DHS charging an immigrant with a violation of immigration law.
Claimed status review	If an immigrant in expedited removal proceedings claims under oath to be a U.S. citizen, to have been lawfully admitted for permanent residence, to have been admitted as a refugee, or to have been granted asylum, and DHS determines that the immigrant has no such claim, he or she can obtain a review of that claim by an immigration judge.

Credible fear	If an immigrant seeking to enter the United States has no documents or no valid documents to enter, but expresses a fear of persecution or torture, or an intention to apply for asylum, that immigrant will be referred to a DHS asylum officer for a credible fear determination. If the asylum officer determines that the immigrant has not established a credible fear of persecution or torture and a supervisory asylum officer concurs, the immigrant may request review of that determination by an immigration judge. That review must be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no event later than 7 days after the date of the determination by the supervisory asylum officer. No appeal to the Board of Immigration Appeals may be taken from the immigration judge's decision finding no credible fear of persecution or torture. If the immigration judge determines that the immigrant has a credible fear of persecution or torture, the immigrant will be placed in removal proceedings to apply for asylum.
Decision	A determination and order arrived at after consideration of facts and law, by an immigration judge.
Defensive asylum application	An asylum application initially filed with the immigration court after the immigrant has been put into proceedings to remove him or her from the United States.
Detained	Detained immigrants are those in the custody of DHS or other entities. Immigration court hearings for detained immigrants are conducted in DHS Service Processing Centers, contract detention facilities, state and local government jails, and Bureau of Prisons' institutions.
Expedited asylum	Asylum regulations implemented in 1995 mandated that asylum applications be processed within 180 days after filing either at a DHS U.S. Citizenship and Immigration Services Asylum Office or at an immigration court. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 reiterated the 180-day rule. Consequently, expedited processing of asylum applications occurs when (1) an immigrant files "affirmatively" at an Asylum Office on or after January 4, 1995, and the application is referred to the EOIR by DHS within 75 days of the filing; or (2) an immigrant files an application "defensively" with EOIR on or after January 4, 1995.

Filing	A filing occurs with the actual receipt of a document by the appropriate immigration court.
Immigration judge	Immigration judge is an attorney whom the Attorney General appoints as an administrative judge within EOIR, qualified to conduct specified classes of proceedings, including exclusion, deportation, removal, asylum, bond redetermination, rescission, withholding, credible fear, reasonable fear, and claimed status review. Immigration judges act as independent decision makers in deciding the matters before them. Immigration judge decisions are administratively final unless appealed or certified to the Board of Immigration Appeals, or if the period by which to file an appeal lapses.
<i>In absentia</i>	A Latin phrase meaning “in the absence of.” An <i>in absentia</i> hearing occurs when an immigrant fails to appear for a hearing and the immigration judge conducts the hearing without the immigrant present and orders the immigrant removed from the United States. An immigration judge is to order removed <i>in absentia</i> any immigrant who, after written notice of the time and place of proceedings and the consequences of failing to appear, fails to appear at his or her removal proceeding. The DHS must establish by clear, unequivocal, and convincing evidence that the written notice was provided and that the immigrant is removable.
Inadmissible	The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 replaced the term “excludable” with the term “inadmissible.” Section 212 of the Immigration and Nationality Act defines classes of immigrants ineligible to receive visas and ineligible for admission. Immigrants who, at the time of entry, are within one of these classes of inadmissible immigrants are removable.
Individual merits hearing	The hearing in which the government must prove the charges alleged in the charging document. The immigrant also is able to present his or her case to the immigration judge with witnesses and persuade the immigration judge to use his or her discretion and allow the immigrant to remain in the United States (if such relief exists).
Institutional hearing program	The Immigration Reform and Control Act of 1986 requires the Attorney General to expeditiously commence immigration proceedings for immigrant inmates convicted of crimes in the United States. To meet this

requirement, the Department of Justice established the Institutional Hearing Program where removal hearings are held inside correctional institutions prior to the immigrant completing his or her criminal sentence. The Institutional Hearing Program is a collaborative effort between EOIR and DHS and various federal, state, and local corrections agencies throughout the country.

Master calendar

A preliminary hearing held to review the charges in the charging document before an immigration judge. The immigration judge explains the immigrant's rights (e.g., the immigrant's right to an attorney) and asks if the immigrant agrees with or denies the charges as alleged by DHS in the charging document. The immigration judge determines if the immigrant is eligible for any form(s) of relief, and sets a date for the individual merits hearing.

Motion

A motion is a formal request from either party (the immigrant or DHS) in proceedings before the immigration court, to carry out an action or make a decision. Motions include, for example, motions for change of venue, motions for continuance, motions to terminate proceedings, etc.

Motion to reconsider

Immigrants may request, by motion, the reconsideration of a case previously heard by an immigration judge. A motion to reconsider either identifies an error in law or fact in a prior proceeding or identifies a change in law and asks the immigration judge to re-examine his or her ruling. A motion to reconsider is based on the existing record and does not seek to introduce new facts or evidence.

Motion to reopen

Either party makes a formal request before the immigration court to reopen the case.

Non-detained

The status of an immigrant who is not in the custody of DHS or the Institutional Hearing Program.

Notice to Appear

The document (Form 1-862) used by DHS to charge an immigrant with being removable from the United States. Jurisdiction vests and proceedings commence when a Notice to Appear is filed with an immigration court by DHS.

Proceeding	The legal process conducted before the immigration court.
Relief from removal	In hearings before an immigration judge, an immigrant may be able to seek relief from removal. Various types of relief may be sought, including asylum, withholding of removal, protection under the Convention Against Torture, cancellation of removal, or adjustment of status. Many forms of relief require the immigrant to fill out an appropriate application.
Removal proceedings	An immigration court proceeding begun on or after April 1, 1997, seeking to either stop certain immigrants from being admitted to the United States or to remove them from the United States. A removal case usually arises when DHS alleges that an immigrant is inadmissible to the United States, has entered the country illegally by crossing the border without being inspected by an immigration officer, or has violated the terms of his or her admission. The DHS issues a charging document called a Notice to Appear and files it with an immigration court to begin a removal proceeding.
Voluntary departure	An immigrant agrees to depart from the United States without an order of removal. The departure may or may not have been preceded by a hearing before an immigration judge. An immigrant allowed to voluntarily depart concedes removability but is not barred from seeking admission at a port of entry in the future. Failure to depart within the time granted results in a fine and a 10-year bar against the immigrant applying for several forms of relief from removal.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

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