

# PRACTICE BEFORE THE U.S. DEPARTMENT OF INTERIOR'S BOARD OF LAND APPEALS

SEPTEMBER 21, 2016



**PRESENTED BY:**

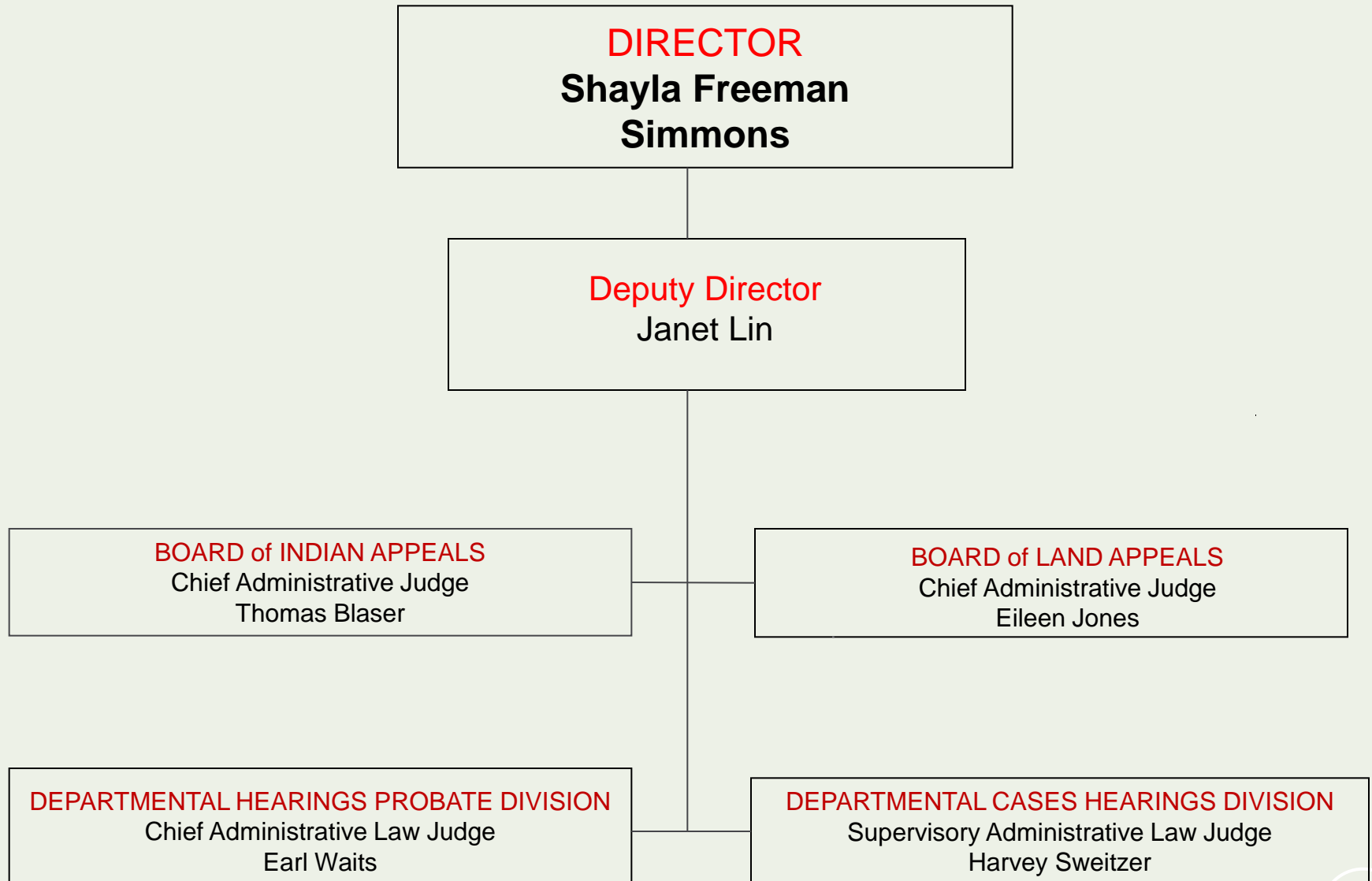
**CHIEF ADMINISTRATIVE JUDGE EILEEN JONES**

