

Reducing the Immigration Court Backlog and Delays

456,644 PENDING CASES
1,400:1 CASES PER JUDGE
=635 AVERAGE # OF DAYS FOR EACH CASE TO BE HEARD

THE IMMIGRATION court system within the Department of Justice's Executive Office for Immigration Review (EOIR) is in a state of crisis. EOIR is currently managing the largest caseload the system has ever seen.¹ Over 456,000 immigration removal cases have now been pending for an average of 635 days in the U.S. immigration courts,² with many cases waiting years for their day in court. The caseload more than doubled between 2010 and 2015, from 223,707 to 456,644.

The immigration court system is widely recognized to be overstretched, backlogged, and underfunded,³ with its resources lagging far behind those provided to the front-line enforcement arms of the immigration system. A wide range of experts and former government officials have long recognized the need to address this gap. Both the American Bar Association and the Administrative Conference of the United States (ACUS) have expressed concern that the immigration courts do not have the resources necessary to deal with their caseloads. These caseloads average about 1,400 per judge. In January

2015, *The Wall Street Journal* and other media reported on immigration court delays and the re-calendaring of non-priority (non-detained and non-border) cases for hearings in late November 2019—nearly five years down the road. Editorials in the *Houston Chronicle*, *The Monitor*, *The Dallas Morning News*, *Bloomberg Views*, *The New York Times*, and the *LA Times* highlight the growing backlog and the need for additional funds for more judges.⁴

These delays leave asylum seekers and other immigrants, particularly those whose cases did not originate at the border, waiting years for their day in court. The delays also prolong the separation of refugee families—by years—leaving the children and spouses of some refugees stranded in difficult and dangerous situations abroad while they await a grant of asylum. The backlogs resulting from insufficient staffing and resources can also undermine the integrity of the system by allowing individuals who have no claim to relief to stay in the country for years while awaiting a court date, exposing the system to potential abuse. A 2015 poll, conducted for Human Rights First by

the Republican polling firm Public Opinion Strategies, confirms that over three-quarters of voters in the most closely watched Congressional Districts believe that Congress should “increase the number of judges who serve on immigration courts in order to help ensure fair and timely immigration hearings for those who are fleeing persecution from other countries.”

Recommendation

Add 280 Immigration Judges, and Support Staff, to Reduce Delays and Backlog. To handle the incoming removal caseload and reduce the backlog, the immigration courts will need 275 to 300 additional immigration judge teams. In addition to the 55 teams requested by the Department of Justice for Fiscal Year 2016, an additional 75 immigration judge teams should be added each year for three fiscal years, for a total of 225 additional teams.⁵ This overdue right-sizing of the immigration courts would cost about \$223,357,500 and would constitute a wise investment in the effectiveness, fairness, and timeliness of the immigration removal system. With this additional infusion of staff, funding for the immigration courts would still amount to only about 3.4 percent of the overall \$18.5 billion immigration enforcement budget.⁶

The Longstanding, and Rapidly Escalating, Imbalance in Immigration Court Resources and Staffing

While immigration enforcement budgets increased 300 percent between 2002 and 2013, funding and staffing for the immigration courts lagged far behind, increasing by only 70 percent.⁷ Averaging about \$18.5 billion for the last five years, resources for immigration enforcement, including Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), have more than quadrupled— from \$4.5 billion in 2002 to \$18.7 billion in fiscal year 2015. The most recent DHS appropriations legislation increased immigration enforcement funding to record levels.⁸

A wide variety of experts and former officials have expressed concern about this funding imbalance and its impact. In an October 2008 report, the GAO found, “The growth in the number of immigration judges has not kept pace with the growth in their overall caseload and case completions.”⁹ Former George W. Bush administration ICE Assistant Secretary Julie Myers Wood pointed out in April 2011 Testimony before the Senate Judiciary committee, “Although resources to apprehend and detain illegal

immigrants have increased substantially over the past several years, resources have not increased proportionally for the immigration courts.”¹⁰ In a 2015 op-ed Wood noted that the backlog undermines both immigration enforcement and due process, stating “Adequate immigration court staffing is an essential component of enforcement. With an appropriate number of judges and staff, cases will be decided in a timely and fair manner.”¹¹ A Georgetown University report, based on an expert meeting in 2014, concluded: “Immigration courts remain chronically underfunded, particularly so in comparison to increased funding given to other enforcement activities. This has led to a court system that is unable to keep pace with heightened demand and extensive backlogs.” As David Martin, a law professor at the University of Virginia who worked for two Democratic presidents, recently explained: “You fund more investigators, more detention space, more border patrol, almost all of these are going to produce some kind of immigration court case.” He pointed out, “You are putting a lot more people into the system. It’s just going to be a big bottleneck unless you increase the size of that pipeline.”¹²

