CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

**Key Takeaways from Freedom of Information Act Request on
Office of Legal Access Programs (OLAP) and the Recognition and Accreditation Program[1]**

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The Department of Justice Executive Office for Immigration Review (EOIR) Recognition and Accreditation Program provides federally tax-exempt non-profit entities in the United States permission to practice immigration law through non-attorneys. Once EOIR recognizes an organization as qualified to provide immigration legal services through non-attorney staff members or volunteers, EOIR will consider applications for accreditation from non-attorneys working or volunteering at the recognized organization to represent noncitizens before the Department of Homeland Security (DHS) only (partial accreditation) or before DHS and EOIR (full accreditation). Once accredited by EOIR, the "Accredited Representatives" may provide immigration legal services only through the "Recognized Organization" specified on their accreditation application.[2]

The Catholic Legal Immigration Network, Inc. (CLINIC) submitted two Freedom of Information Act (FOIA) requests to the EOIR seeking data and records from 2010–2020[3] on (1) the adjudication of recognition applications filed by non-profit organizations and accreditation applications filed by individuals working or volunteering for a recognized organization, and (2) representation in immigration court proceedings by fully accredited representatives.

With regard to the adjudication of recognition and accreditation cases, EOIR responded with charts documenting the number of applications approved, disapproved, and the average time (in days) from receipt of application until the agency made a determination to approve or disapprove the application. Additionally, EOIR stated that it does not track the reasons for disapproval of an application or for termination of recognition or accreditation, but the agency did provide a list of possible reasons regarding why it might take such actions.

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[1] CLINIC's Defending Vulnerable Populations Program reviewed the FOIA disclosures and issued this analysis.
[2] For more information on EOIR's Recognition and Accreditation (R&A) Program, visit
https://www.justice.gov/eoir/recognition-and-accreditation-program.
[3] CLINIC's first submission requested data from 2010–2018, while the second sought additional data from 2019 and 2020. The FOIA response to the second request included only partial data for the year 2020 with data for the adjudication of recognition and accreditation applications provided through May 31, 2020 and data for immigration court proceedings provided through August 4, 2020.

EOIR also provided data on representation by an accredited representative in immigration court proceedings in the form of spreadsheets broken down by year, court, and detained status. The spreadsheets reflect the number of cases handled by an accredited representative and the outcome of the matters.

The key takeaways discussed below are based on CLINIC's amalgamation of the data provided in both sets of FOIA disclosures.

<u>Adjudication of recognition and accreditation applications</u>

1. <u>Processing time</u>

   ➢ **EOIR's average adjudication time of applications from non-profit organizations seeking DOJ recognition for the first time steadily increased between 2012 and 2014. However, between 2014 and 2018, the average adjudication time for these applications dropped by 37%.**
      o In 2012, the average adjudication time was 90 days, but in 2014 it had increased by 37% to 123 days.
      o From this peak in 2014, the average adjudication time dropped by 37% to 77 days in 2018.

   ➢ **Starting in 2019, EOIR began disaggregating the processing times for approved recognition applications versus disapproved applications and overall processing times increased.**
      o In 2019 and 2020, approved initial recognition applications took an average of 22 days longer to adjudicate than disapproved applications.
      o The average processing time (158.5 days) for both approved and disapproved initial recognition applications during 2019 and 2020 was more than double the average processing times in 2018 (77 days).

   ➢ **Before 2017, organizations were not required to apply for renewal of recognition. Instead, an organization remained on the roster of recognized organizations indefinitely once it had received initial recognition. Regulatory changes in December 2016 instituted a renewal requirement.**
      o In 2019 and 2020, processing times for renewal recognition applications were even higher than for initial applications, with approved renewals averaging 159 days and disapproved renewals averaging 262 days in those years. By contrast, in 2017 and 2018, the average processing time for renewal of recognition applications was 75.5 days.

   ➢ **Processing times for initial full and partial accreditation applications increased substantially in 2019 and 2020.**
      o The average processing time for an approved full accreditation application in 2019 and 2020 was 99.5 days, representing an almost 40% increase from 2018 (71 days). Disapproved full accreditation applications took longer to process in 2019 and 2020, averaging 160 days for a decision.

o   Processing times for initial partial accreditation applications were even higher in 2019 and 2020, averaging 161.5 days for approved applications and 162.5 days for disapproved applications (compared to a 69-day average in 2018).