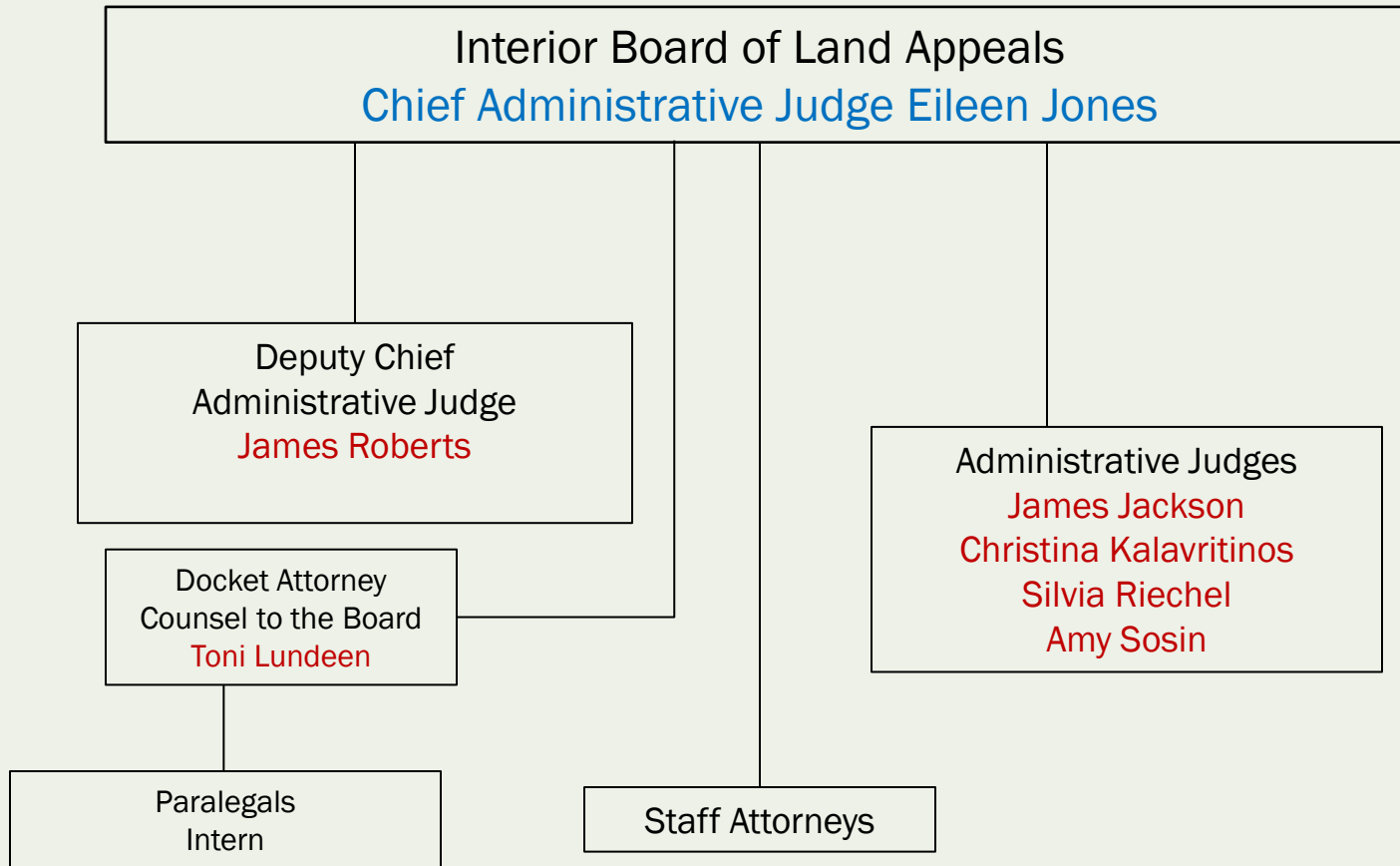


The seal of the U.S. Department of the Interior is a circular emblem. It features a bison standing in a grassy field with mountains and a sunburst in the background. The text "U.S. DEPARTMENT OF THE INTERIOR" is written around the top inner edge, and "MARCH 3, 1849" is at the bottom. The seal is semi-transparent and serves as a background for the text.

