

# **Policy Priorities Background Materials**

**FBA Capitol Hill Day  
May 19, 2016**

**Updated as of May 10, 2016**

## Table of Contents

Federal Judiciary Funding .....	3
Courthouse Construction Funding .....	8
Article III Judicial Vacancies .....	13
Additional Article III Judgeships .....	23
Proposed Article I Immigration Court .....	32

# **Federal Judiciary Funding**

# The Judiciary

## FY 2017

# Congressional Budget Summary

PREPARED BY  
THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS  
WASHINGTON, DC  
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## Foreword

### *Overview*

The Judiciary's FY 2017 discretionary budget request of \$7.0 billion is a 3.2 percent increase over the Judiciary's FY 2016 enacted discretionary appropriations level of \$6.8 billion.

### *FY 2016 Priorities*

The Judicial Conference is grateful for the continued support of Congress in this difficult and constrained fiscal environment. The FY 2016 funding levels will enable the Judiciary to maintain current services across the Judiciary, and will enable investment in important new or upgraded program initiatives needed to support judicial operations.

During FY 2016, the court units will be able to maintain on-board staffing levels and continue to fill critical vacancies needed to meet workload demands. In addition, funding will support much needed information technology (IT) initiatives that will enhance the judicial process and/or produce cost savings and avoidance. The Judiciary plans to use \$19.0 million on a multi-year effort to implement enterprise hosting and cloud computing for the courts that will improve IT security and continuity of operations capabilities, and \$7.0 million of FY 2016 funding and available FY 2015 balances will be used to replace the Judiciary's outdated email system.

The Judiciary continues to strengthen its cyber security initiatives in the wake of the Office of Personnel Management's cyber incident. This series of events brought to the forefront both the importance of cyber security and how a

lapse in IT security can expose sensitive information. The Judiciary plans to strengthen its cybersecurity efforts further in FY 2016.

The Judiciary will continue to improve its federal defendant and offender supervision practices throughout the country by spending approximately \$15.0 million on the probation and pretrial services program to expand its evidence-based efforts and Staff Training Aimed at Reducing Re-arrest (STARR). These resources will assist with reducing recidivism rates for offenders under supervision in the community.

In FY 2016, federal defender organizations (FDOs) will be able to continue backfilling staff vacancies and to hire additional staff to meet workload demands, as called for in the recently-developed staffing formula for FDOs. FY 2016 funding also allows panel attorneys to receive cost-of-living adjustments (COLA) to their hourly rate for work in capital and non-capital representations, and an above-COLA increase to the non-capital rate from \$128 to \$129 per hour effective January 1, 2016. This is the first increase above inflation to this rate since FY 2010.

Additionally, the FY 2016 enacted appropriations will allow for improved security at our courthouses. This includes funding for additional court security officers in the courts as part of the first year of a phased, multi-year implementation of new staffing standards recommended by the U.S Marshals Service. Finally, FY 2016 enacted funding will support the projected need for petit and grand jurors.

### *FY 2017 Budget Request*

The FY 2017 budget request will maintain current services across the Judiciary and sustain progress on several major initiatives initiated in FY 2016.

For the courts' Salaries and Expenses account, the Judiciary requests \$5.1 billion, an increase of \$127 million in discretionary appropriations over the FY 2016 enacted level. This request includes funding to support the court staffing levels needed to meet workload requirements, including additional staff for post-conviction supervision of 6,000 drug offenders released from prison as a result of the July 2014 decision of the U.S. Sentencing Commission to apply retroactively a sentencing guideline reduction for federal drug crimes.

For the Defender Services account, the Judiciary requests \$1.1 billion, an increase of \$51 million over the FY 2016 enacted level which includes sufficient funding to support the projected number of representations for FY 2017 and to continue hiring staff as called for in the new FDO staffing formula to meet workload requirements. The request also includes funding for panel attorneys to receive COLAs and for a \$6 per hour above-COLA increase to the non-capital panel attorney hourly rate (from \$131 per hour to \$137 per hour) to close the gap between the current rate and the statutorily authorized maximum.

The Judiciary's request also includes \$565.4 million for Court Security, an increase of \$27.2 million over the enacted FY 2016 level to protect judges, court staff, and the public at court facilities. This funding level will support security-related IT maintenance and enhancements and provides \$3.6 million for additional CSO positions as part of the second year of a

phased, multi-year implementation of the revised CSO staffing standards.

For the Fees of Jurors account, the Judiciary seeks \$43.7 million, a decrease of \$0.5 million from the FY 2016 enacted levels due to declining jury trials; however, this is sufficient to fund all projected juror requirements. The request also includes \$3.8 million for a \$10 increase to the daily juror attendance fee (from \$40 to \$50), effective January 2017, to compensate jurors more adequately for their services. The juror fee has not been increased since December 1990, even though the cost of living has increased significantly since that time.

### *Cost Containment*

The Judiciary's aggressive cost-containment efforts have achieved cost savings and cost avoidance for over a decade and will continue to do so. These efforts focus on the areas that may have the greatest impact on long-term savings, including GSA space rent, personnel expenses, information technology, and operating expenses.

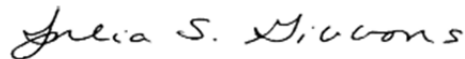
- The Judiciary continues to make strides toward its goal of reducing its space footprint by three percent by the end of FY 2018. Approximately 445,000 square feet of space has already been removed from the GSA rent bill. This represents about 50 percent of the Judiciary's space reduction target.
- The Judiciary continues to update its work measurement formulas on a regular basis to incorporate best practices, shared administrative services, improvements in information technology, and other

efficiencies. In September 2015, the Judicial Conference approved new staffing formulas for probation and pretrial services offices, and the first ever staffing formula for FDOs.

During FY 2015, the Government Accountability Office (GAO) conducted a study, at the request of Senator Charles Grassley, on sequestration and cost containment in the Judiciary. This comprehensive study examined the Judiciary's current methodology for calculating savings and cost avoidance and provided recommendations for the Judiciary to further strengthen its cost savings estimates and reporting. In November 2015, the GAO issued a final report and the Judiciary is determining how it will respond to the report's recommendations.

*Courthouse Construction and Capital Security Improvements*

Because the Judiciary lacks independent real property authority, the Judiciary's courthouse construction and capital security projects are funded from the General Services Administration's (GSA) budget.



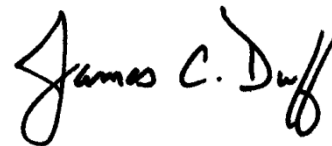
Julia S. Gibbons  
United States Circuit Judge  
for the Sixth Circuit Court of Appeals  
Chair, Budget Committee of the  
Judicial Conference of the United States

The Judiciary is extremely grateful to Congress for providing \$948 million in FY 2016 to GSA for the construction of courthouses on the Judiciary's Courthouse Project Priorities (CPP) plan. These resources will fully fund the top eight courthouse projects on the CPP.

For FY 2017, the Judiciary requests that Congress provide GSA \$26 million for additional capital security projects to ameliorate security deficiencies in existing courthouse buildings where physical renovations are viable in lieu of construction of a new courthouse. The stable and consistent funding of these projects is crucial to addressing serious security risks that threaten the safety of the Judiciary and the public.

