



April 2023

IMMIGRATION COURTS

Actions Needed to Address Workforce, Performance, and Data Management Challenges

Accessible Version

Why GAO Did This Study

Each year, EOIR issues decisions for hundreds of thousands of cases of foreign nationals charged as removable under U.S. immigration law. EOIR is facing a significant and growing backlog of cases pending before the immigration courts. At the start of fiscal year 2023, EOIR's backlog was about 1.8 million pending cases—more than triple the number of pending cases at the start of fiscal year 2017. In 2017, GAO reported on EOIR's management practices, including how it manages and oversees workforce planning and immigration judge hiring.

GAO was asked to review various EOIR management functions, including actions taken since GAO's 2017 report. This report assesses, among other things, EOIR's (1) workforce planning practices; (2) judge performance appraisal program; and (3) policies and procedures for reporting quality data to the public. GAO analyzed EOIR staffing data from fiscal years 2017 through 2022—the most current data available. GAO reviewed EOIR documentation and interviewed officials from headquarters and four immigration courts selected to include different caseloads, among other factors.

What GAO Recommends

GAO is making six recommendations to improve, among other things, EOIR's workforce planning, judge performance appraisal program management, and data quality practices. EOIR identified ongoing and planned steps to address these recommendations.

View [GAO-23-105431](#). For more information, contact Rebecca Gambler at (202) 512-8777 or gambler@gao.gov.

IMMIGRATION COURTS

Actions Needed to Address Workforce, Performance, and Data Management Challenges

What GAO Found

Within the Department of Justice, the Executive Office for Immigration Review (EOIR) is responsible for conducting immigration court proceedings, appellate reviews, and other hearings to interpret and administer U.S. immigration laws and regulations. EOIR has taken steps to improve its management practices since GAO's 2017 report but continues to face several challenges. Specifically:

- **Workforce planning.** EOIR has taken some steps to improve its workforce planning—a systematic process to align an agency's human capital with its mission needs and goals—but its practices do not fully align with GAO-identified key principles for strategic workforce planning.
 - As of January 2023, EOIR had not yet developed a strategic workforce plan or set workforce planning goals. In 2017, GAO recommended that EOIR develop and implement a strategic workforce plan that addresses the key principles of workforce planning—such as identifying critical skills, developing strategies to address skills gaps, and monitoring progress—to better position EOIR to address current and future staffing needs. GAO maintains that developing and implementing a strategic workforce plan would better position EOIR to address current and future staffing needs.
 - In June 2022, EOIR signed a contract with the U.S. Office of Personnel Management (OPM) to help develop workforce planning processes. However, EOIR does not have a governance structure—consisting of assigned and documented roles and responsibilities—to guide its workforce planning efforts and hold leadership accountable for progress on workforce goals. Given its longstanding challenges in this area, EOIR does not have reasonable assurance that it will make the investments necessary to implement the results of the contract. Establishing a documented governance structure for workforce planning would better position EOIR to institutionalize improvements moving forward.
- **Immigration judge performance appraisal program.** EOIR evaluates how immigration judges perform their duties but has not evaluated its overall judge performance appraisal program. For example, in recent years, EOIR has revised the criteria against which it evaluates judges. But, it has not assessed whether they or their supervisors are satisfied with the program's equity, utility, and accuracy, consistent with OPM guidance. Implementing a process to periodically evaluate its performance appraisal program for judges can better position EOIR to determine the program's effectiveness.
- **Data quality.** EOIR reports various immigration case data to the public and takes some steps to ensure such data are accurate and reliable, such as running regular reports on the data to identify and address any anomalies. However, EOIR does not have updated guidelines for reporting quality information—information that is secure, objective, and useful—to the public. Developing such guidelines could further ensure that EOIR consistently provides the public with accurate, reliable immigration data.

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Abbreviations

BIA	Board of Immigration Appeals
DHS	Department of Homeland Security
DOJ	Department of Justice
ECAS	EOIR Courts and Appeals System
EOIR	Executive Office for Immigration Review
FOIA	Freedom of Information Act
INA	Immigration and Nationality Act
OIT	Office of Information Technology
OMB	Office of Management and Budget
OPM	Office of Personnel Management
TRAC	Transactional Records Access Clearinghouse

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April 26, 2023

Congressional Requesters

Each year, the Department of Homeland Security (DHS) initiates hundreds of thousands of removal cases with the U.S. immigration court system.¹ Within the Department of Justice (DOJ), the Executive Office for Immigration Review (EOIR) is responsible for conducting immigration proceedings to fairly, expeditiously, and uniformly administer and interpret U.S. immigration laws and regulations. As of January 2023, EOIR's 659 immigration judges are located in 69 immigration courts across the country. Immigration judges preside over hearings to decide whether respondents—foreign nationals charged as removable for violating immigration law—are removable as charged, and if so, granted any requested relief or protection to lawfully remain in the U.S.²

EOIR is facing a growing backlog of cases pending before the immigration courts. As we previously reported, the effects of the case backlog are significant and wide-ranging from some respondents waiting years to have their cases heard, to immigration judges being able to spend less time considering cases.³ In particular, EOIR officials identified resource shortages as contributing to the backlog, alongside increases in caseloads and the legal complexity of cases. At the start of fiscal year 2023, EOIR had a backlog of about 1.8 million pending cases—more than triple the number of pending cases at the start of fiscal year 2017. In fiscal

¹DHS is responsible for identifying, detaining, initiating removal proceedings and litigating administrative immigration charges against, and executing removal orders for individuals who are suspected and determined to be in the U.S. in violation of U.S. immigration laws.

²A foreign national in the U.S. may be removable on statutory grounds of inadmissibility, Immigration and Nationality Act (INA) § 212(a), 8 U.S.C. § 1182(a), if they have no prior lawful admission; or deportability, INA § 237, 8 U.S.C. § 1227, if they were previously lawfully admitted. See 8 U.S.C. § 1229a(e)(2). The lawfulness of a prior admission may be at issue in removal proceedings. See 8 U.S.C. §§ 1182(a)(6)(C)(i) (inadmissibility for having fraudulently obtained admission into the U.S.), 1227(a)(1)(A) (deportability for having been inadmissible at the time of entry).

³GAO, *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).

year 2022, EOIR received about 707,000 new cases and completed about 314,000 cases, both record high numbers for the agency.⁴

In addition, we have reported previously on other challenges EOIR has faced. In particular, in 2017, we found that EOIR did not have efficient practices for hiring new immigration judges, which contributed to immigration judges being staffed below authorized levels.⁵ Further, we found that although EOIR had taken some steps to address its workforce needs, it did not have a strategic workforce plan that would help it better address staffing needs. We made 11 recommendations to address these and other issues, and EOIR has since taken steps to address most of these recommendations.

Further, immigration court stakeholders have raised questions about the quality of the immigration case data EOIR reports to the public. Specifically, in October 2019, an external research organization reported that EOIR had inappropriately deleted case records from a publicly available data set.⁶ The organization further stated that the data irregularities it observed made it more challenging for the public to understand the operations of the immigration court system.

Lastly, EOIR has encountered delays in meeting its longstanding goal to transition from a paper-based case management system to an electronic filing system. In 2017, we reported that although EOIR had first identified this as a goal in 2001, it had yet to implement such a system. EOIR must

⁴As we reported in 2021, EOIR suspended hearings from mid-March 2020 until mid-June 2020 for individuals not in immigration detention in response to the COVID-19 pandemic. We found that EOIR delayed nearly 600,000 hearings from March through October 2020 due to court closures. See GAO, *COVID-19: Improvements Needed in Guidance and Stakeholder Engagement for Immigration Courts*, [GAO-21-104404](#) (Washington, D.C.: Aug. 31, 2021).

⁵[GAO-17-438](#). We recommended that EOIR assess the immigration judge hiring process to identify opportunities for efficiency, and use the results to develop a hiring strategy and implement any corrective actions needed. In response, as of March 2021, EOIR had conducted such an assessment and implemented a revised immigration judge hiring process, which we determined addressed the intent of our recommendation.

⁶The Transactional Records Access Clearinghouse—an information clearinghouse based at Syracuse University—reported that EOIR had inappropriately deleted about 1,500 immigration case records from data it received under an ongoing Freedom of Information Act request, which we discuss later in this report.

convert its paper case files into digital records by June 2024 to comply with federal requirements for electronic recordkeeping.⁷

You asked us to review EOIR's management practices and assess the steps that EOIR has taken to address their management challenges since our 2017 report. This report assesses the extent to which EOIR has: (1) implemented workforce planning practices that align with key principles for workforce planning; (2) evaluated the performance appraisal program for immigration and appellate immigration judges; (3) developed and implemented policies and procedures to ensure it reports quality data to the public; and (4) implemented an electronic filing system that meets the needs of court staff.

This report also provides information on EOIR's immigration judge training programs (see appendix I).

To address all four objectives, we conducted interviews by telephone with staff from a nongeneralizable sample of four immigration courts in California, Minnesota, New York, and Texas.⁸ We selected these immigration courts based on court type (whether the court has primarily heard cases related to detained respondents, non-detained respondents, or a mixture); geographic dispersion; number of immigration judges; and case backlog size.⁹

⁷In June 2019, the Office of Management and Budget (OMB) issued guidance requiring federal agencies to transition their business processes and recordkeeping to a fully electronic environment. In particular, it directed agencies to manage all permanent records in electronic format by December 31, 2022. In December 2022, OMB revised this deadline to June 30, 2024, citing agency delays during the COVID-19 pandemic. Office of Management and Budget, *Transition to Electronic Records*, Memorandum M-19-21 (Washington, D.C.: June 28, 2019); and Office of Management and Budget, *Update to Transition to Electronic Records*, Memorandum M-23-07 (Washington, D.C.: Dec. 23, 2022).

⁸Specifically, we selected the San Francisco, California; Fort Snelling, Minnesota; Batavia, New York; and Houston (South Gessner Road), Texas courts.

⁹EOIR data on the courts' backlogs were as of February 2022. While removal proceedings are pending, respondents may be detained or released on bond, conditional parole, terms of supervision, or other alternatives to detention. The Immigration and Nationality Act, as amended, provides DHS with broad discretion (subject to certain legal standards) to detain, or conditionally release respondents depending on the circumstances and statutory basis for detention. The law requires DHS to detain particular categories of individuals, such as those deemed inadmissible for certain criminal convictions or terrorist activity. See 8 U.S.C. §§ 1225, 1226, 1226a, 1231.

At each court, we conducted semi-structured interviews with the assistant chief immigration judge, the court administrator, and one immigration judge. We obtained the court staff's perspectives on EOIR's (1) workforce planning efforts; (2) performance assessment and training programs for judges; (3) data management practices; and (4) implementation of an electronic case filing system. Further, we visited two additional immigration courts—Seattle, Washington and Dallas, Texas—to observe immigration hearings and obtain additional contextual information.¹⁰ The information we obtained from these interviews and observations at selected immigration courts cannot be generalized to all immigration courts. However, it provides valuable perspective into EOIR's management and oversight of the immigration court system.

We also interviewed selected external stakeholder groups to obtain their perspectives on immigration court management practices, particularly EOIR's workforce planning and IT systems.¹¹ This included groups that conduct research on the U.S. immigration system and professional associations for individuals who practice law in immigration courts. To select stakeholders representing diverse perspectives, we used factors such as the groups' level of experience working or interacting with EOIR, as well as their expertise on EOIR's management practices.

To address our first objective, we reviewed EOIR documents related to the agency's workforce planning initiatives since our 2017 report. This included a 2017 contractor-developed report on workforce planning and the statement of work for EOIR's June 2022 workforce planning contract with the Office of Personnel Management (OPM). We also analyzed workforce information in EOIR's congressional budget justifications and other reports to congressional committees explaining their requested appropriations, as well as in congressional explanatory statements or conference reports accompanying each year's appropriations legislation. We also reviewed EOIR's most recent strategic plan, which covered fiscal

¹⁰We selected these two immigration courts based on their geographic proximity to GAO staff conducting this review.

¹¹Specifically, we interviewed officials from the American Bar Association, American Immigration Council, American Immigration Lawyer Association, National Association of Immigration Judges, and Transactional Records Access Clearinghouse.

years 2008 to 2013, to understand the extent to which EOIR has identified workforce planning goals.¹²

Further, we reviewed EOIR staffing data for fiscal years 2017 through 2022.¹³ To assess the reliability of these data, we reviewed the data for any outliers or missing data, compared the data to additional sources, and asked EOIR officials about their process for obtaining and using the data. We determined the data were sufficiently reliable for the purposes of describing the number of staff onboard at EOIR during this time period. Additionally, we interviewed EOIR officials responsible for workforce planning, including senior officials in the Office of the Chief Immigration Judge, Office of the Director, Office of Administration, and the Board of Immigration Appeals. We assessed EOIR's workforce planning practices against GAO's five key principles for effective strategic workforce planning,¹⁴ as well as guidance on strategic planning in OPM's Human Capital Framework¹⁵ and leading practices for project management related to creating schedules.¹⁶ We also compared EOIR's reporting of workforce data in its congressional budget justifications against the principles related to information and communication in *Standards for Internal Control in the Federal Government*.¹⁷

¹²EOIR, *Strategic Plan: Fiscal Years 2008-2013* (January 2008).

¹³We selected this time period to update data presented in our 2017 report and include the most recent complete full fiscal year data available at the time of this report. See [GAO-17-438](#).

¹⁴GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: Dec. 11, 2003). We recommended in 2017 that EOIR implement a strategic workforce plan consistent with these key principles. See [GAO-17-438](#).

¹⁵OPM's Human Capital Framework provides comprehensive guidance on strategic human capital management in the Federal Government. The framework consists of four interconnected and adaptive systems: strategic alignment and planning, talent management, performance culture, and evaluation. See: <https://www.opm.gov/policy-data-oversight/human-capital-framework/>.

¹⁶Project Management Institute Inc., *A Guide to the Project Management Body of Knowledge* (PMBOK® Guide), 6th ed. (2017). PMBOK is a trademark of the Project Management Institute, Inc. The PMBOK® Guide presents a broad description of project management-related knowledge and practices, which can be tailored to fit the needs of different projects.

