



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION



December 13, 2017

U.S. Department of Justice  
Executive Office for Immigration Review (EOIR)  
Office of the General Counsel – FOIA Service Center  
FOIA/Privacy Act Requests  
5107 Leesburg Pike, Suite 1903  
Falls Church, VA 22041

Via email: [EOIR.FOIARequests@usdoj.gov](mailto:EOIR.FOIARequests@usdoj.gov)

**Re: Freedom of Information Act Request**

Dear Sir or Madam:

The American Immigration Lawyers Association (AILA) and the American Immigration Council (Council) submits this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. §552, *et. seq.*

**RECORDS SOUGHT**

AILA and the Council request the following records from the Executive Office for Immigration Review (EOIR):

1. A copy of any Collective Bargaining Agreements (CBA) between the National Association of Immigration Judges (NAIJ) and EOIR effective in 2014, 2015, 2016, 2017, and 2018.
2. A copy of any proposed or accepted contract modifications to the CBAs between the NAIJ and EOIR during 2014, 2015, 2016, 2017, and 2018.
3. A copy of any proposed or draft CBAs, whether ultimately adopted or not, between the NAIJ and EOIR in 2017 and 2018.
4. A copy of any draft or proposed CBA provisions, whether ultimately adopted or not, between the NAIJ and EOIR in 2017 and 2018.
5. A copy of any proposals, term sheets, memoranda, draft language or proposals, markups, or any other documents exchanged in the course of bargaining that relate to the criteria used to evaluate the performance standards of immigration judges in 2014, 2015, 2016, and 2017.

6. A copy of the EOIR Strategic Caseload Reduction Plan as referenced in the Backgrounder on EOIR Strategic Caseload Reduction Plan that the U.S. Department of Justice (DOJ) published on December 6, 2017.<sup>1</sup>
7. A copy of the “new, streamlined hiring plan” for immigration judges as announced by Attorney General Jeff Sessions on April 11, 2017.<sup>2</sup>
8. Copies of any studies and reports created or obtained by EOIR in 2016 and 2017 related to immigration court operations, including staffing the immigration courts and activities critical to case completion.

Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your final response to this FOIA request be considered within the scope of the request until such time as a proper and adequate search is conducted.

If EOIR does not have custody or control over certain requested and responsive records but knows or believes that another department, agency, or private entity subject to FOIA does, please promptly forward this FOIA request to the appropriate recipient and inform the undersigned that you have done so.

#### **AILA and the Council Request a Waiver of All Fees**

AILA and the Council request that EOIR waive all fees in connection with this FOIA request in accordance with 5 U.S.C. §552(a)(4)(A)(iii). Disclosure “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government,” and AILA and the Council do not seek the records for a commercial purpose.

In the sections that follow, AILA and the Council address each factor relevant to the public interest fee waiver inquiry.<sup>3</sup>

#### ***The subject of the requested records concerns the operations and activities of the government.***

The requested records clearly concern the operations and activities of the government. The DOJ is a cabinet level department of the federal government. DOJ is organized into a number of bureaus, divisions, offices, and boards, which are referred to as components. EOIR is a component of the DOJ. The records we seek describe the terms and conditions of employment for immigration judges that are employees of the DOJ.

#### ***Disclosure is likely to contribute to an understanding of government operations or activities.***

The records that AILA and the Council seek are not already in the public domain. In October 2017, the Washington Post reported that the DOJ planned to impose numeric quotas on immigration judges as part

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<sup>1</sup> Department of Justice, *Backgrounder on EOIR Strategic Caseload Reduction Plan*, Dec. 6, 2017, available at <https://www.justice.gov/opa/press-release/file/1016066/download> (last visited Dec. 11, 2017).

<sup>2</sup> Department of Justice, *Attorney General Jeff Sessions Announces the Department of Justice’s Renewed Commitment to Criminal Immigration Enforcement*, Apr. 11, 2017, available at <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-announces-department-justice-s-renewed-commitment-criminal> (last visited Dec. 11, 2017).

