OVERSIGHT OF THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND BORDER SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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DECEMBER 3, 2015

OVERSIGHT OF THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

THURSDAY, DECEMBER 3, 2015

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Subcommittee met, pursuant to call, at 9 a.m., in room 2141, Rayburn House Office Building, the Honorable Trey Gowdy (Chairman of the Subcommittee) presiding.

Present: Representatives Gowdy, Smith, King, Buck, Ratcliffe, Lofgren, Jackson Lee, and Conyers.

Staff Present: (Majority) George Fishman, Chief Counsel, Subcommittee on Immigration and Border Security; Tracy Short, Counsel, Subcommittee on Immigration and Border Security; (Minority) Perry Apelbaum, Staff Director & Chief Counsel; Gary Merson, Chief Counsel, Subcommittee on Immigration and Border Security; Maunica Sthanki, Counsel; Micah Bump, Counsel; and Rosalind Jackson, Professional Staff Member.

Mr. GOWDY. Good morning. The Judiciary Committee will come to order. And the Chair is authorized to declare a recess of the Committee at any time.

We welcome everyone to this morning's hearing on Oversight of the Executive Office for Immigration Review. And uncharacteristically, I am not going to begin by recognizing myself for an opening statement. I am going to introduce our witness, and say welcome to him and ask if he would please rise so I can administer an oath. And then I would properly introduce you.

Do you swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

The record will reflect that the witness answered in the affirmative.

This morning's witness is Mr. Juan Osuna, who was appointed as the Director of the Executive Office of Immigration Review in May of 2011, served as acting director from December 2010 to May 2011. Prior to that, Mr. Osuna was at the Department of Justice as an associate deputy attorney general from May of 2009 until June of 2010. He was a deputy assistant attorney general in the Civil Division, Office of Immigration Litigation, from September of 2008 until May of 2009. He served as chairman of the Board of Immigration Appeals. He also served as acting chairman and acting

vice chairman. He holds a bachelor of arts from George Washington University, a law degree from the Washington College of Law at American University, and a master of arts degree in law and international affairs from the American University School of International Service.

Mr. Osuna, we welcome you. Things will be a little bit different this morning, given the nature of the day. And I know that my colleagues on both sides want to be here and many of them will come, but they may come at unusual times. So we are going to recognize you for your opening statement first, and then the Members will do their opening statements, and then we'll go to questioning.

TESTIMONY OF JUAN P. OSUNA, DIRECTOR, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, UNITED STATES DEPARTMENT OF JUSTICE

Mr. OSUNA. Thank you, Mr. Chairman. Mr. Chairman, Representative Lofgren, and other Members of the Subcommittee, thank you for the opportunity to speak with you today about the Department of Justice's Executive Office for Immigration Review, or EOIR. EOIR's role in the removal process is to hear the cases of individuals charged with violating our immigration laws and to decide which of those individuals should be removed from the United States and which are eligible for relief or protection from removal. The agency carries its mission out through our core of 250 immigration judges in 58 courts around the country and our appellate tribunal, the Board of Immigration Appeals. Each of our cases begins when the Department of Homeland Security files a charging document with one of our immigration courts.

Among the many challenges facing the immigration courts, the largest is our growing pending caseload. There are more than 450,000 cases pending in immigration courts around the country. This is an all-time high. This backlog grew in recent years due to budget cuts when the agency was severely limited in hiring immigration judges and staff to replace those who left the agency. While the immigration judge corps was shrinking, enforcement continued and the courts would continue to receive new cases, resulting in continuously increasing caseloads. This was exacerbated by the border influx that began in the summer of last year. From July 2014, the time EOIR started tracking the southwest border crossers, until September 30, 2015, more than 100,000 cases had been filed in the immigration courts nationwide.

We are taking steps to increase our capacity to adjudicate cases through a vigorous hiring effort, and hiring immigration judges is my first priority. I am pleased to report significant progress on this front and greatly appreciate Congress' support for our efforts by providing the funding necessary to augment our judge corps. Over the past year, 23 new immigration judges have entered on duty, and as of this week, the Attorney General had selected another 37 individuals to serve as immigration judges after a thorough and rigorous hiring process at EOIR and within the Department.

These individuals are now undergoing the required background and security checks before they can start hearing cases. Many more immigration judge candidates are going through the final stages of the review process at the Department before they can be rec-

ommended to the Attorney General for selection. These new judges will be arriving in immigration courts throughout the country in the coming months, and they will have a very, very positive effect on the pending caseloads, enabling the courts to begin to correct the imbalance between the incoming caseload and the number of judges available to adjudicate it. Again, thank you for your support for these much needed resources.

Within the immigration court system, certain cases are prioritized for adjudication. Those cases involving individuals detained by the Department of Homeland Security have traditionally been the agency's highest priority. Not only do these cases often involve individuals convicted of serious crimes, but they also implicate the individual's liberty interests.

In July of 2014, EOIR added the cases of unaccompanied children and families who were not detained to the existing priority caseload. This prioritization was in direct response to the Administration's effort in the summer of 2014 and beyond to address the factors that brought a high number of people across the Texas border. EOIR is processing these cases as quickly as possible, consistent with due process.

I want to touch on a few other initiatives that, in addition to the hiring of new judges and staff, will help EOIR improve the efficiency and effectiveness of the court system. First, deployment of new video teleconferencing equipment into the immigration courts is nearly complete. These VTC units are important because they are a force multiplier, allowing immigration judges to conduct hearings remotely, thereby allowing them to save on travel costs and time and simply to hear more cases. By February, every immigration courtroom in the country will have a new VTC unit. We are taking steps to enhance accessibility to the court system by increasing efficiency and combating fraud. EOIR has its departmental working group designed to fight Notarios and other unscrupulous practitioners who undermine the integrity of the system. The group's efforts have had a tangible positive effect, including assisting the prosecution of a number of fraudsters and Notarios around the country over the last few years.

While we help put unscrupulous practitioners out of business, it is important that we also make it easier for legitimate service providers to step in. On October 1, we published three regulations designed to make it easier for legal services to reach individuals who are in removal proceedings, including many detained individuals. We expect that these programs will help improve the quality of representation in immigration court.

Finally, the EOIR continues to expand its highly successful legal access program. This program, which is now active in 37 sites around the country, helps the court process function more efficiently and effectively while providing information to people facing removal.

Mr. Chairman, Representative Lofgren, these are some of the initiatives that we have underway. They are positioning, as well, for the agency to have a very positive 2016.

Thank you, and I am pleased to answer any questions.

[The prepared statement of Mr. Osuna follows:]

Department of Justice

STATEMENT OF

JUAN P. OSUNA
DIRECTOR
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

HEARING ON
"OVERSIGHT OF THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW"

PRESENTED

December 3, 2015

Introduction

Mr. Chairman, Representative Conyers, and other distinguished Members of the Committee, thank you for the opportunity to speak with you today about the Department of Justice's Executive Office for Immigration Review (EOIR).

EOIR administers the Nation's immigration court system, composed of both trial and appellate tribunals. Removal proceedings before EOIR begin when the Department of Homeland Security (DHS) files a formal charging document with an immigration court. EOIR's immigration judges decide whether the alien is removable from the United States based on the DHS charges and, if removable, whether the alien is eligible for any relief or protection from removal. EOIR is responsible for civil immigration proceedings, and EOIR's adjudicators do not determine the guilt or innocence of aliens charged with criminal wrongdoing at the border or in the interior of the country. Overall, there are now 250 immigration judges in 58 courts around the country.

The appellate level of EOIR is the Board of Immigration Appeals (BIA). A Chairman heads the BIA, which consists of 17 Board Members, who are supported by attorney advisers. The BIA has nationwide jurisdiction and hears appeals of the immigration judge decisions. When appropriate, the BIA issues binding precedent decisions interpreting complex areas of immigration law and procedure. Either an alien or DHS may file an appeal with the BIA. An alien who loses an appeal before the BIA may seek review of that decision in the applicable federal circuit court of appeals.

EOIR's third adjudicatory component is the Office of the Chief Administrative Hearing Officer (OCAHO). The Chief Administrative Hearing Officer heads a tribunal comprised of administrative law judges, who handle and adjudicate cases related to illegal hiring and employment eligibility verification violations, document fraud, and unfair immigration-related employment practices. Although there is a much smaller volume of these cases relative to the immigration courts, OCAHO case receipts doubled between Fiscal Year (FY) 2008 and FY 2012.

Current State of the Immigration Courts

The immigration courts' pending caseload continues to increase. The immigration court caseload is tied directly to DHS enforcement and detention activities. DHS determines both initial detention decisions and whether to file a charging document with the immigration court. As such, EOIR is in regular and continuing contact with DHS to anticipate and respond to caseload trends.

EOIR recognizes the continuing public interest in the immigration court pending caseload and the impact of that caseload on the nation's immigration system. At the end of FY 2015, EOIR's immigration courts had 457,106 cases pending, marking an increase of more than 298,171 cases pending over the end of FY 2011. The cases of individuals whom DHS detains, including those who have been convicted of serious crimes, remain a priority for EOIR.

In July 2014, EOIR acted to prioritize the cases of unaccompanied children and families who are not detained in addition to its existing priority caseload of detained aliens. This reprioritization was in direct response to the border surge in summer 2014, and in support of the Administration's effort to address the reasons for individuals leaving their home countries and the perceptions that led people to come into the U.S., both of which contributed to an unusually high number of people crossing the southwest border.

Since the summer of 2014, the immigration courts have received tens of thousands of cases involving unaccompanied children and families who crossed the southwest border. Most priority cases completed to date have been removal orders, and many of those removal orders have been issued *in absentia*, the manner in which the law requires that a hearing proceed if the immigration judge is satisfied that the respondent or a relevant representative received proper notice of the hearing, and that DHS has established that the respondent is removable as charged in the charging document.

EOIR is working tirelessly to maximize its limited resources to hear as many of these cases as possible while ensuring due process and appropriate considerations. Immigration courts are still hearing all cases, including non-detained, non-priority cases, as quickly as available docket time allows. Immigration judges are still actively hearing cases from the full docket as resources allow.

For the last several years, EOIR has been under increased scrutiny during a time of tremendous challenge. The 2014 border surge put unprecedented pressures on EOIR, and our agency responded by updating its practices and policies, which streamlined and strengthened the immigration court system. EOIR is hiring immigration judges to increase the size of the immigration judge corps, thereby augmenting adjudicatory capacity and working to reduce the case backlog and wait times for those in proceedings. EOIR is making organizational changes, at Headquarters and in the individual immigration courts, to increase efficiencies through better communication and providing more direct supervision. EOIR is leveraging technology to assist those who appear before our adjudicators by allowing for real-time information flow.

Immigration Judge Hiring

It is critical that EOIR maintain the ability to properly staff our agency with the adjudicators and support staff needed to most efficiently and fairly process cases. In 2010, the Department and EOIR placed great emphasis on hiring new immigration judges in order to address the rapidly rising caseload. The effort met with success, increasing our immigration judge corps and adding more court staff and law clerks to assist the judges. However, funding constraints led to a hiring freeze beginning in January 2011. Due to attrition, EOIR had fewer immigration judges than at the start of each respective

Fiscal Year from the end of Fiscal Years 2012, 2013, and 2014. The chart below details the number of immigration judges at EOIR for the past several years[1].

	All Immigration Judges		Only Adjudicating Immigration Judges	
FY	On-Board	Hired	On-Board	Hired
2010	245	17	238	17
2011	273	39	265	37
2012	267	4	258	3
2013	262	8	253	7
2014	249	0	240	0
2015 1st Qtr	249	2	240	2
2015 2nd Qtr	243	0	235	0
2015 3rd Qtr	255	18	247	18
2015 4th Qtr	254	0	247	0
2016 1st Qtr	257	3	250	3

The Department continues to seek the resources necessary to hire additional immigration judges, BIA attorneys, and other staff; to provide them with sufficient training and tools; and to continue pursuing other improvements that will benefit the immigration court system and the parties who appear before EOIR. The resources in the President's Budget request for FY 2016 are essential to EOIR's ongoing efforts to recruit, train, and equip top-quality immigration judges and court staff.