¹⁷GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

To address our second objective, we analyzed EOIR documentation related to its performance appraisal program for immigration judges—including assistant chief immigration judges—and appellate immigration judges. This included the employee performance plans for each type of judge, and the associated performance program description. We also interviewed EOIR officials responsible for performance management, including senior officials in the Office of the Chief Immigration Judge, Office of the Director, Office of Administration, and the Board of Immigration Appeals. We then assessed EOIR's practices against criteria in OPM's guidance for evaluating performance appraisal programs.¹⁸

To address our third objective, we reviewed EOIR documentation related to the information it disseminates publicly, such as data reports on its website and policies and procedures for information management. In addition, we reviewed the publicly available data quality guidelines from two other DOJ components—the Bureau of Justice Statistics and the Federal Bureau of Investigation—to compare how other components in the department explain their respective procedures. We selected these components because, like EOIR, they proactively disseminate information and data to the public related to their activities. We also interviewed EOIR officials responsible for information management, including senior officials in the Offices of Administration and Information Technology. We assessed EOIR's practices against Office of Management and Budget (OMB) guidance related to information quality assurance.¹⁹

To address our fourth objective, we reviewed EOIR documentation related to its electronic filing system, including user guides and reports on the status of EOIR's efforts to implement the system. In addition, we reviewed information on system performance, such as the number of IT help desk tickets submitted by users and the dates and lengths of system outages from February 2022 to October 2022. We also interviewed EOIR officials responsible for implementing and maintaining the system, including senior officials in the Office of Information Technology. Additionally, we interviewed the chief counsel assigned to the DHS Office

¹⁸United States Office of Personnel Management, *Performance Management Practitioner Series: Evaluating Performance Appraisal Programs: An Overview*, PMD-09 (Washington, D.C.: January 1999), and *A Handbook for Measuring Employee Performance*, ES/SWP-02803-03-17 (Washington, D.C.: March 2017).

¹⁹Office of Management and Budget, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, 67 Fed. Reg. 8,452-460 (Feb. 22, 2002).

of the Principal Legal Advisor proximate to each immigration court in our sample to obtain their views on EOIR's electronic filing system.²⁰ We then assessed EOIR's practices against that office's strategic plan, as well as OMB guidance for IT management.²¹

We conducted this performance audit from October 2021 to April 2023, 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.

Background

Immigration Court System Roles and Structure

EOIR is responsible for conducting immigration court proceedings, appellate reviews, and administrative hearings. As an office within DOJ, EOIR's activities are subject to the direction and regulation of the Attorney

²⁰The Office of the Principal Legal Advisor provides specialized legal advice to the Director of DHS's U.S. Immigration and Customs Enforcement as civil prosecutors representing the U.S. government in all removal proceedings before EOIR. 6 U.S.C. § 252(c). This office is funded under U.S. Immigration and Customs Enforcement's Operations and Support account. Respondents may choose to retain legal counsel (e.g., a private bar attorney) to represent them during immigration proceedings at no expense to the government. 8 U.S.C. § 1362. Respondents may also choose to represent themselves without legal counsel.

²¹Executive Office for Immigration Review Office of Information Technology, *Office of Information Technology Strategic Plan: Fiscal Years 2019—2024*; Office of Management and Budget, *Managing Information as a Strategic Resource*, Circular A-130 (Washington, D.C.: July 28, 2016).

General.²² EOIR immigration judges and appellate immigration judges are responsible for hearing, and exercising their independent judgment and discretion in deciding, all cases that come before them.²³ As of January 2023, EOIR had 69 immigration courts across the country—including those co-located with a detention facility—and 588 total courtrooms.

As of February 2023, EOIR had 2,516 staff onboard, according to EOIR officials, an increase from 1,703 staff in 2017.²⁴ Three offices carry out EOIR’s quasi-judicial functions:²⁵

- **The Office of the Chief Immigration Judge** provides overall program direction, articulates policies and procedures, and establishes priorities applicable to the immigration courts. A chief immigration judge heads the office and carries out these responsibilities with the assistance and support of three deputy chief immigration judges, 35 assistant chief immigration judges, and 659 immigration judges.²⁶ The assistant chief immigration judges serve as liaisons between courts and the office’s headquarters. They also have

²²See 6 U.S.C. § 521; 8 U.S.C. § 1103(g); 8 C.F.R. § 1003.0(a). EOIR was created as a separate agency within DOJ on January 9, 1983. It was created as a result of an internal DOJ reorganization to improve the management, direction, and control of the quasi-judicial immigration review programs that had been within the legacy Immigration and Naturalization Service. See Board of Immigration Appeals; Immigration Review Function; Editorial Amendments, 48 Fed. Reg. 8038 (Feb. 25, 1983). See, generally, 8 C.F.R. pt. 1003, for organization and responsibilities of the Office of the Chief Immigration Judge and the Board of Immigration Appeals within EOIR.

²³Under U.S. immigration law, an immigration judge is an attorney appointed by the Attorney General as an administrative judge within EOIR, qualified to conduct specified classes of proceedings, including formal removal proceedings under INA § 240. See 8 U.S.C. § 1101(b)(4); 8 C.F.R. § 1003.10. An appellate immigration judge is an attorney appointed by the Attorney General to act as their delegate in resolving administrative appeals. 8 C.F.R. § 1003.1(a)(1). Regarding their independence and discretion in rendering decisions consistent with relevant law and regulation, see 8 C.F.R. §§ 1003.1(d)(1)(ii), 1003.10(b).

²⁴Total staff includes immigration judges but does not include contractor staff, who are not EOIR employees.

²⁵The term “quasi-judicial” generally characterizes the adjudicatory function(s) of an administrative agency, such as EOIR, involving the exercise of discretion that is judicial in nature. Officers or employees of the agency preside over and resolve matters by considering evidence and applying the law to facts on a case-by-case basis, thus exercising independent judgement and discretion consistent with relevant legal authorities.

²⁶Data are as of January 2023. The number of immigration judges onboard grew from 338 at the end of fiscal year 2017—an increase of about 95 percent.

supervisory authority over immigration judges, court administrators, and legal support staff, including attorney-advisors and judicial law clerks. At the court level, court administrators manage the daily court operations, as well as the court's administrative staff. Legal support staff provide research and other legal support to immigration judges.

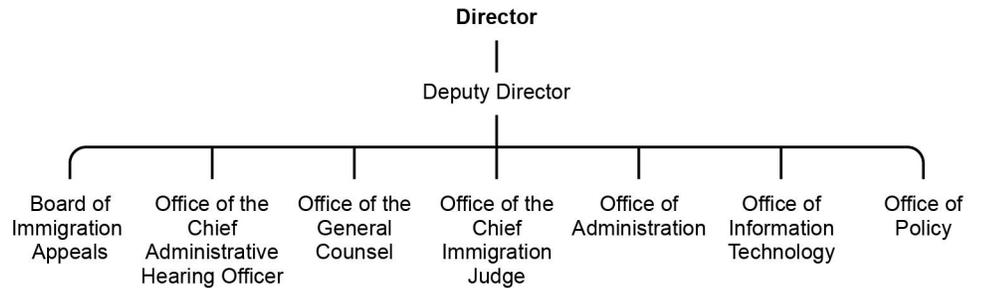
- **The Board of Immigration Appeals (BIA)** is currently composed of 22 appellate immigration judges, as of April 2023, who hear and issue decisions regarding appeals of decisions made by immigration judges and, in some cases, DHS.²⁷ BIA decisions are binding on the parties to the decision, and published decisions are considered precedent for all immigration judges and DHS officials, unless modified or overruled by the Attorney General or a federal court. A chief appellate immigration judge, appointed by the Attorney General, heads the BIA and is responsible for directing, supervising, and establishing the BIA's internal operating procedures and policies.
- **The Office of the Chief Administrative Hearing Officer** adjudicates immigration-related employment and documents fraud cases.²⁸

In addition to these three offices, EOIR has four additional offices, as shown in figure 1. The Office of Administration is responsible for areas such as budget and financial management, contracts and procurements, human resources, and facilities management. The Office of Information Technology oversees EOIR's IT infrastructure and strategy, hardware and software optimization, and custom IT application development.

²⁷An "appellate immigration judge," also known as a Board Member, is an attorney appointed by the Attorney General to act as their delegate in resolving administrative appeals. Pursuant to regulation, BIA is to be composed of 23 appellate immigration judges. 8 C.F.R. § 1003.1(a)(1). As of April 2023, EOIR was in the process of filling the final vacancy, according to officials.

²⁸The Office of the Chief Administrative Hearing Officer was established in 1987 by the Attorney General pursuant to the provisions of the Immigration Reform and Control Act of 1986. See Pub. L. No. 99-603, tit. I, pt. A, §§ 101(a)(1), 102(a), 100 Stat. 3359, 3360-72, 3374-79 (classified, as amended, at 8 U.S.C. §§ 1324a, 1324b).

Figure 1: Organization of the Executive Office for Immigration Review (EOIR)



Source: EOIR. | GAO-23-105431

Text of Figure 1: Organization of the Executive Office for Immigration Review (EOIR)

- 1) Director
 - a) Deputy Director
 - i) Board of Immigration Appeals
 - ii) Office of the Chief Administrative Hearing Officer
 - iii) Office of the General Counsel
 - iv) Office of the Chief Immigration Judge
 - v) Office of Information Technology
 - vi) Office of Policy

Source: EOIR. | GAO-23-105431

Overview of the Immigration Court Process

The immigration court process for removal proceedings generally follows several steps:

- **DHS serves a Notice to Appear.** The process begins when DHS charges an individual as removable by filing a Notice to Appear—a document that provides written notice of the alleged violation(s) of U.S. immigration law—in the appropriate immigration court and serving it to the respondent. The Notice to Appear includes

information on the removal charges and orders the respondent to appear before an immigration judge to respond to the charges.²⁹

- **EOIR conducts master calendar hearing(s).** A judge conducts a master calendar hearing to ensure the respondent understands the immigration court proceedings and provide them information on their rights and an opportunity to admit or deny the charge(s) brought against them.³⁰

EOIR conducts merits hearing(s) and the judge issues a decision. If the issue of removability is not resolved at the initial or follow-on master calendar hearings, or if the respondent, having been deemed removable, seeks relief or protection from removal (such as asylum), the immigration judge schedules a merits hearing. During the merits hearing, the immigration judge may hear arguments as to removability (if still at issue) and any claims for relief or protection from removal. Judges may also hear testimony and review documentary evidence from the respondent as well as from witnesses, such as family members, friends, or country condition experts. Based on the evidence in the record, the immigration judge then decides whether the respondent satisfies the eligibility criteria for any requested relief and renders an oral or written decision. The judge may ultimately grant such relief or issue an order of removal without any associated relief, among other outcomes.³¹

EOIR's Workload

As of the end of fiscal year 2022, EOIR reported that its backlog (the number of pending cases) was about 1.8 million cases—up from about 656,000 cases at the end of fiscal year 2017 (see fig. 2). Numbers of new cases received have outpaced case completions, contributing to the growth of the backlog. For example, in fiscal year 2022, EOIR reported

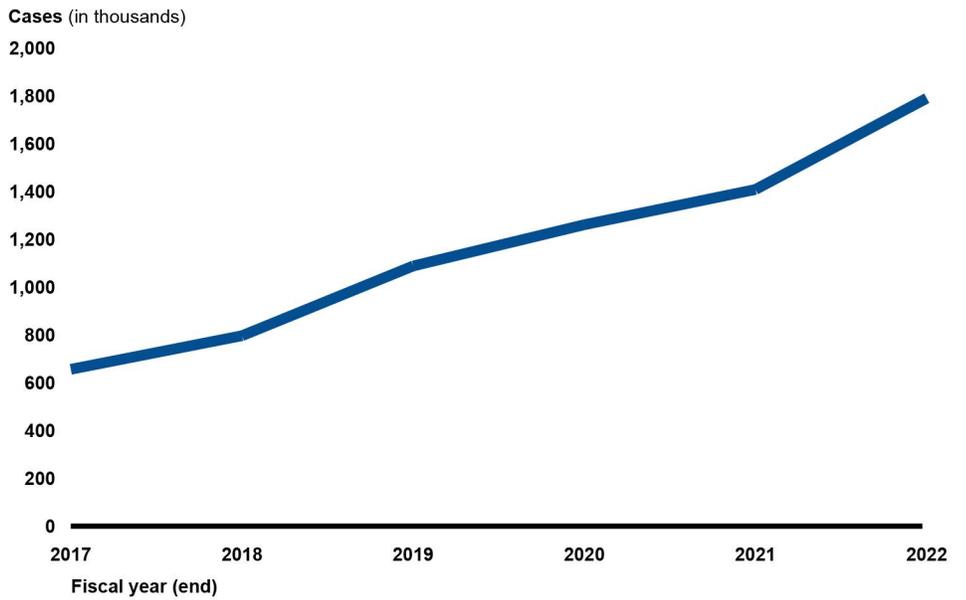
²⁹In addition to the specific charges, the notice is to include the nature of the proceedings against the individual, the acts or conduct alleged to be in violation of law, that the individual may be represented by counsel, and the date and time of the first hearing of the removal proceedings, among other items. 8 U.S.C. § 1229(a)(1).

³⁰Under certain circumstances, an immigration judge may not conduct a master calendar hearing and instead the case may proceed directly to a merits hearing. See, e.g., Policy Memorandum (PM) 21-18, *Revised Case Flow Processing before the Immigration Courts* (Apr. 2, 2021).

³¹Immigration judges' decisions become administratively final either at the time of issuance if neither party appeals, or when all avenues for appeal through the BIA or review by the Attorney General have been exhausted or waived. See 8 C.F.R. §§ 1003.1(b), (h), 1003.3(a)(1), 1003.38, 1241.1.

that it received about 707,000 new cases—the highest number on record—while it completed about 314,000 cases.

Figure 2: Pending Cases in Immigration Courts, End of Fiscal Years 2017–2022



Source: Executive Office for Immigration Review data. | GAO-23-105431

EOIR's Workforce Planning Practices Do Not Fully Align with Key Principles, and It Has Not Clearly Communicated Workforce Needs to Congress

EOIR Has Taken Some Steps to Improve Workforce Planning Since our 2017 Report, but its Practices Do Not Yet Align With Key Principles

EOIR has taken some steps to improve its workforce planning since our 2017 report, but its practices do not fully align with key principles for strategic workforce planning, consistent with our prior recommendation. As we have previously reported, strategic workforce planning is a systematic process that addresses two critical needs: (1) aligning an organization's human-capital program with its current and emerging mission and programmatic goals and (2) developing long-term strategies for acquiring, developing, and retaining staff to achieve programmatic goals. While agencies' approaches to workforce planning will vary, we have identified five key principles strategic workforce planning should address irrespective of the specific context or process (see fig. 3).³²

³²[GAO-04-39](#).