This resource imbalance has been exacerbated by the “fall out” from sequestration, funding freezes, retirements of immigration judges, and the time it takes the Department of Justice to hire immigration judges, as well as the number of cases originating at the southern border during 2014.¹³ The decision to prioritize cases originating at the border, coupled with the pre-existing backlog, led the immigration courts to re-calendar non-priority (non-detained and non-border) cases for November 2019.¹⁴ To address some of the hiring challenges, the Department of Justice should also be funded to hire additional staff to manage the hiring of judges and other staff, and DOJ leadership should prioritize hiring immigration judges and allocate resources to expediting background processing for these hires.

Range of Diverse Officials and Experts Have Long Called for Increased Court Staffing

In an August 2006 outline of reforms for the immigration court system, then Attorney General Alberto Gonzales recommended that in order to “give the immigration courts the resources needed to execute their duties appropriately, the Department will seek budget increases, starting in FY 2008, which will be aimed at hiring more immigration judges and judicial law clerks....” Little

progress however was made following the Attorney General's recommendations.¹⁵

At a 2006 hearing before the Senate Judiciary Committee, the Honorable John M. Walker, then the Chief Judge of the U.S. Court of Appeals for the Second Circuit, cited "a severe lack of resources and manpower at the Immigration Judge and BIA levels," and recommended that the number of immigration judges—then 215 for a caseload of 170,000—be doubled:

With only 215 Judges, a single Judge has to dispose of 1,400 cases a year or nearly twenty-seven cases a week, or more than five each business day, simply to stay abreast of his docket. I fail to see how Immigration Judges can be expected to make thorough and competent findings of fact and conclusions of law under these circumstances. This is especially true given the unique nature of immigration hearings. Aliens frequently do not speak English, so the Immigration Judge must work with a translator, and the Immigration Judge normally must go over particular testimony several times before he can be confident that he is getting an accurate answer from the alien. Hearings, particularly in asylum cases, are highly fact intensive and depend upon the presentation and consideration of numerous details and documents to determine issues of credibility and to reach factual conclusions. This can take no small amount of time depending on the nature of the alien's testimony.¹⁶

A report issued by the American Bar Association's Commission on Immigration in 2010, authored by pro bono attorneys at the law firm of Arnold & Porter LLP, concluded that "the EOIR is underfunded and this resource deficiency has resulted in too few judges and insufficient support staff to competently handle the caseload of the immigration courts." The Administrative Conference of the United States (ACUS) confirmed in June 2012 that the immigration court backlog and "the limited resources to deal with the caseload" present significant challenges. In 2014 two expert roundtables convened by Georgetown University's Institute for the Study of International Migration called for increased resources for immigration judges and the immigration court system to reduce the growing backlog.¹⁷

U.S. Congressman John Culberson (R-TX), recently expressed his support for increased resources for the courts, noting that, "The funding in this [appropriations] bill

will help reduce the growing backlog of cases that are holding up our courts and compromising the rule of law."¹⁸ Also in 2015, Republican Senator Richard Shelby (R-AL) stated in his opening statement at a Senate Appropriations Subcommittee on Commerce-Justice-Science (CJS) hearing, "Significant improvements and reforms are needed in our immigration court system in order to address the approximately 440,000 pending cases... This backlog equates to a waiting period of several years before a case is heard. This delay is unacceptable."¹⁹ Senator Barbara Mikulski further noted that the FY2016 appropriation bill did not provide sufficient resources to reduce the immigration court backlog.²⁰

Poll Confirms Support for Funding the Immigration Courts

In a 2015 poll conducted for Human Rights First by Public Opinion Strategies, a Republican polling firm, seventy-eight percent of voters in the most closely watched Congressional Districts in the upcoming 2016 elections believe the system needs to be strengthened to better protect refugees and those seeking asylum. Over three-quarters of voters in 25 of the most competitive congressional districts, as well as voters in South Carolina and New Hampshire, agree that Congress should "increase the number of judges who serve on immigration courts in order to help ensure fair and timely immigration hearings for those who are fleeing persecution from other countries." Additionally, the survey found that 42 percent of voters are more likely to vote for their Member of Congress if they were to press for such action.²¹

