



March 14, 2022

Office of the General Counsel
Attn: FOIA Service Center
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041

Via email: eoir.foiarequests@usdoj.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Immigrant Legal Defense (ILD), the American Immigration Council (Council) and the National Immigration Law Center (NILC) (collectively Requesters) submit the following Freedom of Information Act (FOIA) request for records regarding Executive Office of Immigration Review (EOIR) policies on the hiring process, assignment, and duties of the position of Assistant Chief Immigration Judge (ACIJ).

In accordance with 5 U.S.C. § 552(a)(6)(A)(i), we expect a response to this request within 20 working days, unless otherwise permitted by statute.

I. REQUEST FOR INFORMATION

For the period between January 1, 2017 to the present, records capturing EOIR policies as follows:

1. The hiring and application process for the position of ACIJ, including, but not limited to: job description, qualification criteria, and/or pre-formatted interview questions;
2. The criteria or protocol by which ACIJs, once hired or temporarily assigned to the position, are assigned to respective immigration courts;
3. The criteria or protocol by which ACIJs, once hired or temporarily assigned to the position, are reassigned to the bench as immigration judges (IJs) or other positions within EOIR;
4. The criteria or protocol by which ACIJs are assigned and/or removed from individual cases docketed before respective immigration courts;

5. The criteria or protocol by which IJs are removed from cases, including when an IJ may be replaced by an ACIJ;¹
6. The criteria or protocol outlining how ACIJs are expected to implement policies established by the Chief Immigration Judge; the Office of Policy; and/or the EOIR Office of the Director;
7. The criteria or protocol outlining how ACIJs may create and implement individual policies, including standing orders, specific to the courts which they oversee.²

For the period between January 1, 2012, to the present, records capturing EOIR data as follows:

8. Information about each hire for a temporary and permanent ACIJ position, including:
 - a. The date of hire for the position and the start date for the position;
 - b. All immigration court locations managed by the ACIJ while in this position; and
 - c. Date of separation from the position.

The term “records” in this request includes, but is not limited to: communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

II. FEE WAIVER REQUEST

Requesters seek a fee waiver because the information they seek is “likely to contribute significantly to public understanding of the operations or activities of the government and is not

¹ For example, in 2018, according to a formal grievance filed by the National Association of Immigration Judges (NAIJ), EOIR removed Immigration Judge (IJ) Steven A. Morley from a high-profile case, *Matter of Castro-Tum*, due to IJ Morley’s decision to continue the case to ensure adequate time for proper notice. According to NAIJ’s grievance, EOIR management personally interceded in the case and sent an ACIJ to Philadelphia to conduct a single preliminary hearing to ensure an adverse outcome. Subsequently, EOIR transferred dozens of other cases from IJ Morley’s docket. NAIJ’s formal grievance against DOJ and EOIR alleged these actions “violated the integrity of the Immigration Court proceedings” and sought redress for the unwarranted removal of cases. See Judges’ Union Files Grievance Over DOJ’s Interference with Judicial Independence and Violation of the Due Process Rights, Aug. 8, 2018, <https://www.aila.org/infonet/judges-union-grievance-violation-due-process-right>.

² An example of an individual court policy is the creation of the special docket in San Francisco Immigration Court that fast-tracked the cases of immigrants whose mail was not reaching them. Tal Kopan, “Immigration court officials cheered results of fast-tracked deportation orders, emails reveal,” San Francisco Chronicle, Jan. 20, 2022, <https://www.sfchronicle.com/politics/article/Immigration-court-officials-cheered-results-of-16791798.php>.

primarily in the commercial interest of the [requesters]....” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(1); (k)(2)(i) – (iii).