Figure 3: Key Principles for Effective Strategic Workforce Planning



Principle 1

Involve top management, employees, and other stakeholders in developing, communicating, and implementing the strategic workforce plan



Principle 2

Identify the critical skills and competencies that will be needed to achieve current and future programmatic results



Principle 3

Develop strategies that are tailored to address gaps in number, deployment, and alignment of human capital approaches for enabling and sustaining the contributions of all critical skills and competencies



Principle 4

Build the capability needed to address administrative, educational, and other requirements important to support workforce strategies



Principle 5

Monitor and evaluate the agency's progress toward its human capital goals and the contribution that human capital results have made toward achieving programmatic goals

Source: GAO; GAO illustrations. | GAO-23-105431

Text of Figure 3: Key Principles for Effective Strategic Workforce Planning

- Principle 1: Involve top management, employees, and other stakeholders in developing, communicating, and implementing the strategic workforce plan
- Principle 2: Identify the critical skills and competencies that will be needed to achieve current and future programmatic results
- Principle 3: Develop strategies that are tailored to address gaps in number, deployment, and alignment of human capital approaches for enabling and sustaining the contributions of all critical skills and competencies

-
- Principle 4: Build the capability needed to address administrative, educational, and other requirements important to support workforce strategies
 - Principle 5: Monitor and evaluate the agency's progress toward its human capital goals and the contribution that human capital results have made toward achieving programmatic goals

Source: GAO; GAO illustrations. | GAO-23-105431

In 2017, we found that EOIR lacked workforce planning to guide its efforts for identifying and addressing staffing needs.³³ We found that EOIR used an informal approach to estimate staffing needs, which did not account for staffing needs beyond the next fiscal year, reflect EOIR's performance goals, or systematically account for workforce risks such as impending retirements. Therefore, we recommended that EOIR develop and implement a strategic workforce plan that addresses key principles of effective strategic workforce planning, including (1) determining critical skills and competencies needed to achieve current and future programmatic results; (2) developing strategies that are tailored to address gaps in number, deployment, and alignment of human capital approaches for enabling and sustaining the contributions of all critical skills and competencies; and (3) monitoring and evaluating of the agency's progress toward its human capital goals and the contribution that human capital results have made toward achieving programmatic results.³⁴

Since 2017, EOIR has undertaken some workforce planning initiatives. For example:

- From 2016 to 2017, EOIR contracted with a private firm to conduct a study of the Office of the Chief Immigration Judge. The contractor assessed EOIR's workforce needs at that time and created a staffing model to identify staffing needs under various scenarios. The final report also included more than 60 recommendations to address aspects of workforce planning such as creating a staffing strategy based on the staffing model, revising job descriptions, and improving communication and transparency. EOIR officials stated that they adjusted some staffing practices and policies. However, EOIR did not

³³[GAO-17-438](#).

³⁴For more information on GAO's key principles for effective strategic workforce planning, see [GAO-04-39](#).

take action in response to many of the contractor's recommendations due to insufficient funding, according to officials.

- In October 2021, EOIR filled its vacant Human Resource Officer position. According to officials, under the officer's direction, the Office of Administration has taken some steps to standardize planning processes and improve communication with components regarding workforce needs. For example, as of January 2023, officials told us the Office of Administration meets at least monthly with components to discuss their workforce needs.
- EOIR signed a contract with OPM in June 2022 for strategic workforce planning support. According to the terms of work for the 2-year contract, OPM aims to help EOIR identify workforce needs, analyze workforce trends, and develop policies and procedures for workforce planning. OPM's initial deliverables under the contract are expected to take 9 to 12 months to complete, with the option for further consultation following completion.

However, we continue to find that EOIR's workforce planning practices do not fully meet GAO's key principles for strategic workforce planning, consistent with the intent of our prior recommendation.

Principle 1: Involve top management, employees, and stakeholders in developing, communicating, and implementing the strategic workforce plan

- Top management should set the overall direction and goals of workforce planning.
- To ensure successful implementation of the workforce plan, agencies should involve employees and other stakeholders in developing and implementing workforce strategies, and should establish a communication strategy to create shared expectations, promote transparency, and report progress.

Source: GAO. | GAO-23-105431

Develop, communicate, and implement a strategic workforce plan.

As of January 2023, EOIR had not developed a strategic workforce plan or set workforce planning goals, consistent with key principles or our 2017 recommendation. EOIR officials stated that they have not developed a strategic workforce plan because they were waiting to first finalize an updated agency-wide strategic plan. EOIR has not had a strategic plan since 2013, which we discuss in more detail later in this report.

Further, EOIR has not clearly communicated with employees across the agency regarding how EOIR headquarters has allocated newly approved staffing positions. Rather, according to EOIR officials, each component tracks its own staffing levels separately, which do not always align with the Office of Administration data on staffing levels.

In addition, EOIR has not consistently involved employees in developing and implementing workforce strategies. For example, in 2017, the contractor recommended that EOIR strengthen employee advisory committees and ensure staff have a voice in important conversations. EOIR officials stated that they reconstituted some employee advisory committees in April 2022. However, officials told us that these groups are not involved in workforce planning discussions or decisions. Further, staff we spoke with in four immigration courts were not aware of EOIR's

workforce goals or priorities, and staff in one court noted that they have had little input into hiring priorities or timelines for their own court.³⁵ For example, staff in this court stated that EOIR headquarters posts most positions as nationwide advertisements, and the court receives only limited notice of when they will be posted. Additionally, if EOIR cannot fill the position during that time, the court must wait until next year for the next nationwide posting.

In the fall of 2021, the Office of Administration began holding regular meetings with component heads to discuss their workforce needs on at least a monthly basis, officials said. Further, EOIR established an inter-component workforce development committee to support its June 2022 contract with OPM. However, without setting the overall strategic direction and goals and ensuring that employees and stakeholders are aware of and engaged in implementing workforce strategies, consistent with this key principle, EOIR cannot develop an effective strategic workforce plan.

Key Principle 2: Identify the critical skills and competencies needed to achieve current and future programmatic results

- It is essential that agencies identify the skills and competencies that are critical to successfully achieving their missions and goals.
- It is important that the skills and competencies identified are clearly linked to the agency's mission and long-term goals developed during the strategic planning process.
- In identifying gaps between its current and future workforce, an agency can consider both the number and skills of employees needed and opportunities to reshape the current workforce.

Source: GAO. | GAO-23-105431

Identify critical skills and competencies. EOIR has not consistently identified the skills and competencies that are critical to successfully achieving its missions and goals. In 2016 and 2017, EOIR's contractor took steps to identify and assess workforce competencies and gaps for the Office of the Chief Immigration Judge, but EOIR did not follow through with these efforts. Specifically, EOIR's contractor provided an analysis of the office's existing workforce, including determining mission-critical jobs and competencies and assessing the workload of current staff.

The contractor also created a staffing tool to identify future court staffing needs based on case completion goals. However, officials stated that EOIR did not invest in the skills and resources necessary to continue use of the staffing model after the contractor's support ended in 2019 and noted that it may no longer reflect updated targets. Additionally, EOIR has not taken steps to update or identify changes to workforce gaps that the contractor identified in 2017. Until EOIR identifies a strategic direction and workforce goals, consistent with the prior principle and our 2017 recommendation, it cannot fully identify gaps between its current and

³⁵We met with staff from four immigration courts: San Francisco, California; Fort Snelling, Minnesota; Batavia, New York; and Houston (South Gessner Road), Texas. We selected a sample of courts that vary on several characteristics, including size, geographic location, and proportion of detained and non-detained cases, among others. For each court, we met with the court administrator, the assistant chief immigration judge, and one immigration judge.

future workforce or determine the number and skills of needed employees.

Key Principle 3: Develop strategies to address skill and competency gaps

- Once agencies have identified skill and competency gaps, they need to develop human capital strategies—the programs, policies, and processes that agencies use to build and manage their workforces—to close these gaps.
- These human capital strategies may include hiring, training, staff development, succession planning, and approaches to increase retention of high-potential staff.
- Agencies should consider how its human capital strategies can be aligned to eliminate gaps and enable, improve, and sustain the contribution of critical skills and competencies.

Source: GAO. | GAO-23-105431

Develop strategies to address gaps. EOIR has not developed human capital strategies to close skill and competency gaps because it has not yet established strategic workforce goals or identified the agency’s gaps, consistent with the preceding two key principles. While EOIR has undertaken some initiatives since our 2017 report related to hiring, training, staff development, and retention, EOIR’s workforce efforts have not been fully implemented and are not tailored to meet specific needs.³⁶

For example, EOIR initiated a restructuring of the Office of the Chief Immigration Judge’s court staffing structure as a strategy to address the lack of staff promotion opportunities, a workforce retention gap EOIR’s contractor identified in 2017. EOIR officials stated that, as part of this restructure, EOIR revised job duties and pay grades for court staff. Further, EOIR created a proposed court staffing chart, which identified target ratios for staff, supervisors, and immigration judges. However, according to EOIR officials, the court staffing chart was used by one person within the Office of the Chief Immigration Judge, but EOIR never formally adopted or implemented it agency-wide.

Additionally, a fiscal year 2021 and 2022 hiring plan for the Office of the Chief Immigration Judge identified how many additional immigration judges and court staff the office expected to hire. However, the hiring plan did not identify specific strategies to address recruitment issues beyond posting additional job announcements. EOIR officials stated that they have not analyzed vacancy postings to determine recruitment issues such as which positions are difficult to fill. According to officials, EOIR’s human resource data systems make it difficult to run the reports necessary to identify which positions have been open the longest or to track attrition trends. Lastly, EOIR officials told us they have recruitment efforts in place, such as outreach to private bar associations. However, although EOIR officials said they have explored retention incentives, these efforts are still in development as of January 2023.

³⁶See appendix I for more information on EOIR’s judge training programs.

Principle 4: Build the capability needed to support workforce strategies

- Agencies should streamline and improve any administrative processes related to workforce planning and strategies. Transparency and accountability should be built into workforce systems.
- Educating managers and employees on the availability and use of any available hiring flexibilities or awards, for example, will improve the success of such workforce strategies.

Source: GAO. | GAO-23-105431

Build capability to support workforce strategies. EOIR does not have effective administrative processes for workforce planning. EOIR officials stated that the existing systems for tracking and assessing workforce needs are difficult to use and may be unreliable. Furthermore, EOIR has not clearly documented guidance on workforce planning processes. For example, according to officials, EOIR’s Office of Administration has modified its process for prioritizing component workforce needs through the development of organizational charts and bimonthly meetings with component leadership. However, in October 2022, EOIR officials told us they do not have documented standard operating procedures for workforce planning processes.

In addition, EOIR officials stated that EOIR did not have the expertise for workforce planning until October 2021, when EOIR hired a new Human Resources Officer. Further, officials stated that until July 2020, EOIR did not have staff with the skills to use and update the contractor’s staffing model. According to the statement of work for the June 2022 contract, OPM will help EOIR develop and document workforce planning policies and procedures, including standardized guidance and workforce planning roles and responsibilities. However, it is too early to determine whether EOIR will successfully build the necessary skills and capabilities.

Key Principle 5: Monitor and evaluate progress toward human capital goals and programmatic results

- Performance measures can indicate whether the agency executed its hiring, training, or retention strategies as intended and achieved the goals of these strategies, and how these strategies changed the workforce’s skills and competencies.
- Periodic measurement of an agency’s progress toward human capital goals and the extent that human capital activities contributed to achieving programmatic goals provides information for effective oversight by identifying performance shortfalls and appropriate corrective actions.

Source: GAO. | GAO-23-105431

Monitor and evaluate progress. EOIR has not identified goals or metrics for its workforce planning initiatives and cannot measure success until it identifies strategic workforce goals and strategies against which to measure its progress. For example, EOIR did not identify goals or metrics to assess how some of its initiatives since 2017 have affected employee promotion or court staffing.

We previously reported that evaluating progress can determine both how well an agency has implemented its workforce strategies and whether its workforce strategies have an impact on an agency’s larger mission and programmatic goals.³⁷ Furthermore, our prior work indicates that an agency should identify and discuss what progress measures it will use before implementing any workforce strategies, to help think through the scope, timing, and possible barriers.

According to DOJ officials, EOIR is reporting on performance metrics in response to the DOJ’s strategic plan for fiscal years 2022 through 2026.

³⁷[GAO-04-39](#).

This includes the average number of vacancy days for immigration adjudicator positions (that is, immigration judges) and the median case completion time.³⁸ While these measures will allow DOJ to monitor progress on its strategic objectives for EOIR, EOIR has not yet identified the specific workforce strategies it will use to reach the targets identified under these objectives or set measures for those workforce strategies. Without monitoring and evaluating its workforce strategies, EOIR cannot determine whether its workforce efforts are effective or identify when approaches might need to be revised.

Strategic 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. Since our 2017 report, EOIR has taken some steps to improve its strategic workforce planning practices, but they do not fully align with key principles for strategic workforce planning or are in their early stages. In particular, EOIR officials stated that they expect to develop a workforce plan as a result of the OPM contract, but it is too soon to tell if this will occur. As we recommended in 2017, we continue to believe that developing and implementing a strategic workforce plan that addresses key principles for effective strategic workforce planning, such as including a determination of critical skills and competencies, strategies to address skill and competency gaps, and monitoring and evaluating progress made, would better position EOIR to address current and future staffing needs.

EOIR Is Updating its Agency-wide Strategic Plan but Does Not Have a Schedule with Time Frames for Completing It

EOIR has efforts underway to update its agency-wide strategic plan, but, as of January 2023, officials could not provide an estimated time frame for its completion. Setting an agency's strategic direction is an important first step in establishing effective workforce planning practices, but EOIR has not had an agency-wide strategic plan since 2013. According to key principles for workforce planning, agency leadership should set the agency's strategic direction and ensure that its workforce goals, plans,

³⁸In addition to these two performance metrics, EOIR reports on the percent of immigration judges who have received all relevant continuing legal education annually, and the number of visits to the Immigration Court Online Resource website.

and practices are aligned with that direction.³⁹ In addition, an agency's multi-year strategic plan should cover a period of at least 4 years, and should articulate the fundamental mission of an organization and lay out its long-term goals for implementing that mission, including the resources needed to reach these goals.⁴⁰

EOIR's previous strategic plan covered fiscal years 2008 through 2013. In 2017, we reported that EOIR was beginning to develop a strategic plan, which was to include strategies and milestones to meet human capital needs.⁴¹ However, as we reported, EOIR did not provide documentation of the plan's contents. In November 2021, EOIR officials told us that they had paused updates to the strategic plan to ensure it would align with the updated DOJ strategic plan under the new administration, which was not finalized at that time.