<sup>3</sup> See 28 C.F.R. §16.10(k)(2).

of their performance evaluations.<sup>4</sup> NAIJ clarified in its statement to the Senate Judiciary Committee that EOIR reopened NAIJ's CBA with the express intent to eliminate a protective provision that prevents DOJ from rating any immigration judges based on number or time-based case production standards.<sup>5</sup> If this fundamental safeguard is eliminated from the CBA, immigration judges may face termination for failing to meet case completion deadlines. Disclosure of the requested records will permit the public to review and assess whether the provisions set forth in past and current CBA agreements and the EOIR Caseload Reduction Plan undermine judicial independence and threaten the integrity of the immigration court system.

Additionally, disclosure of the requested copy of the new streamlined hiring plan for immigration judges will permit the public to assess whether case completion deadlines are incorporated into the hiring standards of immigration judges.

***Disclosure of the information will contribute to the understanding of the public at large.***

Founded in 1946, AILA is an association of more than 15,000 attorneys and law professors who practice and teach immigration law. As a nonpartisan, not-for-profit organization, AILA provides its members and the public with continuing legal education, information, and resources regarding immigration law, policy, and procedure.

Established in 1987, the Council is a non-profit organization that works to increase public understanding of immigration law and policy, advocate for the fair and just administration of immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. The Council's research and policy departments research issues related to immigration and regularly provide information to leaders on Capitol Hill, the media, and the public. The Council's legal department works with other immigrants' rights organizations and immigration attorneys across the United States to advance the fair administration of immigration laws.

The requested information is integral to understanding whether there are provisions or procedures in place that may affect an immigration judge's ability to remain independent and impartial. The Council and AILA have the capacity, intent and demonstrated ability to disseminate the requested information to a broad cross-section of the public. This information will be of significant value to those with an interest in the U.S. immigration system, including, but not limited to: attorneys and law office staff, immigration practitioners, immigration policy analysts, law students, and media.

AILA has the capacity and intent to widely disseminate the requested information to the public and its members. To this end, AILA will post the released documents on its website in a form that is accessible by any member of the public. Those who visit our website include immigration attorneys and their individual and employer clients, media representatives, U.S businesses, foreign nationals, law students, and other interested members of the public. Moreover, information posted to AILA's website is often linked to the websites of other organizations and immigration law firms. AILA will also disseminate the information through its newsletters and other print and electronic publications. Consequently, our

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<sup>4</sup> See Maria Sacchetti, *Immigration judges say proposed quotas from Justice Dept. threaten independence*, Washington Post, Oct. 12, 2017, available at [https://www.washingtonpost.com/local/immigration/immigration-judges-say-proposed-quotas-from-justice-dept-threaten-independence/2017/10/12/3ed86992-ae1-11e7-be94-fabb0f1e9ffb\\_story.html?utm\\_term=.74e0dcbc7941](https://www.washingtonpost.com/local/immigration/immigration-judges-say-proposed-quotas-from-justice-dept-threaten-independence/2017/10/12/3ed86992-ae1-11e7-be94-fabb0f1e9ffb_story.html?utm_term=.74e0dcbc7941) (last visited Dec. 11, 2017).

<sup>5</sup> See NAIJ Statement, *NAIJ Has Grave Concerns Regarding Implementation of Quotas on Immigration Judge Performance Reviews*, Oct. 17, 2017, available at [https://www.naij-usa.org/images/uploads/publications/NAIJ\\_-\\_Concerns\\_Regarding\\_Implementation\\_of\\_Quotas\\_10-17-17.pdf](https://www.naij-usa.org/images/uploads/publications/NAIJ_-_Concerns_Regarding_Implementation_of_Quotas_10-17-17.pdf) (last visited Dec. 11, 2017).

dissemination of the requested information will reach a broad segment of the public that is interested in U.S. immigration issues.

