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Watchdog Finds Immigration Court Agency Bungled Budget

By **Suzanne Monyak**

Law360 (June 9, 2020, 6:22 PM EDT) -- The Justice Department agency that oversees the U.S. immigration court system underestimated its interpreter fees by millions when requesting congressional funding and cut court resources based on miscalculated figures, a government watchdog found in a Tuesday report.

The U.S. Department of Justice's Office of the Inspector General knocked the Executive Office for Immigration Review for failing to request enough funding from Congress for the 2019 fiscal year to cover fees for immigration court interpreters, which have increased as a result of a swelling immigration court backlog and higher contractor rates, the report says. Immigration court interpreters are provided by contractor SOS International LLC, or SOSi, according to the company's website.

Then, after the partial government shutdown in early 2019 that **further aggravated the case backlog**, the agency miscalculated its projected interpreter costs and incorrectly found annual spending on interpreters was set to blow past its budget by tens of millions of dollars, according to the report. This prompted the agency's director, James McHenry, to scale back hiring and training for immigration judges.

EOIR's leadership failed "to coordinate effectively with its budget staff" and was hampered by "general confusion and miscommunication" surrounding the agency's own costs, the watchdog wrote.

The report comes as EOIR has increasingly **relied on video teleconferencing services** to hold immigration court hearings, even before the coronavirus pandemic made in-person interactions unsafe, despite concerns from immigrant advocates that video hearings hamper due process.

EOIR has also increased its use of telephonic translation services, instead of in-person interpreters. Advocates have also slammed this practice for raising communication issues for foreign citizens facing deportation, particularly **for children**.

The inspector general's office zeros in on two emails McHenry sent to staff last year sounding the alarm on the agency's financial woes and warning of cuts to key programs.

McHenry first wrote in February that Congress' appropriations bill for EOIR "does not fully address all of its current operational needs," and that "there will be difficult financial decisions to be made." The report, however, notes that Congress appropriated roughly the same amount of funds the agency had requested.

In a second email in March, McHenry's tone was more dire. He told staff the budget process had left the agency "considerably short" and announced that EOIR was therefore rolling back programs to modernize the agency and support judges.

Those cuts included pushing back its plan to expand electronic filing for immigration courts — which still rely on paper filings in the mail — and cancelling an in-person training for immigration judges.

Additionally, McHenry said the agency would not be able to hire new attorneys and judges as quickly,

nor fill vacancies, though Congress had earmarked \$40 million for that hiring. Meanwhile, the immigration court backlog has now surpassed 1.1 million pending cases.

But "neither of these emails accurately reflected EOIR's financial situation," the report says.

According to the report, the miscalculation occurred when EOIR was notified that it spent around \$9 million on interpreter fees in a single month, which would put the agency on track to spend \$110 million on interpreters after a year. This figure was 36% more than the \$80 million it had estimated it would spend on these services, and 86% more than it spent on them in fiscal year 2018, according to the report.

But just weeks after McHenry sent his March email citing that \$110 million figure, he discovered the number was "overstated," the report says, yet he refrained from sending out a correction to staff. The inspector general's office said EOIR staff members were unable to show how they arrived at the \$9 million figure in the first place.

"In our opinion," the office wrote, "it should have been readily apparent in February 2019, at the time of the EOIR director's email" that the challenges over hiring as many immigration judges as budgeted for stemmed from the hiring pause during the multimonth government shutdown, not from those funding concerns.

"EOIR leadership's lack of knowledge regarding the status of interpreter contract funds subsequently hindered its ability to communicate accurate budget and financial needs," the report says.

Kathryn Sheehay, EOIR's chief management officer, wrote in a May letter in response to the OIG's report that the agency "has already identified and begun to address" the weaknesses highlighted in the report, and expects future budget requests to "more accurately reflect EOIR's needs."

Ashley Tabaddor, president of the National Association of Immigration Judges, told Law360 the report's findings underscore the need for an independent immigration court system, saying the budget mismanagement on display in the report was "court administration 101."

She also faulted the agency for making immigration judges' training the "first thing on your chopping block" when making budget cuts.

"This is a law enforcement bureaucracy model trying to administer a court, and this is what you run into," she said.

An EOIR spokesperson didn't respond to a request for further comment Tuesday.

--Editing by Marygrace Murphy.