Impact of Delays on Refugees Seeking Asylum

The delays and backlogs in the immigration courts have a tremendous impact on refugees seeking asylum in the United States. Through our partnership with law firms representing asylum seekers, Human Rights First sees first-hand the hardship that court backlogs and extended processing times create for refugees—many of whom are currently being given court dates several years away. Those who do not have work authorization while awaiting their immigration court dates are unable to support themselves and their families. While they wait for their claims to be heard, many asylum seekers remain separated from spouses and children who may be in grave danger in their home countries. For example:²²

■ **Wife and Children of Christian Missionary Stranded, Hiding from Boko Haram.** “Joshua” is a Christian missionary and social outreach worker from Nigeria, a husband and the father of young children. Boko Haram militants targeted him because of his religious activities and his assistance providing information about Boko Haram crimes to the police. Boko Haram militants are believed to have shot Joshua’s brother along with another guest at Joshua’s home in Joshua’s absence. Boko Haram militants later kidnapped Joshua himself. Released by security forces who stopped his captors’ vehicle, but unable to find protection in Nigeria, Joshua fled to the United States after a period in hiding. At his first hearing in immigration court, in late 2013, Joshua was scheduled for a hearing on the merits of his case in 2016. Joshua’s wife and children are currently in hiding. Joshua, who already blames himself for the death of his brother, fears for their safety but cannot petition to reunite with them until his asylum case is heard.

■ **Family of Syrian Torture Survivor, Stranded and Threatened in Syria.** “Hisham” was detained and tortured repeatedly by both governmental and non-governmental armed forces in Syria, each of which wrongly believed him to be supporting the other side. All factions also abused him very severely for challenging what they were doing. His hands were permanently damaged by the torture. Hisham finally fled Syria. Since arriving in the United States, his sole priority has been to secure the protection of asylum so that he can get his wife and adolescent son out of Syria. He applied for asylum without the assistance of counsel and was referred to an immigration court that is severely backlogged. When he first appeared in court without counsel, his case was adjourned for nearly a year. Meanwhile, there have been threats against his family back home, and his son has been unable to attend school for months because of these threats. In addition, his son will be called up for military service in a little over a year, and his Syrian passport will expire, meaning that the boy leave Syria before then. If Hisham cannot get his case heard in immigration court in time to petition for his family, all his efforts to gain protection will be meaningless to him.

■ **Separation from Family Prolonged for Tibetan Persecuted for Religious Activity.** S.T. is Tibetan and a lay monk in a sect of Buddhism. He was beaten and imprisoned for over two years by the Chinese government for performing religious ceremonies at which he praised the Dalai Lama and some attendees expressed a desire for a free Tibet. He fled to the United States and applied for asylum. His case has been pending before the immigration court since 2009. During this time, S.T. has been living here alone, with no legal status and no friends or family. His family is still in Tibet, and he is afraid to contact them for fear of jeopardizing their safety. He wants to contact them once he has asylum so that he can try to arrange for a safe exit for them to join him in the United States, but they have now been separated for years. S.T. has been completely cut off from those he cares about, and at this point his family does not even know if he is dead or alive.

Lengthy court delays also increase the difficulty of recruiting pro bono counsel, and without counsel, asylum seekers and other applicants are much less likely to secure relief.²³ The Association of Pro Bono Counsel, which consists of the pro bono leaders of many of the nation’s leading law firms, has explained that years-long delays “make these cases difficult to place with pro bono counsel, as they are typically wary of committing to a matter that will not be heard for several years.”²⁴ Noting the negative impact of delays on the ability to recruit pro bono counsel, the Association has urged funding to eliminate the multi-year delays in the immigration courts and the USCIS asylum office for all hearings and interviews, not just those that originate at the border.²⁵

Failure to Adequately Staff Immigration Courts Undermines Immigration Enforcement and Integrity

In order to effectively secure the integrity of the asylum and immigration systems the agencies responsible for decision-making—the Department of Justice’s Executive Office of Immigration Review (EOIR) and the Department of Homeland Security’s United States Citizenship and Immigration Services (USCIS)—must be properly staffed and resourced to adjudicate cases in a fair and timely manner, and to eliminate backlogs that can leave the system vulnerable to abuse. Former ICE Assistant Secretary Julie Myers Wood stated in her April 2011 congressional testimony that “a properly functioning

immigration court system is critical to ensure that current immigration enforcement efforts are working, and any future reforms are successful.”²⁶ In 2015 Wood wrote, “People who have no legitimate claim for relief languish in the system - and in the country - at taxpayer expense. At the same time, people with strong claims - including those fleeing persecution - now often wait years for their day in court.”²⁷