In July 2022, DOJ issued its new strategic plan, covering fiscal years 2022 through 2026. In October 2022, EOIR officials stated that they were drafting an updated strategic plan to cover fiscal years 2023 through 2027, but they could not provide a schedule with time frames for when they would complete it. EOIR officials also stated that they were waiting for additional implementation guidance and metrics from DOJ on the department's strategic plan that would affect the development of EOIR's strategic plan. In November 2022, DOJ officials responsible for strategic planning told us that the department might provide assistance to components that develop strategic plans. However, they do not have plans to provide any additional formal guidance for components to follow,

³⁹[GAO-04-39](#).

⁴⁰The GPRA Modernization Act of 2010 requirements to develop a strategic plan and associated annual performance plans and other reports apply at the departmental level (e.g., DOJ), and therefore not explicitly to EOIR. However, we have previously stated that the act's requirements can serve as leading practices at lower organizational levels within federal agencies, such as individual divisions, programs, or initiatives. For example, see *Chemical Assessments: Annual EPA Survey Inconsistent with Leading Practices in Program Management*, [GAO-21-156](#), (Washington, D.C.: Dec. 18, 2020); *Coast Guard: Actions Needed to Enhance Performance Information Transparency and Monitoring*, [GAO-18-13](#) (Washington, D.C.: Oct. 27, 2017); and *Motor Carriers: Better Information Needed to Assess Effectiveness and Efficiency of Safety Interventions*, [GAO-17-49](#), (Washington, D.C.: Oct. 27, 2016). Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285, as updated by the GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011).

⁴¹[GAO-17-438](#).

including EOIR, regarding implementation of the department's strategic plan.

Without a strategic plan, EOIR cannot ensure its activities support its objectives or measure progress on agency goals. In the context of its human capital systems and needs, without a strategic direction as set forth in a strategic plan, EOIR is not well positioned to create an effective strategic workforce plan or ensure its workforce planning and human capital processes will support its organizational goals. Best practices for project management advise that entities identify target time frames for project completion.⁴² In developing a schedule for completion, entities should identify the activities necessary to complete the project and create a baseline schedule to serve as a reference for progress. Creating a schedule, including target time frames, would help EOIR better ensure the timely completion of its updated strategic plan, particularly since EOIR has operated without such a plan for nearly 10 years.

EOIR Lacks a Governance Structure to Guide Workforce Planning

Although EOIR has taken some steps to improve its workforce planning practices since 2017, it does not have a governance structure to guide its efforts and hold leadership accountable for progress on workforce-related goals.⁴³ Specifically, EOIR has not assigned and documented roles and

⁴²Project Management Institute Inc., *A Guide to the Project Management Body of Knowledge* (PMBOK® Guide), 6th ed. (2017).

⁴³In general terms, a governance structure refers to the framework of project management, especially regarding rules, procedures, roles, and the division of responsibilities within the decision-making process. OPM does not specifically define a governance structure but states that senior leadership should establish a governance structure for workforce planning implementation. According to federal internal control standards, an agency's organizational structure provides management's framework for planning, directing, and controlling operations to achieve agency objectives. Management develops an organizational structure with the understanding of overall responsibilities, and assigns these responsibilities to discrete units to enable the organization to operate in an efficient and effective manner (see: [GAO-14-704G](#)). For the purposes of this report, we use the term "governance structure" as the framework that agency leaders should develop to implement a workforce plan. This framework should include at least two things: (1) assigned and documented roles and responsibilities for workforce planning, including implementation of the plan, across all levels at the agency; and (2) measurable and observable targets and metrics to determine effectiveness in achieving strategic or organizational goals.

responsibilities for workforce planning and implementation of a strategic workforce plan across all levels of the organization.

EOIR's June 2022 contract with OPM is a positive step and has the potential to address key workforce planning principles. According to the contract's statement of work, OPM is to assess EOIR's current workforce and develop a vision for the future of its workforce; conduct workshops with EOIR leadership on workforce principles and best practices; and work with EOIR to design policies and procedures for a regular and repeatable workforce planning process. However, as of October 2022, EOIR had not documented which officials will be responsible for workforce planning or be accountable for its implementation following the conclusion of the OPM contract, officials told us. In addition, as discussed previously, EOIR does not have measurable and observable targets and metrics to determine the effectiveness of its strategies in meeting EOIR's workforce planning goals.

While it is too soon to assess EOIR's ability to successfully implement results from the OPM contract, EOIR has missed opportunities in past efforts to improve its workforce planning efforts. For example, EOIR did not fully leverage or implement recommendations, analyses, and tools from the 2017 contractor's report to help it develop a workforce plan. EOIR officials also told us they did not make recommended changes to improve procedures and communication related to workforce planning. EOIR officials said they did not implement the recommendations due, in part, to a lack of funding. EOIR officials also noted that, at the time, the agency did not have the sufficient knowledge and expertise in its Office of Administration to undertake workforce planning efforts. But they noted that a long term goal of the OPM contract is to help build the capacity within EOIR to conduct such workforce planning.

In addition, EOIR's strategic plan for fiscal years 2008 through 2013 stated that EOIR would create staffing plans for each component that took into account new skills needed for the future. However, in 2017 we reported that EOIR officials told us they did not create such staffing plans. Furthermore, officials stated that the agency's December 2017 proposed court staffing chart may no longer reflect EOIR's current status and staffing targets, but staff in two of the four courts we spoke with referred to this chart when discussing their court staffing needs.

To effectively implement workforce planning, leadership must actively participate in determining priorities and identifying priority processes. Specifically, according to OPM's Human Capital Framework, agencies

should have a strategic planning and alignment system that ensures human capital management strategies, plans, and practices (1) integrate strategic plans, annual performance plans and goals, and other relevant plans; (2) contain measurable and observable performance targets; and (3) communicate in an open and transparent manner.⁴⁴ To create such a system, OPM's framework calls for agency and human capital leadership to engage key leadership and stakeholders to establish the necessary governance structure for implementation of any strategic plans, hold senior management accountable for organizational progress, and identify metrics to determine effectiveness in achieving goals, among other actions. EOIR officials told us that the Human Resources Officer is responsible for overseeing work under the OPM contract; however, they also stated that they plan to identify and document further roles and responsibilities as OPM's work progresses.

Given its longstanding challenges in workforce planning, EOIR does not have reasonable assurance that it will make the investments and improvements necessary to implement the results of the OPM workforce planning contract. Involving key leadership and stakeholders in establishing a documented governance structure for workforce planning, which includes (1) assigned and documented roles and responsibilities and (2) measurable and observable targets and metrics, would better position EOIR to institutionalize improvements moving forward.

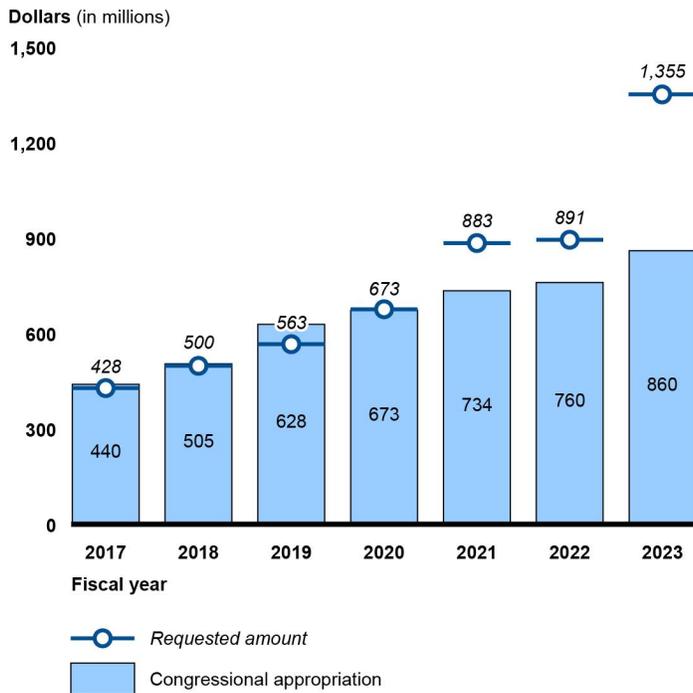
EOIR Has Not Clearly Communicated to Congress Whether its Appropriations Fully Support its Workforce Needs

EOIR has not clearly communicated to Congress the extent to which its appropriations fully support its workforce needs. Since fiscal year 2017, EOIR's total appropriation has increased. Specifically, EOIR's total appropriation increased from \$440 million in fiscal year 2017 to \$860 million in fiscal year 2023. For fiscal years 2017 through 2020, EOIR's appropriation increased annually, and met or exceeded EOIR's budget

⁴⁴OPM's Human Capital Framework provides comprehensive guidance on strategic human capital management in the Federal Government. The framework consists of four interconnected and adaptive systems: strategic alignment and planning, talent management, performance culture, and evaluation. See: <https://www.opm.gov/policy-data-oversight/human-capital-framework/>.

requests. In fiscal years 2021 through 2023, EOIR’s appropriation was more than \$100 million below the requested amount (see fig. 4).⁴⁵

Figure 4: Executive Office for Immigration Review (EOIR) Budget Requests and Appropriated Amounts, Fiscal Years 2017–2023



Source: EOIR Congressional Budget Justifications and appropriations acts. | GAO-23-105431

Text of Figure 4: Executive Office for Immigration Review (EOIR) Budget Requests and Appropriated Amounts, Fiscal Years 2017–2023

- FY 2017: 428 million requested; 440 million appropriated
- FY 2018: 500 million requested; 505 million appropriated
- FY 2019: 563 million requested; 628 million appropriated
- FY 2020: 673 million requested; 673 appropriated

⁴⁵In fiscal year 2021, EOIR requested a total of \$882,872,000, and Congress appropriated \$734,000,000. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. B, title II, 134 Stat. 1182, 1246 (2020). In fiscal year 2022, EOIR requested \$891,190,000 and Congress appropriated \$760,000,000. Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, div. B, title II, 136 Stat. 49, 113. In fiscal year 2023, EOIR requested \$1,354,889,000 and Congress appropriated \$860,000,000. Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. B, title II, 136 Stat. 4459, 4522 (2022).

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- FY 2021: 883 million requested; 734 million appropriated
 - FY 2022: 891 million requested; 760 million appropriated
 - FY 2023: 1,355 million requested; 860 million appropriated

Source: EOIR Congressional Budget Justifications and appropriations acts. | GAO-23-105431

Note: EOIR received more appropriations than requested in fiscal years 2017, 2018, and 2019—with total annual appropriations of \$440,000,000, \$504,500,000, and \$628,407,000, respectively. In June 2019, EOIR received a supplemental appropriation of \$65 million, in addition to its original fiscal year 2019 appropriation of \$563,407,000.

In its annual congressional budget justifications, EOIR reports the number of “authorized positions” (referred to hereafter as “reported positions”) in its salaries and expenses reports.⁴⁶ According to EOIR officials, these reported positions reflect EOIR’s interpretation of the total number of positions that Congress expects the agency to maintain. More specifically, EOIR takes the previously approved number of positions from its prior year spend plan and adjusts this based on information provided in the explanatory statements from Congress accompanying the agency’s annual appropriations acts.⁴⁷ Congress has included language in explanatory statements indicating a specific number of positions or expected hires for certain fiscal years. For example, in the explanatory statement accompanying the fiscal year 2018 appropriations act, Congress provided funding for EOIR to hire at least 100 additional immigration judge teams, with the goal of having 484 immigration judge teams in total.⁴⁸

⁴⁶As a part of the annual budget request process, agencies and their components submit a congressional budget justification, which contains a narrative explaining the requested appropriation. In some cases, agencies also submit exhibits, with tables describing changes between the request and prior year appropriations, including salaries and expenses reports showing changes in the number of positions and the actual employee costs paid in previous years. For the purpose of this report, we use the term “reported positions” to denote the number of positions that EOIR reports in its congressional budget justification’s salary and expense reports, which it calls “authorized positions.” EOIR also uses the term “authorized” to refer to an expected total number of immigration judge positions and immigration judge teams, which is a portion of its total positions.

⁴⁷According to EOIR officials, after an appropriation is enacted, EOIR submits a spend plan to Congress, with the approval and concurrence of DOJ’s Justice Management Division and department leadership. The spend plan outlines the number of reported positions, and the number of full-time equivalents that the agency requested in the current year budget as well as those that are contained in the current year enacted appropriation, among other things.

⁴⁸See 2018 Explanatory Statement, 164 Cong. Rec. H2045, H2090 (daily ed. March 22, 2018).

According to EOIR officials, they understand this to mean that EOIR is to hire 100 immigration judges and the associated support staff normally budgeted with new immigration judge positions. Similarly, in the conference report accompanying the fiscal year 2019 appropriations act, Congress noted that the appropriation provides funding for 534 immigration judge teams.⁴⁹ In the fiscal year 2022 explanatory statement, Congress directed EOIR to continue filling vacant immigration judge and appellate immigration judge positions.⁵⁰

However, from fiscal year 2017 through 2022, EOIR did not fill all of its reported positions.⁵¹ EOIR officials attributed this to a lack of funding, noting that the agency has had the resources to fill only a portion of its reported positions. In particular, EOIR officials told us that its annual appropriations from fiscal year 2017 through 2022 have not supported the number of reported positions in EOIR's congressional budget justifications. For example, EOIR's total number of reported positions for fiscal year 2022 was 3,761. However, these officials stated that EOIR's fiscal year 2022 appropriation supported approximately 2,600 positions, leaving more than 30 percent of reported positions unfunded, according to EOIR data. As a result, the total number of actual employees onboard has been consistently less than the number of reported positions in EOIR's congressional budget justifications, as shown in table 1.⁵²

⁴⁹2019 Conference Report, HR. Rep. No. 116-9, at 624 (Feb. 13, 2019). Congress did not specify how many positions EOIR should hire in the fiscal years 2020, and 2021 or 2022 explanatory statements. The 2020 House and Senate Appropriations Committee reports indicate that the amount recommended for EOIR, which equaled the 2020 budget request and was ultimately adopted in the final 2020 appropriation, is meant to support hiring up to 100 new immigration judges and support staff. H.R. Rep. No. 116-101, at 46-47 (June 3, 2019); S. Rep. No. 116-127, at 84-85 (Sep. 26, 2019).