In FY 2015, Congress provided EOIR with additional resources to hire immigration judges, and for the first time since FY 2011, EOIR launched a significant hiring initiative and was able to increase the total number of immigration judges. After taking into account attrition through the end of FY 2015, EOIR has increased the total number of immigration judges for the first time since FY 2011, and aggressive hiring efforts continue. A total of 23 new immigration judges have entered on duty since November 2014, and, as of November 15, 2015, the Attorney General had selected another 25 new judges, who are now going through the required background and security checks before they can start hearing cases. Another two dozen immigration judge candidates are going through the final stages of the hiring process. All of these new judges will greatly assist in reducing the pending caseload when they arrive in immigration courts over the coming months.

[1] The chart above shows the total number of immigration judges at the end of each listed time period, as well as the number of immigration judges hired during these time periods. The "On-Board" numbers take into account attrition in a given year or quarter. The chart provides both the total number of immigration judges ("All Immigration Judges"), as well as information on the subset of immigration judges who adjudicate cases ("Only Adjudicating Immigration Judges"). The overwhelming majority of immigration judges at EOIR are assigned to adjudicate cases (i.e., immigration judges assigned to the field and Assistant Chief Immigration Judges assigned to the field who routinely hear cases). A small number of immigration judges who oversee the country's immigration courts do not typically adjudicate cases during those leadership assignments (i.e. Chief Immigration Judge, Deputy Chief Immigration Judges, and Assistant Chief Immigration Judges assigned to EOIR Headquarters).

EOIR has a well-established and effective means of training its judges for the substantive rigors of their jobs. An Assistant Chief Immigration Judge (ACIJ) for training is responsible for enhancing and maintaining adequate training programs for immigration judges and other court staff. EOIR provides new immigration judges with six weeks of training in order to ensure that they are ready to hear cases. Further, they are assigned a mentor immigration judge to assist them throughout their first year on the bench. They are also required to take and pass immigration law exams and preside over mock hearings before they can begin adjudicating cases. A formalized review process is included as part of a new immigration judge's trial period, which typically lasts two years. If performance issues arise, EOIR offers counseling and additional training and mentoring to return that judge to the required level of performance. EOIR also takes steps to ensure that both new and experienced immigration judges receive continuing education. EOIR continues to rely on many of its established methods of training to bolster and fine-tune the immigration judges' knowledge, such as video and webinar trainings and an intensive annual training session.

The process for on-boarding immigration judges is lengthy and rigorous. The hiring timeframe has often taken more than one year due to the need to adequately vet the qualifications of the hundreds of applicants seeking these positions. The Department is actively considering ways in which the immigration judge hiring process can be streamlined.

Agency Organization

On November 12, 2015, EOIR announced the appointment of six new ACIJs. These ACIJs will provide oversight of their assigned immigration courts from a field office while continuing to hear cases. Such immediate and present supervision allows for enhanced communication between the immigration court locations and Headquarters and makes experienced supervisory judges available for mentoring and consultation with the immigration judge corps.

The agency has modified its Headquarters organizational chart by consolidating offices to avoid duplication of efforts and to streamline operations. We are also actively evaluating how to improve processes in the field. The Office of the Chief Immigration Judge is developing a plan to thoroughly evaluate court operations and has plans to place a Deputy Chief Immigration Judge in the western United States. The agency has also carefully reviewed its external communications activities. To this end, EOIR has initiated an official outreach program to enhance transparency with agency stakeholders and to create a space to regularly receive stakeholder concerns and recommendations that may merit further agency consideration.

Leveraging Technology

EOIR has also strengthened stakeholder engagement via technology-based initiatives. One example of the agency's continued attempts to improve the quality of

stakeholders' interactions with the immigration courts and the BIA is the deployment of the Internet Immigration Information application, known as I[3]. I[3] allows attorneys and accredited representatives to file their appearance with the immigration court or the BIA and to check the calendar of cases pending with those entities. This is an ongoing effort that will continue to offer more electronic options for stakeholders as time goes on and resources are allocated to such improvements.

Moreover, EOIR has digital audio recording available in every courtroom and certain meeting rooms and is using the video teleconferencing (VTC) technology to allow immigration judges to hear cases across the country. Our adjudicators and stakeholders are finding new ways to leverage these available technology options to increase court efficiencies. EOIR's use of VTC technology permits the agency to be responsive to operational demands in difficult and rapidly changing circumstances. For example, during the 2014 border surge, EOIR used VTC technology to allow immigration judges to hear the cases of recent border entrants where there were no court facilities available. The agency's use of technology enables it to respond to quickly-unfolding events in a manner that maximizes our limited resources. Over the next few months we will complete a major upgrade and expansion of our VTC capability. At completion, 263 of 347 courtrooms will be outfitted with VTC, with plans to expand this technology to cover every immigration courtroom.

In the current fiscal year, EOIR will also conclude the most comprehensive modernization of our technical infrastructure in recent years, modernizing every major component of the agency's technology infrastructure. Should EOIR receive the FY 2016 funding for information technology capacity enhancements requested in the President's FY 16 budget, the agency will invest in additional information technology infrastructure improvements intended to facilitate more efficient and effective internal processes, data sharing, and communications with external partners. In addition, EOIR is actively evaluating how to best update our case management and other electronic databases to enable the agency's adjudicatory components to manage their workload in a more efficient manner.

Additional Initiatives

In recent years, EOIR has undertaken a number of initiatives designed to enhance accessibility to the immigration court system, while increasing efficiency and combatting fraud. EOIR heads a Departmental working group designed to fight *notarios*[2] and other unscrupulous practitioners, who not only harm the individuals they purport to represent, but who also undermine the integrity of the system. The working group's efforts have had tangible positive effects, including assisting in the prosecution of a number of *notarios* around the country.

[2] *Notarios* are persons who provide unauthorized legal advice or representation regarding immigration matters, often charging substantial sums while providing little to no assistance in the matter and making incorrect filings or statements that may have a negative impact on the aliens' cases.

While we help put unscrupulous practitioners out of business, it is important that we make it easier for legitimate legal services providers to step in. On October 1, 2015, EOIR published three regulations designed to make it easier for legal services to reach aliens who are in removal proceedings, including many detained individuals. When added to other legal service programs that are ongoing, the agency expects that the quality and availability of representation in immigration court will continue to improve, thereby benefiting not only the individuals who are in removal proceedings, but the immigration court system itself.

Finally, EOIR continues to expand its highly successful Legal Orientation Program (LOP)[3] and Legal Orientation Program for Custodians of Unaccompanied Alien Children (LOPC)[4]. The LOP program is now active in 37 sites around the country, and the LOPC in 14. Both programs help the immigration court process function more efficiently and effectively, while providing valuable information to aliens facing removal and the custodians of children who arrive in the U.S. without a parent or guardian.

Conclusion

Mr. Chairman, Representative Conyers, and distinguished Committee Members, despite the challenges we face, EOIR continues to make great strides. Our adjudicators and staff are dedicated professionals who work every day to ensure efficient and fair immigration court proceedings, both at the trial and appellate levels. EOIR faces the demands of a large and increasing caseload, but, with Congress's continued support, we are confident that EOIR will effectively meet that challenge.

Thank you for your interest and for the opportunity to speak with you today. I am pleased to answer any questions you might have.

[3] Through the LOP, representatives from nonprofit organizations provide comprehensive explanations about immigration court procedures along with other basic legal information to large groups of detained individuals.

[4] Through the LOPC, contractors provide legal orientation presentations to the adult caregivers of unaccompanied children in EOIR removal proceedings.

Mr. GOWDY. Thank you, Director. I am going to recognize myself for an opening, and then when my colleagues from California and Michigan get here, we will recognize them. But it may go to questioning from the gentleman from Iowa and Texas before then. We are going to try to make it all work and be good stewards of your time in the process.

Within the Department of Justice, the Executive Office for Immigration Review is charged with overseeing the immigration courts and the Board of Immigration Appeals, which is the highest administrative authority for interpreting immigration laws. As the delegates of the Attorney General, immigration judges serve an important function in the administration of our immigration system. They award asylum to those fleeing persecution; they grant deserving aliens the privilege of permanently residing in the United States, and they also order to remove those aliens who have violated our laws and abuse the generosity of this Nation.

Whether our law requires immigrants to return to their native land or whether it affords them an opportunity to stay in this country would depend upon the ability of immigration judges to faithfully apply the law that Congress enacted to their cases and to exercise their impartial judgment, unhindered by political agenda. Because of the relative obscurity of immigration courts, their labors largely go unnoticed, and you could argue, unappreciated by the American public, but their decisions affect real people, the immigrants and their family members alike, and their effect on the immigration system is critical.

Everyone, those who stand before the administrative judges, this Administration, and our fellow citizens has a vital interest in ensuring justice in our immigration courts is dispensed fairly, efficiently, and expeditiously. That is one reason I am troubled that there are approximately 460,000 cases waiting for an immigration judge to make a decision.

In addition, I remain troubled by allegations of abuse for all in the asylum program. Abuse and fraud, frankly, hurt everyone, those legitimately entitled to relief and those who depend upon a fair justice system. The average alien will wait nearly 3 years before the judge renders a decision, and those are the fortunate ones. According to the 2012 DOJ inspector general report, over 21,000 cases were pending 5 years or more, and over 6,200 cases were pending for 10 years or more. The real effect of these delays is to penalize those awaiting relief based on a valid claim to immigration benefits and reward those who have no right to remain in the United States with many years of continued unlawful presence.

Testimony before the Senate earlier this year indicated the backlog had increased 100 percent over the last 5 years, and the answer to the problem was alleged to be more immigration judges. But the DOJ inspector general found from fiscal year 2006 to 2010, while the number of immigration judges increased, case completions actually decreased.

So the Office of Inspector General found inefficiencies persisted despite the addition of more immigration judges. The inspector general also noted incomplete or exaggerated performance reports and noted the absence of the data or an objective staffing model to guide its resource planning and deployment of immigration judges,

which begs the question as to whether or not additional immigration judges alone will solve the problem or if something else is required.

Additionally, a report by the Government Accountability Office released yesterday found derelictions in implementing the necessary policies and procedures to address asylum fraud. Lack of focus on rooting out fraud in the asylum program, coupled with a backlog that allows people to stay in the country unlawfully through a long backlog of cases until the court date is a gap in our national security. The bottom line is an inefficient and flawed adjudication process further diminishes our capacity as a Nation to effectively deal with our broken immigration system. And for that reason and others, I look forward to today's questions and answers.

Again, I will recognize Ms. Lofgren and Mr. Conyers whenever they come. But I will begin by recognizing the gentleman from the great State of Texas for his questions, the former United States Attorney, Mr. Ratcliffe.

Mr. RATCLIFFE. Thank you, Mr. Chairman, for holding this hearing.

Thank you, Director Osuna, for being here today. You know, the 700,000 Texans that I represent who are certainly concerned about the impacts of illegal immigration in this country and what many see as an environment of lawlessness created by this Administration when it comes to the enforcement of our immigration laws and, frankly, the inefficiency of our immigration system. And one of the things that highlights that is a fact that was related by the Chairman, the fact that there are approximately 459,000 immigration cases waiting for action right now.

And, you know, it would appear that that type of backlog of cases really amounts to de facto amnesty, because a lot of individuals that are in this country, perhaps illegally, to remain here without any repercussion as their cases are stuck in administrative limbo. So I am anxious to hear some of your testimony today about your plans to reduce that backlog.

One of the cases that I want to ask about in terms of contributing to a backlog is one of the judges in the Houston immigration court, Judge Mimi Yam—are you familiar with Judge Yam?

Mr. OSUNA. Yes.

Mr. RATCLIFFE. Good. Over the past 5 years, there were a total of 24 months in which Judge Yam failed to issue a single ruling. Are you aware of that?

Mr. OSUNA. Not those specifics, but I am aware of the issues there.