Russell Wheeler and Lenni Benson, the experts retained by the Administrative Conference of the United States to study the immigration court system, have described a number of ways in which immigration court understaffing and delays can undermine the integrity of the immigration enforcement system. They point out that “[e]xcessive delay degrades adjudication as memories fade” and that “delay becomes a goal for some with no legitimate claims to legal status, because it lets them remain in the country for up to several years while their cases wait in the court queue.” The Georgetown expert report also identified the immigration court backlog as a challenge for the removal system, stating: “Some unauthorized migrants may benefit from the delays and remain longer in the country than they should, but those with legitimate grounds for relief from removal, such as many asylum seekers, remain in limbo for unnecessarily long periods.” Wheeler and Benson concluded, “There can be no effective and fair enforcement of our immigration laws if the immigration courts cannot keep up.”²⁸

In a 2015 article, The Bipartisan Policy Center concluded that, “more judges would reduce the backlog, which would allow the enforcement system to function more efficiently and help migrants receive a fairer hearing.”²⁹

Improved Efficiency and Cost Savings

Increased funding for the immigration courts will also promote efficiency and ultimately lead to cost savings. As former Chief Judge Walker explained: “Adding resources at the Immigration Judge and BIA levels will also reduce the percentage of cases that are remanded by the courts of appeals for further work by the Immigration Judge or the BIA As these administrative judges have more time to spend on each case, the quality of adjudication will improve, and the need for remands will drop.”³⁰

Former Attorney General Alberto Gonzalez also believes that investing in the immigration courts would make fiscal sense. In an August 2014 piece in *USA Today*, he emphasized that investing in our immigration court system

along with broader immigration reforms would save money in the long run as well as “adhere to our principles of fairness and justice.”³¹

Wheeler and Benson point out that excessive delay in the immigration courts increases detention costs.³² The United States currently spends over \$2 billion on immigration detention each year. More timely immigration court proceedings would reduce the costs of detention and increase savings from the use of alternatives. For example, the cost for an appearance monitoring or support program would be significantly less if an asylum seeker waits 6 months for a hearing, as opposed to 3 years. While detention costs roughly \$160 a day per person on average, alternatives to detention range from 17 cents to \$17 a day. More timely hearings may also lead to the increased use of cost-saving alternatives to detention, as officials who have continued to over-rely on the detention facilities may be encouraged to shift to alternatives if removal cases are not left stuck in the backlog. A long backlog for non-detained cases also forces some asylum seekers to make the difficult “choice” to stay in detention, rather than seek release, because they fear that the hearing date delays they will face if released will delay their asylum grant, and as a result, their ability to petition to bring their spouses and children to safety in this country.

The Numbers

How many more immigration judge teams are actually needed to both address the incoming cases as well as the substantial and growing backlog of immigration court cases? The immigration courts are currently staffed with about 236 immigration judges, and there are 32 additional immigration judge positions approved for hire. Once additional hires, including those added through the fiscal year 2015 budget increase, are on board, the immigration courts will have about 319 judges. The current budget level for the immigration courts is \$357.6 million.³³

In July 2014, EOIR reported that the caseload per immigration judge averaged about 1400 matters. Commenting on overwhelming immigration court case-loads, former Second Circuit Chief Judge Walker once remarked that a single immigration judge “has to dispose of 1,400 cases a year—or about 80 a week—a virtually impossible task.” In its comprehensive 2010 study of the immigration court system, the American Bar Association recommended that immigration judges should handle no more than 700 cases a year. EOIR has cited this study,

noting that it “indicated that judges for the Board of Veterans’ Appeals hear approximately 700 cases each year per judge and the Social Security Administration administrative law judges decide approximately 500 cases each year per judge.”³⁴

Experienced immigration judges, including those who oversee the immigration judges’ union, recommend that each judge can handle on average about 500 cases. They note that federal judges handle roughly 400 cases a year, with significant support from law clerks and other staff.³⁵

They also point to the increasing complexity of cases in recent years due in part to the many changes in the law.

A range of experts has called for substantial increases in the staffing of the immigration courts. In its 2010 report, the American Bar Association recommended hiring enough judges to bring cases levels down to roughly 700 per judge, which it estimated to require an increase of 100 immigration judges, plus support staff, based on the caseload at the time. As noted above, Judge Walker recommended that the number of immigration judges, then 215, be doubled to 430. Experienced academic researchers, who conducted an in-depth study of asylum decisions before the immigration courts, also recommended in their 2009 study that the number of immigration judges be doubled.³⁶ However, the caseload since the time of these recommendations has grown substantially, meaning that more judges would be needed now to ensure a manageable caseload per judge.