*Summary*

The Judiciary's FY 2017 discretionary budget request of \$7.0 billion is summarized in the following pages. A more detailed description of the Judiciary's FY 2017 request, as well as the requests for courthouse construction and capital security requirements can be found in The Judiciary, Budget Estimates for FY 2017, Congressional



James C. Duff  
Director, Administrative Office  
of the United States Courts  
Secretary, Judicial Conference of the United States

# **Courthouse Construction Funding**

## GSA FY2016 Courthouse Investment Plan Breakdown

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### Nashville, Tenn.

#### **New U.S. Courthouse**

The GSA plan allocates **\$167,449,000** for site preparation, design and construction of a new, 339,000-square-foot U.S. Courthouse and underground parking spaces. A new U.S. Courthouse in Nashville will allow for relocation of the court and court-related agencies from the existing facilities located in the Estes Kefauver Federal Building (FB) and Annex. The new courthouse will provide eight courtrooms and 11 chambers to accommodate 11 judges. Other court-related tenants include the District Clerk, U.S. Probation, U.S. Department of Justice agencies, and a U.S. Senate Office. GSA plans to re-use the Kefauver Federal Building and Annex to house executive agencies that are currently located in leased space, and will complete a feasibility study to determine the appropriate funding request, schedule and implementation of any proposed future project. *This project received prior funding in 2002, 2003, and 2004 totaling \$26,095,000.*

### Toledo, Ohio

#### **New Courthouse Annex / Ashley U.S. Courthouse Renovation**

GSA's plan allocates **\$97,784,000** for the design and construction of a new, 96,000-square-foot U.S. Courthouse Annex and inside parking spaces, and for the repair and alteration of the James M. Ashley and Thomas W.L. Ashley Courthouse. The renovation of the existing Ashley Courthouse and the construction of a new annex will meet the space requirements of the District and Bankruptcy Courts. The project will provide six courtrooms and eight chambers to accommodate eight judges. Other court-related tenants include a Federal Public Defender and U.S. Department of Justice agencies.

### Charlotte, N.C.

#### **New Courthouse Annex / Charles R. Jonas Federal Building and U.S. Courthouse Renovation**

The GSA plan allocates **\$156,160,000** for the design and construction of a new 198,000-square-foot U.S. Courthouse Annex, inside parking spaces, and the repair and alteration of the Charles R. Jonas Federal Building and U.S. Courthouse in Charlotte, N.C. The project will include 10 courtrooms and 15 chambers to accommodate 15 judges. Other court-related tenants include the Federal Public Defender and U.S. Department of Justice agencies. The Jonas Courthouse was constructed in 1918 and, due to its age, major upgrades and the replacement of major building systems are needed to ensure continued operation of the courts and to promote energy efficiency. *This project received prior funding in 2004 totaling \$8,500,000.*

### Des Moines, Iowa

#### **New U.S. Courthouse**

GSA's plan allocates **\$136,602,000** for site acquisition, design and construction of a new 229,000-square-foot U.S. Courthouse and inside parking spaces in Des Moines, Iowa. The court is currently housed in the U.S. Courthouse in downtown Des Moines and in an adjacent leased Courthouse Annex. The proposed housing solution will provide nine courtrooms (five district, two magistrate, and two bankruptcy) and 13 chambers.

### Greenville, S.C.

#### **New U.S. Courthouse**

The GSA plan allocates **\$93,999,000** for site preparation, and the design and construction of a new, 193,000-square-foot U.S. Courthouse and inside parking spaces in Greenville, S.C. The new courthouse will provide seven courtrooms and nine chambers to accommodate nine judges. Other court-related tenants include the U.S. Probation, Federal Public Defender and U.S. Department of Justice agencies. Upon completion of the new courthouse, the C.F. Haynsworth Federal Building and U.S. Courthouse will be utilized

by several court operations including the Court of Appeals and Bankruptcy Court, as well as Federal agencies currently located in leased space elsewhere in the area. GSA will complete a feasibility study to determine the appropriate funding request, schedule and implementation of any proposed future project for the Haynsworth building. *This project received prior funding in 2004 totaling \$11,000,000.*

### **Anniston, Ala.**

#### **New U.S. Courthouse**

The GSA plan allocates **\$38,175,000** for site acquisition, and the design and construction of a new 63,000-square-foot U.S. Courthouse and inside parking spaces in Anniston, Ala. The new courthouse will provide two courtrooms and three chambers to accommodate three judges. Other court-related tenants include U.S. Department of Justice agencies. GSA will consider ownership transfer or sale of the existing courthouse upon completion of the new building. *This project received prior funding in 2004 totaling \$4,400,000.*

### **Savannah, Ga.**

#### **New U.S. Courthouse Annex and Tomochichi U.S. Courthouse Renovation**

The GSA plan allocates **\$95,500,000** for design and construction of a 46,000-square-foot annex and inside parking spaces, and the repair and alteration of the Tomochichi U.S. Courthouse in Savannah, Ga. The Savannah project is predominately for the repair and alteration of the existing courthouse with a portion of the budget for construction of a new annex. The new courthouse annex and alteration of the Tomochichi courthouse will provide four courtrooms and five chambers to accommodate five judges. Other court-related tenants include U.S. Department of Justice agencies. *This project received prior funding in 1995, 1996, and 2010 totaling \$13,497,000.*

### **San Antonio, Texas**

#### **New U.S. Courthouse**

The GSA plan allocates **\$132,581,000** for the construction of a new 305,000-square-foot U.S. Courthouse and inside parking spaces in San Antonio, Texas. The court currently occupies space in the John H. Wood, Jr. U.S. Courthouse (Wood CT), the Adrian A. Spears Judicial Training Center, and the Federal Building. The new courthouse will consolidate all of the district court into one facility, providing eight courtrooms and 13 chambers to accommodate 13 judges. Other court-related tenants include the Federal Public Defender and U.S. Department of Justice agencies. The Wood courthouse and the Spears Training Center will be transferred to the City of San Antonio in exchange for the former City Police Headquarters site, which is where the new U.S. courthouse will reside. *This project received prior funding in 2004 and 2008 totaling \$12,000,000.*

### **Harrisburg, Pa.**

#### **Feasibility Study for Potential Future Project**

The GSA plan allocates **\$29,510,000** toward a potential project to meet the space requirements of the court and court-related agencies in Harrisburg, Pa. GSA will undertake a feasibility study to determine the best housing solution, appropriate future funding request amount, and the project schedule. The court and related agencies are currently located in the Ronald Reagan Federal Building in the central business district of Harrisburg. *This project received prior funding in 2004 totaling \$26,000,000.*

## GSA Announces \$947 Million Courthouse Investment Plan



### *Funding to Provide Economic Growth Across the Country*

WASHINGTON, D.C. — The U.S. General Services Administration (GSA) is set to begin work on eight courthouse construction projects identified by the federal Judiciary as their top priorities. GSA's plan, which was submitted to Congress today, includes \$787 million for construction and \$160 million for repairs and alterations to existing facilities.

This investment allows GSA to leverage the resources of our agency, and the federal government, to foster economic development in communities across the country.

"This investment in our federal courthouses will serve as a catalyst for economic development in these local communities, while addressing the space constraints and security challenges in these aging facilities," said GSA Administrator Denise Turner Roth.