Mr. RATCLIFFE. And why don't you relate for us what the issues are there?

Mr. OSUNA. Congressman, what I can tell you is that particular judge is not hearing cases at the moment. It is an unfortunate personnel issue that I can't get into with you in this forum, but it is true that she is not hearing cases at this time.

Mr. RATCLIFFE. Well, whether she is hearing cases at this time or not, she's been paid as an employee of the United States Government, and there have been long periods where while she's being paid to do that, she's been hearing cases but not ruling on cases.

To highlight that fact, she went as long as 7 months without issuing a single decision. And through May of this year, she's issued a total of, I think, 15 decisions, where over the same period of time, one of the judges right next door to her issued decisions in 700 cases. Can you see why in an oversight hearing like this the American people would be concerned about this type of inefficiency when it comes to ruling on our immigration cases?

Mr. OSUNA. Congressman, again, because I can't get into the personnel issues, we can't get into the specifics here. What I can tell you, though, is that Houston is actually one of the courts that we have targeted for adding a significant number of new judges as part of the hiring that we are currently doing.

As I mentioned in my opening statement, we have added 23 new judges over the past year. The Attorney General, as of this week, has selected another 37, and we are in the process of hiring quite a few more. Houston is one of the immigration courts that we are targeting for more judges because of the great need there.

Mr. RATCLIFFE. So, Director, the backlog of cases is clearly well-documented. I understand that your office has shifted many of its resources to address the cases across our southern border, primarily after May 1, 2014. Would it be fair to say that the docket is primarily devoted to hearing cases involving minors and family units who were apprehended at the U.S. southern border as part of the surge?

Mr. OSUNA. Congressman, those cases are a priority for us, along with the cases of detained individuals. And for the reasons that I've stated earlier, detained individuals are often the ones that have committed serious crimes in this country; therefore, we move those to the top of the priority list. We make the judges and staff available to hear those cases first before all others. You are correct that last year we also added to the priority list the cases of unaccompanied children and families and others that were crossing the southern border as part of our response to the influx.

I would say that a great number of the adjudications in our courts are of those two large groups. It does not mean that we don't adjudicate other nondetained cases that are pending in immigration courts around the country. We have to draw this line between making sure that those priority cases are taken care of first, but also not neglecting those cases of others that have been waiting for a long time for their hearings.

Mr. RATCLIFFE. I want to ask you about the timing in the few seconds left here. Director, would it be fair for me to say that there are presently thousands of unlawful aliens who won't have a hearing before an immigration judge for perhaps the next 5 or 6 years?

Mr. OSUNA. There are thousands of individuals that are waiting for their hearings. We prioritize those who need to have their hearings first because of compelling national interests, such as the need to get detained cases heard first and adjudicated first to get criminal aliens out of the country or those who crossed the border last year. But there are others that are going to have to wait for their hearings because of the prioritization.

Mr. RATCLIFFE. And because of that prioritization, as you've encapsulated for us, in some cases right now, that's 5 or 6 years?

Mr. OSUNA. In some immigration courts the wait can be as long as 5 years, yes.

Mr. RATCLIFFE. Mr. Chairman, I see my time has expired. I yield back.

Mr. GOWDY. The gentleman from Texas yields back.

The Chair would now recognize the gentlelady from the great State of Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Director, and thank you for your service. I would like to explore a line of questioning, because I think it's important to discern the responsibilities of your office versus the State Department and how we can be helpful, the Congress, and particularly this Committee. Let me follow a line of questioning of my colleague from Texas regarding the lengthy backlog and to cite, again, the 450,000 cases of which are backlogged, and an individual on the nondetained immigration docket might have to wait up to 4 years.

Certainly, I am from the Southern District of Texas, and I know the immigration courts there. This delay means that people with potential claims for immigration relief remain in limbo throughout the pendency of the immigration court process. This affects vulnerable populations such as children, asylum seekers, and other immigrants hoping to obtain immigration relief, and they are in the legal system because they are trying to go into court. What solution do you propose to resolve the staggering immigration court backlog, and how can Members of Congress, in particular, help the EOIR office?

And I have a series of questions. I'm going to let you briefly answer those, but I'd like to go onto some other questions.

Mr. OSUNA. Thank you, Congresswoman. Our main approach to making sure that we have this balance between the incoming caseload and the adjudicators is more immigration judges. We got into this situation because of a number of years where there were severe immigration judge shortages. We lost a number of judges from 2011 to last year during the time of budget cuts. We were not able to replace those judges who left the agency.

Ms. JACKSON LEE. And you have a capacity for how many?

Mr. OSUNA. We currently have, thanks to Congress' appropriations for us this past year, we have 319 authorized positions. We are filling those as quickly as we can. Those judges will make a significant impact.

Ms. JACKSON LEE. Well, why don't you help us out. You have 319, but you're at a smaller number right now. Is that correct? You have 250 judges?

Mr. OSUNA. That's correct.

Ms. JACKSON LEE. I think you have some good news about those that have been approved? How many have been approved to be added to that?

Mr. OSUNA. That's correct, Congresswoman. In my opening statement I mentioned that we have added 23 over the past year, and the Attorney General has approved 37 more as of this week, and several dozen more are in the final stages of the selection process at the Department.

Ms. JACKSON LEE. And the President asked that you mentioned in your opening statement as well?

Mr. OSUNA. The President has asked for another 55 immigration judges for fiscal year 2016. And that's going to be a very significant step forward for us as well. And we ask for your support for that.

Ms. JACKSON LEE. And that would make a sizable difference as well?

Mr. OSUNA. That would get us to about 374 immigration judges nationwide when all of those positions are filled, if Congress provides those positions. That is going to have a very, very significant impact and will enable us to begin to shorten these wait times in the most backlogged courts.

Ms. JACKSON LEE. And I would imagine that—we are not getting into personnel matters—you are going to sort of review your immigration judges to make sure that they are both hearing cases and ruling? I think that's an important oversight as well. Will you engage in that?

Mr. OSUNA. Exactly. So the process that we have for selecting immigration judges is designed to make sure that we select the best candidates that are representing the Attorney General in these courtrooms.

Ms. JACKSON LEE. Let me move to a situation I think should be clear. First of all, refugees coming into the country are handled by the State Department. But if I was online, one of those cases, and I was seeking asylum, we know that you would have a hearing before the immigration judge. But that is not the final decision. Would you explain, after that hearing before an immigration judge, what then, what process goes forward to ensure that that person is not a national security threat?

Mr. OSUNA. Immigration judges are prohibited by law from actually granting asylum before—unless that person is then sent for background security checks by the Department of Homeland Security.

So if an immigration judge finds that somebody is legally eligible for asylum and merits asylum in this country, that judge then has to suspend the case, more or less, send the case to the Department of Homeland Security for the required background security checks. Those security checks are done with the FBI and through the interagency database check process. And only until that case comes back and DHS tells the judge the background is clear, this person is not a danger, can the judge go ahead and grant asylum.

Ms. JACKSON LEE. So there are layers that are added to a judge's original hearing that add to our security. Let me quickly ask this question. Does your agency have a plan for addressing concerns about their expedited review of prioritized cases such as those involving children and those who are detained criminally?

And would you like to highlight the new policy change that you are—that I understand that you may be suggesting from 21 days to 90 days?

Mr. OSUNA. So for detention cases, we don't have a policy change. We are doing what we have always done in those, we are prioritizing those cases. We do have a change on the unaccompanied minor front. We have been—our commitment beginning last year was to hold those cases—those hearings initially within 21 days of the case being filed in court.

In consultation with our Federal partners and after hearing from a lot of stakeholders over the last few months, we have been considering a change. So we have decided to move that timeline—adjust that timeline from 21 days—from 10 to 21 days to 30 to 90 days.

Ms. JACKSON LEE. Is that for the unaccompanied children?

Mr. OSUNA. For unaccompanied children.

Ms. JACKSON LEE. Not impacting criminal individuals?

Mr. OSUNA. That's correct.

Ms. JACKSON LEE. And I think that's important to clarify. And you're doing that because stakeholders find it was complicated to get all the facts together for the children?

Mr. OSUNA. That's right. I mean, we feel that this change would provide our courts with more flexibility for these challenging cases, but also it would provide the children more time to find legal counsel. And that works for the efficiency of the immigration courts. It actually helps us in the long run to move these cases faster by actually providing more time initially for the kids to get counsel.

Ms. JACKSON LEE. I think all of us would appreciate that—thank you, Mr. Chairman. I will finish on this note. I think all of us would appreciate that children are vulnerable and children do need more legal protection and more time. And it's not whether the children are not within the purview of the courts or HHS, in the instance of their detaining, but it is to give them more rights so that decisions can be more adequate as to the ultimate resolution.

Would that be the correct assumption?

Mr. OSUNA. Well, we're making the change because it helps the efficiency of our courts, and it helps—by helping the kids, giving kids more time to find counsel, it actually helps the court function more efficiently. That's correct.

Ms. JACKSON LEE. With that, Mr. Chairman, I yield back. Thank you.

Mr. GOWDY. The gentlelady's time is expired. She yields back. The Chair now recognizes the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman.

Director Osuna, I appreciate your testimony and the fact that you are here. We've watched this grow over the years that it's not a big surprise to me to see these numbers grow the way they have. But I wonder if you can break this down for us a little bit.

I'm looking at numbers in your testimony. It says that there's a 457,106 case, I'll call it a backlog case, and it has increased more 298,171 since 2011. One, I can't exactly determine whether that's—if I can match up fiscal years. But could you tell me roughly how many additional cases have accrued on an annual basis over the last 4 or 5 years?

Mr. OSUNA. I don't know if I have those numbers exactly, Congressman. What I can tell you is over the past—we started tracking, for example, the southwest border crossing cases beginning last summer, and I can tell you that we have added—100,000 cases have been added to the court dockets from the summer of 2014 through this fall, primarily through the border.

Mr. KING. And if I average those numbers, that's about 75,000 a year that—so if it's 100,000 that's been added over, roughly, the last year that you can contribute, that, then, is an accelerating

number, but probably more than acceleration, the 25,000 additional a year. I will just say, I've been down—I don't want to put words in your mouth; that's just my math.

But I've been down the road a good number of times. I recall standing on the banks of the Rio Grande River at Roma, Texas, with my video camera, a couple of Border Patrol agents, and watching as two coyotes drove around on the other side of the river until a shift change took place. And then they pulled the inflatable raft out of the trunk of their car, inflated it. Two coyotes help load a pregnant lady in that raft and came across the river, docked the river in the weeds on—excuse me—docked the raft in the weeds on the U.S. side of the river, helped her out, handed her two little bags of her possessions. She patiently stood there for the shift change to be complete so a Border Patrol agent could come along, pick her up. One could expect that she applied for asylum.

It seems to me that it's not that they fear enforcement, nor do they fear adjudication. They seem to welcome that. And so what is the percentage of asylum applicants that are granted asylum that are coming across our southern border, especially in the McAllen region?

Mr. OSUNA. Congressman, that's a tough number to get in, and I'll explain why. Because if you are—if the border crosser is an unaccompanied child, the law provides that that individual's asylum claim, if they file one, actually has to be heard by USCIS at DHS. So the child comes to immigration court first; the judge does what he's going to do with that case in terms of hearing the pleadings. If the child then wishes to apply for asylum, the judge then has to send that case over to USCIS. Many of those cases are still pending in USCIS, is my understanding. And I don't have a firm number as to how many of those are being granted.

Mr. KING. You can actually go down through those records now and draw from those records the status of each one of them, put that in a spreadsheet and let this Congress know the status of these asylum claims by children that you've selected from the question I asked. It could be done, couldn't it?

Mr. OSUNA. I don't know if it can be done. We are certainly happy to look into it.

Mr. KING. I want to ask you on the record here, if you would produce the records, not only for children that apply for asylum, for all the asylees that apply, I'd like to see the results of that, the adjudication process, where it is, how many are pending, why. And I'll put this in a formal letter so that it's clear.