**WHO/WHAT IS  
THE INTERIOR BOARD OF LAND APPEALS?**

# OFFICE OF HEARINGS AND APPEALS





## The Board **adjudicates** appeals from:

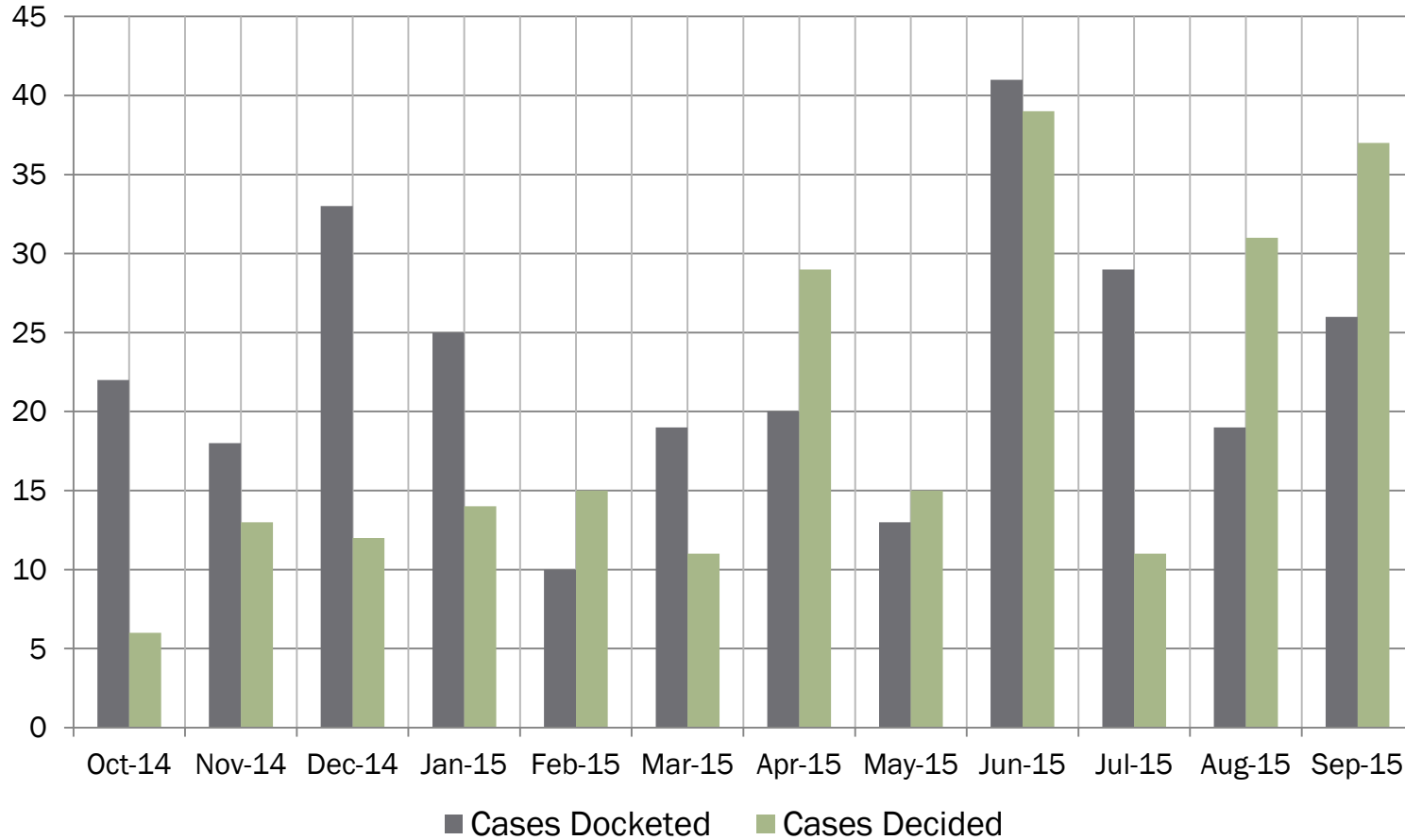
- Bureau of Land Management
- Office of Natural Resources Revenue
- Bureau of Ocean Energy Management
- Bureau of Safety and Environmental Enforcement
- Office of Surface Mining Reclamation and Enforcement



