



Court Performance Measures Adjournment Codes

Judge Santoro, Judge Daugherty, Judge Sharda

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Court Performance Measures
2018 Executive Office for Immigration Review
Legal Training Program

EOIR MISSION

***The primary mission is to adjudicate
immigration cases by fairly,
expeditiously, and uniformly interpreting
and administering the nation's
immigration laws.***

How do courts gauge performance?

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NATIONAL CENTER FOR STATE COURTS (Established 1971)

Is the organization courts turn to for authoritative knowledge and information, because its efforts are directed by collaborative work with the Conference of Chief Justices, the Conference of State Court Administrators, and other associations of judicial leaders.

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NATIONAL CENTER FOR STATE COURTS

“Through the collective work of all members of the judicial process, from **judges to administrators to clerks**, we can assess and recognize areas that need **improvement.**”

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The National Center for State Courts has 10 Performance Measurements

- M1: Access and Fairness
- M2: Clearance Rates
- M3: Time to Disposition
- M4: Age of Active Pending Caseload
- M5: Trial Date Certainty
- M6: Reliability and Integrity of Case Files
- M7: Ensuring Fairness in Legal Financial Obligations
- M8: Effective Use of Jurors
- M9: Court Employee Satisfaction
- M10: Cost Per Case

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WHY COURT PERFORMANCE MEASURES?

What do they do for us?

- Performance measures enable courts to collect and present evidence of their success in adjudicating cases.
- Performance measures provide accountability in the administration of justice.
- Performance measures provide a structured means to communicate our success to our partners in government.
- Designed to demonstrate the quality of services and foster consensus on what courts should strive to achieve and their success in achieving justice with limited resources.

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Court Performance Measures and Benchmarks within each Measure

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COURT PERFORMANCE MEASURES

1. Eighty-five percent (85%) of all non-status detained removal cases should be completed within 60 days of filing of the Notice to Appear (NTA), reopening or recalendar of the case, remand from the Board of Immigration Appeals (BIA), or notification of detention.
2. Eighty-five percent (85%) of all non-status non-detained removal cases should be completed within 365 days (1 year) of filing of the NTA, reopening or recalendar of the case, remand from the BIA, or notification of release from custody.
3. Eight-five percent (85%) of all motions should be adjudicated within 40 days of filing.
4. Ninety percent (90%) of all custody redeterminations should be completed within 14 days of the request for redetermination.
5. Ninety-five percent (95%) of all hearings should be completed on the initial scheduled individual merits hearing date.
6. One hundred percent (100%) of all credible fear reviews should be completed within seven (7) days of the initial determination by an asylum officer that an alien does not have a credible fear of persecution. See NA § 235(b)(1)(B)(iii)(III). One hundred percent (100%) of all reasonable fear reviews should be completed within 10 days of the filing of the negative reasonable fear determination as reflected in Form 1-863. See 8 C.F.R. § 1208.31(g).
7. One hundred percent (100%) of all expedited asylum cases should be completed within the statutory deadline and consistent with established EOIR policy. See NA 208(d)(5)(A)(iii);OPPM 13-02.
8. Eighty-five percent (85%) of all Institutional Hearing Program (IHP) removal cases should be completed prior to the alien's release from detention by the IHP custodian.
9. One hundred percent (100%) of all electronic and paper records should be accurate and complete.

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The Measures Reflect Our Duties:

The Immigration Courts adjudicate cases and the BIA reviews completed cases.

Our Judges and Board Members serve justice by applying the laws as enacted, irrespective of personal preference or political opinion.

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IJ ETHICS AND PROFESSIONALISM GUIDE, IV, V, VIII

Judges shall perform the duties of office impartially, competently and diligently.

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The #1 Roadblock to Justice

Some parties fail to perform
competently and diligently.

*How many case have we continued because parties
were not prepared?*

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How to reinforce Competence and Diligence?

Establish Timelines: 8 CFR 1003.31(c) & 1003.29

- Set reasonable deadlines for submission of evidence.
- Set a trial schedule.
- Set the individual hearing date.
- We enforce our orders and deadlines.

***BIA enforces filing deadlines every day and so must the
immigration courts!***

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The CPM's show counsel that we are tracking their cases and we enforce our orders and deadlines!

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CPM #5. Ninety-five percent (95%) of all hearings should be completed on the initial scheduled individual merits hearing date.

In 95% of cases, parties must be prepared.

In 95% of cases, parties must be diligent.

In 95% of cases counsel must be competent, because we enforce our deadlines!

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Through our orders, the setting of deadlines, our rulings, our conduct and our express expectations of counsel ...

WE CAN RAISE THE STANDARDS
OF THE IMMIGRATION PRACTICE

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CourTools

Trial Court Performance Measures

National Center for State Courts

Trial Date Certainty

Measure **5**

- **Definition:** The number of times cases disposed by trial are scheduled for trial.
- **Purpose:** A court's ability to hold trials on the first date they are scheduled to be heard (trial date certainty) is closely associated with timely **case disposition**.
- This measure provides a tool to evaluate the effectiveness of **calendaring and continuance** practices.