The proposed spending plan will bring new federal courthouses to Nashville, Tenn.; Des Moines, Iowa; Greenville, S.C.; Anniston, Ala.; San Antonio, Texas. It will also provide for new courthouse annexes in Toledo, Ohio; Charlotte, N.C.; and Savannah, Ga., to go along with renovations of the James M. Ashley and Thomas W.L. Ashley U.S. Courthouse (Toledo), the Charles R. Jonas Federal Building and Courthouse (Charlotte), and the Tomochichi U.S. Courthouse (Savannah).

"This is a much needed and welcomed step in replacing unsafe, overcrowded and inefficiently designed courthouses," said James M. Smith, director of the Administrative Office of the U.S. Courts. "We are grateful that Congress has appreciated that our judiciary-wide consolidation initiatives have saved money, and has also recognized our most serious needs."

"The majority of the funded projects have been on the Judiciary's construction priority list for more than 15 years," said Judge D. Smith, chair of the Judiciary's Space and Facilities Committee. "Working with the GSA, we have planned appropriate facilities that address the housing and security needs of these courts in an innovative and cost-efficient manner."

In addition to these eight communities, the plan includes \$29.5 million for continued feasibility studies and preparation work for

housing needs in Harrisburg, Pa.

All new courthouse and renovation projects will be completed in accordance with the U.S. Courts Design Guide, meet the 10-year needs of the court and court-related agencies, and be consistent with the application of courtroom sharing policies.

The House and Senate Appropriations Committees, and the congressional committees that authorize courthouse construction, must approve the investment plan before construction activities can begin. The exception to this is the Nashville Federal Courthouse which is fully funded and does not need additional authorization.

**Additional Resources:**

- [GSA FY2016 Courthouse Investment Plan Breakdown](#)
- [FY 2016 Funding Meets Judiciary Needs - U.S. Courts Release \(12/21/2015\)](#)

*Join the conversation online @USGSA #EconomicCatalyst*

###

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# **Article III**

## **Judicial Vacancies**

# Judicial Vacancies

*Find a summary of current and future judicial vacancies, and links to pages that provide full listings of the different types of vacancies.*

\* Judges in territorial courts (Virgin Islands, Guam, and Northern Mariana Islands) are Article I judges with term appointments.

Judicial Vacancies

Last updated on 05/10/2016

Court	Vacancies	Nominees Pending	Nominees Pending for Future Vacancies
US Court of Appeals	9	7	0
US District Courts (includes territorial courts*)	67	44	1
US Court of International Trade	4	4	0
US Court of Federal Claims	6	5	0
US Supreme Court	1	1	0
Total	87	61	1

# Current Judicial Vacancies

*This table contains a listing of current judicial vacancies by court. The name of the incumbent, the reason for the vacancy, the vacancy date, the nominee (if applicable), and the nomination date.*

Vacancies in the Federal Judiciary

114th Congress

Last updated on 05/10/2016

Total Vacancies: 87

Total Nominees Pending: 61

Court	Incumbent	Vacancy Reason	Vacancy Date	Nominee	Nomination Date
01 - MA	Woodlock,Douglas P.	Senior	06/01/2015	Bernstein,Inga S.	07/30/2015
01 - RI	Lisi,Mary M.	Senior	10/01/2015	McElroy,Mary Susan	09/08/2015
02 - NY-E	Gleeson,John	Resigned	03/09/2016		
02 - NY-E	Feuerstein,Sandra J.	Senior	01/21/2015	Brown,Gary Richard	07/30/2015
02 - NY-N	Sharpe,Gary L.	Senior	01/01/2016		
02 - NY-S	Crotty,Paul A.	Senior	08/01/2015		
02 - NY-W	Skretny,William M.	Senior	03/08/2015	Sweet,Kathleen Marie	03/15/2016
03 - CCA	Rendell,Marjorie O.	Senior	07/01/2015	Haywood,Rebecca Ross	03/15/2016
03 - NJ	Martini,William J.	Senior	02/10/2015		
03 - NJ	Chesler,Stanley R.	Senior	06/15/2015	Martinotti,Brian R.	06/11/2015
03 - NJ	Hochberg,Faith S.	Retired	03/06/2015	Neals,Julien Xavier	02/26/2015
03 - PA-E	Restrepo,Luis Felipe	Elevated	01/11/2016		
03 - PA-E	McLaughlin,Mary A.	Senior	11/18/2013	Younge,John Milton	07/30/2015
03 - PA-W	McLaughlin,Sean J.	Resigned	08/16/2013	Baxter,Susan Paradise	07/30/2015
03 - PA-W	Lancaster,Gary L.	Deceased	04/24/2013	Colville,Robert John	07/30/2015
03 - PA-W	McVerry,Terrence F.	Senior	09/30/2013	Horan,Marilyn Jean	07/30/2015

Court	Incumbent	Vacancy Reason	Vacancy Date	Nominee	Nomination Date
04 - MD	Quarles Jr.,William D.	Senior	02/01/2016	Gallagher,Stephanie Agli	09/08/2015
04 - MD	Chasanow,Deborah K.	Senior	10/03/2014	Xinis,Paula	03/26/2015
04 - NC-E	Howard,Malcolm J.	Senior	12/31/2005	Timmons-Goodson,Patricia Ann	04/28/2016
04 - SC	Currie,Cameron McGowan	Senior	10/03/2013	Beatty,Donald W.	02/25/2016
04 - SC	Anderson Jr.,Joseph F.	Senior	11/16/2014	Coggins Jr.,Donald C.	02/25/2016
05 - CCA	King,Carolyn Dineen	Senior	12/31/2013		
05 - CCA	Garza,Emilio M.	Senior	08/01/2012		
05 - LA-E	Lemelle,Ivan L.	Senior	06/29/2015	Kelly III,Claude J.	02/04/2016
05 - LA-W	Haik,Richard T.	Senior	03/06/2015	Finley,Stephanie A.	02/04/2016
05 - TX-E	Davis,Leonard E.	Retired	05/15/2015		
05 - TX-E	Schneider,Michael H.	Senior	01/07/2016		
05 - TX-E	Schell,Richard A.	Senior	03/10/2015	Scholer,Karen Gren	03/15/2016
05 - TX-N	Robinson,Mary Lou	Senior	02/03/2016		
05 - TX-N	Cummings,Samuel Ray	Senior	12/31/2014	Frost,E. Scott	03/15/2016
05 - TX-N	Solis,Jorge A.	Retired	05/01/2016	Hendrix,James Wesley	03/15/2016
05 - TX-N	Means,Terry	Senior	07/03/2013	Ramirez,Irma Carrillo	03/15/2016
05 - TX-S	Costa,Gregg Jeffrey	Elevated	05/20/2014		
05 - TX-S	Jack,Janis Graham	Senior	06/01/2011		
05 - TX-W	Junell,Robert A.	Senior	02/13/2015	Counts III,Walter David	03/15/2016
06 - CCA	Martin Jr.,Boyce F.	Retired	08/16/2013	Hughes,Lisabeth Tabor	03/17/2016
06 - KY-E	Coffman,Jennifer B.	Retired	01/08/2013		
06 - KY-W	Heyburn II,John G.	Senior	04/01/2014		
06 - OH-S	Frost,Gregory L.	Retired	05/02/2016		
06 - TN-W	Mays Jr.,Samuel H.	Senior	07/01/2015	Stanton III,Edward L.	05/21/2015
07 - CCA	Evans, Terence T.	Senior	01/07/2010	Schott,Donald K.	01/12/2016