I won't ask you to remember all this, but I would like to see the effect of the continuances that have been offered. And the data that I'm looking at, at continuances are, the OIG's report, 953 cases reviewed by the OIG, 4,091 continuances offered or allowed for 953 cases, totaling 375,047 days in the aggregate. So it averages 92 days per continuance and 368 days per case. So every case that has an asylum application, by this GAO report, results in more than a year of continuances.

Have you looked at how to compress that so that we can get that adjudicated in a quick fashion? We know if we don't send them back, those that need to go back, they are going to keep coming.

Mr. OSUNA. On the issue of continuances, Congressman, we have looked at that. Continuances are actually a legal matter that is governed by the regulation. The standard under the regulations are that immigration judges are to grant a continuance if there is good cause shown. And there is much case law from the BIA and from the Federal courts as to what is good cause.

Mr. KING. Of course, I'm out of time. But I would just say a good cause is—would be unlikely to be four different good causes in a row on average for each case lasting a year. I conclude my questioning. I thank you for testifying.

And I yield back the balance of my time.

Mr. GOWDY. Thank you, the gentleman from Ohio—from Iowa. Excuse me.

The Chair will now recognize the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. And I thank my colleague, Ms. Lofgren, for letting me go in front of her.

Ms. JACKSON LEE. Mr. Chairman, can I just put——

Mr. CONYERS. I'll yield.

Ms. JACKSON LEE. Mr. Chairman, can I put these in the record before you go forward? Thank you for your kindness. I have a meeting.

I would like to add to the record by unanimous consent, Mr. Chair, a letter, statement from the immigration—excuse me, American Immigration Council, underfunding of immigration courts undermines justice. And a second document, Executive Office for Immigration Review, unaccompanied children priority for adjudication. I ask unanimous consent to put these items into the record.

Mr. GOWDY. Without objection.

[The information referred to follows:]

AMERICAN IMMIGRATION COUNCIL

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May 2015

EMPTY BENCHES:
Underfunding of Immigration Courts Undermines Justice

Among many longstanding problems plaguing the U.S. immigration system is the shortage of immigration judges. Over the past decade, Congress has increased immigration enforcement funding exponentially, yet has not provided the immigration courts commensurate funding to handle the hundreds of thousands of new removal cases they receive each year. The resulting backlog has led to average hearing delays of over a year and a half, with serious adverse consequences. Backlogs and delays benefit neither immigrants nor the government—keeping those with valid claims in limbo and often in detention, delaying removal of those without valid claims, and calling into question the integrity of the immigration justice system.

Dramatic Immigration Enforcement Spending Increases, Without Commensurate Court Resource Increases, Have Placed Extraordinary Burdens on the Courts

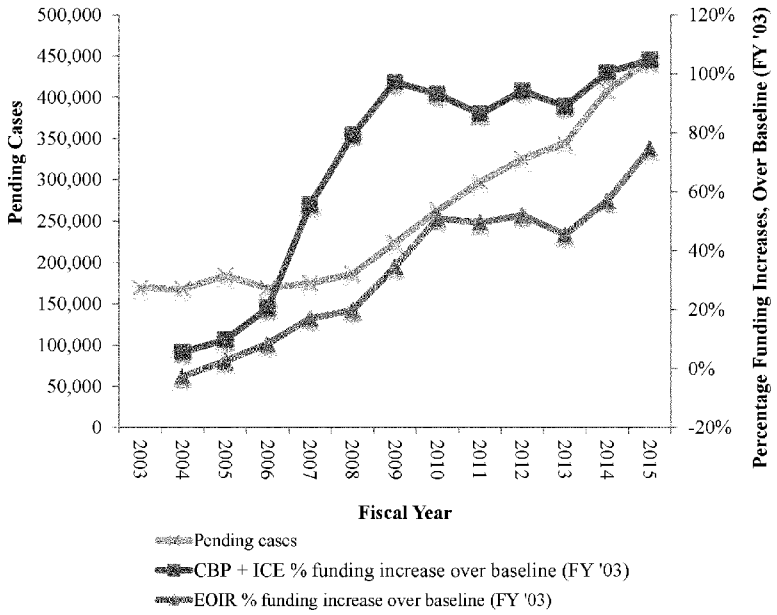
Over the last decade, the Department of Homeland Security's (DHS) immigration enforcement resources have increased dramatically (Figure 1):[1]

- Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) combined spending increased **105 percent** from Fiscal Year (FY) 2003 to FY 2015, from $9.1 billion to approximately $18.7 billion.[2]
- Moreover, the federal government increasingly leveraged state law-enforcement resources for immigration enforcement through programs like Secure Communities[3] and 287(g).[4]

In contrast, as increased enforcement has contributed to immigration court backlogs,[5] court funding has not kept pace (Figure 1):

- Immigration court **backlogs** increased **163%** from FY 2003 to April 2015.[6]
- Immigration court spending increased more modestly—**74 percent** from FY 2003 to FY 2015, from $199 million to $347.2 million.[7]
    - Congress increased funding by $35 million in FY 2015.[8]
    - The Administration has requested an additional $64 million for immigration courts in FY 2016.[9]
    - Bipartisan calls are emerging for further increases.[10] Immigration Judge Dana Leigh Marks, President of the National Association of Immigration Judges, argues that it is necessary to double or even triple the size of the immigration courts.[11]

Figure 1: CBP & ICE Enforcement Funding vs. EOIR Court Funding, Case Backlog



Source: See endnotes 2, 6, 7 and 8.

High Caseloads, Low Staffing Shape the Courts' Current Condition

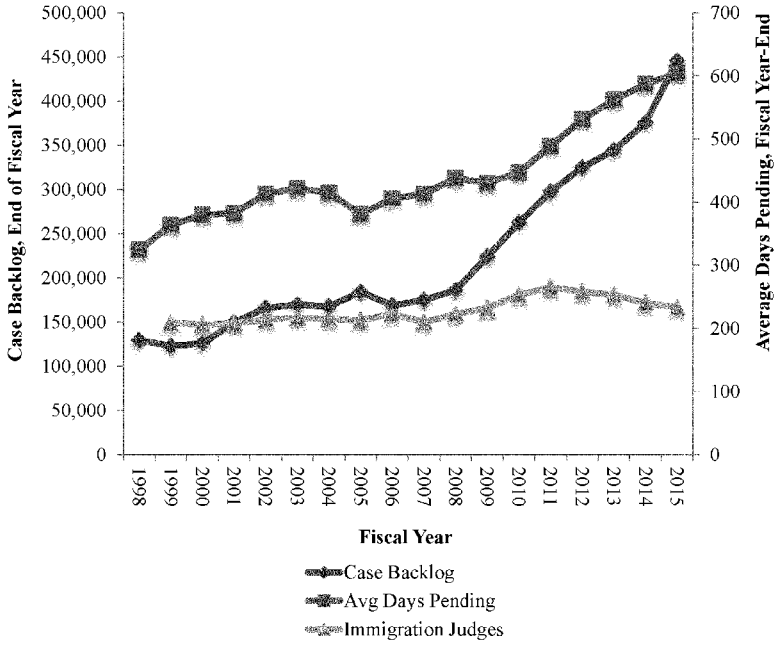
Immigration judges are employees of the Executive Office for Immigration Review (EOIR), an agency within the Department of Justice (DOJ).

- Attrition, budget cuts, and burn-out have led to a reduction in judges from 270 in April 2011 to 233 today,[12] with only about 212 judges serving full-time,[13] in 58 immigration courts nationwide. At least 100 judges are eligible to retire in 2015.[14]
- Each immigration judge was handling over 1,400 "matters"/year on average at the end of FY 2014[15]—far more than federal judges (566 cases/year in 2011) or Social Security administrative law judges (544 hearings/year in 2007).[16] Some judges reportedly have over 3,000 cases on their docket.[17]
- In FY 2014, immigration judges received 306,045 matters overall—225,896 removal cases (73.8 percent of all matters), 60,446 bond hearing requests (19.8 percent), and 19,703 motions (6.4 percent).[18]

Growing Court Backlogs Lead to Long Delays

There have been rising immigration court backlogs and case delays since at least 1998 (Figure 2).[19]

Figure 2: Rising Immigration Court Backlogs & Rising Case Delays While Judges Remain Flat



Source: TRAC, Immigration Court Backlog Tool (FY 2015 data through April 30, 2015); Bipartisan Policy Center, May 20, 2015; Los Angeles Times, May 16, 2015.

- More cases are filed than can be completed. For instance, in FY 2014, courts received 23 percent more matters than they completed (306,045 versus 248,078).[20]
    - Accordingly, court backlogs have more than doubled since 2006, reaching **445,607 cases** in April 2015—an all-time high, and nearly 30 percent higher than the beginning of FY 2014.[21]
    - The average removal case as of April 2015 has been pending for **604 days**—nearly a year and eight months.[22]

- Backlogs in large cities are even worse—over two years in Los Angeles (768 days), Chicago (782 days), Denver (819 days), and Phoenix (806 days). Backlogs in Houston (636 days) and New York (605 days) are above-average as well.[23]

"Rocket Dockets" for Children and Families Have Increased Backlogs Across the System

- On July 9, 2014, DOJ issued new guidelines prioritizing the cases of recently-arriving unaccompanied children and families above other cases in the immigration courts.[24] The American Immigration Council and others have criticized these "rocket dockets" for the most vulnerable,[25] and criticized the quick adjudication of cases against unaccompanied children who may have lacked adequate notice of their proceedings or may not have understood the process.[26]

- In any event, these "rocket dockets" neither caused, nor have solved, court backlog problems:
  - Backlogs long predate recent Central American arrivals of children and families, as shown above.[27]
  - Only 15.7 percent of the current backlog consists of unaccompanied children's cases.[28]
  - Meanwhile, backlogs have increased for everyone else—including many with humanitarian claims, including individuals who cannot obtain work authorization while their immigration court case is pending.[29]
    - In fact, since October 1, 2014, backlogs have increased 9.2 percent.[30]
  - Indeed, EOIR has essentially taken many "non-priority" cases off the calendar—giving them a "parking date" for a hearing in four years (Nov. 29, 2019), but with the understanding that the court date may move again.[31]

Extreme Immigration Court Backlogs and Delays Benefit No One

Long delays keep applicants with meritorious claims in limbo, restricting their integration into society.

- Immigration Judge Marks pointed out that "with long delays, people whose cases will eventually be granted relief suffer."[32] For those without valid claims, backlogs simply delay their departure.[33]
- Long delays cause family separation.[34] Applicants also are often unable to work and contribute financially, due to lack of work authorization.[35]
- Many immigrants remain detained during their hearings,[36] including families and children fleeing persecution,[37] with serious negative health impacts.[38] Some detainees with valid claims to stay simply give up.[39]

Pressure on judges to accelerate hearings undermines the overall integrity of the system:

- Overburdened judges are more likely to make wrong decisions when making "split-second decisions regarding complex legal issues."[40]

- Some immigration judges have reported seven minutes on average to decide a case, if they decided each case schedule for a hearing before them that day.[41]
- Accelerated proceedings put at risk children, whose cases require particular sensitivity,[42] and asylum seekers, for whom "hasty decisions [in cases] could result in loss of lives."[43]
- Moreover, "haste makes waste," leading to more appeals and higher fiscal costs overall, as Marks noted.[44]

Conclusion

Problems plaguing the immigration courts will not be addressed by funding alone. Numerous other reforms are necessary to create a more efficient and fair judicial process—most significantly, a meaningful right to counsel.[45] In the short term, however, addressing the basic lack of resources for immigration courts is a necessary step forward. Additional immigration judges would help ensure that all noncitizens have a meaningful and timely day in court, and would help restore the integrity of the system.

Endnotes

[1] American Immigration Council, *The Growth of the U.S. Deportation Machine* (Washington, DC: April 9, 2014). The U.S. government now spends $18 billion on immigration enforcement yearly, more than all other criminal federal law enforcement agencies combined—with inflation, 15 times INS' enforcement spending in 1986. Doris Meissner, et al., *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: Migration Policy Institute, January 2013), p. 2.