The bipartisan Senate immigration reform bill called for an increase of 225 additional immigration judges—to be staggered over three years (with 75 added each year). Immigration court case levels have increased even since that bill was passed in June 2013. Writing last summer, about an immigration court caseload of 375,500, Daniel Costa of The Economic Policy Institute recommended tripling the number of immigration judges: “Congress could go a long way toward fixing the system by tripling the number of immigration judges with an investment of \$500 million—which is less than 3 percent of the \$18 billion spent annually on immigration enforcement.”³⁷

For fiscal year 2016, the Department of Justice requested an increase of \$60 million in order to add 55 immigration judge teams to help adjudicate its caseload. According to DOJ’s FY 2016 Budget Request, “An IJ team consists of an Immigration Judge, Language Specialist, Legal Technician, Clerk, Law Clerk, as well as a BIA Attorney and Paralegal for every two IJ teams, and one

administrative support position.” The Department of Justice states, “This enhancement will help IJ Teams and attorneys adjudicate rising immigration caseloads resulting from the increase in Southwest Border crossings.” This increase should indeed help the courts address the increased number of border cases, but additional immigration judge teams would be needed to make a meaningful dent in the substantial backlog of cases and to address cases that are not deemed to be a “priority” because they did not originate at the border.

Looking at the current caseload of the immigration courts, which now exceeds 453,000 cases, the courts would need at least an additional 275 to 300 immigration judge teams in order to both address incoming and priority cases, as well as to begin to tackle the backlog in a meaningful way.³⁸ This number will likely rise to over 300 if the backlog is allowed to continue to expand.

Other Steps that Can Improve Efficiency and Effectiveness

While not the subject of this background paper on court staffing levels, it should be noted that there are a range of additional steps that should also be taken to improve the efficiency and effectiveness of the immigration courts. These include: the greater use of pre-trial conferences to narrow issues before hearings, the expansion of legal orientation presentations which have been shown to promote efficiency, and the elimination of the asylum filing deadline bar which places the cases of refugees with well-founded fears of persecution into the immigration court removal system. The American Bar Association and other experts have also recommended shifting the immigration court system into an independent Article I court or at least into an independent agency.³⁹ Moreover, while all hearings should occur in a timely manner, they should not be rushed ahead in ways that are unjust and counterproductive, such as by forcing children or other applicants to appear without counsel.

Another key step that would improve the efficiency and effectiveness of the immigration courts is the appointment of counsel for indigent individuals who would otherwise go unrepresented. In a survey of immigration judges conducted by ACUS, 92 percent agreed that “when the respondent has a competent lawyer, I can conduct the adjudication more efficiently and quickly.”⁴⁰ A recent study by the NERA Economic Consulting Firm concluded that the provision of representation to indigent immigrants in

removal proceedings would ultimately save taxpayers money.⁴¹

In addition, as recommended in other Human Rights First materials, Congress and the administration should also work together to increase staffing for the USCIS asylum

division in order to eliminate the delays and backlogs in the affirmative asylum process, and ensure that USCIS can conduct timely affirmative asylum interviews as well as timely credible fear and reasonable fear interviews. ■

Endnotes

¹ Interim Rule, Designation of Temporary Immigration Judges, 79 Fed. Reg. 133, July 11, 2014, available at <http://www.gpo.gov/fdsys/pkg/FR-2014-07-11/pdf/2014-16279.pdf>.

² TRAC, Immigration Court Backlog Tool, available at http://trac.syr.edu/phptools/immigration/court_backlog/

³ American Bar Association, *Reforming the Immigration Court System* (2010), p. 2-16 available at http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf; Administrative Conference of the United States (ACUS), "Immigration Removal Adjudication, Committee on Adjudication, Proposed Recommendation, June 14-15, 2012," available at <http://www.acus.gov/report/immigration-removal-adjudication-report>.