Court	Incumbent	Vacancy Reason	Vacancy Date	Nominee	Nomination Date
07 - CCA	Tinder,John Daniel	Senior	02/18/2015	Selby,Myra C.	01/12/2016
07 - IN-N	Miller Jr.,Robert L.	Senior	01/11/2016		
07 - IN-S	Barker,Sarah Evans	Senior	06/30/2014	Ong,Winfield D.	01/12/2016
07 - WI-E	Randa,Rudolph T.	Senior	02/05/2016		
08 - CCA	Bye,Kermit Edward	Senior	04/22/2015	Puhl,Jennifer Kelmetsrud	01/28/2016
08 - NE	Bataillon,Joseph F.	Senior	10/03/2014	Rossiter Jr.,Robert F.	06/11/2015
09 - AK	Beistline,Ralph R.	Senior	12/31/2015		
09 - CA-C	Morrow,Margaret M.	Senior	10/29/2015		
09 - CA-C	Pregerson,Dean D.	Senior	01/28/2016	Abrams,Paul Lewis	12/16/2015
09 - CA-C	Collins,Audrey B.	Retired	08/01/2014	Young,Mark A.	07/16/2015
09 - CCA	Pregerson,Harry	Senior	12/11/2015	Koh,Lucy Haeran	02/25/2016
09 - HI	Mollway,Susan Oki	Senior	11/06/2015	Connors,Clare Elizabeth	09/08/2015
09 - ID	Lodge,Edward J.	Senior	07/03/2015	Nye,David C.	04/06/2016
09 - NV	Jones,Robert Clive	Senior	02/01/2016	Traum,Anne Rachel	04/28/2016
09 - WA-W	Lasnik,Robert S.	Senior	01/27/2016	Andrus,Beth M.	04/14/2016
09 - WA-W	Pechman,Marsha J.	Senior	02/06/2016	O'Sullivan,Kathleen M.	04/14/2016
10 - CO	Blackburn,Robert E.	Senior	04/12/2016	Rodriguez,Regina M.	04/28/2016
10 - KS	Vratil,Kathryn H.	Senior	04/22/2014	Campbell,Terrence J.	01/28/2016
10 - OK-W	Cauthron,Robin J.	Senior	07/14/2015		
10 - OK-W	Russell,David L.	Senior	07/07/2013	Mitchell,Suzanne	12/16/2015
10 - OK-W	Friot,Stephen P.	Senior	12/01/2014	Palk,Scott L.	12/16/2015
10 - UT	Stewart,Brian T.	Senior	09/01/2014	Russell,Ronald G.	12/16/2015
11 - AL-M	Fuller,Mark E.	Resigned	08/01/2015		
11 - AL-M	Thompson,Myron H.	Senior	08/22/2013		
11 - AL-N	Blackburn,Sharon Lovelace	Senior	05/08/2015		

Court	Incumbent	Vacancy Reason	Vacancy Date	Nominee	Nomination Date
11 - AL-N	Smith Jr.,C. Lynwood	Senior	08/31/2013		
11 - AL-S	Granade,Callie V.S.	Senior	03/07/2016		
11 - CCA	Dubina,Joel F.	Senior	10/26/2013	Kallon,Abdul K.	02/11/2016
11 - FL-M	Steele,John E.	Senior	06/03/2015	Barksdale,Patricia D.	04/28/2016
11 - FL-M	Conway,Anne C.	Senior	08/01/2015	Jung,William F.	04/28/2016
11 - FL-N	Smoak,Richard	Senior	12/31/2015	Lammens,Philip R.	04/28/2016
11 - FL-S	Rosenbaum,Robin S.	Elevated	05/12/2014	Flores,Mary Barzee	02/26/2015
11 - GA-N	Carnes,Julie E.	Elevated	07/21/2014	Lopez,Dax Eric	07/30/2015
CL	Block,Lawrence J.	Retired	01/08/2016		
CL	Damich,Edward J.	Senior	10/21/2013	Bonilla,Armando Omar	01/07/2015
CL	Firestone,Nancy B.	Senior	10/21/2013	Firestone,Nancy B.	01/07/2015
CL	Bush,Lynn J.	Senior	10/21/2013	Halkowski,Thomas L.	01/07/2015
CL	Hewitt,Emily C.	Retired	10/21/2013	McCarthy,Patricia M.	01/07/2015
CL	Miller,George W.	Retired	08/06/2013	Somers,Jeri Kaylene	01/07/2015
DC - DC	Roberts,Richard W.	Senior	03/16/2016	Edelman,Todd E.	04/28/2016
DC - DC	Walton,Reggie B.	Senior	12/31/2015	Pan,Florence Y.	04/28/2016
IT	Pogue,Donald C.	Senior	07/01/2014	Davidson,Jeanne E.	01/07/2015
IT	Eaton,Richard K.	Senior	08/22/2014	Drake,Elizabeth J.	07/30/2015
IT	Carman,Gregory W.	Senior	09/15/2014	Groves,Jennifer Choe	07/30/2015
IT	Restani,Jane A.	Senior	03/01/2015	Katzmann,Gary Stephen	07/30/2015
SC	Scalia,Antonin	Deceased	02/13/2016	Garland,Merrick B.	03/16/2016

Total Vacancies: 87

Total Nominees Pending: 61

# Judicial Emergencies

*Find current federal judiciary judicial vacancies that the Judicial Conference has deemed as judicial emergencies and an explanation of what is a judicial emergency.*

\*Adjusted Filings per Panel and Weighted Filings per Judgeship are Calendar Year Data

Beginning with calendar year 2015, weighted filings are based on the new district court case weights [approved by the Judicial Conference \(/news/2016/03/15/judicial-conference-addresses-judgeship-needs-issues\)](/news/2016/03/15/judicial-conference-addresses-judgeship-needs-issues) in March 2016.

The new weighted filings definition may affect whether specific vacancies qualify as judicial emergencies. Read about how a [judicial emergency is defined \(/judges-judgeships/judicial-vacancies/judicial-emergencies/judicial-emergency-definition\)](/judges-judgeships/judicial-vacancies/judicial-emergencies/judicial-emergency-definition).