■ The Board has **no jurisdiction** over:

- National Park Service
- Fish and Wildlife Service
- Bureau of Reclamation
- Bureau of Indian Affairs

# TOTAL INCOMING CASES: 275 | TOTAL CASES DECIDED: 233



FY15

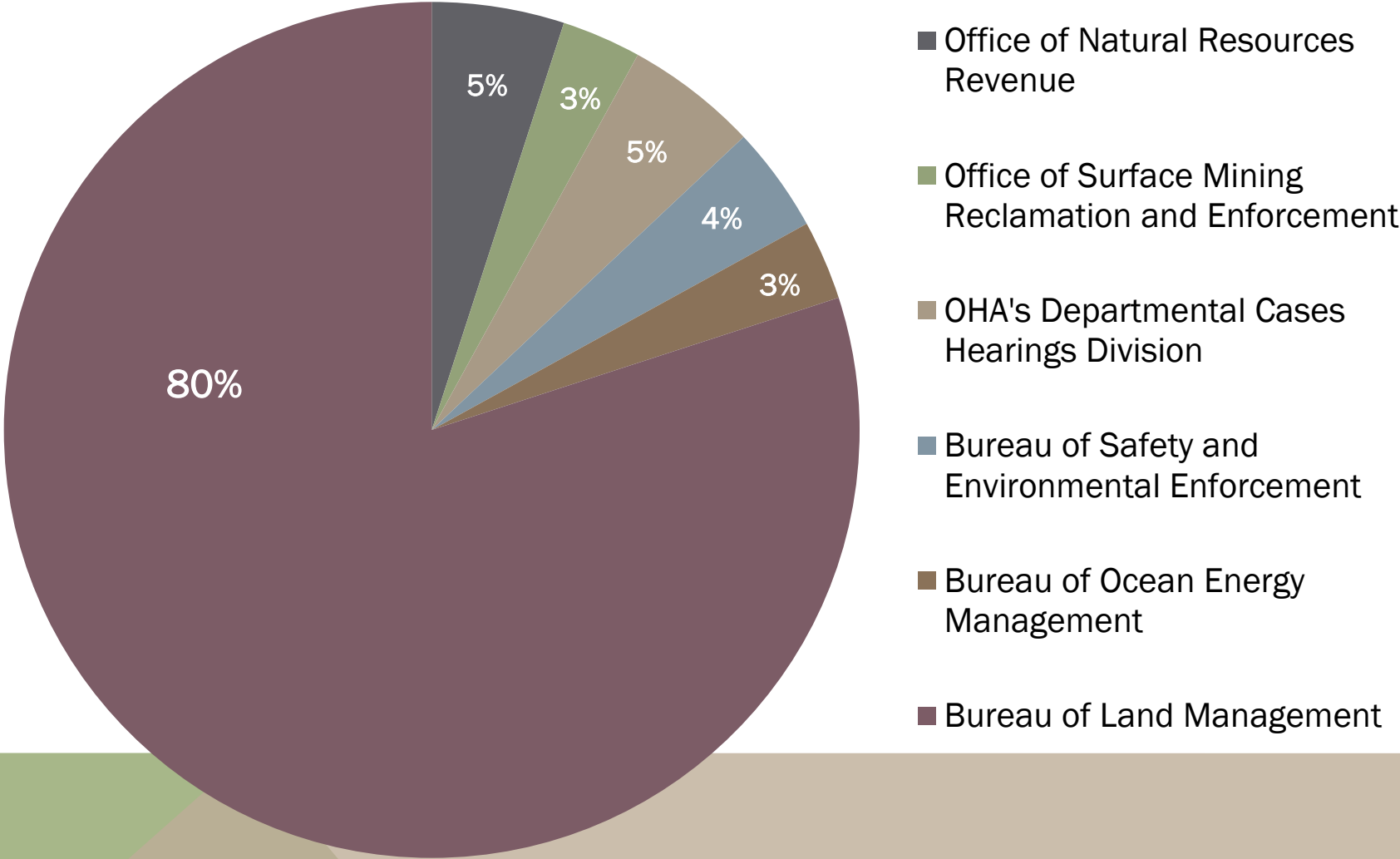


# BOARD INPUT/OUTPUT

SUMMARY CASELOAD FY15	
Pending Cases 10/01/2014	279
Cases Docketed	275
Cases Concluded	233
Pending Cases as of 9/30/2015	321

<b>SUBJECT MATTER</b>	<b>Number of cases finalized</b>	<b>Percentage of caseload</b>
<b>Mining Fees &amp; Recordation</b>	75	32%
<b>Oil &amp; Gas</b>	36	15%
<b>Other Lands</b>	19	8%
<b>Grazing</b>	13	6%
<b>Right-of-Way</b>	13	6%
<b>Royalty</b>	12	5%
<b>Recreation</b>	11	5%
<b>Trespass</b>	11	5%
<b>Surface Mining Control Reclamation Act</b>	7	3%
<b>Unidentified</b>	6	3%
<b>Wild Horse and Burro</b>	6	3%
<b>Mining Other</b>	5	2%
<b>Wild Fire Management</b>	4	2%
<b>Geothermal</b>	3	1%
<b>Land Conveyance</b>	2	1%
<b>Federal Land Policy Management Act</b>	2	1%
<b>Survey</b>	2	1%
<b>Timber</b>	2	1%
<b>Alaska</b>	1	<1%
<b>Bureau of Ocean Energy Management</b>	1	<1%
<b>Payment in lieu of taxes</b>	1	<1%
<b>Safety</b>	1	<1%
<b>TOTAL</b>	<b>233</b>	<b>100%</b>