⁵⁰2022 Explanatory Statement, 168 Cong. Rec. H1709, H1784 (daily ed. Mar. 9, 2022).

⁵¹EOIR data on reported positions and employees on board for fiscal year 2023 were not available at the time of our review.

⁵²EOIR officials stated that since EOIR did not receive the requested funding increase for fiscal year 2022, they prioritized hiring immigration judges to reach the reported number of immigration judges based on EOIR's interpretation of congressional expectations for total immigration judges. However, they stated they did not have the funding to hire the associated staff positions. As such, in fiscal year 2022, the reported number of immigration judges matched the actual number of immigration judges for the first time in a number of years.

Table 1: EOIR Total Reported Positions and Actual Employees Onboard, by Fiscal Year

Fiscal year	Total reported positions ^a	Total employees onboard as of end of fiscal year ^b	Difference between reported positions and onboard employees
2017	2,138	1,703	435
2018	2,198	1,804	394
2019	2,798	1,984	814
2020	2,951	2,299	652
2021	3,761	2,300	1,461
2022	3,761	2,469	1,292

Source: GAO analysis of Executive Office for Immigration Review (EOIR) Personnel, Hiring, and Caseload Reports to Congress, and Congressional Budget Justifications. | GAO-23-105431

^aEOIR’s reported positions reflect what EOIR interprets to be Congress’s expectations to the agency, based on explanatory statements and committee reports accompanying annual appropriations acts, according to officials. The reported positions for each fiscal year are based on the positions described by EOIR as “enacted” under the prior fiscal year’s appropriation, taking into account the legislative documents noted above.

^bActual employees onboard represents the total federal employees employed by EOIR as of the end of the fiscal year. Data are from a specific point each fiscal year and may not reflect the peak employment level in a given fiscal year or the exact number of funded positions.

From fiscal years 2017 through 2022, EOIR included more reported positions in its congressional budget justifications than what EOIR officials stated its actual annual appropriations supported. Several factors, some continuous and some temporary, have contributed to this misalignment between EOIR’s reported positions and the number of employees its appropriations have supported, and thus the number of onboard employees.

First, EOIR has not clearly defined what it calls authorized positions (that is, reported positions) in its congressional budget justifications. As previously discussed, EOIR officials told us that the authorized, or reported, positions included in its annual congressional budget justifications reflect what EOIR has historically interpreted as Congress’s expectation for the number of positions the agency will maintain. However, officials stated these are not positions that EOIR has filled, the number of actual employees onboard, or the number of positions EOIR believes its requested budget would support. As a result, Congress may not have a clear understanding of what EOIR’s numbers on authorized, or reported, positions mean in its congressional budget justifications.

Second, EOIR officials told us that the agency did not adjust its total reported positions to reflect a lower funding level as a result of government-wide sequestration following the Budget Control Act of

2011.⁵³ More specifically, after sequestration, the reduced funding level became EOIR's baseline budget for submitting future budget requests, but EOIR did not adjust its reported positions in congressional budget justifications. Other agencies and components have faced similar misalignment issues following the government-wide sequestration, which EOIR noted in its fiscal year 2021 congressional budget justification. For example, the Federal Bureau of Prisons made a technical adjustment in its budget justification in fiscal year 2018 to revise its number of positions to better align with its existing appropriation. Specifically, in its budget justification, the bureau removed 5,156 unfilled positions from its budget reports to better align with its existing appropriation.⁵⁴ However, each year EOIR requested and received increased funding for positions after sequestration, EOIR added new positions to its total reported positions so the gap created during sequestration remained.

Third, EOIR's funding requests in certain years did not fully account for unexpected increases in program costs, such as a large increase in contract costs for interpretation services in fiscal year 2019.⁵⁵ This increase in program costs reduced the funds available for hiring staff for both new and existing positions. As a result, EOIR could not hire all the new positions it had requested for that fiscal year, according to officials. However, EOIR has included those new positions in its total reported positions even though it could no longer afford to fill them.

Finally, officials stated that EOIR's personnel cost modeling in prior fiscal years contained miscalculations, which led to an underestimation of certain costs for staff positions in those years. Officials told us the cost model predicted that EOIR would hire all new employees at the lowest grade and level on the pay scale, rather than reflecting that some new employees may be hired at higher grades and levels on the scale. However, EOIR officials stated that budget staff have since improved their cost modeling, and that they corrected this assumption for the fiscal year 2023 budget request. Nevertheless, as a result of this underestimation in

⁵³Pub. L. No. 112-25, 125 Stat. 240. Sequestration is the automatic, across-the-board cancellation of budgetary resources. Under the Budget Control Act, sequestration was used to achieve a target of \$85.3 billion in reductions across the federal government.

⁵⁴See: GAO, *Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs*, [GAO-21-123](#) (Washington, D.C.: Feb. 24, 2021).

⁵⁵According to EOIR officials, while there was a dramatic increase in interpretation costs in fiscal year 2019, it was difficult to measure the increases in subsequent years due to the effects of COVID-19, which affected courts' use of interpretation services.

prior years, EOIR's budget supported fewer total staff than initially calculated when EOIR requested those positions. EOIR did not reduce the total number of reported positions to reflect this.

EOIR has not clearly communicated in its congressional budget justifications what it means by total reported positions, even as Congress has directed EOIR to submit monthly performance and operating reports detailing its staffing data and describing its hiring progress.⁵⁶ As a result, Congress may not have complete information about the extent to which existing funding supports all of its reported positions. For example, in its fiscal year 2022 budget request, EOIR stated that its requested increase in appropriation would "enable EOIR to add 100 new immigration judges, for a total of 734 authorized immigration judges, and necessary support staff." This gives the impression that EOIR could already fund 634 immigration judge teams, and the additional requested funding would allow EOIR to hire 100 more for a new total of 734 immigration judge teams. However, according to EOIR officials, EOIR could not fund all 634 immigration judge teams with its fiscal year 2022 appropriations.

With the exception of its fiscal year 2021 budget request, EOIR has continued to use the total reported positions in its congressional budget justifications and its monthly staffing reports to Congress without stating in those documents that some reported positions are not supported by its appropriations. Further, the misalignment will continue to increase, according to officials, as EOIR adds to its number of reported positions each fiscal year it receives additional funding for more staff.

This misalignment and lack of clear communication complicates EOIR's ability to justify its requests for additional staffing resources when, according to officials and immigration court staff, limited funding is already

⁵⁶Since fiscal year 2016, Congress has directed EOIR to submit these monthly Personnel, Hiring, and Caseload Reports to the House and Senate Committees on Appropriations. See 2016 Explanatory Statement, 161 Cong. Rec. H9693, H9738 (daily ed. Dec. 17, 2015); 2017 Explanatory Statement, 163 Cong. Rec. H3327, H3370 (daily ed. May 3, 2017); 2018 Explanatory Statement, 164 Cong. Rec. H2045, H2090 (daily ed. Mar. 22, 2018); 2019 Conference Report, H.R. Rep. No. 116-9, at 624 (Feb. 13, 2019); 2020 Explanatory Statement, 165 Cong. Rec. H10613, H10966 (daily ed. Dec. 17, 2019); 2021 Explanatory Statement, 166 Cong. Rec. H7879, H7935 (daily ed. Dec. 21, 2020); 2022 Explanatory Statement, 168 Cong. Rec. at H1784.

one of the main barriers to hiring immigration judges and other staff.⁵⁷ EOIR officials stated they attempted to address the misalignment in the department's fiscal year 2021 congressional budget justification. Specifically, EOIR requested funding for an additional 100 immigration judge teams but did not request the additional positions or full-time equivalent employees normally associated with such an increase, in an attempt to reduce (but not eliminate) the gap. However, according to EOIR officials, Congress did not approve the requested increase.⁵⁸ In its fiscal year 2022 and 2023 budget justifications, EOIR did not request funding for additional immigration judges without requesting additional positions, as it did in 2021.

Standards for Internal Control in the Federal Government states that agencies should communicate quality information to achieve their objectives, and should consider the audience and purpose of the information being communicated.⁵⁹ Whether EOIR's total reported positions is consistent with how it interprets and tracks congressional expectations, EOIR does not clearly communicate if existing appropriations support its workforce needs. Furthermore, with the exception of the fiscal year 2021 congressional budget justification, EOIR's budget documentation does not state that some positions are not supported by its appropriations.⁶⁰

Senior EOIR officials stated that they are concerned that taking further actions to clarify their reported positions, such as actions similar to those taken by the Bureau of Prisons, could appear as if EOIR is reducing onboard immigration judges and other staff. However, as EOIR officials have also noted, this continued lack of clarity in EOIR's budget justifications complicates its ability to request additional resources. Further, the lack of clarity has led to confusion among congressional

⁵⁷Additional barriers to hiring identified by EOIR officials include space constraints, the volume of hiring actions needed to hire the necessary staff along with each immigration judge, and the recruitment of qualified individuals in areas with high costs of living.

⁵⁸In fiscal year 2021, EOIR requested a total of \$882,872,000, and Congress appropriated \$734,000,000. Pub. L. No. 116-260, div. B, title II, 134 Stat. at 1246.

⁵⁹[GAO-14-704G](#).

⁶⁰In its 2021 congressional budget justification, EOIR stated that following enactment of the Budget Control Act and later sequestration, many federal agencies, including EOIR, experienced funding reduction. EOIR sought to address a lack of funding to support its total reported positions by requesting additional appropriated funds rather than seeking to reduce the total number of positions it reports as authorized or enacted to align with its appropriation.

committee staff around EOIR's use of appropriated funds for hiring. Taking additional steps to communicate clear information to Congress as a part of its annual budget justification regarding EOIR's workforce needs, and the extent to which its existing appropriations support its total reported positions, would help ensure Congress is well positioned to understand EOIR's workforce needs. Such steps could include clearly describing what its reported positions represent and what positions it estimates that are not supported by its appropriations, or revising its reported positions to more closely align with its existing appropriations.

EOIR Assesses How Judges Perform but Has Not Evaluated its Overall Judge Performance Appraisal Program

EOIR Evaluates Judge Performance Using Different Performance Plans for Each Type of Judge

Under its performance appraisal program⁶¹ for adjudicative positions, which covers immigration judges, assistant chief immigration judges, and appellate immigration judges, EOIR evaluates how judges perform their duties using different performance plans and performance cycles for each group, as seen in table 2.⁶² The performance plans include performance elements, which are the criteria against which EOIR evaluates judges.⁶³ For example, in the performance plan for immigration judges, legal ability refers to exhibiting knowledge of substantive immigration law, the rules of procedure, and the rules of evidence, among other things. In the assistant

⁶¹According to OPM, an appraisal program establishes specific procedures for appraising individual employees and operates within the parameters established by an agency's appraisal system. An agency may have a single program to cover all of its non-Senior Executive Service employees or it may have multiple programs, each covering a specific group of employees with no employee covered by more than one program.

⁶²This performance appraisal program is referred to as the *Performance Appraisal Program for Adjudicative Positions in the Executive Office for Immigration Review*. EOIR also has two other performance appraisal programs that cover other agency positions.

⁶³According to OPM, an employee performance plan is a document that establishes expectations for employee performance. Employee performance plans are all of the written or otherwise recorded performance elements that set forth expected performance. Performance elements tell employees what they have to do and standards tell them how well they have to do it.

chief immigration judge performance plan, teamwork refers to handling conflicts or disagreements with diplomacy and sensitivity to the issues, among other things. Each performance cycle is to include a formal progress review for each judge, generally halfway through the appraisal cycle. This is a formal meeting with the judges and their supervisors about their performance compared to the performance elements. Finally, the performance cycle ends with a summary rating for each judge.⁶⁴

Table 2: Executive Office for Immigration Review (EOIR) Description of Judge Employee Performance Plans, as of Fiscal Year 2022

Judge type	Performance cycle	Performance elements in the employee performance plan
Immigration judge	2 years	Legal ability; professionalism; and accountability for organizational results.
Assistant chief immigration judge ^a	1 year	Core competencies: communication; teamwork; accountability; and stakeholder relations. Job specific results elements: managing change and court management operations.
Appellate immigration judge ^b	1 year	Adjudicatory performance; professionalism/interpersonal leadership; and accountability for organizational results.

Source: GAO analysis of EOIR documentation. | GAO-23-105431

^aAssistant chief immigration judges serve as liaisons between courts and EOIR headquarters. They also have supervisory authority over immigration judges, court administrators, and legal support staff.

^bAppellate immigration judges sit on the Board of Immigration Appeals. They hear and issue decisions regarding appeals of decisions made by immigration judges and, in some cases, by the Department of Homeland Security.

EOIR Has Not Evaluated its Overall Judge Performance Appraisal Program

While EOIR evaluates how judges perform, it has not evaluated its overall judge performance appraisal program. The performance culture element of OPM’s Human Capital Framework states that agencies should periodically evaluate their performance appraisal system by, for example, linking performance objectives to strategic goals.⁶⁵ In addition, EOIR’s judge performance appraisal program documentation states that EOIR’s Human Resources Officer shall provide periodic assessments of the

⁶⁴According to OPM, a rating means evaluating employee performance against the performance elements in the employee performance plan, and assigning a summary rating of record. The rating is based on work performed during the entire appraisal period.

⁶⁵See: <https://www.opm.gov/policy-data-oversight/human-capital-framework/>.

effectiveness of the performance appraisal program. OPM guidance states that performance elements in a performance plan should be measurable, understandable, verifiable, equitable, and achievable.

Regarding immigration judges, EOIR has used the same performance elements for immigration judges—legal ability, professionalism, and accountability for organizational results—since at least 2007.⁶⁶ Three judges we spoke with across two immigration courts stated the performance elements in the immigration judge performance plan are not specific enough. For example, one assistant chief immigration judge stated that it is not clear how the elements are measured and that immigration judges have no reference points to use to track their own progress in meeting the elements.

Further, representatives for the National Association of Immigration Judges we spoke with stated that the performance elements in the immigration judge performance plan are very general and highly subjective terms, which leaves the evaluation process up to the local supervisor.⁶⁷ In the view of these representatives, the result may be that assistant chief immigration judges may not consistently apply the performance elements in assessing judges, and the performance review for judges may not be applied consistently.