[2] *See* U.S. DHS Budgets-in-Brief, FY 2003-2016. For FY 2003 through FY 2014, CBP and ICE budget amounts reflect final numbers, while FY 2015 is an estimated final number. More technically, from FY 2003 through FY 2014, total budget authority, revised enacted, including supplemental funding, is provided for CBP and ICE. Total CBP budget amount for FY 2015 is the requested total budgetary authority, including Customs unclaimed goods and mandatory fees. U.S. DHS Budget-in-Brief, FY 2016, p. 38,. Congress ultimately granted most of the Administration's discretionary request ($10.837 billion, compared to $10.972 billion). Total ICE budget amount for FY 2015 is the allocated discretionary amount. *See* P.L. 114-4 (Mar. 4, 2015); William L. Painter, "Homeland Security Appropriations: FY2015 Action in the 114th Congress," Congressional Research Service (Mar. 16, 2015). (This amount may ultimately be higher, as the Administration also anticipated $345 million in mandatory fees in its FY '15 budget request, not reflected here). U.S. DHS Budget-in-Brief, FY 2016, p. 54.

[3] Michele Waslin, *The Secure Communities Program: Unanswered Questions and Continuing Concerns* (Washington, DC: American Immigration Council, November 2011). A bipartisan government report found that the "growth in DHS's controversial 'Secure Communities' program may produce more" cases, and interviewed EOIR officials who expressed those fears. Lenni B. Benson and Russell R. Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication*, Administrative Conference of the United States (June 2012), p. 30.

[4] American Immigration Council, *The 287(g) Program: A Flawed and Obsolete Method of Immigration Enforcement* (Washington, DC: November 2012),

[5] Seth Robbins, "Immigrants see court dates cancelled as Justice Department is overwhelmed with cases," *Associated Press* (Feb. 1, 2015) (quoting David Martin, former DHS general counsel: "You fund more investigators, more detention space, more border patrol, almost all of these are going to produce some kind of immigration court case… It's just going to be a big bottleneck unless you increase the size of that pipeline.").

[6] TRAC, *Immigration Court Backlog Tool*.

[7] See EOIR Budget Requests, FY 2009-15, and previous appropriations bills passed by Congress. Notably, EOIR budgets for FY 2007 and earlier include funding for DOJ's Office of the Pardon Attorney, which is historically small—$2.8 million in FY 2014. Compare Executive Office for Immigration Review, *FY 2015 Budget Request At A Glance*, to H. Rpt. 113-448 (May 15, 2014), p. 42.

[8] U.S. DOJ, Administrative Review and Appeals, Executive Office for Immigration Review (EOIR), FY 2016 Budget Request at a Glance (February 2015), U.S. DOJ, Administrative Review and Appeals, Executive Office for Immigration Review (EOIR), FY 2015 Budget Request at a Glance (February 2014).

[9] U.S. DOJ, Administrative Review and Appeals, Executive Office for Immigration Review (EOIR), FY 2016 Budget Request at a Glance (February 2015).

[10] Congressman Henry Cuellar, "Congressman Cuellar Works to Fund 55 New Immigration Judges" (May 15, 2015) (quoting Rep. John Culberson (R-TX): "Processing and adjudicating immigration cases is an important part of upholding our nation's laws. The funding in this bill will help reduce the growing backlog of cases that are holding up our courts and compromising the rule of law."); Julie Myers Wood, "Courts could be a step forward in immigration debate," *Houston Chronicle* (Apr. 30, 2015) (former ICE Director under President George W. Bush); Matt Graham, "Funding Immigration Courts Should Not be Controversial," *Bipartisan Policy Center* (May 20, 2015), Fig. 1; Marshall Fitz and Philip E. Wolgin, "Enforcement Overdrive Has Overloaded the Immigration Courts," *Center for American Progress* (Nov. 18, 2014).

[11] Molly Hennessy-Fiske, "Immigration: 445,000 awaiting a court date, which might not come for 4 years," *L.A. Times* (May 16, 2015).

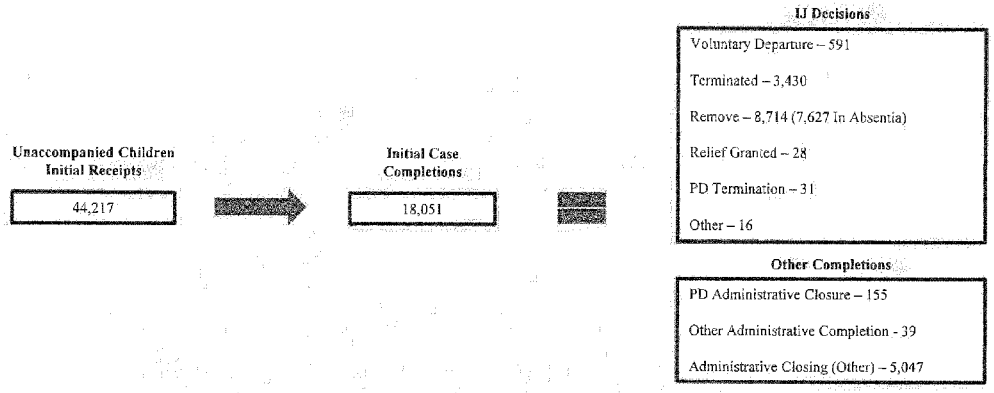
[12] Ibid.; Benson and Wheeler, note 3, p. 29; Stuart L. Lustig, et al., "Inside the Judges' Chambers: Narrative Responses from the National Association of Immigration Judges Stress and Burnout Survey," *Georgetown Immigration Law Journal* 23:57-83 (2008), p. 57.

[13] Lomi Kriel, "Immigration courts backlog worsens," *Houston Chronicle* (May 15, 2015) (National Association of Immigration Judges President Dana Leigh Marks estimate).

[14] Hennessy-Fiske, note 11; Laura Wides-Munoz, "Nearly half immigration judges eligible to retire," *Associated Press* (December 23, 2013).
[15] A "matter" includes either a removal case, bond redetermination request, or a motion. U.S. Department of Justice, Executive Office for Immigration Review, "FY 2014 Statistics Yearbook" (March 2015), p. A7. This number is derived from dividing the matters received by immigration courts in FY 2014 by the number of immigration judges at the end of FY 2014. Ibid., p. A2; Matt Graham, "Funding Immigration Courts Should Not be Controversial," *Bipartisan Policy Center* (May 20, 2015), Fig. 1. A prominent report used similar methodology. Charles Roth and Raia Stoicheva, *Order in the Court: Commonsense Solutions to Improve Efficiency and Fairness in the Immigration Court* (Chicago: National Immigrant Justice Center, October 2014).
P. 6 & fns. 42-44.
[16] Benson and Wheeler, note 3, p. 27.
[17] Hennessy-Fiske, note 11.
[18] EOIR, "FY 2014 Statistics Yearbook," note 15, p. A7.
[19] TRAC, *Immigration Court Backlog Tool* (FY 2015 data is through April 2015).
[20] FY 2014 Statistics Yearbook, note 15, p. A2.
[21] TRAC Immigration, "Immigration Court Backlog Keeps Rising" (May 15, 2015).
[22] TRAC, *Immigration Court Backlog Tool*.
[23] Ibid.
[24] Department of Justice, "EOIR Factsheet on New Priorities to Address Migrants Crossing into the U.S." (July 9, 2014); Department of Justice, "EOIR Announcement of New Priorities to Address Migrants Crossing into the U.S." (July 9, 2014).
[25] Walter Ewing, "Why More Immigration Judges Are Needed," *Immigration Impact* (May 11, 2015); Hennessy-Fiske, note 1 (quoting Jonathan Ryan, executive director of the San Antonio-based legal advocacy group Raices, calling the prioritization "backwards": "The people being prioritized in the backlog are the most vulnerable children and mothers who are essentially getting railroaded.").
[26] Wendy Feliz, "Immigration courts Are Ordering Unrepresented Children Deported," *Immigration Impact* (Mar. 10, 2015).
[27] American Immigration Council, *Children in Danger: A Guide to the Humanitarian Challenge at the Border* (Washington, DC: July 2014); TRAC, *Immigration Court Backlog Tool*, note 7.
[28] TRAC Immigration, "Immigration Court Backlog Keeps Rising" (May 15, 2015).
[29] Hennessy-Fiske, note 11 (citing a Syrian family unable to work until their case is heard — which is not scheduled until 2019).
[30] TRAC, *Immigration Court Backlog Tool*.
[31] Seth Robbins, "Immigrants see court dates cancelled as Justice Department is overwhelmed with cases," *Associated Press* (Feb. 1, 2015).
[32] Dana Leigh Marks, President, National Association of Immigration Judges, "Letter to Senators Reid and McConnell, Special Concerns Relating to Juveniles in immigration courts," July 22, 2014, p. 4 [hereinafter "Marks Letter"].
[33] American Immigration Council, *Two Systems of Justice: How the Immigration System Falls Short of American Ideals of Justice* (Washington, DC: March 2013), p. 9.
[34] Marks Letter, p. 4.
[35] American Immigration Council, *Two Systems of Justice*, p. 9.
[36] Ibid. ("immigrants who were wrongly placed in removal proceedings… remain stuck in legal limbo and may needlessly languish in detention until their cases are decided.")
[37] Human Rights First, *Detention of Families at the Border Not Consistent with American Ideals*, June 28, 2014.
[38] Boston College Center on Human Rights, *The Psychosocial Impact of Detention and Deportation on U.S. Migrant Children and Families: A Report for the Inter-American Human Rights Court*, August 2013.
[39] Even detainees "with valid claims likely give up and accept deportation, simply to escape detention." Oren Root, Vera Institute, Testimony Before The Committee on Immigration, New York City Council, *Regarding Examining Models for Providing Legal Services for Immigrants In Deportation Proceedings*, February 25, 2014, p. 6 (on file with authors).
[40] American Immigration Council, *Two Systems of Justice*, p. 9, citing Benson and Wheeler, p. 29.
[41] Eli Saslow, "In a crowded immigration court, seven minutes to decide a family's future," *Washington Post*, February 2, 2014.
[42] Marks Letter, p. 2.

[43] Ibid, p. 3.
[44] Ibid.
[45] American Immigration Council, *Two Systems of Justice*, p. 10; Marks Letter, p. 3 ("when noncitizens are represented by attorneys, Immigration Judges are able to conduct proceedings more expeditiously").

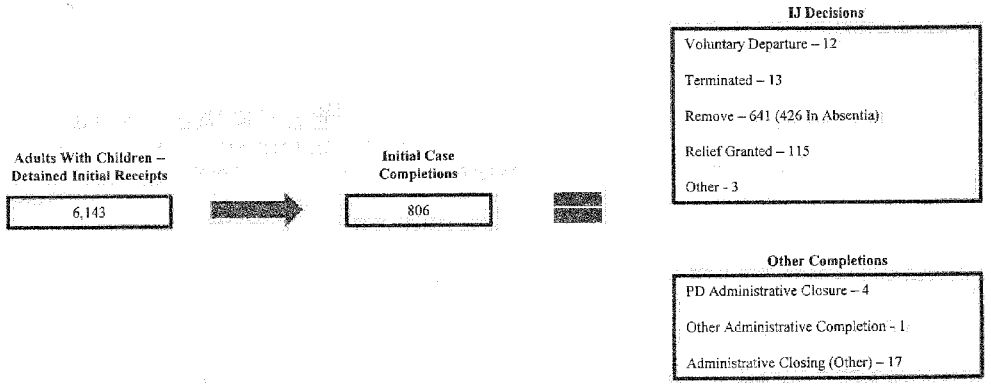
Executive Office for Immigration Review
Unaccompanied Children Priority Code Adjudication
July 18, 2014 – October 27, 2015



- **Of the 44,217 unaccompanied children initial receipts, 36,066 have had a master hearing scheduled, the date for which has passed.**
- **There have been 5,287 change of venue and transfer decisions issued between July 18, 2014 and October 27, 2015.**
- **There are currently 27,621 pending unaccompanied children cases.**

- The initial receipts capture new Notices to Appear that DHS files with EOIR's immigration courts for removal cases for unaccompanied children (UC), which falls into one of the four priority groups EOIR announced on July 18, 2014: unaccompanied child (UC), adults with a child or children detained (AWC/D), adults with a child or children released on alternatives to detention (AWC/ATD), and recent border crossers whom DHS is detaining (RBC/D). DHS is responsible for identifying which individuals fall into the priority categories. The Department of Homeland Security places priority case codes on the Notices to Appear before filing them with the immigration court. These case codes do not change as the case moves through the immigration court process. Consequently, we note that priority cases, including those marked as "adults with children - detained" or "recent border crosser - detained," will retain the designation DHS provides at the case onset, regardless of subsequent custody status. These initial receipts are for cases that DHS filed with EOIR between July 18, 2014 and October 27, 2015.
- Initial case completions are the immigration judges' determinations on cases with the designated priority code. These initial case completions may occur at the first hearing, after multiple adjournments, or after a change of venue or transfer.
- IJ Decision = A determination by an immigration judge.
- Other Completion = In the immigration court, the conclusion of a case with one of the following: 1) administrative closure; 2) failure to prosecute; 3) other administrative completion; or 4) temporary protected status.
- Please note that EOIR staff frequently enter and update information into the case database, so the statistics provided are subject to change.