Judicial Emergencies

Last updated on 05/10/2016

Total Emergencies: 29

Court	Vacancy Created By	Reason	Vacancy Date	Days Pending	Weighted Filings per Judgeship *	Adjusted Filings per Panel *
04 - MD	Chasanow,Deborah K.	Senior	10/03/2014	585	471	0
04 - NC-E	Howard,Malcolm J.	Senior	12/31/2005	3783	606	0
04 - SC	Currie,Cameron McGowan	Senior	10/03/2013	950	503	0
05 - TX-E	Davis,Leonard E.	Retired	05/15/2015	361	1261	0
05 - TX-E	Schneider,Michael H.	Senior	01/07/2016	124	1261	0
05 - TX-E	Schell,Richard A.	Senior	03/10/2015	427	1261	0
05 - TX-N	Cummings,Samuel Ray	Senior	12/31/2014	496	621	0
05 - TX-N	Means,Terry	Senior	07/03/2013	1042	621	0
05 - TX-N	Solis,Jorge A.	Retired	05/01/2016	9	621	0
05 - TX-N	Robinson,Mary Lou	Senior	02/03/2016	97	621	0

Court	Vacancy Created By	Reason	Vacancy Date	Days Pending	Weighted Filings per Judgeship *	Adjusted Filings per Panel *
05 - TX-S	Jack,Janis Graham	Senior	06/01/2011	1805	563	0
05 - TX-S	Costa,Gregg Jeffrey	Elevated	05/20/2014	721	563	0
05 - TX-W	Junell,Robert A.	Senior	02/13/2015	452	691	0
05 - CCA	Garza,Emilio M.	Senior	08/01/2012	1378	0	912
05 - CCA	King,Carolyn Dineen	Senior	12/31/2013	861	0	912
06 - CCA	Martin Jr.,Boyce F.	Retired	08/16/2013	998	0	536
07 - IN-S	Barker,Sarah Evans	Senior	06/30/2014	680	621	0
08 - NE	Bataillon,Joseph F.	Senior	10/03/2014	585	458	0
09 - CA-C	Collins,Audrey B.	Retired	08/01/2014	648	545	0
09 - ID	Lodge,Edward J.	Senior	07/03/2015	312	494	0
09 - CCA	Pregerson,Harry	Senior	12/11/2015	151	0	786
10 - KS	Vratil,Kathryn H.	Senior	04/22/2014	749	696	0
11 - AL-M	Fuller,Mark E.	Resigned	08/01/2015	283	379	0
11 - AL-M	Thompson,Myron H.	Senior	08/22/2013	992	379	0
11 - FL-M	Steele,John E.	Senior	06/03/2015	342	611	0
11 - FL-M	Conway,Anne C.	Senior	08/01/2015	283	611	0
11 - FL-S	Rosenbaum,Robin S.	Elevated	05/12/2014	729	675	0
11 - GA-N	Carnes,Julie E.	Elevated	07/21/2014	659	507	0
11 - CCA	Dubina,Joel F.	Senior	10/26/2013	927	0	912

Total Emergencies: 29

# Future Judicial Vacancies

*This table lists judicial vacancies that will occur in the future, for instance if a current federal judge announces his or her retirement. Find out the court where the vacancy will occur, the name of the incumbent, the vacancy reason, the vacancy date, the nominee (if applicable), and the nomination date.*

## Future Vacancies in the Federal Judiciary

114th Congress

Last updated on 05/10/2016

Total Vacancies: 14

Total Nominees Pending: 1

Court	Incumbent	Vacancy Reason	Vacancy Date	Nominee	Nomination Date
01 - PR	Fuste,Jose Antonio	Retired	06/01/2016		
02 - CCA	Wesley,Richard C.	Senior	08/01/2016		
02 - CT	Chatigny,Robert N.	Senior	01/01/2017		
03 - CCA	Fuentes,Julio M.	Senior	07/18/2016		
03 - DE	Robinson,Sue L.	Senior	02/03/2017		
03 - PA-W	Gibson,Kim R.	Senior	06/03/2016		
09 - CA-N	Koh,Lucy H.	Elevated	TBD		
09 - CCA	Silverman,Barry G.	Senior	10/11/2016		
09 - CCA	Clifton,Richard R.	Senior	12/31/2016		
09 - WA-W	Robart,James L.	Senior	06/28/2016	Diaz,J. Michael	04/14/2016
11 - AL-N	Kallon,Abdul K.	Elevated	TBD		
11 - FL-N	Hinkle,Robert L.	Senior	11/07/2016		
DC - CCA	Garland,Merrick B.	Elevated	TBD		
DC - DC	Collyer,Rosemary M.	Senior	05/18/2016		

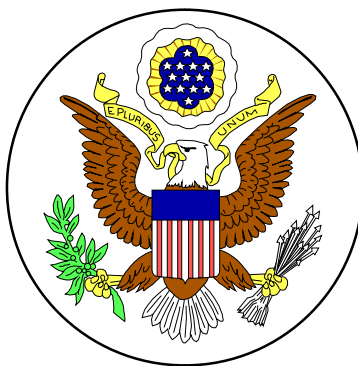
Total Vacancies: 14

Total Nominees Pending: 1

# **Additional Article III Judgeships**

**ARTICLE III JUDGESHIP  
RECOMMENDATIONS OF THE  
JUDICIAL CONFERENCE  
2015**

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## Article III Judgeship Recommendations of the Judicial Conference of the United States 2015

The Judicial Conference of the United States (Judicial Conference) reviews biennially the judgeship needs of all U.S. Courts of Appeals and U.S. District Courts to determine if any of the courts require additional judges to appropriately administer civil and criminal justice in the federal court system. The Judicial Conference completed its last review in March 2015, and immediately thereafter recommended that Congress establish five new judgeships in one court of appeals and 68 new judgeships in 30 district courts. The Judicial Conference also recommended that nine temporary district court judgeships be converted to permanent positions. Tables 1 and 2 contain summary information about the numbers of additional judgeships recommended by the Judicial Conference for each court.

The last time that Congress passed a comprehensive Article III judgeships bill was 1990 - more than two decades ago. While some additional judgeship needs have been addressed in various subsequent items of legislation since 1999,<sup>1</sup> most of the courts with judgeship needs in 2015 had similar needs dating to 1999 or earlier.

### **Survey Process**

In developing judgeship recommendations for consideration by Congress, the Judicial Conference, through its committee structure, uses a formal survey process to review and evaluate Article III judgeship needs. The reviews are managed by the Subcommittee on Judicial Statistics (Subcommittee) of the Committee on Judicial Resources (Committee), with final recommendations on judgeship needs approved by the Judicial Conference. Before a judgeship recommendation is completed, it undergoes consideration and review at six levels within the judiciary, as follows:

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<sup>1</sup> Thirty-four new district court judgeships have been created between 1999 and the present (33 of which were recommended by the Judicial Conference). As part of the Judiciary's appropriations for fiscal years 2000 and 2001, and as part of the Department of Justice authorization bill in fiscal year 2003, the Congress created 9, 10, and 15 judgeships, respectively.

- 1) Individual court request and justification for judgeships (*the Judicial Conference does not consider recommending additional judgeships for courts that do not request them*);
- 2) Subcommittee analysis, review, and preliminary recommendation;
- 3) Circuit Judicial Council (for circuit in which court is located) review and recommendation;
- 4) Subcommittee second analysis, review, and recommendation;
- 5) Committee analysis, review, and recommendation; and
- 6) Judicial Conference review and recommendation.

In the course of the 2015 survey, the courts requested 88 additional judgeships (87 permanent and one temporary.) The Conference review process reduced the number of recommended judgeships to 73. The recommendations resulting from each successive survey supersede prior judgeship recommendations.

### **Workload Factors and Standards**

The Judgeship Recommendations of the Judicial Conference are based on workload factors, as follows:

**Case Filings:** The recommendations developed through the review process noted above are based in large part on standards related to the caseload of the courts. These standards, discussed further at Appendix 1, are **not** optimum caseload levels, but instead represent the caseload at which the Judicial Conference may begin to consider requests for additional judgeships. The standards represent a starting point in the process rather than an ending point. The caseload standards used by the Conference are expressed as filings per authorized Article III judgeship, which assumes that all vacancies are filled.

