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Attorney General Alberto R. Gonzales Outlines Reforms for Immigration Courts and Board of Immigration Appeals

WASHINGTON – The Department of Justice will implement new measures to enhance the performance of the Immigration Courts and the Board of Immigration Appeals, Attorney General Alberto R. Gonzales announced today in remarks at the Immigration Judges' Training Conference.

The announcement comes after the completion of a comprehensive review of the Immigration Courts and the Board that was initiated by the Attorney General in January 2006, following reports of judges failing to display temperament and produce work that meets the Department's standards. Based on the results of the review, the Attorney General directed the implementation of 22 new measures.

"The review has left me reassured of the talent and professionalism that exists in the Immigration Courts and at the Board of Immigration Appeals," said Attorney General Alberto R. Gonzales. "I am secure in the knowledge that our immigration judges and Board members stand ready to serve their country in discharging their demanding responsibilities to apply the rule of law and protect the Constitution. But there is room for improvement, and I believe these new measures will assist them greatly in their important work."

The new measures include the following key reforms needed to improve the performance and quality of work of the nation's immigration court system, based on the findings of the review.

Performance Evaluations:

The first of the reforms is the establishment of performance evaluations to enable EOIR leadership to review periodically the work and performance of each immigration judge and member of the Board of Immigration Appeals. Just as performance appraisal records are used elsewhere in the Justice Department to assess the work of personnel at all levels, EOIR performance evaluations will allow for identification of areas where an immigration judge or Board member may need improvement while fully respecting his or her role as an adjudicator. The evaluations will also include an assessment by EOIR's Director during an immigration judge's initial two-year trial period as to whether a new appointee possesses the appropriate judicial temperament and skills for the job and to take steps to improve that performance if needed.

EOIR, working with the Office of Professional Responsibility and the Office of the Inspector General, will also conduct a review of its current complaint-handling procedures and develop a plan to standardize these procedures, clearly define the roles of the different offices charged with administering them, and ensure a timely and proportionate response to complaints.

Immigration Law Exam:

To ensure that all immigration judges are proficient in the key principles of immigration law, the Attorney General has instructed EOIR to develop an examination testing for familiarity with these principles. Each newly appointed immigration judge and Board member appointed after December 31, 2006, will be required to pass the exam before he or she begins to adjudicate matters. Additional measures directed to improve judges' performance include improved training for immigration judges, Board members, and EOIR staff.

Sanctions Power:

To ensure that immigration judges have the tools they need to control their courtrooms and to protect the adjudicatory system from fraud and abuse, EOIR will consider and, where appropriate, draft proposed revisions to the existing rules that provide sanction authority for false statements, frivolous behavior, and other gross misconduct. EOIR will also draft a new proposed rule that creates a strictly defined and clearly delineated authority to sanction by civil money penalty an action (or inaction) in contempt of an immigration judge's proper exercise of authority. To make sure that statutory limits on this power are respected, the proposal will provide for substantial oversight, such as approval by the EOIR Director or another overseeing body, and the Department would anticipate that it would be used sparingly. By better enabling judges to address frivolous submissions and to maintain an appropriate atmosphere in their courtrooms, we will reduce the pressures that may have contributed to intemperate conduct in the past.

Likewise the Board of Immigration Appeals should have the ability to sanction effectively litigants and counsel for strictly defined categories of gross misconduct. EOIR therefore will consider and, where appropriate, draft proposed revisions to the existing rules that provide sanction authority to the Board of Immigration Appeals.

Increased Resources:

To give the immigration courts the resources needed to execute their duties appropriately, the Department will seek budget increases, starting in FY 2008, which will be aimed at hiring more immigration judges and judicial law clerks, focusing on those Immigration Courts where the need is greatest; and hiring more staff attorneys to support the Board. In addition, the Board will be increased by the addition of four permanent members and the continued use of temporary Board members to fulfill the Board's needs is encouraged.

Technological and Support Improvements:

Several improvements will also be made to the Immigration Courts' ability to record, transcribe, and interpret court proceedings. The improvements include:

- Replacing the Immigration Courts' current tape recording system with a digital recording system, and ensuring that the Immigration Courts' other information management systems are efficient and innovative.
- A plan to be developed by EOIR to strengthen the transcription of oral decisions.
- A plan to be developed by EOIR to strengthen interpreter selection. The plan will address, among other things, ways to improve the screening, hiring, certification and

evaluation of staff interpreters; and ways to ensure that contract interpreters meet similar standards of quality.

Improvements to the Streamlining Reforms:

Furthermore, the new reforms will make adjustments to the Board's "streamlining" practices to, among other things, encourage the increased use of one-member written opinions to address poor or intemperate immigration judge decisions that reach the correct result but would benefit from discussion or clarification, and to allow the limited use of three-member written opinions (as opposed to one-member written opinions) to provide greater analysis in a small class of particularly complex cases. Streamlining, which the Department originally instituted in 1999 and expanded in 2002, brought much-needed efficiency to the Board's administrative review process, enabling the Board to eliminate a large backlog and to provide respondents with a final, reviewable administrative action in a reasonable amount of time. The adjustments to streamlining included in the new reforms balance the Board's need to explain its reasoning more fully in certain types of cases, with its existing and predicted caseload, its existing resources and the need to provide respondents with a final decision in a timely fashion.

Also included in the new reforms are measures for drafting a new code of conduct specifically applicable to immigration judges and Board members; improved mechanisms to detect poor conduct and quality by immigration judges and Board members; a pilot program to assign one or more Assistant Chief Immigration Judges to serve regionally, near the Immigration Courts they oversee; improved complaint procedures for inappropriate conduct by adjudicators; and new procedures by which immigration judges and Board members may refer cases of immigration fraud and abuse for investigation.

As part of the comprehensive review conducted over the past several months, the Deputy Attorney General and the Associate Attorney General assembled a review team that traveled to nearly 20 Immigration Courts and the Board of Immigration Appeals, conducted more than 200 interviews of stakeholders, administered an online survey to hundreds of participants, and analyzed thousands of pages of material in an effort to assess the strengths and weaknesses of the immigration court system.

EOIR is charged under the authority of the Attorney General with adjudicating immigration cases, including cases involving detained aliens, criminal aliens, and aliens seeking asylum. EOIR is headed by a Director who reports to the Deputy Attorney General, and contains, among other offices, all the trial-level Immigration Courts and the Board of Immigration Appeals, which decides appeals from Immigration Court decisions.

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