# DISPOSITIONS BY BUREAU



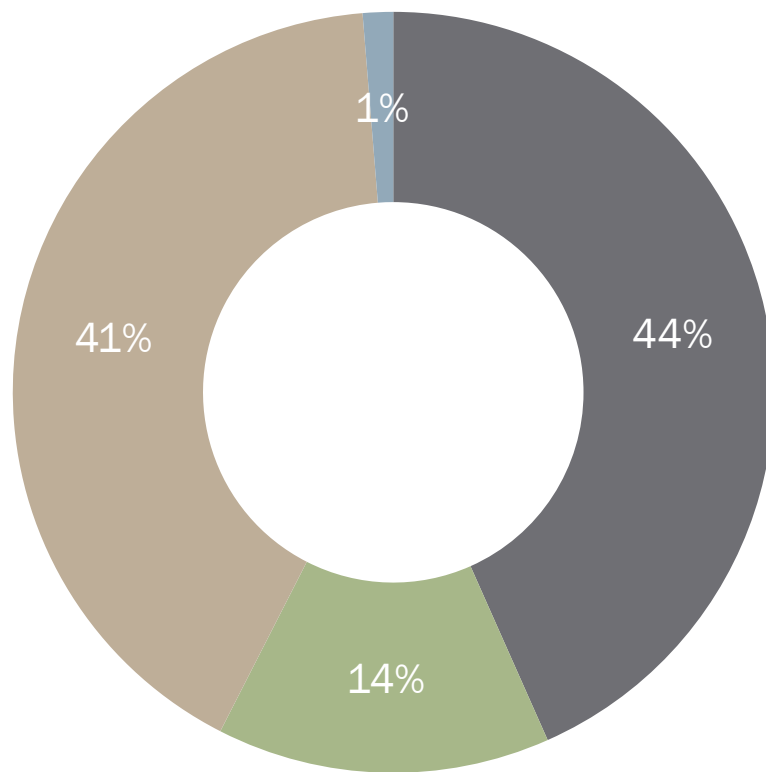
FY15

# CASE DISPOSITION BY BUREAU

	Affirmed/Affirmed as Modified	Set Aside & Remanded and Vacated/Reversed	Dismissed	Referred for Hearing
Bureau of Land Management	45%	15%	37%	0%
Bureau of Ocean Energy Management	0%	0%	100%	0%
Bureau of Safety and Environmental Enforcement	56%	11%	33%	0%