The standard used by the Judicial Conference as its starting point in the district courts is 430 weighted filings per authorized judgeship after accounting for the additional judgeships recommended. Weighted filings measure caseload in a manner that accounts for the complexity of different types of cases. With the additional judgeships recommended by the Judicial Conference as a result of the 2015 survey, weighted filings would be 475 per judgeship or higher in 15 district courts and would exceed 500 weighted filings per judgeship in 10 district courts.

The standard used by the Judicial Conference as its starting point in the courts of appeals is 500 adjusted filings per panel (based on authorized judgeships). In the 2015 survey, one circuit court requested additional judgeships. With the additional judgeships recommended by the Judicial Conference, the caseload in this court would exceed 600 adjusted filings per panel.

**Additional Factors:** As important as the caseload statistics may be in evaluating a court's need for additional judgeships, the data must be considered with other court-specific information to provide an accurate indication of the judgeship needs of each court. The statistics alone do not reveal unique situations in a court and, thus, may reflect an overstatement or understatement of the actual workload burdens. For that reason, the Judicial Conference process takes into account additional factors that may impact the judgeship needs of each court, including senior, visiting, and magistrate judge assistance, geographical factors, unusual caseload complexity, temporary caseload increases or decreases, and any other factors noted by individual courts as having an impact on resource needs. The Judicial Conference also looks at the effort each court has undertaken to manage the workload before requesting additional judgeships, including, but not limited to, use of visiting judges and alternative dispute resolution techniques.

The presence of senior judges is an important resource factor. Senior judges make valuable contributions to the work of the courts. The level and type of assistance provided by senior judges, however, can vary from court to court in ways that may be beyond the control of individual courts. For this reason, the Judicial Conference evaluates the impact that senior judges may have on a court's judgeship needs quantitatively on a court by court basis, rather than through caseload standards.

Another important and valuable resource for a district court is the contribution of magistrate judges. It must be recognized, however, that these judges have limited jurisdiction which necessarily restricts that contribution. Magistrate judges cannot dispose of felony criminal cases, the primary factor affecting many of the courts in need of additional judgeships. Criminal filings per judgeship are well above the national average in nearly half the courts recommended for additional judgeships. Additionally, magistrate judges can only dispose of civil cases with the consent of the parties involved. So, the extent to which magistrate judges can assist a court by disposing of cases varies considerably depending on the nature of a court's caseload and the frequency with which parties consent to trial before a magistrate judge. Neither of these factors is under the control of the courts. For that reason, the Judicial Conference reviews how each court employs its magistrate judges rather than incorporating the contributions of magistrate judges in the caseload standards.

## Background Caseload Information

The last comprehensive judgeship bill for the U.S. courts of appeals and district courts was enacted in 1990 and provided most of the judgeships requested at that time. Public Law 101-650 established 11 additional judgeships for the courts of appeals and 74 additional (including 13 temporary) judgeships for the district courts. Since that time, the caseloads in both the courts of appeals and the district courts have increased. By the end of fiscal year 2014, filings in the courts of appeals had grown by 28 percent while district court case filings had risen by 41 percent (civil cases were up 40 percent and criminal felony defendants were higher by 43 percent). Although Congress created 34 additional judgeships in the district courts since 1999 in response to particular problems in certain districts (9 in fiscal year 2000, 10 in fiscal year 2001, and 15 in fiscal year 2003), no additional judgeships have been created for the courts of appeals. As a result, the national average circuit court caseload per three-judge panel has reached 988 filings compared to 773 in 1991. In the district courts, even with the 34 additional judgeships, weighted filings were 533 per judgeship as of September 2014, compared to 386 per judgeship in 1991. For a more detailed description of the most significant changes in the caseload since 1991, see Appendix 2.

Although the national figures provide a general indication of system-wide changes, the Judicial Conference judgeship recommendations are based on relevant workload information for each specific court. The caseload situation in courts where the Judicial Conference is recommending additional judgeships is much more dramatic than indicated by national totals.<sup>2</sup> For the 30 district courts where the Judicial Conference is recommending additional judgeships, weighted filings averaged 629 per judgeship and 14 courts have caseloads above 600 weighted filings, five above 700, and two with more than 1,000 weighted filings. For the circuit court where the Judicial Conference is recommending additional judgeships, adjusted filings were 800 per panel compared to the national average of 634 per panel.

Appendix 3 contains specific information for each court for which the Judicial Conference is recommending additional judgeships. Appendix 3 includes:

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<sup>2</sup> The current Judicial Conference recommendation includes one district that lost a badly needed judgeship in 2004 when the temporary judgeship expired before Congress could convert the judgeship to permanent status.

**Court Profile**

A summary page with information about the number of judgeships authorized and recommended, when the last judgeship was created, and the relationship between the caseload and the Judicial Conference standard.

**Caseload Profile and Recommendation***Preliminary Caseload Profile*

The statistical profile showing six years of court caseload data through fiscal year 2013.

*Preliminary Recommendation*

The initial evaluation of a court's request for additional judgeships by the Subcommittee on Judicial Statistics of the Committee on Judicial Resources.

*Final Caseload Profile*

The statistical profile showing six years of court caseload data through June 2014. This profile provided the most recent data available when the Subcommittee developed its final recommendation.

*Final Recommendation*

The final evaluations by the Subcommittee, the Committee, and the Judicial Conference after consideration of the court's justification, caseload data, and the recommendation of the judicial council of the circuit.

**TABLE 1. ADDITIONAL JUDGESHIPS OR CONVERSION OF EXISTING JUDGESHIPS RECOMMENDED BY THE JUDICIAL CONFERENCE 2015**

CIRCUIT/DISTRICT	AUTHORIZED JUDGESHIPS	JUDICIAL CONFERENCE RECOMMENDATION
<b>U.S. COURTS OF APPEALS</b>		<b>5P</b>
NINTH	29	5P
<b>U.S. DISTRICT COURTS</b>		<b>68P, 9T/P</b>
ALABAMA, NORTHERN	8	T/P
ARIZONA	13	4P, T/P
CALIFORNIA, CENTRAL	28	13P, T/P
CALIFORNIA, EASTERN	6	6P
CALIFORNIA, NORTHERN	14	5P
CALIFORNIA, SOUTHERN	13	2P
COLORADO	7	2P
DELAWARE	4	1P
FLORIDA, MIDDLE	15	6P
FLORIDA, NORTHERN	4	1P
FLORIDA, SOUTHERN	18	3P, T/P
GEORGIA, NORTHERN	11	2P
IDAHO	2	1P
INDIANA, SOUTHERN	5	1P
KANSAS	6	T/P
MINNESOTA	7	1P
MISSOURI, EASTERN	8	T/P
NEVADA	7	1P
NEW JERSEY	17	2P
NEW MEXICO	7	2P, T/P
NEW YORK, EASTERN	15	2P
NEW YORK, SOUTHERN	28	1P
NEW YORK, WESTERN	4	1P
NORTH CAROLINA, WESTERN	5	T/P
TENNESSEE, MIDDLE	4	1P
TEXAS, EASTERN	8	2P, T/P
TEXAS, SOUTHERN	19	2P
TEXAS, WESTERN	13	4P
WASHINGTON, WESTERN	7	1P
WISCONSIN, WESTERN	2	1P