⁴ Lomi Kriel, Immigration courts backlog worsens, Houston Chronicle, May 15, 2015, available at <http://www.houstonchronicle.com/news/houston-texas/houston/article/Immigration-courts-backlog-worsens-6267137.php>; Editorial Board, More U.S. Immigration Judges Needed, The Monitor, April 12, 2015, available at http://www.themonitor.com/opinion/editorial-more-us-immigration-judges-needed/article_1aed2194-dfe5-11e4-af39-47dff4009261.html; Dianne Solis, Backlog at all-time high in federal immigration courts, The Dallas Morning News, May 15, 2015, available at <http://thescoopblog.dallasnews.com/2015/05/backlog-at-all-time-high-in-federal-immigration-courts.html>; Editorial Board, Fighting the Wrong War at the U.S. Border, Bloomberg Views, July 21, 2015, available at <http://www.bloombergvie.com/articles/2015-07-21/fighting-the-wrong-war-at-the-u-s-border>; Liz Robbins, Immigration Crisis Shifts from Border to Courts, The New York Times, August 23, 2015, available at http://www.nytimes.com/2015/08/24/nyregion/border-crisis-shifts-as-undocumented-childrens-cases-overwhelm-courts.html?_r=1; The Times Editorial Board, The Immigration Court Backlog: Why won't Congress act?, Los Angeles Times, August 26, 2015, available at <http://www.latimes.com/opinion/editorials/la-ed-immigration-court-20150826-story.html>

⁵ See note 32 below for calculations leading to recommended level of immigration court staffing.

⁶ A potential immigration court cost of \$640 million (which would include the existing \$357.6 million budget, plus the FY 2016 appropriations request of \$60 million (which includes 55 additional immigration judge teams), plus an additional \$223.3 million to add 225 immigration judge teams (staggered like the Senate immigration reform bill to add 75 additional immigration judge teams each year for 3 years) would amount to only 3.34 % of an overall immigration enforcement budget (which would include the cost of the courts as well as the \$18.5 billion in DHS enforcement costs); the potential total immigration court cost would amount to 3.45% when compared to the \$18.5 billion.

⁷ Rosenblum and Meissner, Migration Policy Institute, *Deportation Dilemma*, 2014, at p. 2, available at: <http://www.migrationpolicy.org/research/deportation-dilemma-reconcilingtough-humane-enforcement>.

⁸ Testimony of Mark Rosenblum, Migration Policy Institute, Before the House Judiciary Committee, February 3, 2015, available at <http://judiciary.house.gov/cache/files/31971212-6fdb-4fe6-abbb-406b7c673b21/rosenblum-testimony.pdf>; See also Mark Noferi, DHS Funding Controversy Over, but Enforcement-First Approach Remains, March 6, 2015 (The DHS appropriations legislation appropriates an additional \$1 billion combined for Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) salaries and expenses—a \$314 million increase to CBP, to \$8.460 billion, and a \$703 million increase to ICE, to \$5.932 billion.), available at <http://immigrationimpact.com/2015/03/06/dhs-funding-controversy-enforcement-first-approach-remains/#sthash.kVkimM3X.dpuf>.

⁹ Government Accountability Office, U.S. Asylum System: Agencies Have Taken Actions to Help Ensure Quality in the Asylum Adjudication Process, but Challenges Remain at 8, GAO-08-935 (2008), available at <http://trac.syr.edu/immigration/library/P2957.pdf>.

¹⁰ Statement of Julie Myers Wood, Former ICE Assistant Secretary, for the Senate Committee on the Judiciary, April 11, 2011, available at <http://www.judiciary.senate.gov/imo/media/doc/5-18-11%20Wood%20Testimony.pdf>

¹¹ Julie Myers Wood, Courts could be a step forward in immigration debate, Houston Chronical, April 30, 2015, available at <http://www.chron.com/opinion/outlook/article/Wood-Courts-could-be-a-step-forward-in-6234283.php>

¹² Georgetown University, Institute for the Study of International Migration, *Detention and Removal: What now and What Next?*, Report on expert's roundtable held in October 2014 available at <https://isim.georgetown.edu/sites/isim/files/files/upload/Detention%26Removalv10%20%281%29.pdf>. The roundtable discussion included current and former government officials as well as academic and non-governmental experts. See Seth Robbins, Associated Press, *Immigrants See Court Dates Canceled as Justice Department is Overwhelmed with Cases*, Christian Science Monitor, Feb. 1, 2015 (quoting Professor David Martin), available at <http://www.csmonitor.com/USA/Latest-News-Wires/2015/0201/Immigrants-see-court-dates-cancelled-as-Justice-Department-is-overwhelmed-with-cases>.