Departmental Cases Hearings Division	17%	8%	75%	n/a
Office of Surface Mining and Reclamation	16%	17%	17%	50%
Office of Natural Resources Revenue	36%	9%	55%	0%

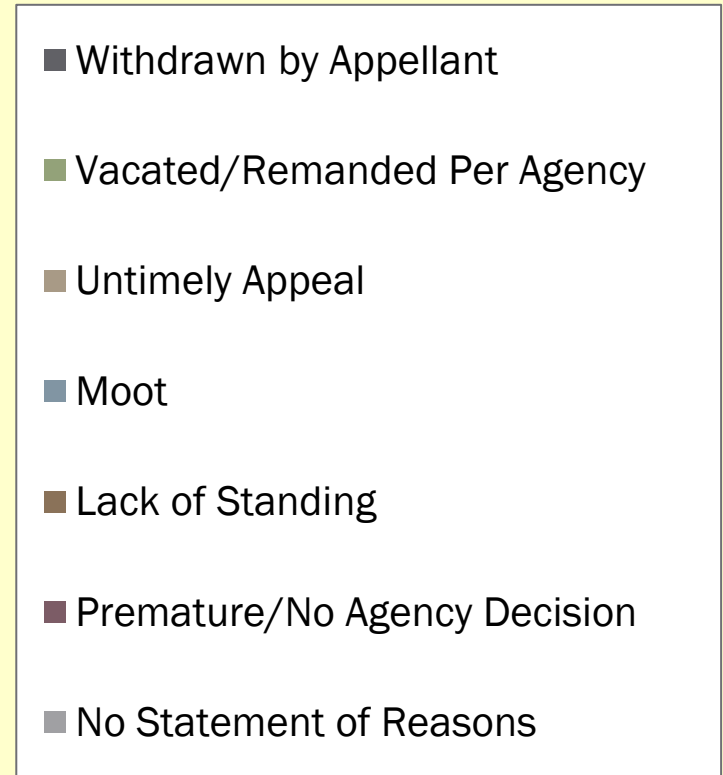
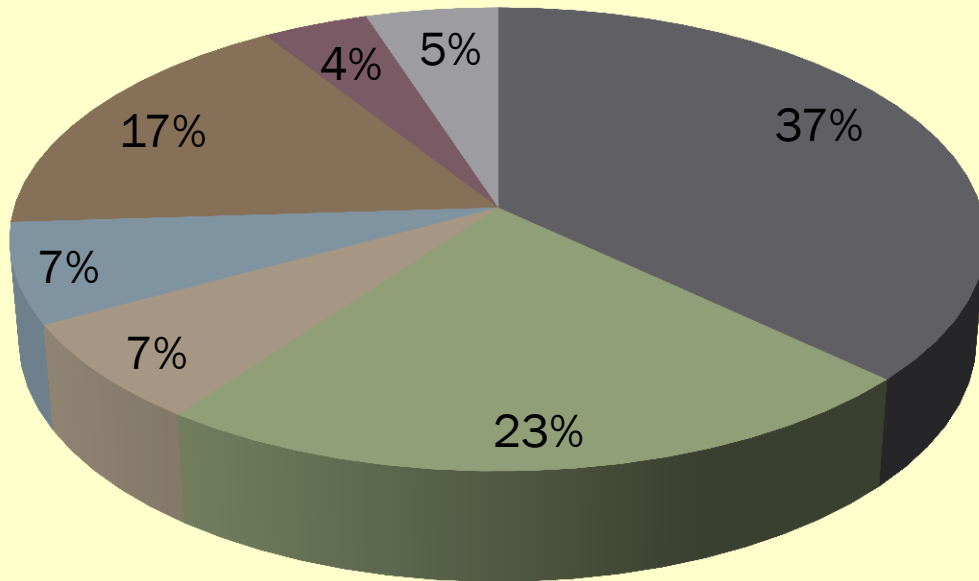
# Total Percentage of Cases Decided by Disposition Type