P = PERMANENT; T = TEMPORARY; T/P = TEMPORARY MADE PERMANENT

**TABLE 2. ADDITIONAL JUDGESHIPS OR CONVERSION OF EXISTING JUDGESHIPS RECOMMENDED BY THE JUDICIAL CONFERENCE 2015**

CIRCUIT/DISTRICT	AUTHORIZED JUDGESHIPS	JUDICIAL CONFERENCE RECOMMENDATION	ADJUSTED FILINGS PER PANEL/WEIGHTED FILINGS PER AUTHORIZED JUDGESHIP
<b>U.S. COURTS OF APPEALS</b>		<b>5P</b>	<b>ADJUSTED FILINGS</b>
NINTH	29	5P	809
<b>U.S. DISTRICT COURTS</b>		<b>68P, 9T/P</b>	<b>WEIGHTED FILINGS</b>
DELAWARE	4	1P	1,433
TEXAS, EASTERN	8	2P, T/P	1,331
CALIFORNIA, EASTERN	6	6P	974
MINNESOTA	7	1P	781
ARIZONA	13	4P, T/P	742
FLORIDA, SOUTHERN	18	3P, T/P	695
NEW YORK, EASTERN	15	2P	692
FLORIDA, MIDDLE	15	6P	670
TENNESSEE, MIDDLE	4	1P	667
CALIFORNIA, CENTRAL	28	13P, T/P	664
TEXAS, WESTERN	13	4P	644
NEW JERSEY	17	2P	642
INDIANA, SOUTHERN	5	1P	642
COLORADO	7	2P	642
NEW MEXICO	7	2P, T/P	598
CALIFORNIA, NORTHERN	14	5P	593
TEXAS, SOUTHERN	19	2P	579
WISCONSIN, WESTERN	2	1P	556
WASHINGTON, WESTERN	7	1P	549
FLORIDA, NORTHERN	4	1P	545
GEORGIA, NORTHERN	11	2P	540
NEW YORK, WESTERN	4	1P	521
CALIFORNIA, SOUTHERN	13	2P	508
NEVADA	7	1P	505
NEW YORK, SOUTHERN	28	1P	485
IDAHO	2	1P	446
ALABAMA, NORTHERN	8	T/P	381
MISSOURI, EASTERN	8	T/P	374
KANSAS	6	T/P	366
NORTH CAROLINA, WESTERN	5	T/P	351

P = PERMANENT; T = TEMPORARY; T/P = TEMPORARY MADE PERMANENT

# **Proposed Article I Immigration Court**



## Immigration Update

by Christine Lockhart Poarch

# The FBA's Proposal for the Creation of a Federal Immigration Court

### Recently, the FBA Immigration Law Section

proposed that Congress establish a new, specialized court under Article I of the Constitution. This new court would be created by transferring the adjudicatory responsibilities currently performed by the Executive Office of Immigration Review (EOIR) in the Department of Justice (DOJ) to the U.S. judiciary. The FBA adopted the Immigration Law Section's proposal during the FBA Board of Directors' recent determination of the 2013–2014 Issues Agenda. Through that agenda, the Federal Bar Association has now called upon Congress to create a specialized federal court for the adjudication of immigration claims under the Immigration and Naturalization Act.

### Background: The Immigration Law Section's Proposal

The legal community has been aware, since at least the 1980s, of the defects of the current immigration adjudication system, which time has only made more pronounced. The Hon. Dana Leigh Marks, president of the National Association of Immigration Judges, published an article discussing the need for this reform in the March 2012 edition of *The Federal Lawyer* (available on the FBA website). A number of other legal groups have also endorsed the creation of an independent immigration court. Those developments prompted H. Raymond Fasano, chair of the Immigration Law Section, to appoint a committee to draft a proposal for the creation of an Article I Immigration Court. Following lively debate within the committee, the section's board adopted a revised proposal that has been endorsed by the FBA's National Board of Directors and included in the FBA's Issues Agenda.

### In a Nutshell: The Problems and Potential Solutions

Although Congress directed that immigration judges should be considered administrative judges, raised their compensation to the approximate level of administrative law judges, and even granted contempt authority<sup>1</sup>; the DOJ still considers immigration judges to be department attorneys. The due process protections of the Administrative Procedures Act (APA) do not apply in immigration proceedings. DOJ also retains ultimate control over immigration judge decisions and employment. They are thus placed in an

ethical dilemma, as the public (and the courts of appeals) perceive them as independent, when they are actually subject to substantial agency supervision.

Further, EOIR, which is the home for immigration judges as well as the Board of Immigration Appeals, has an agency rather than a court structure, with many layers of supervision and administration. This reform would result in cost-savings through greater efficiency. EOIR would be reorganized as a court system, with per-judge funding either equal to that of district judges, or roughly equal to that of other Article I judges (such as bankruptcy and magistrate judges). These substantial improvements in resources and efficiency could be realized without additional expenditures by Congress.

There is another system of trial courts within EOIR—the Office of the Chief Administrative Hearing Officer (OCAHO), designed to hear employer sanctions cases.<sup>2</sup> Because such actions involve U.S. citizens, Congress provided for their adjudication by administrative law judges, rather than immigration judges, and so these proceedings are subject to the protections of the APA. However, the employer sanctions regime never realized its anticipated volume, and OCAHO lapsed into relative inactivity even though it is still staffed as a separate division of EOIR. Merging the functions of these two trial divisions would result in greater savings and efficiency.

Finally, revenue to fund the court would be created not only by realized savings, but also by the generation of court filing fees. EOIR generally does not collect fees for the adjudications that it conducts, as they are collected and retained by the Department of Homeland Security. Those fees that EOIR does collect, such as for appeals and motions to reopen, have not been increased in two decades and are clearly inadequate.

### The Proposal

First, the proposal would abolish the present Executive Office for Immigration Review in the Department of Justice and transfer its functions to a newly created U.S. Immigration Court. The U.S. Immigration Court would be administered by the Administrative Office of the U.S. Courts, as is the Bankruptcy Court. A chief immi-

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gration appeals judge, nominated by the President with Senate confirmation, would direct the U.S. Immigration Court and serve for a five-year term.

The court would consist of two levels:

- An appellate level of 15 immigration appeals judges, analogous to the present Board of Immigration Appeals (BIA). The President would appoint these members to 15-year terms with Senate confirmation. The initial panel would be divided into three

clerical duties. Rather than being an administrative bureaucracy as it is now, the immigration court staff will be responsive to its judges and to the public.

- Cost Savings: According to the Administrative Office of the U.S. Courts, the cost of operations for one U.S. district judge (including staff, office, and courtroom) is \$1.1 million. Although EOIR is far less transparent, a best estimate of the similar cost for an immigration judge is \$1.0 million. Considering the vast superiority in resources possessed by the district court as opposed to

**“[An Article I immigration court] will foster greater judicial independence, cost-savings, and speed in deciding immigration claims.”**

**—Karen Silberman, Federal Bar Association Executive Director**

groups, with staggered appointments for 5, 10, and 15 years. Decisions will be made by three-judge panels; and

- A trial level of immigration judges, appointed for 15-year terms by the relevant judicial circuit, in a manner similar to that of bankruptcy judges.