A. *Disclosure Will Contribute to Public Understanding of EOIR Operations*

EOIR administers the nation’s immigration courts and is tasked with implementing decision-making in individual removal proceedings.³ Individuals appearing before the immigration courts and the Board of Immigration Appeals (BIA), are entitled to due process, both under the immigration statute and the U.S. Constitution.⁴ The hallmark of due process in a hearing is a neutral and fair arbiter. In addition to a judge’s impartiality, it is equally important for the public to have confidence in the competence of immigration judges. Public scrutiny over the hiring, qualifications, and staffing of judges presiding over immigration courts is thus essential in ensuring the due process rights of noncitizens and integrity of the immigration court system. This scrutiny is particularly warranted given concerns with regard to the compromised impartiality of immigration judges, as well as a lack of experience, in recent times.⁵

Public scrutiny is of particular importance about immigration judges who are hired for or temporarily tasked with the position of ACIJ. According to EOIR’s website,

“The Office of the Chief Immigration Judge (OCIJ) is led by the Chief Immigration Judge, who establishes operating policies and oversees policy implementation for the immigration courts. OCIJ provides overall program direction and establishes priorities for approximately 535 immigration judges located in 68 immigration courts and three adjudications centers throughout the Nation.”⁶

The duties of the OCIJ are distributed among the Chief Immigration Judge, Principal Deputy Chief Immigration Judge, three Regional Deputy Chief Immigration Judges and approximately 40 ACIJs

³ See Department of Justice, Executive Office for Immigration Review (EOIR), “*Fact Sheet: Executive Office for Immigration Review: An Agency Guide*,” December 2017, https://www.justice.gov/eoir/page/file/eoir_an_agency_guide/download.

⁴ 8 U.S.C. § 1229a(b); The due process clause applies to immigrants in deportation proceedings and includes the right to a full and fair removal hearing. *Landon v. Plasencia*, 459 U.S. 21, 103 S.Ct. 321, 74 L.Ed.2d 21 (1982); *Castillo-Villagra v. INS*, 972 F.2d 1017, 1028 (9th Cir. 1992). “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976) (internal quotation omitted).

⁵ Tanvi Mistra, “DOJ Changed Hiring to Promote Restrictive Immigration Judges,” Roll Call, Oct. 29, 2019, <https://www.rollcall.com/2019/10/29/doj-changed-hiring-to-promote-restrictive-immigration-judges/>; See also Reade Levinson, Kristina Cooke, Mica Rosenberg, “Special Report: How Trump Administration Left Indelible Mark on U.S. Immigration Courts,” Reuters, March 8, 2021, <https://www.reuters.com/article/us-usa-immigration-trump-court-special-r/special-report-how-trump-administration-left-indelible-mark-on-u-s-immigration-courts-idUSKBN2B0179>.

⁶ EOIR, Office of the Chief Immigration Judge, <https://www.justice.gov/eoir/office-of-the-chief-immigration-judge-bios>

who are assigned to oversee immigration courts by region.⁷ ACIJs thus play a key role in furthering policies and procedures governing the immigration courts. Moreover, ACIJs also hear and render decisions in individual immigration cases. Nonetheless, there is little public information regarding the hiring criteria for ACIJs, as well as their role and scope in terms of both policy and individual decision-making. Because of the weighty responsibility and authority inherent in the position of ACIJ, and the implications for the due process rights of noncitizens, Requesters seek to enforce the public's right to know about EOIR's functions in this key regard.

As outlined further below, ILD, the Council, and NILC intend to make the information received in response to this request available to the public at no charge. All requesters have significant audience reach, which includes varied segments of the U.S. public.

ILD is a legal services organization that provides legal consultations, information and representation to hundreds of noncitizens each year. ILD attorneys regularly appear before the immigration courts and the BIA and also provide training and mentoring to other attorneys in their representation of low-income non-citizens. ILD strives to ensure robust due process protections for individuals appearing before the immigration courts and BIA. In ILD's view, the impartiality of the judges that sit on these courts is of paramount importance to safeguard the guarantee of due process for noncitizens.