- Affirmed
- Set Aside and Remanded/Vacated/Reversed
- Dismissed
- Referred for Hearing



FY15

# BASES for DISMISSAL



# HOW ARE DECISIONS MADE?



- By panels of 2 judges but all judges (Board members) are in agreement. Decision is a Board decision, not an individual judge's decision.

## WHAT'S the DIFFERENCE BETWEEN an ORDER and a DECISION?

- The Board issues final opinions by two means: written **orders** or written **decisions**, both of which are signed by 2 judges.
- Orders historically have not been published on our web page, but decisions have been.
- Orders are not precedential; decisions are.

# WHY ARE SOME OPINIONS ORDERS BUT SOME ARE DECISIONS? HOW DO YOU DECIDE?

- Since 2016, default is all opinions are decisions.
- Historically, decisions were new statements of law, non-routine opinions.





# DO YOU PUBLISH PROCEDURAL (NON-DISPOSITIVE) ORDERS?

- Non-dispositive refers to any order that doesn't end the appeal before us. Typically, these would be procedural in nature:
  - extensions of time
  - motions to intervene
  - motions for nondisclosure of confidential information, and
  - stay petitions
- The Board has a large stay practice.
  - About half of appeals include petition to stay the effect of the decision on appeal until we resolve the appeal.
  - The Board is bound by regulation to decide all stay petitions within a certain, short deadline.
- Publication of non-dispositive orders.



# FINDING BOARD DECISIONS

- Commercial providers
- OHA's web site (free and includes orders)

Google "OHA IBLA" → <https://www.doi.gov/oha/organization/ibla>

search engine, chron index, substantive and procedural orders



# HIGHLIGHTS OF PROCEDURAL REGS



Motion Practice can be Broad:

- Most requests require a motion.

- Board accepts motions for expedited appeals, although has no reg per se; motions to withdrawal as counsel.

- Other common non-dispositive motions: For extensions of time to file (not the appeal).

- Others include: to suspend; to consolidate; to protect data; to accept non-conforming pleading.