Regarding assistant chief immigration judges, EOIR has revised its performance plan since 2017. In the most recent change, issued in May 2022, EOIR updated the performance elements. According to EOIR officials, the Office of the Director wanted to augment and clarify some

⁶⁶In 2018, EOIR added some performance metrics. Specifically, it added case completions (700 per year), remand rate (less than 15 percent), and various benchmark goals. EOIR suspended these performance metrics in October 2021.

⁶⁷The National Association of Immigration Judges is a voluntary organization of immigration judges. In 2020, the Federal Labor Relations Authority issued a decision removing the association's status as a federal employee union. In December 2021, the association entered into a settlement with EOIR to again recognize it as the exclusive union representative and collective bargaining agent for immigration judges. In April 2022, the Federal Labor Relations Authority upheld its 2020 decision de-certifying the association by denying a second motion for reconsideration. In July 2022, the association filed another petition with the Federal Labor Relations Authority to regain its status as a federal employee union. The association has also sought federal appellate review of the 2020 and 2022 decisions of the Federal Labor Relations Authority. See *Nat'l Ass'n of Immigration Judges v. David L. Neal*, No. 20-1868 (4th Cir. Filed Aug. 12, 2020); *Nat'l Ass'n of Immigration Judges v. David L. Neal*, No. 20-CV-731 (E.D. Va. Filed July 1, 2020).

assistant chief immigration judge management duties. For example, the Director's office wanted to provide more specificity about the level of communication expected between assistant chief immigration judges and the immigration judges they supervise. In addition, EOIR officials said the Director's office wanted to add court performance measures to the plan, so that the assistant chief immigration judges' rating includes an assessment of court performance.⁶⁸ EOIR officials stated that the purpose of adding court performance measures to the performance work plan was to put the burden of court operations on the assistant chief immigration judges.⁶⁹

One assistant chief immigration judge we spoke with stated that with changes to the performance plan in 2022, the plan went from too general to too specific. The judge also stated that the changes are not easily applied to all courts. For example, the performance work plan states that assistant chief immigration judges should meet with every immigration judge in their court every two weeks. According to the judge, this can be done in a small court with a small number of judges, but it is difficult to do in a large court with many judges.⁷⁰ For example, as of February 2023, EOIR data indicate that the three smallest courts—in Honolulu, HI, Imperial, CA, and Saipan, Northern Marianas Islands—each had one immigration judge; the largest court—in New York, NY—had 40 immigration judges.

Regarding appellate immigration judges, EOIR moved them from a DOJ performance appraisal system for Senior Level and Scientific Professionals to the same performance appraisal system for immigration

⁶⁸The performance work plan includes seven court performance measures, including: (1) all detained removal cases, absent a showing of good cause for a continuance, should be completed within 60 days of filing of the Notice to Appear, reopening or recalendar of the case, or notification of detention; (2) all non-detained removal cases, absent a showing of good cause for a continuance, should be completed within 365 days of filing of the Notice to Appear, reopening or recalendar of the case, or notification of release from custody; (3) and all motions should be adjudicated within 40 days of filing.

⁶⁹For example, according to the employee performance plan, assistant chief immigration judges are to achieve the specified court performance standards, such as ensuring that all motions be adjudicated within 40 days of filing, at least 80 percent of the time.

⁷⁰Immigration courts vary in size. EOIR separates its courts into small and large based on the number of personnel. Small courts have less than 100 personnel and large courts have more than 100 personnel, according to EOIR.

judges in fiscal year 2021.⁷¹ As a result, the BIA developed and implemented a new performance plan for appellate immigration judges. This plan includes performance elements to assess the appellate workload, and in circumstances when a judge may be detailed from the BIA, hear cases at an immigration court.

OPM guidance states that agencies should evaluate their performance appraisal system and programs and plan for its ongoing evaluation. In particular, agencies should periodically check for effect in their performance appraisal programs.⁷² To check for the effect of the appraisal program, OPM guidance notes that evaluating the appraisal program for effect helps the agency determine the results of the appraisal program. An agency can ask, for example, if employees and managers are satisfied with the equity, utility, and accuracy of the program.⁷³

As of October 2022, EOIR officials stated that they do not have a process to periodically evaluate their overall judge performance appraisal program, consistent with OPM guidance. These officials stated that the changes EOIR made to some of the specific judge performance plans were sufficient for ensuring that the work plans are appropriate. However, in deciding whether to make changes to each of the judge performance plans in recent years, EOIR did so without assessing if employees and managers are satisfied with equity, utility, and accuracy of the program, for example, consistent with OPM guidance on evaluating performance

⁷¹According to EOIR officials, DOJ previously classified appellate immigration judges as Senior Level employees. The Senior Level category of high-level federal jobs was established in 1990 to replace General Schedule-16, 17, and 18 positions. There are two broad types of Senior Level positions. Most such employees are in non-executive positions whose duties are broad and complex enough to be classified above the General Schedule-15 level. However, in a few agencies that are statutorily exempt from inclusion in the Senior Executive Service, Senior Level employees fill executive-level positions.

⁷²OPM guidance also states that agencies should check for compliance. To check for compliance, an agency asks questions such as if progress reviews were conducted or employees received a summary rating. EOIR officials stated they have a performance management specialist in the Office of Administration who tracks that every judge receives a summary rating, using an excel spreadsheet.

⁷³See OPM, *Performance Management Practitioner Series: Evaluating Performance Appraisal Programs: An Overview*, PMD-09. Other questions an agency can ask include: (1) if the stated objectives of the appraisal program are being met; (2) if there has been an improvement in employee, unit, or organizational performance; (3) if there are signs of different treatment in the results of performance appraisal processes; and (4) if there has been an improvement in the efficiency or the effectiveness of related human resources programs.

appraisal programs. By implementing a process for evaluating its performance appraisal program for adjudicate staff (immigration judges, assistant chief immigration judges, and appellate immigration judges) on a periodic basis, EOIR would be better positioned to determine the effectiveness of judge performance plans and the overall program.

EOIR Takes Steps to Ensure It Reports Quality Data to the Public, but Does Not Have Updated Guidelines

EOIR reports immigration data to the public in several ways, including by (1) reporting immigration case statistics on its public website and (2) responding to Freedom of Information Act (FOIA) requests.⁷⁴ Officials told us they take steps to ensure the quality of the data.⁷⁵ However, EOIR does not have updated guidelines for disseminating quality information to the public, including basic standards and procedures to ensure information quality.

Reports on EOIR website. EOIR officials told us they publish a series of quarterly data reports on the agency's website, which provide current and historical summary statistics on topics such as EOIR's pending caseload, case outcomes, and rates at which respondents are represented by counsel. EOIR developed the data reports to cover the types of information commonly requested by Congress and the media, according to officials. EOIR officials told us they use several practices to check the quality of the underlying case data used to update the quarterly reports. For example, officials stated that data analysts are to compare the new data to the prior quarters to identify and address any unexpected differences. In addition, the analysts also compare EOIR data against the same data from DHS by running a reconciliation report with U.S. Immigration and Customs Enforcement on a weekly basis. Before posting the quarterly data reports on its website, officials noted that several senior

⁷⁴U.S.C. § 552 (FOIA statute).

⁷⁵In the context of information management, OMB guidance defines quality as encompassing three aspects: integrity (whether the information is secure); objectivity (whether the information is accurate, reliable, and unbiased in presentation and substance); and utility (whether the information is useful for its intended users and purpose). The guidance calls for agencies to incorporate all three aspects of quality in their information management practices. Office of Management and Budget, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, 67 Fed. Reg. 8,452-460 (Feb. 22, 2002).

EOIR officials are to review them for quality, including the Chief Management Officer and head of public affairs.

In addition, EOIR officials told us that data analysts run a set of standard reports on a weekly or monthly basis to check the completeness and accuracy of EOIR's underlying case data. Data analysts use these standard reports to help identify potential anomalies in the data, which they or other relevant officials then review as appropriate. The analysts are also responsible for verifying the quality of the data by running queries on data samples and checking whether the differences in the results are statistically significant, indicating a potential error, officials said. Further, officials at EOIR headquarters provide DHS and the Office of the Chief Immigration Judge with regular data reports so they can compare the data against their own records as another check for inconsistencies.

FOIA requests. EOIR also reports information to the public by responding to FOIA requests from respondents' representatives and external organizations. One such organization, the Transactional Records Access Clearinghouse (TRAC)—an information clearinghouse based at Syracuse University—has an ongoing FOIA request for monthly record-level immigration case data. EOIR provides these data to TRAC in addition to publishing the data on its website. Officials from TRAC and another court stakeholder, the American Immigration Council, told us they analyze the monthly case data to help themselves and other external organizations understand the operations of the immigration courts. In August 2020, EOIR developed a standard operating procedure to document the process staff should use to extract and prepare the monthly data files for the release of information to TRAC.⁷⁶ The procedure includes steps to verify the quality of the data, such as comparing record counts in data tables to counts from the previous month and assessing the differences for potential anomalies.

⁷⁶In October 2019, TRAC reported that EOIR had inappropriately deleted about 1,500 immigration case records from data it received from EOIR under its ongoing FOIA request. The National Archives and Records Administration became aware of this report and requested that EOIR investigate the potential deletion. In response, EOIR stated that it had investigated the issue, finding that no unauthorized deletion of records had occurred and that EOIR staff had taken action to otherwise modify most of the records in question. In January 2020, the National Archives and Records Administration accepted EOIR's response and closed the matter. EOIR officials also told us that they found an error in the script used during the posting of the data, and have since corrected the error.

Although EOIR takes some steps to ensure information quality, it does not have documented guidelines for disseminating quality information to the public. OMB guidance requires executive branch agencies to issue guidelines ensuring and maximizing the quality of information disseminated by the agency. In addition, the guidance requires that agencies establish administrative mechanisms allowing members of the public to request that agencies correct any information that does not comply with the aforementioned information quality guidelines.⁷⁷

As of January 2023, EOIR has a document on its website titled *EOIR Information Quality Guidelines for Information Disseminated to the Public*. The document states that EOIR is generally committed to ensuring the quality of the information it disseminates to the public and contains instructions for members of the public seeking correction of information. However, our analysis indicates that the document does not contain guidelines describing the steps EOIR takes or standards it uses to ensure it disseminates quality information. In addition, EOIR has not updated the document since July 2015, and the contact information for members of the public to use to request correction of information is no longer valid. Further, EOIR officials told us the information in the document is out of date and does not reflect the agency's current information management practices.

EOIR officials noted that while they do not have updated guidelines, they have experienced data management experts who are familiar with the data and are responsible for ensuring data quality. Further, they stated that the information requests they receive vary and may not always fit "hard and fast" rules provided by guidelines. In addition, EOIR data definitions and parameters change frequently and, as a result, any documented quality practices would quickly become outdated, officials said. However, senior EOIR officials, including the Chief Management Officer, acknowledged that the 2015 document is outdated and expressed an interest in developing updated guidelines, as appropriate. As of October 2022, EOIR did not have plans or time frames for doing so, officials said.

⁷⁷Office of Management and Budget, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*.

To comply with the OMB guidance, DOJ requires its components to develop their own information pre-dissemination practices.⁷⁸ These practices are to include establishing a basic standard of quality for information maintained and disseminated, and establishing and applying procedures to ensure quality before disseminating information. EOIR's Chief Management Officer told us that if EOIR were to update its guidelines, officials would first review the guidelines of other DOJ components to help inform this process. We reviewed two DOJ components' public-facing websites as of January 2023, and found that both had published guidelines detailing the standards and procedures officials are to use to ensure information quality. These include:

- **Bureau of Justice Statistics.** The primary statistical agency within DOJ, the Bureau of Justice Statistics has a page on its website that describes its data quality guidelines, with the stated purpose of informing the public of the agency's quality assurance procedures. The guidelines include the standards the bureau uses for ensuring the utility, objectivity, and integrity of the information it disseminates to the public. In addition, the guidelines describe the procedures the bureau follows to meet the standards in every phase of information management, such as maintaining the confidentiality of the data, designing and conducting surveys, verifying the accuracy of its statistics, and disseminating the information.
- **Federal Bureau of Investigation.** The Federal Bureau of Investigation also provides data quality guidelines on its website such as for information disseminated by its Uniform Crime Reporting Program. The mission of this program is to generate crime statistics for use in law enforcement and by students, researchers, the media, and the public. The guidelines describe the procedures the agency uses to review both the quality of the data it receives and compiles from other entities, such as state and local law enforcement agencies, as well as the process it uses to prepare information for dissemination.

Developing information quality guidelines consistent with DOJ and OMB guidance could help ensure that EOIR consistently provides the public with accurate, reliable data about the immigration court system. In addition, such guidelines would provide greater transparency to the public regarding EOIR's information quality assurance practices, enhancing their understanding of and trust in the information as appropriate. Further,

⁷⁸Department of Justice, *Ensuring the Quality of the Information Disseminated by the Department* (February 25, 2022).

guidelines that include standards and procedures for information quality could help EOIR ensure the continuity of these practices when faced with changes such as staff turnover or IT system updates.