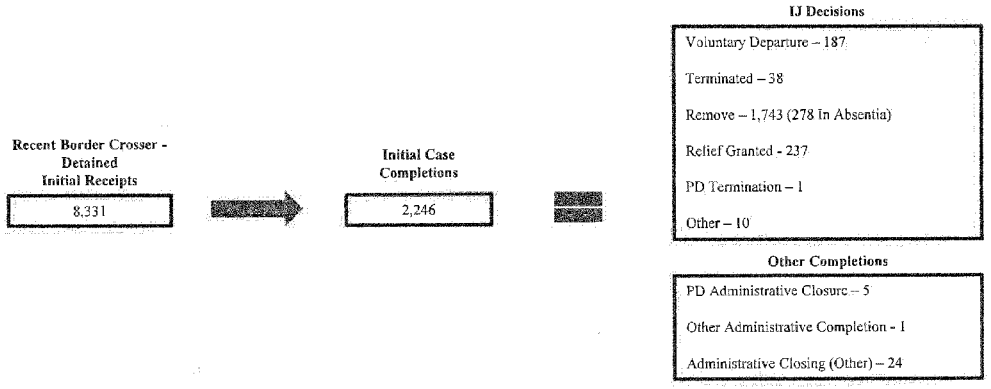
Executive Office for Immigration Review
Adults With Children – Detained Priority Code Adjudication
July 18, 2014 – October 27, 2015



- **Of the 6,143 adults with children - detained initial receipts, 5,847 have had a master hearing scheduled, the date for which has passed.**
- **There have been 7,618 change of venue and transfer decisions issued between July 18, 2014 and October 27, 2015.**
- **There are currently 5,382 pending adults with children - detained cases.**

- The initial receipts capture new Notices to Appear that DHS files with EOIR's immigration courts for removal cases for adults with children - detained (AWC/D), which falls into one of the four priority groups EOIR announced on July 18, 2014: unaccompanied child (UC), adults with a child or children detained (AWC/D), adults with a child or children released on alternatives to detention (AWC/ATD), and recent border crossers whom DHS is detaining (REC/D). DHS is responsible for identifying which individuals fall into the priority categories. The Department of Homeland Security places priority case codes on the Notices to Appear before filing them with the immigration court. These case codes do not change as the case moves through the immigration court process. Consequently, we note that priority cases, including those marked as "adults with children - detained" or "recent border crosser - detained," will retain the designation DHS provides at the case onset, regardless of subsequent custody status. These initial receipts are for cases that DHS filed with EOIR between July 18, 2014 and October 27, 2015.
- Initial case completions are the immigration judges' determinations on cases with the designated priority code. These initial case completions may occur at the first hearing, after multiple adjournments, or after a change of venue or transfer.
- IJ Decision = A determination by an immigration judge.
- Other Completion = In the immigration court, the conclusion of a case with one of the following: 1) administrative closure; 2) failure to prosecute; 3) other administrative completion; or 4) temporary protected status.
- Please note that EOIR staff frequently enter and update information into the case database, so the statistics provided are subject to change.

Executive Office for Immigration Review
Recent Border Crosser - Detained Priority Code Adjudication
July 18, 2014 – October 27, 2015



- **Of the 8,331 recent border crossers – detained initial receipts, 7,054 have had a master hearing scheduled, the date for which has passed.**
- **There have been 7,231 change of venue and transfer decisions issued between July 18, 2014 and October 27, 2015.**
- **There are currently 6,130 pending recent border crossers – detained cases.**

- The initial receipts capture new Notices to Appear that DHS files with EOIR's immigration courts for removal cases for recent border crossers – detained (RBC/D), which falls into one of the four priority groups EOIR announced on July 18, 2014: unaccompanied child (UC), adults with a child or children detained (AWC/D), adults with a child or children released on alternatives to detention (AWC/ATD), and recent border crossers whom DHS is detaining (RBC/D). DHS is responsible for identifying which individuals fall into the priority categories. The Department of Homeland Security places priority case codes on the Notices to Appear before filing them with the immigration court. These case codes do not change as the case moves through the immigration court process. Consequently, we note that priority cases, including those marked as "adults with children - detained" or "recent border crosser - detained," will retain the designation DHS provides at the case onset, regardless of subsequent custody status. These initial receipts are for cases that DHS filed with EOIR between July 18, 2014 and October 27, 2015.
- Initial case completions are the immigration judges' determinations on cases with the designated priority code. These initial case completions may occur at the first hearing, after multiple adjournments, or after a change of venue or transfer.
- IJ Decision = A determination by an immigration judge.
- Other Completion = In the immigration court, the conclusion of a case with one of the following: 1) administrative closure; 2) failure to prosecute; 3) other administrative completion; or 4) temporary protected status.
- Please note that EOIR staff frequently enter and update information into the case database, so the statistics provided are subject to change.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. CONYERS. You're more than welcome. I ask unanimous consent to put my opening statement in the record, Mr. Chairman.

Mr. GOWDY. Without objection.

[The prepared statement of Mr. Conyers follows:]

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary

The administration of our Nation's immigration courts is of utmost importance because it is the gateway for immigrants to obtain crucial protections from persecution, defend themselves against removal, and have the opportunity to avail themselves of relief under the Immigration and Nationality Act.

Unfortunately, there are fundamental problems with this system.

To begin with, immigrants in removal proceedings deserve comprehensive due process protections.

Although this goal can only be achieved by the appointment of legal counsel for *all* immigrants in removal proceedings, there currently is *no government funding, **even for children.***

Unless these individuals are able to obtain pro bono representation, indigent children and other immigrants must defend against removal without benefit of counsel.

This is an utterly daunting challenge for anyone given the fact that these are adversarial proceedings with potentially dire consequences, namely, deportation from the United States. Keep in mind that the government, on the other hand, is represented in these proceedings by an Immigration and Customs Enforcement attorney.

This is inherently inequitable and raises fundamental constitutional due process concerns.

I know that the Department of Justice helps coordinate pro bono representation and is expanding its Legal Orientation Programs, which I very much appreciate. Nevertheless, I look forward to hearing from Director Osuna whether these initiatives can be further improved and expanded.

Another concern is that there is a significant dearth of judicial resources, which is causing years-long delays in many cases and an overwhelming immigration court backlog.

Studies indicate that each immigration judge has a docket of *more than* 1,400 cases, which is an untenable workload.

As a result of this backlog, many immigrants must literally wait years for their day in court. I am sure that we are all aware of the adage that justice delayed is justice denied.

Accordingly, I hope we are able to have a productive discussion today about what concrete and practical steps can be taken to reduce this backlog, while continuing to ensure that immigrants in removal proceedings receive a fair, full and impartial hearing.

Finally, we must undo efforts that have undermined the legitimate exercise of discretion by Immigration Judges.

In recent months, I have been very pleased to work on a bipartisan basis with Chairman Goodlatte on criminal justice reform. But, we need to consider similar reforms to the Immigration Courts.

Unfortunately, when it comes to immigrants, the Majority often confuses judidical discretion with judicial abuse. Nearly every piece of legislation introduced by the Majority Members of this Committee has sought to streamline immigration court removal proceedings by taking discretion out of the hands of the Immigration Court.

They believe that many forms of relief granted to immigrants are fraudulent and without merit. I do not agree.

Our Immigration Judges are in the best position to assess the facts and law. And, it is an anathema to their judicial independence when we restrict their discretion.

This is not justice and this is not how our courts should work.

Certainly, if there are legitimate concerns of abuse in the exercise of discretion by Immigration Judges, we should investigate these concerns and take appropriate action. But, we must acknowledge that just because we disagree with a decision, it does not necessarily constitute abuse.

In closing, I want to thank Director Osuna for his service to our country and his dedication to ensuring that immigrants in removal proceedings have a full and fair hearing before an impartial immigration judge.

I realize that this is often a thankless task and it requires an immense amount of perserverence and commitment.

Thank you for your work, and for your appearance before our Committee today.

Mr. CONYERS. We find that there's a problem that our immigration judges face, when it comes to immigrants. We sometimes confuse judicial discretion with judicial abuse. And I think you're very sensitive to that, Director Osuna.

Too much of our proposals, legislatively, have sought to streamline the immigration court removal process by taking discretion out of the hands of the immigration court. And so some believe that many forms of relief granted to immigrants are without merit, and I'm not sure if that's the case.

Do you have a view on that, sir, that you could relate to us?

Mr. OSUNA. Congressman, on the issue of merit of claims, that's what our judges are there for, to determine which cases are actually meritorious and which are not. And they do a great job of that every day in immigration courts around the country.

On the issue of discretion, again, I trust our judges to exercise discretion in the best way possible. And we believe that that is appropriate to vest them with that authority.

Mr. CONYERS. Thank you. I tend to agree with you. I realize that this is a thankless task to ensure that immigrants in removal proceedings have a full and fair hearing before an impartial immigration judge. And, so it's in that spirit that I come to these hearings. And, you know, the delay in hiring immigration judges is often cited as a reason for the immigration court backlog.

What are other challenges that you might give us this morning in reference to the hiring of immigration judges?

Mr. OSUNA. Congressman, we have a very robust and multi-layered process for hiring immigration judges. It takes a long time, but we feel that it is necessary to do this carefully, because these individuals, as you know, are exercising the Attorney General's authority in immigration courtrooms around the country every single day. They are literally making life-and-death decisions, so we need to make sure that we are selecting the best candidates to serve as immigration judges.

That requires multiple layers of review at EOIR and at the Department and careful vetting to make sure that we are getting the best of the best. That, unfortunately, takes some time. We have been able to streamline the process to some extent over the last few months to make it go a little bit faster, but we think that the process actually helps to make sure that we select the best individuals.

In my opening statement, I did mention that we have added 23 new judges over the past year. And the Attorney General has selected 37 new judges as of this week who are now going through the required background and security checks before they begin

hearing cases. So we are adding judges as quickly as we can and selecting good people, and they will make a significant difference.

Mr. CONYERS. In your testimony, you include a chart on immigration judge hiring. And in the second quarter of 2015 where you did not hire any immigration judges, can you explain why EOIR did not hire during that period?

Mr. OSUNA. There were judges in process at that time. What the chart shows is the actual number of people entering on duty; in other words, judges entering on duty within that particular quarter. So the hiring process was going on during that second quarter. They just had not entered on duty as of that time.

You will see that the third quarter shows 18 new judges entering on duty. Those were the ones that were in process in the prior two quarters.

Mr. CONYERS. Thank you, sir. And I thank the Chairman.

Mr. GOWDY. The Chair would now recognize the gentleman from Colorado.

Mr. BUCK. Thank you, Mr. Chairman. I yield my time to the gentleman from Texas.