# “HEARINGS”

1. To ALJ for testimony and FOF  
(4.415)

2. Oral argument before Board (4.25)



# NOT TO BE CONFUSED WITH:

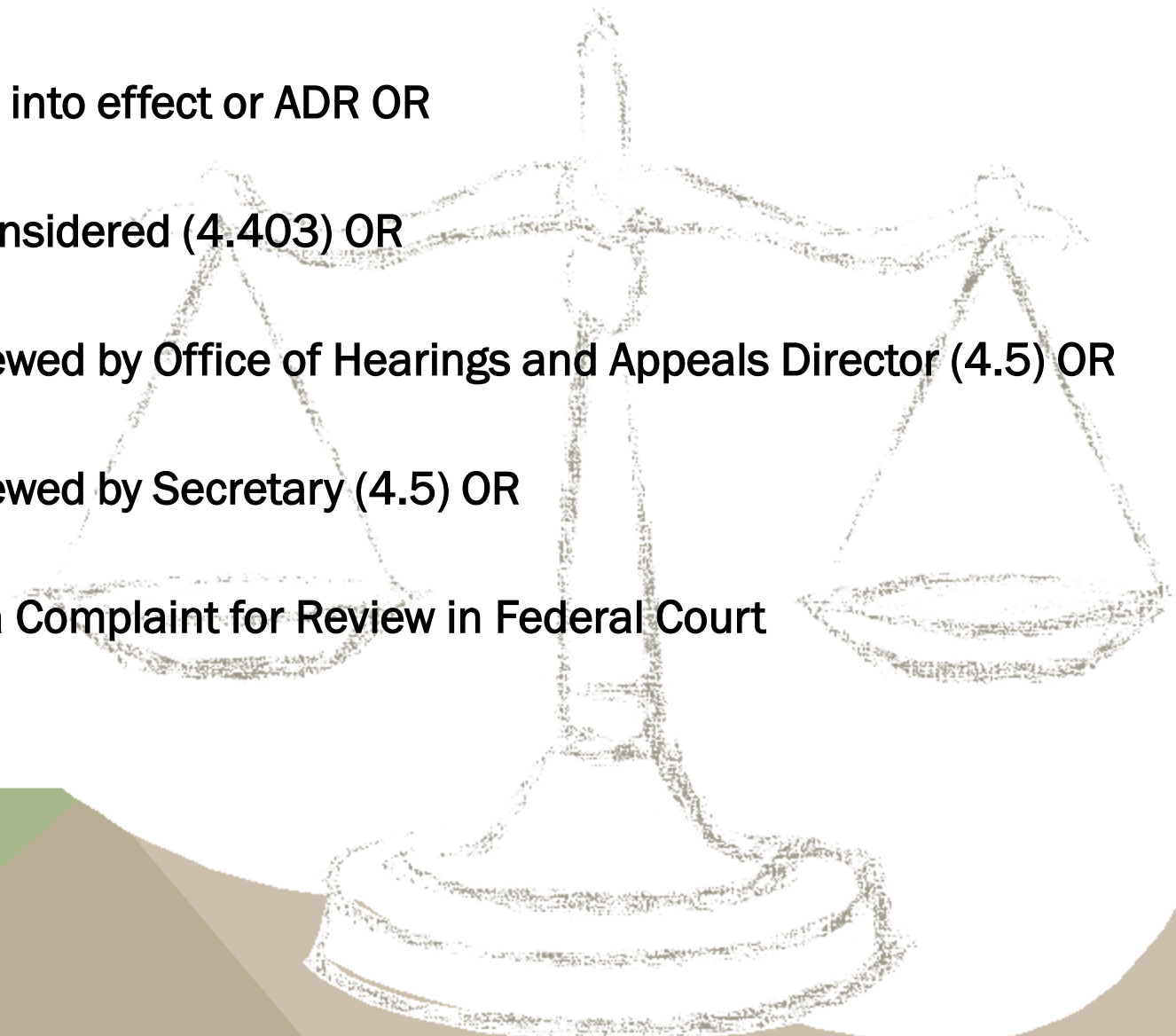
Interlocutory appeals of questions of law (from ALJ to Board): 3-step process:

1. ALJ or counsel raise issue. ALJ certifies issue or abuses discretion in refusing request.
2. The movant seeking interlocutory review must petition the Board for review.
3. Board accepts interlocutory appeal when our determination would materially advance the decisionmaking below.



# WHAT HAPPENS AFTER YOU ISSUE A DECISION?

- Goes into effect or ADR OR
- Reconsidered (4.403) OR
- Reviewed by Office of Hearings and Appeals Director (4.5) OR
- Reviewed by Secretary (4.5) OR
- File a Complaint for Review in Federal Court





# CONCLUSION

## SUMMARY OVERVIEW