EOIR Implemented an Electronic Filing System but Court Staff Reported that Outages Disrupt Their Work

EOIR Implemented an Electronic Filing System and Court Staff Reported Some Benefits

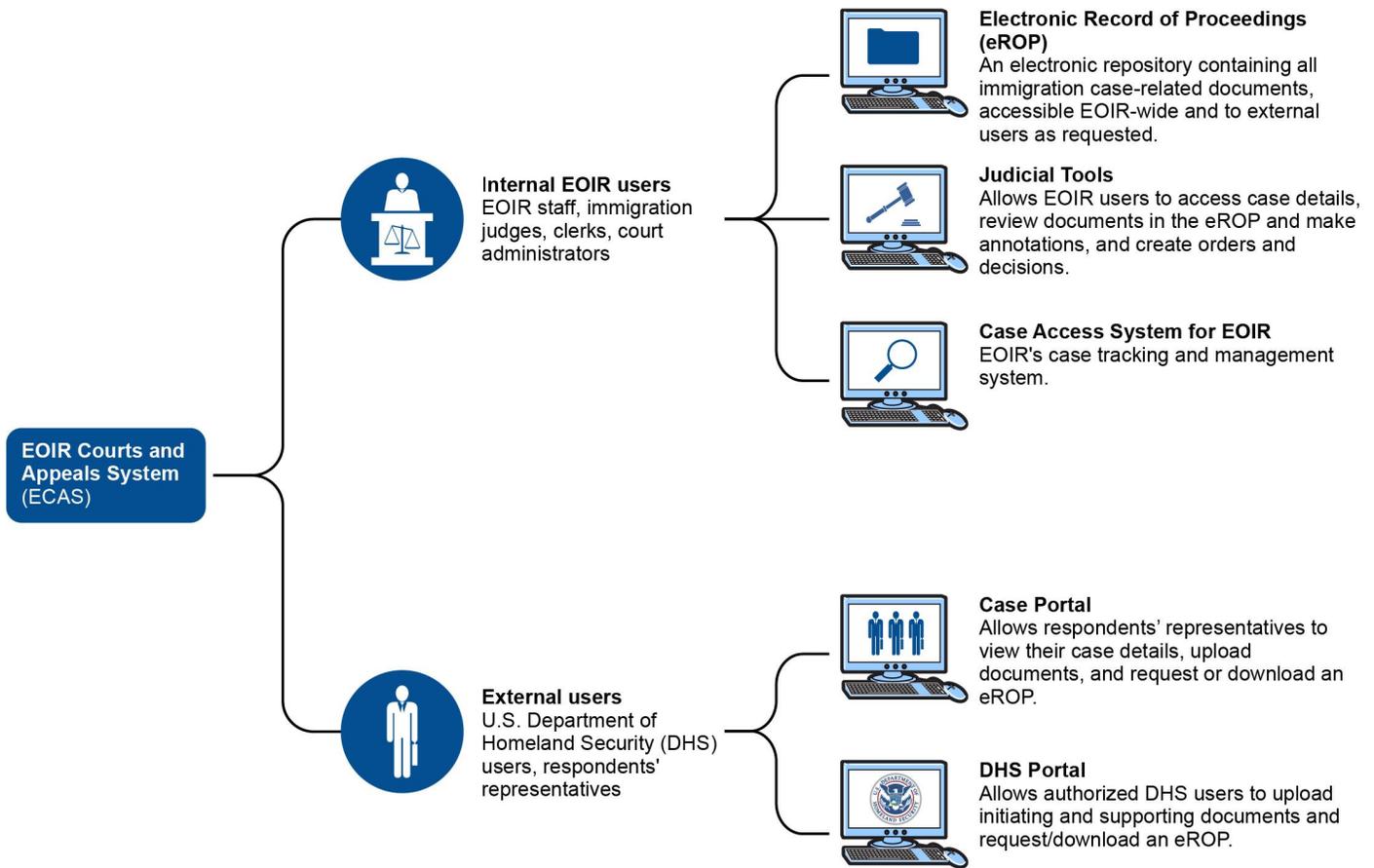
In 2016, EOIR began developing an electronic filing (e-filing) system for case documentation, known as the EOIR Courts and Appeals System (ECAS). E-filing is a means of transmitting documents and other information to immigration courts through an electronic medium, rather than on paper. EOIR has historically relied upon a paper-based system for filing case documentation, and aims to phase out paper filing and processing, retaining all records in electronic format. According to EOIR documentation, e-filing will save time and costs by allowing parties to access and submit information electronically in real time. In 2018, the agency began implementing e-filing at immigration courts in phases; as of November 2021, all courts had access to the system.⁷⁹ In December 2021, EOIR issued a final rule amending its regulations to implement e-filing for all new cases before the immigration courts and the BIA.⁸⁰

ECAS consists of several web-based applications that are available to different types of stakeholders in the immigration court system. For example, immigration judges and court staff use the Judicial Tools application to access case information and documentation, such as motions and evidence filed by parties, and to create orders and decisions on cases. Judges and court staff also use the Electronic Record of Proceedings application to scan and upload paper documents to electronic case files. In addition, DHS officials use the DHS Portal application to upload case documentation such as Notices to Appear, which initiate noncitizens' immigration removal proceedings (see fig. 5).

⁷⁹EOIR also began implementing e-filing at the BIA in phases, starting in September 2020.

⁸⁰The final rule took effect on February 11, 2022. Executive Office for Immigration Review Electronic Case Access Filing, 86 Fed. Reg. 70,708 (Dec. 13, 2021) (codified at 8 C.F.R. pts. 1001, 1003, 1103, 1208, 1240, 1245, 1246, & 1292).

Figure 5: Applications within the EOIR Courts and Appeals System



Source: Executive Office for Immigration Review (EOIR) information; GAO illustrations; DHS (seal). | GAO-23-105431

Text of Figure 5: Applications within the EOIR Courts and Appeals System

- 1) EOIR Courts and Appeals System (ECAS)
 - a) Internal EOIR users: EOIR staff, immigration judges, clerks, court administrators
 - i) Electronic Record of Proceedings (eROP): An electronic repository containing all immigration case-related documents, accessible EOIR-wide and to external users as requested.
 - ii) Judicial Tools: Allows EOIR users to access case details, review documents in the eROP and make annotations, and create orders and decisions.

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- iii) Case Access System for EOIR: EOIR's case tracking and management system.
 - b) External users: U.S. Department of Homeland Security (DHS) users, respondents' representatives
 - i) Case Portal: Allows respondents' representatives to view their case details, upload documents, and request or download an eROP.
 - ii) DHS Portal: Allows authorized DHS users to upload initiating and supporting documents and request/download an eROP.

Source: Executive Office for Immigration Review (EOIR) information; GAO illustrations; DHS (seal). | GAO-23-105431

As part of the transition to e-filing, EOIR has taken steps to convert its pending cases, which are still on paper, to electronic records—a process known as digitization. Digitization involves scanning paper case documents into an electronic record of proceedings within ECAS, as well as tagging documents with metadata and converting any annotations to machine-readable text. In January 2023, EOIR officials reported that about 850,000 cases remained on paper. These records must be digitized to comply with federal requirements for electronic recordkeeping.⁸¹ EOIR headquarters officials and court staff told us that courts are making an effort to digitize records for pending cases.

Staff we interviewed at all four immigration courts reported that ECAS has several benefits. For example, eight out of 12 court staff we spoke with—including court administrators, immigration judges, and assistant chief immigration judges—said ECAS makes information more accessible. In particular, they noted that the system reduces staff reliance on paper and provides a central location for all parties to access the same information simultaneously. One court administrator and one assistant chief immigration judge said that ECAS is beneficial for allowing attorneys to instantly transmit documents to the court at any time of day. They stated that this eliminates the need for court staff to wait for paper documents to arrive in the mail. Another court administrator said the implementation of ECAS was timely because their court had paper files stacked to the

⁸¹In June 2019, OMB issued guidance requiring federal agencies to transition their business processes and recordkeeping to a fully electronic environment. In particular, it directed agencies to manage all permanent records in electronic format by December 31, 2022. In December 2022, OMB revised this deadline to June 30, 2024, citing agency delays during the COVID-19 pandemic. See OMB Memorandum M-19-21 and OMB Memorandum M-23-07.

ceiling and had run out of space to store additional files. Further, one-quarter of court staff told us that ECAS is beneficial for allowing staff to work remotely. Overall, 11 out of 12 court staff we interviewed expressed positive views of ECAS.

Court Staff Reported that Outages and Delays Disrupted Their Work

Despite reporting benefits associated with ECAS, staff from all four courts also told us they experienced system performance issues—specifically outages and delays—while using the Judicial Tools application. Ten of the 12 court staff we interviewed cited outages and delays as a disadvantage of e-filing. For example, because of system outages, court staff were sometimes unable to access case information during the workday, including during hearings, they said. In addition, delays cause slowdowns in completing basic tasks, court staff told us. One assistant chief immigration judge told us that master calendar hearings for electronic cases take roughly three times as long as they did when cases were on paper, due to slow response times in Judicial Tools. Similarly, one immigration judge said that annotating case documents in Judicial Tools is slower than on paper. Further, representatives from the National Association of Immigration Judges told us that the outages and delays their members experienced made hearings “slow or impossible.”

Officials from EOIR’s Office of Information Technology (OIT) told us that they are aware of these Judicial Tools performance issues. For example, according to officials, users submitted about 2,100 IT help desk tickets related to Judicial Tools from November 2021 to November 2022. From February 2022 to November 2022, Judicial Tools experienced 20 system outages resulting in periods of disruption of less than an hour each, according to EOIR documentation. However, these outages do not include the delays that court staff also reported experiencing while trying to use the application.

According to OIT officials, the volume of scanned documents that users uploaded to ECAS contributed to these performance issues. Document uploads surpassed OIT’s projections—growing “exponentially” after e-filing became mandatory in February 2022—and the system infrastructure failed to accommodate this growth, officials said. OIT estimated that after the requirement took effect, ECAS users would upload about 6,350 documents per day. However, document uploads increased from about 4,000 per day in January 2022 to about 12,000 per day in October 2022,

officials said—roughly twice the initial OIT projection. OIT based the projection on the number of registered attorneys in the system and their document upload rates over the prior year, and determined that the infrastructure underlying ECAS would be able to handle the expected volume of uploads. However, OIT did not account for the documents court staff would scan and upload—including efforts to digitize pending cases—which officials said increased significantly after the requirement took effect.

EOIR officials told us they have taken some steps to address the Judicial Tools performance issues. For example, EOIR officials told us they have been working with the vendor of several IT products involved to examine the infrastructure underlying the application and determine how to improve its performance. In addition, OIT increased the system’s capacity for optical character recognition—the software that converts the text in scanned documents to machine-readable text. Officials said the average length of the outages decreased starting in September 2022 after EOIR implemented several other remediation measures, such as making refinements to the database and increasing server resources and bandwidth for Judicial Tools. Further, in August 2022, EOIR documented the process and requirements that staff are to use for digitizing paper case files, and officials said they factored this workflow into their system planning. In addition, EOIR officials told us they signed a contract in late September 2022 with the goal of improving the performance and resiliency of its IT systems overall, including Judicial Tools.

However, EOIR does not have a process to regularly assess whether Judicial Tools is meeting the needs of its users using qualitative and quantitative methods, as called for in OIT documentation. According to its *Office of Information Technology Strategic Plan* for fiscal years 2019 through 2024, one of OIT’s goals is to establish formal evaluation mechanisms to monitor the performance of its products and services on an ongoing basis after they have launched. This includes qualitative and quantitative methods of gathering user feedback on IT products, analyzing the impacts of these products on EOIR’s ability to execute its mission, and using this information to make modifications as appropriate.⁸² Further, according to EOIR documentation, the main performance measure for ECAS is how well it enables court staff to perform adjudication-related tasks rapidly and efficiently. To that end, the

⁸²Executive Office for Immigration Review Office of Information Technology, *Office of Information Technology Strategic Plan: Fiscal Years 2019—2024*.

documentation notes that it is important that ECAS have an intuitive interface with quick response times. OMB guidance also states that agencies should have the IT resources they need and regularly assess these resources to ensure they meet agency needs, including whether any upgrades are needed.⁸³

OIT officials told us they take several steps to determine whether their IT resources, including Judicial Tools, meet agency needs. For example, an investment review board composed of senior EOIR officials regularly reviews ongoing projects, including progress made and any risks or issues that arise. Further, officials told us that several channels are available to users to provide qualitative feedback on Judicial Tools. These include portals for users to submit suggestions for modifications to IT services; ad hoc meetings between OIT and components; and a working group established in September 2022 consisting of the Director's office, OIT, and a group of immigration judges. However, EOIR did not provide documentation of quantitative methods it uses to gather user feedback on Judicial Tools, as called for in the strategic plan. These methods could include, for example, proactively soliciting feedback from all users through a regular survey, analyzing the results, and using the information to make modifications as appropriate. Further, EOIR did not provide documentation regarding how they use the aforementioned qualitative feedback methods to regularly assess Judicial Tools performance, specifically.

The transition to e-filing using ECAS has the potential to bring greater efficiencies to EOIR's work adjudicating immigration cases, and as such supports the agency's mission. However, the Judicial Tools outages and delays reported by court staff create additional inefficiencies in this work. If not resolved, these inefficiencies may adversely affect EOIR's ability to meet its case processing goals, such as holding three hearings per day and reducing the backlog of pending cases, as well as its case digitization goals. Developing and implementing a process to regularly reassess whether Judicial Tools is meeting the needs of its users using qualitative and quantitative methods would help EOIR ensure that the application continues to serve EOIR's needs moving forward, particularly as internal and external changes place additional demands on the application and as the needs of staff change.

⁸³Office of Management and Budget, *Managing Information as a Strategic Resource*, Circular A-130 (Washington, D.C.: July 28, 2016).

Conclusions

As EOIR continues to face a significant and growing backlog of immigration cases, effective management practices are critical to ensuring that EOIR is well positioned to fulfill its mission to adjudicate these cases effectively and efficiently. In recent years, EOIR has faced management challenges, as we have reported, and continues to need improvement in areas such as workforce planning and data management. While EOIR has taken some steps to improve workforce planning in recent years, it has yet to develop a workforce plan, as we recommended in 2017. Moreover, we found that the efforts it has undertaken since 2017 do not fully align with key principles for effective strategic workforce planning. We continue to believe that developing and implementing a strategic workforce plan that addresses these key principles, consistent with our 2017 recommendation, would better position EOIR to address current and future staffing needs. EOIR has also been without an agency-wide strategic plan since 2013. Developing a schedule, including target time frames, for completing its strategic plan would help better position EOIR to set a strategic direction for its efforts to create a workforce plan.

Additionally, while EOIR has some new efforts underway to help it develop a workforce plan, it lacks the governance structure to ensure that these efforts will be successful. An effective governance structure should include assigned and documented roles and responsibilities for workforce planning, and measurable and observable targets and metrics to determine effectiveness in achieving organizational goals. Establishing a governance structure could help EOIR ensure that current efforts in workforce planning are successful. In addition, EOIR has not clearly communicated to Congress its workforce needs. This has complicated its ability to justify requests for additional staff resources and has led to confusion around EOIR's use of appropriated funds for hiring.

EOIR evaluates judge performance through the use of performance plans, but has not evaluated the performance appraisal program for adjudicative staff (immigration judges, assistant chief immigration judges, and appellate immigration judges). An evaluation of the performance appraisal program could help EOIR ensure that recent changes to the assistant chief immigration judge and appellate immigration judge employee performance plans are effective, and could help determine if changes are needed to the immigration judge employee performance plan.