Mr. GOWDY. The gentleman from Texas, you're recognized.

Mr. RATCLIFFE. Thank you, Mr. Chairman. Thank the gentleman from Colorado for yielding his time so I can follow up on a question, Director Osuna, I didn't have time to ask in my prior line of questioning, and that is this: What is the official policy for granting a continuance in an immigration case?

Mr. OSUNA. Continuances are governed by regulation, Congressman. The regulations provide that a judge may grant a continuance for good cause. And that good cause standard has been filled out, has been outlined and defined through court decisions over a number of years.

So that is the standard. Immigration judges refer to that standard, follow the circuit law and the BIA law on what is good cause and it depends on the individual case.

Mr. RATCLIFFE. Okay. So we know that the standard is established by case law and precedent, but the inspector general report from 2012 cited frequent and lengthy continuances as the primary factor in this backlog that we have been talking about, of now almost a half million cases. You are aware of that fact?

Mr. OSUNA. I'm aware of the inspector general report, yes.

Mr. RATCLIFFE. And the fact that they cited that as a primary factor?

Mr. OSUNA. I'm aware that they cited it. I can't remember what ranking they gave it, but I do remember that they did cite it.

Mr. RATCLIFFE. Okay. Well, to that point, the inspector general actually recommended that your office—and I want to quote this so I make sure I get it right, recommended your office, "Analyze the reasons for the continuances and develop guidance that provides immigration judges with standards and guidelines for granting continuances to avoid these unnecessary delays." Do you remember that from the IG report?

Mr. OSUNA. I remember that, sir.

Mr. RATCLIFFE. Okay. Can you tell me what you've done to comply with that recommendation?

Mr. OSUNA. Sure. Continuances, again, are governed by legal standards. What we've done is two things. Number one, is that we do provide regular training for judges on continuances. We provided a legal training just a few months ago on a number of issues, and provided information on what the courts have said about that legal standard.

Secondly, this is more of a management issue, but our assistant chief judges, which are the supervisory judges that have supervision over particular courts, do monitor the continuance issue and the oldest cases that are pending on court dockets, and they take action as appropriate.

Sometimes it is not appropriate to take any action, because the number of continuances is actually appropriate in a particular case. But when there appears to be something, an outlier issue with somebody granting continuances for, other than the good cause standard, then that is treated as a management issue.

Mr. RATCLIFFE. So is this having an impact on the number of continuances?

Mr. OSUNA. I don't have an answer for you on that, Congressman.

Mr. RATCLIFFE. All right. So then let me ask you this question. Depending on the immigration case, the Department of Homeland Security provides sufficient evidence to find an individual in question is not entitled to admission to the United States, what's the role of the immigration judge?

Mr. OSUNA. If I understand your question, I think that if the Department of Homeland Security——

Mr. RATCLIFFE. Finds somebody is not entitled to admission.

Mr. OSUNA. Well, that's a legal determination that the judge would have to make. But, certainly, DHS as a party in the courtroom would have a significant impact on that decision. The judge's responsibility is to find that somebody is removable from the country or not removable. If they are removable, the evidence submitted by DHS goes a long way to proving that, because that is DHS's burden.

Mr. RATCLIFFE. Well, if the determination is made, the judge's role is actually to sustain the DHS charge of removability. Isn't that right?

Mr. OSUNA. The judge's role is to determine whether somebody is removable. And DHS's evidence going to that fact, that legal determination, is obviously very relevant if not determinative in the immigration judge's decision.

That is not the end of the discussion in immigration court, because if a judge finds somebody is removable from a country, then he has to consider or she has to consider whether that person is eligible for some sort of relief from removal.

Mr. RATCLIFFE. So 121 convicted criminal aliens released by the Obama administration between 2010 and 2014 have been charged with homicide-related crimes. Were you aware of the fact that 33 of those individuals were released on bond at the discretion of your office after committing the original crime?

Mr. OSUNA. I'm aware of the 33, yes.

Mr. RATCLIFFE. All right. And does that concern you?

Mr. OSUNA. Congressman, those cases, immigration judges held bond hearings, as anybody—or most people that are not detained mandatorily are entitled to request. The law provides that immigration judges are to determine two things in a bond proceeding: Number one, is the person a flight risk? Are they going to show up for their hearings or are they going to abscond? Number two, and more importantly, are they a danger to the community? Are they a danger to others? If the judge finds that they are a flight risk, he or she may set a high bond or no bond at all. If they are a danger to the community, typically judges don't release them, or set a very high bond. Typically, they don't release them.

So the 33 individuals that you mentioned, I have no reason to think that judges made the wrong decision in those cases.

Mr. RATCLIFFE. Did you go back and review those cases?

Mr. OSUNA. I am aware of some of them. I didn't review every single case.

Mr. RATCLIFFE. All right. Mr. Chairman, my time has expired. I yield back.

Mr. GOWDY. The gentleman from Texas yields back.

The Chair will now recognize the Ranking Member, gentlelady from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman, and Mr. Osuna. I'm sorry I was late. I was at a meeting also on an immigration matter.

I would ask unanimous consent to put my full statement in the record.

Mr. GOWDY. Without objection.

[The prepared statement of Ms. Lofgren follows:]

Prepared Statement of the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration and Border Security

Our immigration courts, under the Justice Department's Executive Office for Immigration Review, are part of a broken immigration system. I say this with all due respect to today's witness, Director Juan Osuna. I know Director Osuna, and he is a thoughtful government official with a deep knowledge of immigration law, and its impact on individuals and families.

The Immigration Courts are simply overwhelmed. The EOIR caseload has more than doubled between 2010 and 2015. Today, more than 457,000 immigration removal cases have been pending for an average of 635 days. Many individuals wait several years for their day in court. This means we are neither efficiently removing those who should be deported, nor are we affording timely hearings for those who do merit immigration relief.

I am afraid that Members of Congress bear some responsibility for this immigration court backlog. We have continuously underfunded EOIR far below what is necessary. By contrast, resources for immigration enforcement, including CBP and ICE, have more than quadrupled — from $4.5 billion in 2002 to $18.7 billion in fiscal year 2015. However, funding and staffing for the Immigration Courts has lagged far behind, increasing by only 70 percent in that same timeframe. The number of immigration judges has gone up only slightly from 230 in 2006 to 247 at the end of FY 2015. EOIR's resources are simply not commensurate with resources devoted to enforcement. I ask my colleagues on this Committee and the Appropriations Committee to adequately fund the Immigration Courts. The integrity of our immigration system depends on functional immigration courts able to efficiently process and adjudicate cases.

The immigration court backlog has been exacerbated by the EOIR decision to prioritize cases involving migrants who had recently crossed the southwest border—

including unaccompanied children. As a part of the "rocket docket," EOIR is scheduling unaccompanied children cases before all others. This has resulted in dire consequences for newly arrived children and has negatively affected the overall backlog of cases. I am also troubled by the reluctance from some judges to reopen *in absentia* removal orders entered as part of the rocket docket proceedings and issued to children who simply did not understand their legal obligations. I understand that EOIR is working toward extending the "rocket docket" timeframe, and I am hopeful they will also create sound policy with regard to motions to reopen.

There is good work being done in our immigration courts, but every day children, some as young as 3 and 4 years old, appear before immigration judges and in opposition to trained ICE prosecutors without legal representation. Immigration law is often compared to tax law in its staggering complexity. And we should not permit children—often with limited or no English and rudimentary educational levels—to defend themselves against government lawyers. In every other area of law in this country, we recognize that children in court proceedings need increased protections because of their unique vulnerabilities and reduced capacity to understand legal procedures and the consequences of their actions. Immigration proceedings should be treated no differently.

The vulnerabilities of immigration children are heightened by the fact that many have been victims of violence other severe traumas. A majority of recently-arrived unaccompanied children are eligible for legal protection that would allow them to lawfully remain in the United States. But without representation how likely is it that a child is able to tell her story and prevail in an adversarial court of law?

I am troubled by the position DOJ has taken in the case, *J.E.F.M v. Holder.* In that case, advocates argued that deportation proceedings against pro se child respondents violated due process and the INA requirement of a "full and fair hearing." In response, DOJ argued that children in immigration courts simply tell the judge they are afraid and they automatically get asylum. This simply is inaccurate and in fact, during the last six months of 2014, 94% of the unaccompanied children *ordered removed* did not have an attorney or accredited representative. I am concerned about DOJ's misrepresentation in federal court, and I hope the Director is able to clarify DOJ's position in today's hearing.

The lack of representation raises serious Constitutional concerns of due process. It is a blight on our country and antithetical to our values. Congress can ensure children's access to due process and protection while concomitantly increasing docket efficiency by: (1) expanding government funding for *pro bono* legal services and direct representation for children; and (2) ensuring that the child's best interests is a primary consideration in all custody and removal proceedings. In the absence of universal government funded representation, a robust mix of government-funded and *pro bono* representation is needed to fill the enormous representation gap that currently exists.

I look forward to hearing from Director Osuna about EOIR's efforts to coordinate *pro bono* representation, expand its Legal Orientation Program and the Legal Orientation Program for Custodians of Unaccompanied Alien Children, and other initiatives that make the court perform its mission more efficiently and ensure that those who come before it and merit relief have the help they need to make their case. And we in Congress, as well as the Administration, can and must do more.

I thank Director Osuna for his leadership of EOIR and look forward to his testimony at today's hearing.

Ms. LOFGREN. I would just note that we have ramped up expenditures on immigration enforcement over the past decade substantially. We have increased the funding for the Border Patrol and for ICE that's more than quadrupled the expenditures there. But our funding for the immigration courts has lacked far behind. We've got a 70 percent increase for courts and the quadrupling of expenditures at the border.

And, I think no system is perfect, I'm not going to say, having worked as a lawyer in this system many, many years ago. But you can't just keep jamming more into the system. You need to ramp up the capacity in the immigration courts. And we're making some baby steps forward on that now, but I am concerned, given the demographics of the immigration judges, we're facing a tidal wave of retirements among the ranks of immigration judges.

Now, those are funded positions, but we're going to have to go out and hire people and train people. So I think that we've got a picture that is going to be very problematic to manage. Mr. Osuna is an old hand at this. He was here during the Bush administration, during the Obama administration. He knows what he's doing, but I'm hoping that he would let the Committee know if he needs additional assistance, because it's in everybody's interest that this work well, and that the immigration judge system and the court system works well.

I just want to mention one other thing. And I know it's not entirely—actually, it isn't up to you, but I have continuing concerns, and I raised this issue when the Attorney General was here, about the due process implications of children appearing in immigration court without counsel.

I don't see how an 8-year-old, who speaks no English, can appear without counsel and possibly represent themselves and meet the due process expectations in our Constitution. So I throw that out there. I know that efforts are being made to coordinate with pro bono lawyers, but I think ultimately litigation will resolve this issue for us. And we need to be prepared to respond.

If I may, Mr. Chairman, perhaps in addition to doing my opening statement, I can go directly to my questions, and we will be able to expedite the conclusion of this hearing.

Mr. GOWDY. Yes, ma'am.

Ms. LOFGREN. I had a question about the asylum application, the 1-year filing deadline because of the backlog. And I think the rocket docket actually aggravated that, because every and all resources were put forward and all of the other cases ended up being delayed. We've got a problem.

And it's my understanding that in August of this last year, Human Rights First, and the law firm of Akin Gump, requested a hearing memorandum to instruct immigration judges that administrative delays can constitute an exceptional circumstance to the 1-year filing deadline. And I'd like unanimous consent to enter this letter in the record.

Mr. GOWDY. Without objection.