To ensure that the work of the present immigration judges and BIA continue without disruption, all current immigration judges and BIA board members would be appointed to initial terms.

Compensation would be essentially the same as it is now, except that all judges will be paid at the same rate, regardless of their years of service. This would, in effect, raise the pay of more junior judges; although, as the highest rate is reached in only four or five years, most judges currently receive the highest rate. The proposal would also make the Judicial Retirement System available to judges of the immigration court, just as it is for magistrate and bankruptcy judges. To cover these additional expenses, the court would collect fees for the matters it adjudicates, at the rates presently charged by the Department of Homeland Security. Fees for appeals and motions would be increased to reasonable levels.

The employer-sanctions functions of the administrative law judges of the Office of the Chief Administrative Hearing Officer would be merged with the traditional immigration judge function. This would permit greater flexibility, in that any U.S. immigration judge would have jurisdiction over cases under the sanctions regime. This would eliminate the expense and inefficiency of having a separate organization to hear sanctions cases.

Finally, retired judges could be used as senior judges to augment the capabilities of the immigration court as needed, and discipline and removal of judges would be handled in a judicial manner.

#### **Advantages Over the Present System.**

- Independence: The immigration court would be fully independent of the executive branch. No longer will judges be intimidated or disciplined for their good-faith decisions.
- Best Use of Judicial Resources and Traditional Judicial Authority: Judges will have greater control over their cases. Now, judges lack authority to supervise law clerks and support personnel. Judges will be able to devote their time to deciding cases rather than finding files, making copies, and performing

the immigration court, it is clear that funds are not being utilized in an optimum manner under the present system. Freeing up these resources will enormously enhance the mission of the U.S. Immigration Court and permit more efficient justice. Collecting fees for adjudication of applications and appeals should more than compensate for the increases in compensation and expenses of an Article I court. Moreover, efficient combination of the function of immigration judges with that of the administrative law judges in employer sanctions cases will create additional cost savings, including travel costs.

- Increased Professionalism: Finally, it will elevate the percep-

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tion of the practice of immigration law to the true federal specialty that it is. The difficulties faced by EOIR in appropriately sanctioning unauthorized practitioners will be managed by the existing licensure requirements of the U.S. court system, which require appropriate bar membership. This will protect the public and ensure greater accountability by immigration practitioners in general.

### Future Possibilities

In addition to using existing resources more efficiently and flexibly, establishing the U.S. Immigration Court under Article I could have benefits in the more distant future. The draft bill provides for a study of the feasibility of consolidating all immigration-related adjudications in the immigration court. Currently, the Departments of Homeland Security, State, and Labor maintain review units that interpret various aspects of the Immigration and Nationality Act. Some of those units comprise administrative law judges while others are staffed by non-attorney officers. Having a single body making these decisions would promote consistency, efficiency, and fidelity to the law.

Once the U.S. Immigration Court is well established, Congress might even consider transferring criminal jurisdiction over misdemeanor immigration violations to the immigration court. This would take considerable pressure from district courts, especially

those located in border states that are currently inundated with prosecutions for illegal entry and other minor violations.

### Conclusion

The Immigration Law Section of the Federal Bar Association is grateful that the Federal Bar Association has included this reform in its current Issues Agenda. Congressional establishment of an Article I Immigration Court would bring about judicial independence, cost savings, and speed in deciding immigration claims. In addition, the administration of justice under the immigration laws would be improved. This would bring to immigration law the same level of professionalism and quality of justice that the bankruptcy and debtor-creditor law experienced through the creation of the Article I Bankruptcy Courts. It is, we believe, high time. ☉

### Endnotes

<sup>1</sup>Illegal Immigration Reform and Immigrant Responsibility Act of 1996, division C of Pub. L. No. 104-208, sections 304, 371 [the latter amended by section 1125(c)(4) of National Defense Authorization Act for FY 2004].

<sup>2</sup>Immigration Reform and Control Act of 1986, Pub. L. No. 99-603.

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**Presented by the FBA Immigration Law Section and the Chicago Chapter of the FBA**

**In conjunction with the Memphis Mid-South Chapter of the FBA; the American Immigration Lawyers Association (AILA); and support from the U.S. District Court for the Western District of Tennessee, through its Court Improvement Fund**

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## [Immigration Court Backlog Shows No Sign of Shrinking](#)

Written by [Tory Johnson](#) April 22, 2016

American Immigration Council

<http://immigrationimpact.com/2016/04/22/immigration-court-backlog-shows-no-sign-shrinking/>

The latest figures show that the number of cases pending in immigration court continue to grow. According to the Transactional Records Access Clearinghouse ([TRAC](#)), there were 486,206 cases in the backlog as of the end of March. This is almost 30,000 more pending cases than Executive Office of Immigration Review (EOIR) Director Juan Osuna [reported](#) to Congress at the end of Fiscal Year (FY) 2015.

The data show that in the first half of FY 2016 (October 2015 through March 2016), a total of [99,452](#) cases were completed in immigration court. In FY 2015, TRAC [estimated](#) that 198,105 cases total were completed—meaning this year cases are moving through immigration court at about the same rate. A case could be classified as completed if someone was ordered or volunteered to be removed, the court terminated the case because there were no grounds for removal, someone was granted relief to stay in the country, or the case was closed on administrative grounds.

While EOIR has [sworn in](#) 17 new immigration judges since January 2016, following a major hiring push in late 2015, it is clear the current backlog will take some time to bring to a manageable level. In the meantime, those seeking asylum and other forms of relief are caught in an inefficient and inconsistent system.

As of the end of March, relief had been granted in [8,165](#) cases since October 1. In FY 2015, relief was granted in [20,208](#) of the total completed cases. The projections for the current fiscal year show a significant drop, with just [16,330](#) cases completed as of March.

The TRAC [data](#) reveal that in cases where relief is granted, the time it takes to process a case varies significantly from state to state. In New York, for example, it took more than 1,000 days on average—or about three years—for a qualifying asylum seeker to obtain relief. Likewise, in five other states—Arizona, Illinois, Nevada, California and Ohio—the average was also more than 1,000 days. Puerto Rico had the fastest time with an average of 378 days. Overall, it took at least two years on average for a qualifying asylum seeker to be granted relief in 15 states, out of 28 states with immigration court data.

The lengthy processing times have hidden [consequences](#) for those seeking asylum. Many individuals navigating the immigration system have already experienced

trauma and violence, and are subjected to further suffering in the form of detention and ankle shackles while their case is processed. Many immigrants remain detained during their hearings, including families and children fleeing persecution, with serious negative health impacts. Some detainees with valid claims to stay in the United States simply give up.

For more than a decade, the immigration court system has struggled with its enormous backlog. After attempting to bring down processing times by implementing flawed prioritization policies that led certain cases to be processed with [alarming speed](#), EOIR finally received an influx in [funding from Congress](#) for new immigration judges in FY 2016. Halfway through FY 2016, the data shows that the issues in the immigration court system are deeply rooted and may take more time to be addressed. Hopefully, as more immigration judges are vetted and hired, we will see a greater impact on the backlog and wait times for asylum seekers.