¹³ See Statement of Juan P. Osuna, Director, Executive Office for Immigration Review, DOJ, for the Senate Committee on Homeland Security and Governmental Affairs, July 9, 2014, available at <http://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/2015/02/05/07-09-14-eoir-osuna-testimony-re-challenges-at-the-border-examining-the-.pdf> ("[F]unding constraints that resulted in a hiring freeze beginning in January 2011 had a negative and worsening impact upon EOIR's core mission, and increased the number of cases pending adjudication and extending court dockets further into the future. And more than 100 immigration judges – more than one third of the immigration judge force – are eligible to retire in FY 2014 alone.).

TRAC has reported that “[t]he annual attrition rate for immigration judges due to retirement or other turnover has been estimated to be 5%.” See TRAC, *Improving the Immigration Courts: Effort to Hire More Judges Falls Short* July 28, 2009, available at <http://trac.syr.edu/immigration/reports/189/>.

¹⁴ Statement of Juan P. Osuna, July 9, 2014, *supra* note 12. (EOIR will now prioritize the adjudication of cases involving unaccompanied children, adults with children in detention, adults with children released through “alternatives to detention,” and other individuals in detention. To realign our resources with these priorities, EOIR will reassign immigration judges in immigration courts around the country from their regular dockets to hear the cases of individuals falling in these four groups. Lower priority cases will be rescheduled to accommodate higher priority cases.); see also Devlin Barrett, U.S. Delays Thousands of Immigration Hearings by Nearly 5 Years; Thousands of Immigrants Awaiting Hearings Get Delay Notices in New Sign of Backlogs, *Wall Street Journal*, January 28, 2015, <http://www.wsj.com/articles/justice-department-delays-some-immigration-hearings-by-5-years-1422461407>.

¹⁵ U.S. Department of Justice, *Attorney General Alberto R. Gonzales Outlines Reforms for Immigration Courts and Board of Immigration Appeals*, August 9, 2006, available at http://www.justice.gov/archive/opa/pr/2006/August/06_ag_520.html. In a September 2008 report, TRAC concluded that “[T]here has been no actual increase in the number of funded Immigration Judge positions since the Attorney General’s proposals were announced. The net result is that as the total number of matters handled by the Immigration Courts has increased over the last decade, today’s Immigration Judges have less time to handle a case received by the court than they did ten years ago. In sum, because Congress did not appropriate funding for new positions requested in FY 2008, and because the DOJ did not request funding for additional positions in FY 2009, the result is that no new Immigration Judge positions have been funded since the Attorney General’s 2006 directive. As a result, for whatever reason, this part of the overall effort to improve the courts has fallen short of the stated goal. See Bush Administration Plan to Improve Immigration Courts Lags, September 8, 2008, available at <http://trac.syr.edu/immigration/reports/194/>.

¹⁶ Testimony of Hon. John M. Walker, Jr, Chief Judge, United States Court of Appeals for the Second Circuit, Senate Judiciary Committee, *Immigration Litigation Reduction*, April 3, 2006, available at <http://www.judiciary.senate.gov/imo/media/doc/Walker%20Testimony%20040306.pdf>.

¹⁷ ABA Immigration Court Report, *supra* note 4; ACUS report, *supra* note 4; Georgetown Removal Report, *supra* note 11; Georgetown University, Institute for the Study of International Migration, *Refugee, Asylum and Other Humanitarian Policies: challenges for Reform*, Report on an experts’ roundtable held on October 29, 2014, available at <https://isim.georgetown.edu/sites/isim/files/files/upload/Asylum%20%26%20Refugee%20Meeting%20Report.pdf>

¹⁸ Congressman Cuellar Works to Fund 55 New Immigration Judges, May 15, 2015, available at <http://cuellar.house.gov/news/documentsingle.aspx?DocumentID=398443>

¹⁹ Shelby Opening Statement on Department of Justice’s FY16 Budget Request, May 07, 2015, available at <http://www.shelby.senate.gov/public/index.cfm/2015/5/shelby-opening-statement-on-department-of-justice-s-fy16-budget-request>

²⁰ FY16 CJS Full Committee Markup Bill Summary, United States Senate Committee on Appropriations, June 11, 2015, available at <http://www.appropriations.senate.gov/news/fy16-cjs-full-committee-markup-bill-summary>

²¹ Public Opinion Strategies, *Recent Polling on the U.S. Asylum and Refugee System*, March 16, 2015, available at <http://www.humanrightsfirst.org/sites/default/files/Human-Rights-First-Poll-Memo-3-16-15.pdf>.

²² The names of these asylum seekers have been changed to protect the safety and security of their families.