The Council also will disseminate widely the information obtained through this FOIA. The Council will analyze and post the information on its publicly accessible website. Between December 12, 2016 and December 12, 2017, the Council's website had over 1.4 million unique visitors viewing over 2.5 million pages of content. If the responsive information is voluminous, the Council also will publish a summary analysis of such information and will disseminate that summary through its established networks. The Council also has regular contact with national print and news media and will share information from FOIA disclosures with interested media. The Council has consistently demonstrated the ability to disseminate information received in response to FOIA requests to a broad public audience.<sup>6</sup>

***The contribution to the public understanding of government operations or activities will be significant.***

Disclosure of the requested information will contribute significantly to the public's understanding of performance measures imposed on immigration judges. Understanding the impact of case completion goals on judges' performance evaluations will allow the public to anticipate changes to the methods by which immigration judges review immigration cases in immigration courts across the country. Members of the public interested in ensuring decisional independence and due process in the immigration courts have a strong interest in better understanding immigration judge performance evaluations based on numerical quotas.

***Disclosure of the Information is Not Primarily in the Commercial Interest of AILA or the Council.***

AILA is a nonpartisan, 501(c)(6) tax-exempt not-for-profit organization that provides its members and the public with continuing legal education, information, and resources, primarily through its website, [www.aila.org](http://www.aila.org), that is updated daily with the latest immigration news and information, including agency guidance, interpretations and policy memoranda. As described above, AILA seeks the requested information for the purpose of disseminating it to the general public, free of charge. As a not-for-profit organization, AILA clearly lacks any commercial interest in obtaining the requested records.

The Council is a not-for-profit organization that seeks the requested information for the purpose of disseminating it to the general public and not for the purpose of commercial gain. The information received in response to this FOIA request will be disseminated free of charge to the Council's networks, as described above. Given that FOIA's fee waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case.<sup>7</sup>

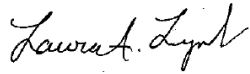
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<sup>6</sup> See, e.g., *Behind Closed Doors: An Overview of DHS Restrictions on Access to Counsel*, a report summarizing certain key documents released by DHS agencies in response to FOIA requests regarding noncitizens' access to counsel, available at <https://www.americanimmigrationcouncil.org/research/behind-closed-doors-overview-dhs-restrictions-access-counsel> (last visited, Dec. 7, 2017); *Enforcement Overdrive: A Comprehensive Assessment of ICE's Criminal Alien Program*, a report analyzing data obtained from ICE to provide a fuller picture of CAP's evolution, operations, and outcomes between fiscal years 2010 and 2013, all of which was previously unknown to the public, available at [https://www.americanimmigrationcouncil.org/sites/default/files/research/enforcement\\_overdrive\\_a\\_comprehensive\\_assessment\\_of\\_ices\\_criminal\\_alien\\_program\\_final.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/enforcement_overdrive_a_comprehensive_assessment_of_ices_criminal_alien_program_final.pdf) (last visited, Dec. 7, 2017); and *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered*, a report examining records of alleged misconduct by Border Patrol agents and supervisors, available at <https://www.americanimmigrationcouncil.org/research/still-no-action-taken-complaints-against-border-patrol-agents-continue-go-unanswered> (last visited, Dec. 7, 2017).

<sup>7</sup> See *Judicial Watch v. Rossotti*, 326 F.3d at 1312 (internal citations and quotations omitted).

If you deny the fee waiver request, we respectfully ask for a limitation of processing fees pursuant to 5 U.S.C. §552(a)(4)(A)(ii)(II). Please inform us if the charges for this FOIA production will exceed \$25.00. If you have any questions, please contact Laura Lynch at (202) 507-7627 or by email at [llynch@aila.org](mailto:llynch@aila.org) and Emily Creighton at (202) 507-7514 or by email at [ecreighton@immcouncil.org](mailto:ecreighton@immcouncil.org).

Sincerely,



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