2.   Number of Applications Submitted

➢   **Between 2010 and 2015, there was a 61% increase in the number of new applications for recognition submitted to EOIR.**
  o   In 2010, EOIR received only 135 new applications for recognition. In 2015, the number of applications submitted to EOIR peaked at 218 applications.

➢   **Since 2015, the number of new applications for recognition has dropped. By 2019, the annual number of new recognition applications received was 36% lower than it was at its peak in 2015.**
  o   Compared to the 218 new applications for recognition that EOIR received in 2015, it received only 139 such applications in 2019 and was on pace to reach just 120 applications for 2020.

➢   **New applications for full accreditation drastically increased between 2010 and 2015 and then began to level out.**
  o   In 2010, EOIR only received two (2) applications for full accreditation. The number of applications for accreditation steadily increased each year until 2015, when EOIR received 116 applications, representing a 5,700% increase.
  o   Between 2016–2019, EOIR received an average of 105 initial applications for full accreditation.

➢   **New applications for partial accreditation also drastically increased between 2010 and 2016 before beginning to level out.**
  o   In 2010, EOIR only received 10 applications for partial accreditation. The number of applications for partial accreditation steadily increased each year until 2016, when EOIR received 830 applications, representing an 8,200% increase.
  o   Between 2017–2019, EOIR received an average of 553 new applications for partial accreditation.

3.   Approval and Disapproval Rates

➢   **There was a substantial decrease in the approval rate for new recognition applications under the Trump administration.**
  o   Between 2010 and 2016, the approval rate for new accreditation applications hovered between 48% and 66%. Between 2017 and 2020, the approval rate averaged 33.5% and reached a low of 27% in 2019, with only 38/139 applications approved in that year.

➢   **There was a substantial decrease in the approval rate for new full accreditation applications under the Trump administration.**

- In the last years of the Obama administration, the approval rate for full accreditation applications was quite high. In 2015, the approval rate for new full accreditation applications was 70%. In 2016, the approval rate for those applications increased to 78%.
- During the Trump administration, however, the approval rate averaged 40% and reached a low of 35% in 2019.

➢ **There has been a substantial increase in the disapproval rate for new partial accreditation applications in recent years**.
- The disapproval rate for new applications for partial accreditation remained at 10% or less between 2010 and 2016. Between 2014 and 2016 specifically, the disapproval rate for those applications was below 3%.
- Between 2018–2019, however, the disapproval numbers in this category averaged 12%.

➢ **Many recognition renewal applications were left unadjudicated by EOIR.**
- EOIR started requiring organizations to renew their recognition status as part of a regulatory change that occurred in December 2016. Of the 753 renewal applications filed between 2017 and 2020, only 410 were approved and 18 were disapproved. Accordingly, over 40% of the renewal applications filed had not been adjudicated at the time of the FOIA disclosures.
- CLINIC surmises that some of these applications may have been withdrawn, while others remain pending.

4. Termination

➢ **Regulatory changes in December 2016 precipitated EOIR terminating recognition and accreditation for numerous organizations**.
- There were no terminations of recognition between 2010 and 2016. Following regulatory changes in December 2016 that allowed for termination of recognition, EOIR began terminating recognition for large numbers of organizations. In 2017, EOIR terminated recognition for 49 organizations. In 2018, this number ballooned to 235 terminations before dipping back down to 62 recognition terminations in 2019.
- Between 2017 and 2019, EOIR terminated an average of 59 full accreditations and an average of 416 partial accreditations.

Representation by Fully Accredited Representatives in Immigration Court

According to EOIR, the Recognition and Accreditation Program aims to increase the availability of competent immigration legal representation for low-income and indigent persons, thereby promoting the effective and efficient administration of justice. Based on the data provided in both sets of FOIA disclosures, the Recognition and Accreditation Program has been meeting this goal.