EOIR could also make improvements to its data management practices. In particular, updating its guidelines for disseminating quality information to the public could help EOIR ensure that it consistently provides the public with accurate, reliable data on the immigration court system. In addition, while moving immigration cases from a paper-based system to an electronic system for case documentation has garnered many benefits, unforeseen system outages have disrupted work at immigration courts. These outages, if not resolved, could create inefficiencies that hinder EOIR's ability to reduce the backlog of pending cases. EOIR could improve its management of the electronic case system by developing and implementing a process to regularly assess whether Judicial Tools, the portal used by court staff, is meeting the needs of its users.

Recommendations for Executive Action

We are making the following six recommendations to EOIR:

The Director of EOIR should develop a schedule, including target time frames, for completing EOIR's strategic plan. (Recommendation 1)

The Director of EOIR should involve key leadership and stakeholders in establishing a documented governance structure for workforce planning that includes:

- assigned and documented roles and responsibilities for workforce planning and implementation across all levels of EOIR, and
- measurable and observable targets and metrics to determine effectiveness in achieving strategic or organizational goals. (Recommendation 2)

The Director of EOIR should take additional steps to communicate clear information to Congress as a part of its annual budget justification regarding EOIR's workforce needs and the extent to which its existing appropriations support its total reported positions. (Recommendation 3)

The Director of EOIR should implement a process to evaluate, on a periodic basis, the performance appraisal program for adjudicative staff (immigration judges, assistant chief immigration judges, and appellate immigration judges), consistent with OPM guidance. (Recommendation 4)

The Director of EOIR should develop guidelines for disseminating quality information to the public, including documenting EOIR's standards and

procedures for information quality, consistent with DOJ and OMB guidance. (Recommendation 5)

The Director of EOIR should develop and implement a process to regularly reassess, using quantitative and qualitative methods, whether Judicial Tools is meeting the needs of its users. (Recommendation 6)

Agency Comments

We provided a draft of this report to DOJ and DHS for review and comment. EOIR provided written comments, which are reproduced in full in appendix II. EOIR and DHS also provided technical comments, which we incorporated as appropriate.

In its written comments, EOIR stated that it looked forward to implementing the recommendations in order to improve management practices at EOIR. The agency identified actions that it has taken, or plans to take, to implement the recommendations. For example, EOIR reported that a draft of its strategic plan is undergoing internal review, which it expects to complete within 30 days. EOIR also noted that it will continue to work on improving communication with Congress regarding workforce requirements and budgeting, including through a formal budget rollout plan. EOIR also stated that it will work to create a publicly available repository to hold and organize the standards and procedures for information quality.

We are sending copies of this report to the appropriate congressional committees, the Attorney General, and the Secretary of Homeland Security. In addition, this report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact Rebecca Gambler at 202-512-8777 or gablerr@gao.gov. GAO staff that made key contributions to this report are listed in appendix III.



Rebecca Gambler
Director, Homeland Security and Justice

List of Requesters

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate

The Honorable Richard Blumenthal
United States Senate

The Honorable Cory Booker
United States Senate

The Honorable Christopher Coons
United States Senate

The Honorable Dianne Feinstein
United States Senate

The Honorable Mazie Hirono
United States Senate

The Honorable Amy Klobuchar
United States Senate

The Honorable Sheldon Whitehouse
United States Senate

The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
House of Representatives

The Honorable Pramila Jayapal
Ranking Member
Subcommittee on Immigration Integrity, Security, and Enforcement
Committee on the Judiciary
House of Representatives

The Honorable Veronica Escobar
House of Representatives

The Honorable Sylvia R. Garcia

House of Representatives

The Honorable Sheila Jackson Lee
House of Representatives

The Honorable Henry C. "Hank" Johnson, Jr.
House of Representatives

The Honorable Zoe Lofgren
House of Representatives

The Honorable Joe Neguse
House of Representatives

The Honorable Jamie Raskin
House of Representatives

The Honorable Mary Gay Scanlon
House of Representatives

The Honorable Eric Swalwell
House of Representatives

Appendix I: Information on the Executive Office for Immigration Review's Judge Training Programs

The Executive Office for Immigration Review (EOIR) established the Legal Education and Research Services Division (LERS) under the Office of Policy in December 2017 to develop and coordinate nationwide legal training and professional development for new and experienced judges, attorneys, and others within EOIR who are directly involved in adjudication functions.

In addition to coordinating the training programs, LERS has undertaken multiple initiatives. For example, it established a Legal Training Committee in 2021, which serves as a standing steering and advisory committee for judicial and attorney training. As of June 2022, LERS also had several other efforts underway. It is developing a facilitator training program aimed at providing best practices and skills for agency training and meeting facilitators. It also created a technology subgroup to evaluate and make recommendations related to LERS technology needs. LERS staff are also developing a strategic plan, which officials stated will be used to measure LERS progress.

For fiscal years 2020 and 2021, LERS issued annual reports summarizing its training activities, training program data, and a summary of program activities, resources, and constraints. Additionally, in January 2020 and May 2021, the Office of Policy developed memorandums with a summary of recommendations for improving, enhancing, and expanding agency training. EOIR also seeks feedback from immigration judges on training topics they would find most helpful in performing their duties, according to training officials.

Table 3 provides a description of the judge training programs.

**Appendix I: Information on the Executive
Office for Immigration Review's Judge Training
Programs**

Table 3: Executive Office for Immigration Review (EOIR) Judge Training Programs

Judge group	Type of training	Training description	Sample of courses offered^a
Immigration judge	New hire	New immigration judges receive six weeks of initial training, which consists of two main components—extensive classroom training and on-the-job training. The first week is spent in the judge's home court with an assigned home court mentor. The next three weeks are classroom instruction on immigration law and process, and judicial skills. Finally, the last two weeks are training in the home court with the mentor.	<ul style="list-style-type: none"> • Adjustment of status and waivers of inadmissibility • Asylum, withholding of removal, and The Convention Against Torture • Bond proceedings and custody issues • Case exercise: Conducting an individual hearing • Case management: Managing the docket • Credibility and corroboration • Juvenile cases • Receipt of evidence: Building an evidentiary record • Removability and relief
Immigration judge	Ongoing	Incumbent judges receive periodic training on legal and procedural issues (e.g., asylum law, juveniles in proceedings, professional responsibility, etc.); training required pursuant to litigation; training offered to facilitate the implementation of new policies and procedures; and an annual multi-day training program on immigration law and related topics.	<ul style="list-style-type: none"> • Board of Immigration Appeals: Advanced criminal law issues related to immigration practice • Competency: <i>Franco-Gonzalez v. Holder</i> • International Religious Freedom Act • Office of the Ombuds • Special considerations in juvenile cases • The Convention Against Torture: Court updates and current topics • Unaccompanied children and other juveniles: Relief and reporting requirements
Assistant chief immigration judge	New hire	The Legal Education and Research Services Division (LERS) provides new Supervisory Judge Training, a one-week training program for supervisory judges, which covers judicial and court management-related training topics.	<ul style="list-style-type: none"> • Current challenges facing the Office of the Chief Immigration Judge • Effective supervision, case priorities, and effective docket management for assistant chief immigration judges • EOIR's judicial conduct and professionalism unit • Labor issues • Leading and managing your court teams and working with the court administrator • Managing performance and the performance appraisal system
Assistant chief immigration judge	Ongoing	Assistant chief immigration judges receive the same ongoing training as immigration judges.	<ul style="list-style-type: none"> • See list above for ongoing immigration judge training.

**Appendix I: Information on the Executive
Office for Immigration Review's Judge Training
Programs**

Judge group	Type of training	Training description	Sample of courses offered^a
Appellate immigration judge	New hire	New appellate immigration judges are to attend new immigration judge training, one week for those that were previously immigration judges and three weeks for those that were not. Otherwise, training for new appellate immigration judges consists of a weeklong training on substantive issues conducted by LERS, and a week-long training at the Board of Immigration Appeals. In addition to training provided by LERS, the Senior Legal Advisor for Training at the Board of Immigration Appeals provides additional Board-specific training, according to EOIR officials.	<ul style="list-style-type: none"> • Adjustment of status and waivers of inadmissibility • Board of Immigration Appeals standards of review • Case exercise: Reaching decisions in bond proceedings • Determining mental competence • Domestic violence, human trafficking, and collateral visas • Introduction to appellate immigration judge adjudications • Introduction to the en banc process • Overview of the Board of Immigration Appeal's structure, operations, and case flow process • Visa petition proceedings
Appellate immigration judge	Ongoing	Appellate immigration judges receive ongoing substantive legal training throughout the year, generally in conjunction with the Board of Immigration Appeals attorney and paralegal staff, according to EOIR officials. Training includes sessions on advanced legal research and writing, and substantive law issues such as litigation updates and criminal issues in immigration law. According to Board of Immigration Appeals officials, ongoing training for appellate immigration judges is similar to training for immigration judges.	<ul style="list-style-type: none"> • See list above for ongoing immigration judge training.

Source: GAO analysis of EOIR documentation. | GAO-23-105431

^aCourse examples are as of fiscal year 2021.

Appendix II: Comments from the Department of Justice



U.S. Department of Justice
Executive Office for Immigration Review
Office of the General Counsel

*5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041*

April 7, 2023

Rebecca Gambler
Director, Homeland Security and Justice Issues
U.S. Government Accountability Office
Washington, DC 20548

Re: Draft Report GAO 23-105431SU, "Immigration Courts: Actions Needed to Address
Workforce, Performance, and Data Management Challenges"

Dear Ms. Gambler:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Justice, Executive Office for Immigration Review (EOIR), appreciates the opportunity to work with the U.S. Government Accountability Office (GAO) on this review of the agency's workforce, performance, and data management practices. We further appreciate the work of the GAO team that performed this review and for the attention given to EOIR's unique mission and challenges. We look forward to addressing the recommendations for improvement contained in the report with the goal of improving management practices for EOIR employees, the individuals who participate in proceedings before the agency, and members of the public who rely on our agency for information. Specific comments regarding the GAO's six recommendations are provided below. We welcome the opportunity to implement these recommendations so that EOIR can more effectively accomplish our mission.

Recommendation 1 — EOIR Strategic Plan: EOIR recognizes the importance of strategic planning and we appreciate this recommendation. EOIR currently has a draft strategic plan undergoing internal agency clearance and we expect to complete that process within the next 30 days. Once the plan receives final clearance within EOIR, the plan will enter the Departmental clearance process. While we can provide timeframe goals for this phase of the clearance process, we note that EOIR ultimately does not control the clearance of the strategic plan once it leaves EOIR.

Recommendation 2 — Governance Structure for Workforce Planning: EOIR has contracted with the Office of Personnel Management (OPM) to partner in developing workforce planning, position management and structure consistency, and staffing prioritization and planning targets

**Appendix II: Comments from the Department
of Justice**

and metrics. This initiative is currently under the purview of EOIR's Office of Administration, with the Human Resource Officer serving as the program manager. However, given that the current partnership with OPM is pursuant to a contract, it is not permanent in nature. With additional time and resources, EOIR anticipates using this partnership as the operational foundation for a permanent workforce planning framework. Additionally, the Human Resources Office developed and stood up the Position Management Council (PMC) in January 2023 with the objective of streamlining hiring across the organization. The PMC is comprised of senior officials from the various EOIR components and utilizes a standardized set of metrics, to include budgetary, to assess and approve Component hiring requests. The PMC has already been a value-added effort for the organization: in the less than handful of sessions held to date, the Council evaluated 71 requests for a total of 480 positions, 250 of which were approved. Moreover, the PMC created an Attorney Mix Working Group to determine the appropriate workforce blend in OCIJ and BIA. One of the Working Group's proposals was the creation of a new GS-12 attorney career ladder position intended to provide more hiring flexibility as well as building additional depth in the junior attorney ranks in EOIR.

Recommendation 3 — Annual Budget Justification: EOIR recognizes the importance of clear communication in the budgeting process and we appreciate this recommendation. EOIR will continue to provide robust briefings to Congressional appropriations staff as part of the annual budget rollout, to include EOIR's workforce needs. Further, EOIR will continue to work on improving communication with Congress regarding workforce requirements and budgeting, including through a formal budget rollout plan. In particular, EOIR will provide information regarding the extent to which existing appropriations support total reported positions.

Recommendation 4 — Performance Appraisal Program Evaluation: EOIR appreciates the value of institutionalizing an ongoing, periodic review of the agency's performance appraisal program. As such, EOIR's Office of Administration will coordinate periodic reviews of the adjudicative staff performance appraisal program, to include analysis in areas such as the overall completion rate of evaluations and how the performance plans promote the effectiveness of adjudicative staff performance. The components comprised of adjudicative staff—most notably, the Office of the Chief Immigration Judge and the Board of Immigration Appeals—then will be positioned to evaluate the effectiveness of the actual standards vis-à-vis job performance, as well as the accuracy and applicability of the Core Competencies and Job-Specific Elements, contained within the performance appraisals themselves.

Recommendation 5 — Information Quality Guidelines: EOIR appreciates this recommendation. We will work to create a publicly available repository to hold and organize the standards and procedures for information quality.

Recommendation 6 — Judicial Tools Assessment: EOIR appreciates the GAO's recommendation to perform a routine assessment of Judicial Tools, using both qualitative and quantitative measures. EOIR continually is engaged in evaluating its technology and working to improve user experience. EOIR will be sure to include assessing user experience with Judicial Tools as part of its ongoing efforts in this area.

**Appendix II: Comments from the Department
of Justice**

Thank you again for your review and for bringing these important issues to our attention. We appreciate the recommendations that you have offered for future improvements to agency management, performance, and data. We look forward to working with you again in the future.

Sincerely,

**JILL
ANDERSON**

Digitally signed by
JILL ANDERSON
Date: 2023.04.07
17:02:31 -04'00'

Jill Anderson
General Counsel
Executive Office for Immigration Review
Office of the General Counsel

Text of Appendix II: Comments from the Department of Justice

April 7, 2023

Rebecca Gambler

Director, Homeland Security and Justice Issues

U.S. Government Accountability Office

Washington, DC 20548

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Sincerely,

Jill Anderson General Counsel

Executive Office for Immigration Review Office of the General Counsel

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Rebecca Gambler at (202) 512-8777 or gablerr@gao.gov

Staff Acknowledgments

In addition to the contact named above, Kathryn Bernet (Assistant Director), Valerie Kasindi (Analyst-in-Charge), Nasreen Badat, Ashley Davis, Marissa Esthimer, Ángela González Yanes, Taneeka Hansen, Eric Hauswirth, Amanda Miller, Sasan J. “Jon” Najmi, and Leah Nash made key contributions to this report.

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