



## **SNAPSHOT OF THE CRISIS FACING OUR IMMIGRATION COURTS TODAY**

### **SALIENT FACTS AND URGENT NEEDS**

December 5, 2014

#### **RECALCITRANT CASE BACKLOGS**

As of October 31, 2014, the Immigration Court backlog stood at 421,972.<sup>i</sup> This is a more than 22% increase since this time in 2013.<sup>ii</sup>

#### **LENGTHY DELAYS**

The average number of days a case was pending on the Immigration Court docket until decision was 569 days as of October 31, 2014, although 12 states – in order of descending magnitude: Nebraska, Illinois, Ohio, California, Colorado, Arizona, Michigan, New Jersey, Nevada, Georgia, New York, Massachusetts and Utah - exceeded that average.<sup>iii</sup>

#### **SURGING JUVENILE CASELOAD ON THE HORIZON**

An unprecedented influx of unaccompanied minors at our nation's southwest border has been labeled a humanitarian crisis, prompting the President to establish an interagency unified coordination group and the Senate to nearly double the available funding for care and resettlement of child migrants.<sup>iv</sup> Of the 63,721 pending juvenile cases as of October 31, 2014, only 32% had legal representation and the impact of these cases has been disproportionately felt in just six Immigration Courts (in order of descending magnitude): New York City, Houston, Arlington (VA), Los Angeles, Baltimore and San Francisco.<sup>v</sup> It is inevitable that this influx has and will continue to result in dramatic increases in the dockets of the Immigration Courts.

#### **FAILURE TO MEET PREDICTABLE STAFFING NEEDS IN A TIMELY FASHION**

Following a comprehensive review of the Immigration Courts by Attorney General Gonzales in 2006, it was found that a judge corps of 230 Immigration Judges was inadequate for the caseload at that time of approximately 168,853 pending cases.<sup>vi</sup> Despite this finding, the pledge to augment the judge corps, and the increase in caseloads since then, there are less than 230 active field Immigration Judges at present.<sup>vii</sup> To make matters much worse, half of all Immigration Judges are eligible to retire by the end of 2014.<sup>viii</sup>

### **FAILURE TO PROVIDE ESSENTIAL TOOLS FOR ADJUDICATIONS**

Despite express congressional authorization of contempt power for Immigration Judges in 1996, the Department of Justice still has not promulgated implementing regulations. Without authority to impose civil monetary sanctions for attorney misconduct, Immigration Judges lack an important tool in controlling court proceedings over which they preside.

### **DEEPENING DISCONNECT IN FUNDING BETWEEN DHS AND THE IMMIGRATION COURTS**

In the past decade, budgets for components in the Department of Homeland Security (Customs and Border Patrol and Immigration and Customs Enforcement) rose approximately 300% compared to 70% for the Executive Office of Immigration Review.<sup>ix</sup> In the meantime, while grappling with this meteoric rise in our dockets, budget bills continue to ignore the needs of our courts.<sup>x</sup>

### **CHRONIC SCARCITY OF RESOURCES CRIPPLES DAILY OPERATIONS OF THE COURT**

A catastrophic hardware failure on April 12, 2014 took the docketing system off-line for five weeks, impacting the public hotline, digital audio recording and access to the electronic docketing database.<sup>xi</sup> We fear occurrences like this are just the tip of the iceberg as our chronically resource-starved system continues to face the unprecedented challenges of aging technology, surging caseloads and potential retirements.<sup>xii</sup>

### **JUDGES PUSHED TO THE BRINK**

More than five years ago, Immigration Judges reported stress and burnout at higher levels than prison wardens or doctors at busy hospitals.<sup>xiii</sup> After continuing to struggle in an environment of decreased resources and skyrocketing caseloads for so long, morale is at an all-time low and stress at an all-time high. An unprecedented number of retirements is looming.

## **SOLUTION**

While it cannot be denied that additional resources are desperately needed immediately, resources alone cannot solve the persistent problems facing our Immigration Courts. Structural reform can no longer be put on the back burner. Since the 1981 Select Commission on Immigration, the idea of creating an Article I court, similar to the U.S. Tax Court, has been advanced.<sup>xiv</sup> In the intervening years, a strong consensus has formed supporting this structural change.<sup>xv</sup> For years experts debated the wisdom of far-reaching restructuring of the Immigration Court system. Now “[m]ost immigration judges and attorneys agree the long term solution to the problem is to restructure the immigration court system....”<sup>xvi</sup>

The time has come to stop putting off structural reform of the Immigration Courts. It is apparent that until far-reaching changes are made, the problems which have plagued our tribunals for decades will persist. For years NAIJ has advocated establishment of an Article I court. We now urge that the logical first step be taken: a Government Accountability Office study. This would provide concrete answers to a myriad of questions regarding the most effective road to a truly independent Immigration Court. The need for this study, and suggested questions to be addressed, are discussed in the NAIJ’s March 2014 issue paper, **GAO STUDY NEEDED**. Please act now on this urgent priority for the Immigration Courts and stop the cycle of overlooking this important component of the immigration enforcement system.