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The Continuance Cycle

- Due to lack of preparation, attorneys move for continuances.
- Court grants continuances.
- The dockets just keep getting longer.
- Court schedules a high number of cases.
- One case goes, then 2, or 3 are continued.
- The continuance reinforces the belief that counsel will receive more continuances!!!

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Trial Court Performance Measures

National Center for State Courts

Trial Date Certainty

Measure **5**

- Credible hearing dates require a firm and consistently applied policy to limit the number of trial day continuances.
- If continuance practices are too lenient, attorneys are less likely to be properly prepared on the trial date, which increases the likelihood of a breakdown in the trial calendar.
- The result is judge and court staff time are wasted.

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“To delay Justice is Injustice.” [William Penn](#)

The timely and efficient decision of cases serves Justice. Unwarranted delays and delayed decision making do not. The final disposition for each case where removability is established, is either a removal order or a grant of relief consistent with applicable laws.

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COURT PERFORMANCE MEASURES

CMP #1. Eighty-five percent (85%) of all non-status **detained** removal cases should be completed within 60 days of filing of the NTA, reopening or recalendaring of the case, remand from the Board of Immigration Appeals (BIA), or notification of detention.

They are detained. They have lost their freedom. They are outside their home country. They are away from their families.

They should have their freedom restored as quickly as possible.

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Diligence

- In 85% of non-status detained removal cases, no more than three days elapse from merits hearing to case completion.
- In 85% of non-status, non-detained removal cases, no more than 10 days elapse from merits hearing to case completion, unless completion is prohibited by statute (e.g. a cap on grants of relief) or completion is delayed due to a need for completion of biometrics.

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CPM #3. Eight-five percent (85%) of all motions should be adjudicated within 40 days of filing. (I.J. 20 days!)

**We set deadlines and show counsel
they will follow the deadlines!**

Court has 40 days, judge has 20 days! Allows for vacations, details, holidays, etc...

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CPM #7. One hundred percent (100%) of all **expedited asylum** cases should be completed within the statutory deadline. See INA 208(d)(5)(A)(iii); OPPM 13-02. (180 days)

CPM #8. Eighty-five percent (85%) of all Institutional Hearing Program (IHP) removal cases should be completed prior to the alien's release from prison.

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Stuff Beyond Your Control
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CBA 22.3(h). When evaluating...Judge performance... the Agency will take into account relevant factors... including:

Availability of resources;

Approved leave;

Changes in the law;

Other official duties;

Approved official time in accord with Art. 5;

Less than 24 months on the bench;

Other factors not in the control of the Judge...

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Records management is at the core of our courts' processes...

ACCURACY

With respect to records ... accurate records are critical to the fair and efficient adjudication of cases and the enforcement of legal remedies that courts provide.

National Center for State Courts

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CourTools

Trial Court Performance Measures

National Center for State Courts

Reliability and Integrity of Case Files Measure **6**

- **Purpose:** A reliable and accurate case file system is fundamental to the effectiveness of day-to-day court operations and fairness of judicial decisions. The maintenance of case records directly affects the timeliness and integrity of case processing.
- This measure provides information regarding (a) how long it takes to locate a file, (b) whether the file's contents and case summary information match up, and (c) the organization and completeness of the file.

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EOIR CPM #9. One hundred percent (100%) of all electronic and paper records should be accurate and complete.

Help your clerks - help you!

Be accurate on the adjournment codes
and on the case management sheet or
record of master hearing!

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EOIR

Electronic Case Management System

ECAS – testing starts July.

Yes – July 2018!

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Adjournment Codes
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Adjournment Codes

WHY?

Operating Policies and Procedures Memorandum 17-02
On **October 5, 2017**, OCIJ issued OPPM – 17-02 to help consolidate and streamline the codes used in CASE and to improve the data quality for analysis.

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WHY ?

User Errors

Scribe Errors

Data Entry Errors

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A recent survey says...

Code	Description	Error rate
1	A to seek representation	(b)(5) DP
2	Attorney/A prep	
3	DHS prep	
11	A/atty no-show	
12	Other A request	
21	Supplement 589	
23	589 w/d, another issue pending	
26	A req for in-person hrng	
27	DHS req in-person hrng	
28	IJ determined in-person hrng needed	
37	DHS investigation	
45	Joint request	
4B	Interpreter must leave	
7B	DHS app process – A initiated	

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A few notorious examples...

- Code 26 (alien request for in-person hearing): Used 18 times in a single case, none of which was correct...
- IJ announced code 11 (attorney no-show/clock stop) until R asked about a work permit; IJ changed code to 7B (to run the clock)...
- IJ doing initial group masters never asks if Rs want time to find counsel – in the script IJ tells everyone IJ is going to give a continuance and codes everything 01 w/o any R input...
- Code 37 (DHS investigation) used when IJ ordered written closing arguments b/c IJ was tired and didn't want to complete the cases...