The Council regularly provides information to the public based on its FOIA requests.⁸ Requester reaches a wide audience, which includes varied segments of the U.S. public. In calendar year 2020, the Council's website received more than 2.4 million pageviews from more than 1.4 million visitors. The Council also regularly shares information with national print and news media and plans to distribute information obtained from these FOIA disclosures to interested media. In keeping with its track record of synthesizing or otherwise publishing information on governmental operations shared in responses to FOIA requests, the Council intends to post documents received in response to this FOIA request on its publicly accessible website. The Requester's demonstrated ability to disseminate information requested to the public will contribute to the public's understanding of EOIR's treatment of this vulnerable population. Further, the Council's commitment to disseminate this information widely and free of charge

⁷ <https://www.justice.gov/eoir/office-of-the-chief-immigration-judge-bios>.

⁸ See, e.g., American Immigration Council, "The Electronic Nationality Verification Program: An Overview" (Jan. 26, 2021), <https://www.americanimmigrationcouncil.org/research/electronic-nationality-verification-program-overview>; Guillermo Cantor *et al.*, "Changing Patterns of Interior Immigration Enforcement in the United States," 2016 -2018, American Immigration Council (July 1, 2019), <https://americanimmigrationcouncil.org/research/interior-immigration-enforcement-united-states-2016-2018>; American Immigration Council, "Stays of Removal Responses from EOIR" (May 2019), https://americanimmigrationcouncil.org/sites/default/files/foia_documents/board_of_immigration_appeals_interpretation_of_stay_of_removal_foia_production.pdf; Guillermo Cantor & Walter Ewing, "Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered, American Immigration Council" (Aug. 2017), http://bit.ly/Council_StillNoActionTaken.

among its network of supporters ensures that disclosure is likely to contribute significantly to the public's understanding.

NILC is a nonprofit national legal advocacy organization that engages in policy analysis, advocacy, education, and litigation to promote and advance the rights of low-income immigrants and their families. NILC serves as an important resource to a broad range of immigrant advocacy groups, community organizations, legal service organizations, and the general public. As part of its work, NILC disseminates information to the public through electronic newsletters, news alerts, issue briefs, trainings, and other educational and informational materials. In addition, NILC disseminates information to individuals, tax-exempt organizations, not-for-profit groups, and members through its website (<http://www.nilc.org>). NILC's website receives approximately 4,800 visits per day, and many visitors actively download NILC's reports, brochures, and fact sheets. NILC's email listserv has about 126,000 subscribers. NILC's Twitter account has over 92,000 followers.

B. Disclosure of the Information Is Not in the Commercial Interest of the Requesters

Requesters are not-for-profit organizations and have no commercial interest in the present request. Rather, this request furthers Requesters' work to safeguard the due process rights of noncitizens, as well as ensure transparency of the immigration courts by sharing information with the general public about its policies and functions.

ILD is a non-profit legal services organization that provides consultation and representation to noncitizens at no cost. ILD will, in coordination with the Council and NILC, publicize the information it obtains via this request at no charge to the public. ILD has an interest in the widespread availability of information about the immigration courts and BIA to ensure transparency and due process for noncitizens facing deportation.

The Council is a not-for-profit organization and has no commercial interest in the present request. This request furthers the Council's work to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of immigrants in the United States. As with all other reports and information available on the Council's website, the information that the Council receives in response to this FOIA request will be available to immigration attorneys, noncitizens, and other interested members of the public free of charge.

NILC is a nonprofit national legal advocacy organization that has no commercial interest in the present request. NILC will work in coordination with the Council and ILD to publicize the information it obtains at no cost to the public. NILC has an interest in the widespread availability of information about the immigration court system to ensure transparency and due process.

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. See *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312-14 (D.C. Cir. 2003).

III. EXEMPTIONS

If EOIR concludes that statutory exemptions apply to any of the information requested, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

IV. FORMAT OF PRODUCTION

Requesters seek the data in a workable format, such as Microsoft Excel. ***Please also provide a glossary or other descriptive records containing definitions of acronyms, numerical codes, or terms contained in data responsive to this request, if those terms are not in the form template and/or publicly defined.***

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If you have any questions regarding this request, please feel free to email or call Claudia Valenzuela at the contact information under the first signature block below.

Sincerely,



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