For additional information, visit our website at [www.naij-usa-org](http://www.naij-usa-org) or contact:

Dana Leigh Marks, President  
National Association of Immigration Judges  
100 Montgomery Street, Suite 800  
San Francisco, CA 94104  
415-705-0140  
[Dana.Marks@usdoj.gov](mailto:Dana.Marks@usdoj.gov) and [danamarks@pobox.com](mailto:danamarks@pobox.com)

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<sup>i</sup> Transactional Records Access Clearinghouse (TRAC), Syracuse University, Immigration Court Backlog Tool, [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/).

<sup>ii</sup> *Id.*

<sup>iii</sup> *Id.*

<sup>iv</sup> See *Presidential Memorandum For the Heads of Executive Departments and Agencies*, June 2, 2014, <http://www.whitehouse.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr> and David Rogers, *Senate Democrats Double Funding for Child Migrants*, POLITICO, June 10, 2014, <http://www.politico.com/story/2014/06/child-migrants-immigration-senate-democrats-107665.html>

<sup>v</sup> TRAC, <http://trac.syr.edu/imm/juvenile/>

<sup>vi</sup> See Press Release, Dep't of Justice, Attorney General Alberto R. Gonzales Outlines Reforms for Immigration Courts and Board of Immigration Appeals (Aug. 9, 2006), available at [http://www.justice.gov/opa/pr/2006/August/06\\_ag\\_520.html](http://www.justice.gov/opa/pr/2006/August/06_ag_520.html), and TRAC, *Improving the Immigration Courts: Efforts to Hire More Judges Fall Short*, <http://trac.syr.edu/immigration/reports/189/>.

<sup>vii</sup> Approximately 15 Immigration Judges are now serving in exclusively or primarily managerial positions with little or no pending caseload. See EOIR Immigration Court Listings, <http://www.justice.gov/eoir/sibpages/ICadr.htm>. Moreover, it is extremely difficult to precisely calculate the number of IJs at any given point due to the rapid rate of retirements. See Homeland Security Newswire, U.S. Govt. the Largest Employer of Undocumented Immigrants, May 30, 2014, <http://www.homelandsecuritynewswire.com/dr20140530-u-s-govt-the-largest-employer-of-undocumented-immigrants>

<sup>viii</sup> *Id.*

<sup>ix</sup> See, Marc R. Rosenblum and Doris Meissner, *The Deportation Dilemma, Reconciling Tough and Humane Enforcement*, MIGRATION POLICY INSTITUTE, April, 2014, <http://www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement>

<sup>x</sup> Erica Werner, *Spending Leaves Out Immigration Courts*, ASSOCIATED PRESS, Sept. 18, 2014, [http://hosted.ap.org/dynamic/stories/U/US\\_CONGRESS\\_IMMIGRATION\\_OVERLOAD?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2014-08-18-16-57-40](http://hosted.ap.org/dynamic/stories/U/US_CONGRESS_IMMIGRATION_OVERLOAD?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2014-08-18-16-57-40)

<sup>xi</sup> Elizabeth Summers, *Weeks-Long Computer Crash Sends U.S. Immigration Courts Back to Pencils and Paper*, PBS NEWSHOUR, May 23, 2014, <http://www.pbs.org/newshour/updates/weeks-long-computer-crash-sends-u-s-immigration-courts-back-pencils-paper/>.

<sup>xii</sup> Laura Wides-Munoz, *Nearly Half Of Immigration Judges Eligible For Retirement Next Year*, Huffington Post, Dec. 22, 2013, available at [http://www.huffingtonpost.com/2013/12/22/immigration-judges\\_n\\_4489446.html?utm\\_hp\\_ref=fb&src=sp&comm\\_ref&comm\\_crv](http://www.huffingtonpost.com/2013/12/22/immigration-judges_n_4489446.html?utm_hp_ref=fb&src=sp&comm_ref&comm_crv).

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<sup>xiii</sup> Stuart L. Lustig et al., Inside the Judges' Chambers: Narrative Responses from the National Association of Immigration Judges Stress and Burnout Survey, 23 GEO. IMMIGR. L.J. 57 (2009).

<sup>xiv</sup> COMM'N ON IMMIGRATION & REFUGEE POLICY, U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST: FINAL REPORT AND RECOMMENDATIONS OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY WITH SUPPLEMENTAL VIEWS BY THE COMMISSIONERS (1981).

<sup>xv</sup> Prestigious legal organizations such as the American Bar Association, Federal Bar Association, and American Judicature Society wholeheartedly endorse this reform. While not as certain as to the exact form of change desired, reorganization has also been endorsed by the American Immigration Lawyers Association, and increased independence by the National Association of Women Judges.

<sup>xvi</sup> *Supra*, note ii.