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The codes are directly tied to the performance measures. The codes enable your CA to improve case flow and identify cases that judges and clerks need to review.

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- **Use the appropriate one! Please put it on the CASE worksheet or Record of Master Calendar.**

Example: I I/P 5/14/2021 8:30 02 REN

- “Best Practice” state the reason for adjournment on the DAR.
- “This case is continued for Attorney Preparation.” Then the clerk codes the case “02.” Or, “This case is being placed on the status docket, due to the _”I-130”_ pending at USCIS, Code 7A.”
- **Please help your clerks keep your CASE data accurate!**

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Use the most appropriate code based upon the definition and the clock will take care of itself.

Please read the new Policy Manual or OPPM – 17-02

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Example: Non-detained asylum case. Court performance measure – 365 days.

Counsel waives the expedited asylum hearing and you set the case for an individual hearing and code as a 17. The case is set 300 days out? (Just an Example!)

RESULT – The CPM is busted as the code should have been 22. (Counsel waived the expedited asylum hearing.) The code 22 gives the full 365 days to complete the case. (Non-detained)

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Stuff Beyond Your Control
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**CBA 22.3(h). When evaluating...Judge performance...
the Agency will take into account relevant factors...
including:**

- Availability of resources;***
- Approved leave;***
- Changes in the law;***
- Other official duties;***
- Approved official time in accord with Art. 5;***
- Less than 24 months on the bench;***
- Other factors not in the control of the Judge...***

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ALIEN - RELATED ADJOURNMENTS

- **Preparation – Alien/Attorney/Representative 02 S** Used at the master to show alien/attorney/representative time to prepare. Includes allowing time to file an additional relief application not initially requested, or to take witness testimony outside corrections facility, e.g., at the Immigration Court for a witness in a 240A(b) hearing. (b)(5) DP error rate)
- **Preparation – DHS 03 R** – Adjourned to allow DHS time for preparation or to cover other DHS requested continuances not otherwise included. (b)(5) DP error rate)

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- **DHS Application Process – Alien Initiated 7A S** – Such as I-130 pending at USCIS. Used to show the adjudication of an application by DHS.
- **Other No-Show by Alien/Counsel or Rep. 11 S.** A no-show by the Alien, without just cause, follow the in absentia guide. The no-show by counsel, without just cause, write the disciplinary counsel.
- **Other Alien/Alien's Attorney/Representative Request 12 S** – Used when counsel/R shows OTHER good cause for adjournment that is not covered by 38 – (Illness).

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- **Supplement Asylum Application 21 S**
– Used at the master when you require filing in open court. (b)(5) DP error rate)
- **Alien or Rep. Rejected Earliest Possible Asylum Hearing 22 S**
– Original hearing reset date was rejected and then set for a later date.

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- **Asylum Application Withdrawn/Reset for Other Issue 23 S** – Counsel needs more time to file other application. (b)(5) DP error rate)
- **Joint Request of Both Parties 45 S** – To use this code, both parties must agree to the adjournment request. (b)(5) DP error rate)

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- **DHS Investigation 37 R** – Adjourned to allow DHS time to complete investigations. (b)(5) DP error rate)
- **Contested Charges 51 S** – Adjourned because charges are contested by alien.
- **DHS Application Process – DHS Initiated 7B R** – DHS sent the application to USCIS or other agency. (b)(5) DP error rate)

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I.J. SPECIFIC CODES

- **IJ Determined an In-Person Hearing is Necessary 28 R** – Many times used when there is a question of competency, MAM issues. (b)(5) DP error rate)
- **Interpreter must leave 4B R** – Used when the Interpreter must leave court before hearing is complete for a valid reason. (Illness, transportation, scheduling conflict...) (b)(5) DP error rate)

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I.J. SPECIFIC CODES

- **Reserved Decision RR R** – Used when you complete the hearing but reserve to write a decision.
 - If you continue to issue an oral decision, use **Code 13**.
 - This enables CASE to show you are coming back on the record.
 - Will reflect in completion goal. (95% first Individual hearing date)

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ADJOURNMENT CODES

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NEW CODES - Coming Soon!

- **IJ Detail (Volunteer) and (Non volunteer)**
- **Late-filed evidence**
 - Alien - Related Adjourment (S-Stops the Clock)
 - DHS - Related Adjourment - *not* be used for rebuttal or impeachment evidence
 - Etc...

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Performance Enablers:

1. CASE / ECAS Reports.
2. Shortened oral decision format.
3. Audio recording 42B decisions.
4. Increase in JLCs and permanent AAs.
5. *ECAS – coming soon to a court near you!*
6. IJ dashboards enable you to monitor current performance to the measures.

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Maintaining the Public Trust

“It is imperative that we recognize our extraordinary role in ensuring the faithful application of the duly enacted immigration laws while ... ensuring the timely and impartial administration of justice.”

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QUESTIONS?

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THE END

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