²³ TRAC, *Asylum Denial Rate Reaches All Time Low: FY 2010 Results, a Twenty-Five Year Perspective*, September 2, 2012, available at <http://trac.syr.edu/immigration/reports/240/>. (“Having legal representation appears to have a major impact on outcome. During FY 2010, for example, only 11 percent of those without legal representation were granted asylum; with legal representation the odds rose to 54 percent.”).

²⁴ Association of Pro Bono Counsel, *Letter to Senators*, June 4, 2013, available at <http://www.endthedeathline.org/uploads/pdfs/APBCo-Letter.pdf>.

²⁵ Association of Pro Bono Counsel, *Letter to Vice President Joseph Biden from APBCo, AILA, Human Rights First, KIND, NIJC*, September 19, 2014, available at <http://www.humanrightsfirst.org/sites/default/files/APBCo-letter-to-VP-Biden-UAM-Crisis-91814.pdf>.

²⁶ Statement of Julie Myers Wood, *supra* note 10.

²⁷ Julie Myers Wood, *supra* note 11

²⁸ Georgetown Removal Report, *supra* note 11 at p. 13; Russell Wheeler and Lenni Benson, *Immigration courts would benefit with more staff*, *Houston Chronicle*, November 14, 2013, available at <http://www.chron.com/opinion/outlook/article/Wheeler-Benson-Immigration-courts-would-benefit-4983968.php>.

²⁹ Bipartisan Policy Center, *Funding Immigration Courts Should Not be Controversial*, May 20, 2015, available at <http://bipartisanpolicy.org/blog/funding-immigration-courts-should-not-be-controversial/>

³⁰ Statement of Hon. John M. Walker Jr, *supra* note 15.

³¹ Alberto Gonzales, *Obama’s time for immigration action*, *USA Today*, August 12, 2014, available at <http://www.usatoday.com/story/opinion/2014/08/12/border-children-action-obama-executive-authority-action-column/13921133/>.

³² Russell Wheeler and Lenni Benson, Immigration courts would benefit with more staff, Houston Chronicle, November 14, 2013; NERA Economic Consulting Firm, Cost of Counsel in Immigration, May 2014, available at http://www.nera.com/content/dam/nera/publications/archive2/NERA_Immigration_Report_5.28.2014.pdf.

³³ DOJ FY 2016 Budget Request, supra note 3.

³⁴ Interim Rule, Designation of Temporary Immigration Judges, supra note 1.

³⁵ “[W]hile the average Federal district judge has a pending caseload of 400 cases and three law clerks to assist, in Fiscal Year (“FY”) 2009, immigration judges completed over 1500 cases per judge on average, with a ratio of one law clerk for every four judges. Written Statement of Hon. Dana Leigh Marks, President, National Association of Immigration Judges Before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the House Committee on the Judiciary on Oversight Hearing on the Executive Office For Immigration Review, June 17, 2010, http://judiciary.house.gov/_files/hearings/pdf/Marks100617.pdf.

³⁶ Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Philip G. Schrag, Refugee Roulette (2009) at pp. 107-09.

³⁷ Senate Bill 744(II)(E)(3505) available at <http://www.gpo.gov/fdsys/pkg/BILLS-113s744is/pdf/BILLS-113s744is.pdf>

³⁸ At a case level of 500 cases per immigration judge, the immigration courts would need 400 immigration judge teams to handle incoming cases (based on an estimate of incoming cases of around 200,000 cases, which is an estimate based on review of levels over recent years) plus 228 additional judge teams to address the backlog in 4 years (456,644 divided by 4, divided by 500 per judge), for a total of 628 immigration judge teams. This does not factor in that some of these judges may perform significant supervisory or management functions – a factor that could increase the number needed. Given that 319 immigration judges are now authorized (though less are hired and on board yet), the courts would need at least about 300 additional judge teams at a 500 cases per judge level. Even if a small portion of the backlog was excluded from this calculation (due to prosecutorial discretion, the fact that some cases will necessarily continue to the following year, or other reasons), the number would only be reduced slightly. If 55 additional immigration judge teams are added through the FY 2016 appropriations process, the immigration courts would still face a gap of about 250 immigration judge teams. Moreover, the size of the backlog will certainly rise in the short term, and it will continue to rise until staffing levels are significantly increased.

³⁹ See ABA Immigration Court Report, supra note 4; see also Appleseed, Reimagining the Immigration Court Assembly Line, 2012.

⁴⁰ Wheeler & Benson, supra note 26.

⁴¹ NERA Economic Consulting Firm, Cost of Counsel in Immigration, May 2014, available at http://www.nera.com/content/dam/nera/publications/archive2/NERA_Immigration_Report_5.28.2014.pdf



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