1. Removal and custody proceedings

EOIR's FOIA response regarding representation by fully accredited representatives included information related to both removal and custody proceedings at the immigration court level. Some key takeaways from that data are provided below:

- **Accredited representatives have provided essential legal services in thousands of removal cases across the country.**
  - Between 2010 and August 4, 2020, accredited representatives provided representation in 7,799 removal cases where DHS filed an NTA.
  - During that same period, immigration courts issued 6,315 decisions (both detained and non-detained) in cases where the respondent was represented by an accredited representative. Fifty-one percent (51%) of those decisions resulted either in a termination order (2,251 cases) or in the court granting relief (943 cases).

- **Accredited representatives were effective advocates in even the most difficult jurisdictions for immigration matters.**
  - In Atlanta, Georgia accredited representatives won termination in 37 cases between 2010 and 2018. These 37 termination outcomes represented 86% of the 43 total cases in which an accredited representative represented the respondent.[4]
  - In Stewart, Georgia accredited representatives won relief (not including voluntary departure) for their clients in 67% of cases in which an accredited representative represented the respondent between 2010 and 2018.[5]

- **Accredited representatives play a key role across the country in helping detained noncitizens obtain release on bond.**
  - Between 2010–2020, EOIR documented 1,544 bond receipts across the country for noncitizens represented by an accredited representative.

- **In recent years, accredited representatives have been critical in helping noncitizens detained in remote locations to obtain bond.**
  - Between 2016 and 2018, immigration courts that serve only detained populations saw some of the largest percentage increases in the number of bond receipts by an accredited representative:
    - Adelanto, California: 100% increase

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[4] Between 2013 and 2018, the Atlanta Immigration Court had a 94% denial rate for asylum applications. The national average was 58%. Syracuse University's Transactional Records Access Clearinghouse, https://trac.syr.edu/immigration/reports/judge2018/denialrates.html; *see also* Jeremy Redmon, *Georgia's Immigration Court Judges Among Toughest in Nation for Asylum*, THE ATLANTA JOURNAL-CONSTITUTION, July 25, 2019, https://www.ajc.com/news/breaking-news/georgia-immigration-court-judges-among-toughest-nation-for-asylum/svQ2CmRGXS5Hgi2utVTmrO/

[5] Between 2013 and 2018, 58% of asylum claims in immigration courts nationwide were denied. Over the same period, the denial rate at Stewart was 94%. *See* Simon Montlake, *Long Shot Lawyer: Defending Migrants in US's Toughest Immigration Court*, CHRISTIAN SCIENCE MONITOR, Apr. 22, 2019, https://www.csmonitor.com/USA/Justice/2019/0422/Long-shot-lawyer-Defending-migrants-in-US-s-toughest-immigration-court (citing Syracuse University's Transactional Records Access Clearinghouse).

- Batavia, New York: 1,300% increase
- Otero, New Mexico: 4,600% increase

2. <u>Board of Immigration Appeals (BIA)</u>

In addition to providing data regarding removal and custody proceedings at the immigration court level, EOIR's FOIA response also included a "board decisions" chart reflecting "[a]ll decisions at the Board of Immigration Appeals represented by an Accredited Representative at Immigration Court." Such data broke down BIA outcomes into twenty categories such as "remand," "sustain," "summarily dismiss," and so on, but did not differentiate between appeals brought by DHS and those brought by the respondent. As a result, few conclusions could be made regarding which outcomes ultimately benefitted respondents. The information below, therefore, reflects only basic context for the data provided in this category and likely does not fully account for the impact of accredited representatives at the appellate level.

➢ **Respondents represented by an accredited representative at the immigration court level obtained positive outcomes in front of the BIA.**
  o The EOIR data noted 1,826 BIA decisions between 2010 and August 4, 2020 in cases where accredited representatives had provided representation in immigration court.
  o Within those decisions, the fourth most common outcome for non-detained cases (after "dismiss appeal/affirm IJ's decision," "remand," and "denied") was termination (157 cases).
  o For both detained and non-detained cases during that period, respondents received discernibly positive outcomes[6] in at least 187 cases.

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[6] A positive outcome is defined here as one of the following: administratively closed, administratively closed-DHS PD, TPS, termination.