[The information referred to follows:]

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August 19, 2015

via electronic mail
Juan Osuna, Director
Nathan Berkeley,
Outreach Director, Office of Legislative and
Public Affairs
Executive Office of Immigration Review
U.S. Department of Justice

Re: Interpretation of "Extraordinary Circumstance" Exception to One Year Filing Deadline to Include Administrative Delays

Dear Juan and Nathan:

As discussed at the White House Office of Public Engagement meeting on legal access on July 21, 2015, we are writing on behalf of Human Rights First to follow up on the request that the Executive Office of Immigration Review issue guidance to ensure that the current backlogs in the Immigration Courts do not result in barring Asylum Applicants from meeting the one-year application filing deadline. In particular, we respectfully request that EOIR issue an Operating Policies and Procedures Memorandum (**"OPPM"**) to instruct Immigration Judges that the "exceptional circumstances" exception to the One Year Filing Deadline ("**OYFD**") includes cases in which an Asylum Applicant in Immigration Court proceedings has not been given the opportunity to file the I-589 Asylum Application ("**I-589)** in Immigration Court within the OYFD due to administrative delays in scheduling the Filing Master Calendar Hearing (as defined below). As discussed below, this situation fits well within the statutory language and policies of the "extraordinary circumstances" exception, which certainly covers situations in which unintended administrative scheduling backlogs and delays make it near impossible for Asylum Applicants to file their applications on time.

The backlogs in the Immigration Courts, as you know, have now reached record levels, and numerous Asylum Applicants wait years for their day in Immigration Court. The combination of limited administrative personnel, escalating backlogs, severe underfunding and the significant increase in asylum-seeking Central American women and children has resulted in a significant number of cases where Asylum Applicants are not afforded the opportunity to file their I-589 in open court within one (1) year of entering the United States. Many Asylum Applicants do not have legal representation, at least initially, as they struggle to find pro bono

counsel. Given the limited and overstretched pro bono resources, it can take several months to secure pro bono counsel. Furthermore, the surge in children and families seeking asylum protection has put an additional strain on finite pro bono resources. Consequently, Asylum Applicants may take several months to secure legal representation especially as they try to reunite with family members, to find a stable environment in which to live, and to overcome severe social segregation and economic hardship. If and when Asylum Applicants in Immigration Court obtain counsel, their lawyers have often been forced to resort to ad hoc creative approaches to meet the OYFD in the absence of a timely-scheduled hearing or to "lodge" the I-589 with court clerks for OYFD purposes.[1] This constrained filing timeline has also led to attorneys filing a large number of motions for emergency hearings as the OYFD approaches, needlessly wasting Immigration Court resources in the pursuit of meeting the deadline. This waste of resources is particularly unnecessary when the Asylum Applicant has already articulated a need for protection or an intention to apply for asylum during the Credible Fear Interview and/or the pleading stage. Another extraordinary step that pro bono attorneys now take is to file the I-589 with a United States Citizenship and Immigration Services ("**USCIS**") service center in the affirmative process—even though USCIS has no jurisdiction and is also working under extreme backlogs and resource depletion—in order to show Immigration Judges that there was a good faith attempt to file before the OYFD. While these approaches might provide limited legal protection to some Asylum Applicants, their effectiveness varies between Immigration Courts, ultimately creating disparate procedural standards and potentially conflicting case law. In any case, none of these ad hoc mechanisms serves to advance any substantive or procedural goal for the Immigration Courts; rather, the I-589 simply sits in a file awaiting the next scheduled hearing.

These ad-hoc approaches, to the extent they work, will be useful or realistic options only for Applicants who have access to experienced and aggressive legal representation. Human Rights First regularly sees unrepresented Applicants who were given no guidance as to the OYFD while they might still have been in a position to meet it, and are unlikely to devise the complex strategies described above on their own. Overall, it would be illogical and unfair to bar an asylum application for not meeting the OYFD when the Asylum Applicant was simply awaiting scheduling of the master calendar hearing at which the application would be filed.

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[1] The EOIR OPPM implementing the ABT settlement distinguishes "lodging" and "filing," but only in the context of the asylum clock, and in fact indicates that a "lodged" application is **not** considered filed for the purposes of meeting the OYFD. *See* EOIR OPPM 13-03: *Guidelines for Implementation of the ABT Settlement* (Dec. 2, 2013) ("If a defensive asylum application is submitted outside of a hearing for the purpose of lodging the application, the asylum application will be stamped "lodged not filed" and returned to the applicant, following the process laid out below. The lodged date is not the filing date and a lodged asylum application is not considered filed. The requirement that an asylum application be filed before an Immigration Judge at a master calendar hearing will not change. .... A respondent who lodges an asylum application at an immigration court filing window must still file the application before an Immigration Judge at a master calendar hearing.").

1. **The Problem**

As you know, the Immigration Courts have been backlogged for years, particularly for individuals who are not detained. The increased inflow of Central American women and children resulted in a large number of family units, women and children entering an already extremely overloaded and understaffed legal system, further straining Immigration Court resources around the country.

The docket oversaturation has directly affected the Immigration Courts' capacity to schedule Filing Master Calendar Hearings within the prescribed OYFD.

The most recurrent problem involves women and children who have been detained, served with a Notice to Appear ("**NTA**") (typically after passing a Credible Fear or Reasonable Fear Interview), and released (either on bond or otherwise) before the Master Calendar Hearing at which they are permitted to file the I-589. Once these women and children are removed from the detained docket, in many circumstances they may not be scheduled for another Filing Master Calendar Hearing before the expiration of the OYFD. Notwithstanding such adjudication problems, the EOIR still requires Asylum Applicants in removal proceedings to file the I-589 in open court at a Filing Master Calendar Hearing, creating a legal and logistical impossibility for immigration Courts and Asylum Applicants.

Take, for example, the case of Angelica H. and her four (4) children. She entered the United States on or about July 30, 2014. Angelica and her children were detained at the Karnes County Residential Center ("**KCRC**"). On September 18, 2014, her family passed their Credible Fear Interview and was served with a NTA on September 20, 2014. On October 27, 2014, she appeared at the San Antonio Immigration Court to plead to the charges in her NTA, to state her intention to apply for asylum, and to petition to be released on bond. After she was released on bond from KCRC, Angelica and her family relocated to Dallas, Texas, to reunite with family members and establish a stable environment for her children. Accordingly, her Filing Master Calendar Hearing, which had been set on the San Antonio Immigration Court's detained calendar, was canceled, and her case was subsequently transferred to the Dallas Immigration Court. On May 22, 2015, EOIR issued a notice setting her first Master Calendar Hearing in the Dallas Immigration Court docket for December 1, 2015, more than sixteen (16) months after her entry into the United States. On July 23, 2015, Angelica's pro bono counsel filed an emergency motion to advance her Filing Master Calendar Hearing, or in the alternative, a determination that her I-589 (attached to the motion) be deemed lodged and filed. Angelica was the exception, not the rule, in that she was fortunate to have secured pro bono counsel just in time to prepare her application together with a petition for an emergency Filing Master Calendar Hearing motion, ultimately filing the I-589 within such constrained timeline.

As this example demonstrates, under the current backlogged system it is possible (and in our experience, all too frequent) that the first Master Calendar Hearing at which the filing of the

I-589 is permitted ("**Filing Master Calendar Hearing**") will not be scheduled within the OYFD. In these circumstances, the Immigration Court is *de facto* denying Asylum Applicants the right to file on time, effectively setting thousands of asylum applications up for failure due to circumstances beyond the Applicant's control. As such, we ask that the EOIR issue guidance to Immigration Judges to make clear that this administrative delay constitutes an "extraordinary circumstance" within the meaning of INA § 208(a)(2)(D). Moreover, the guidance needs to indicate that Immigration Judges should excuse Asylum Applicants' failure to file within the OYFD, as long as the I-589 is filed at the first Filing Master Calendar Hearing scheduled – or at a subsequent Filing Master Calendar Hearing as approved by the Immigration Court for circumstances including continuances granted to seek counsel.[2]

A common-sense solution, consistent with the intent of the "extraordinary circumstances" to the OYFD, can address delayed scheduling and adjudication challenges efficiently:

1. No Asylum Applicant shall be considered to have missed the One-Year Filing Deadline if s/he files the I-589 at the first Filing Master Calendar Hearing scheduled subsequent to the one (1) year anniversary of entry, or at a subsequent hearing as instructed by the Immigration Court.

2. Only a Filing Master Calendar Hearing should be considered to be an opportunity to file the I-589.

3. A hearing at which a continuance to seek counsel has been granted should not be considered to be a Filing Master Calendar Hearing. Immigration Judges must still be encouraged to grant such continuances, even if it results in a Filing Master Calendar Hearing scheduled after the OYFD.

The specific confirmation that these situations qualify for the "extraordinary circumstances" exception and/or their integration into the OYFD analysis will help ensure that Asylum Applicants who are simply waiting for their Filing Master Calendar Hearing to be scheduled are not penalized or barred from asylum due to delays directly caused by administrative backlogs, understaffing and ineffective procedural policies. This approach will still require Asylum Applicants to pursue asylum in a timely manner while addressing the direct effects that administrative delays – over which Asylum Applicants have no control – have on the filing of applications.

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[2] *See*, e.g., OPPM 13-01: Continuances and Administrative Closure at 2-3 (noting general EOIR policy of allowing two (2) continuances to seek counsel).

2. **Administrative Scheduling Delay Qualifies as an "Extraordinary Circumstance"**

The laws and regulations enacting the One Year Filing Deadline were intended to deter frivolous applications, ensuring that bona fide asylum applicants pursued relief in a timely manner. None of these goals are served by using the OYFD to bar applications filed at a Filing Master Calendar Hearing scheduled more than one year after entry. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("**IIRIRA**") added the requirement that an Asylum Applicant must file his/her asylum application within one (1) year of his/her last entry into the United States, and has the burden to prove by *clear and convincing evidence* that the application was filed within the OYFD.[3] Congress, did however, include two (2) exceptions to the OYFD "to provide adequate protections to those with legitimate claims of asylum."[4] Under Subsection (D), an application for asylum of an alien may be considered, notwithstanding the OYFD, if the alien demonstrates either the existence of changed circumstances which materially affect the Applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the OYFD.[5] Accordingly, an Asylum Applicant can demonstrate "through credible evidence sufficiently persuasive to satisfy the Attorney General in the exercise of his reasonable judgment, considering the proof fairly and impartially," his/her eligibility for an exception to the OYFD if events or factors directly prevented the timely filing of the I-589. In this particular instance our analysis focuses on the "extraordinary circumstances" exception.[6]

During the defensive asylum process, the Applicant has the burden to prove to the *reasonable* (emphasis added) satisfaction of the Immigration Judge that the extraordinary circumstance meets the following three (3) elements:

(i) It was not intentionally created by the Applicant through his/her own action or inaction;

(ii) It was directly related to the Applicant's failure to file the application within the one (1) year period; and

(iii) The delay was reasonable under the circumstances.[7]

The application, however, must still be filed within a reasonable period of time given those extraordinary circumstances.[8]

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[3] 8 C.F.R. §1208.4(a)(2)(A)

[4] *See* 142 Cong. Rec. S11840 (daily ed. Sept 20, 1996) (statement of Sen. Hatch).

[5] 8 U.S.C. §1158(a)(2)(D)

[6] *Supra* note 1 at Section V(C); p.21

[7] 8 C.F.R. §1208.4(a)(5)

The applicable federal regulations adopted a *non-exhaustive* list of extraordinary circumstances that Immigration Judges may take into consideration as part of their analysis, which include, "but are not limited to," the following: (i) serious illness or mental or physical disability; (ii) legal disability; (iii) ineffective assistance of counsel; (iv) Applicant maintained Temporary Protected Status, lawful immigrant or nonimmigrant status until a reasonable period before filing the asylum application; (v) Applicant filed an asylum application prior to the OYFD but the application was rejected because it was not properly filed, was returned for correction and was refiled within a reasonable period thereafter; or (vi) the death or serious illness or incapacity of the Applicant's legal representative or a member of Applicant's immediate family.[9] The regulations specify, however, that there are "other circumstances that might apply if the Applicant is able to show that those circumstances were extraordinary and directly related to the failure to timely file."[10] Any such circumstance or group of circumstances must have had a severe enough impact on the Applicant's functioning to have produced a significant barrier to timely filing.[11]

The failure to file an I-589 within one (1) year of entry when a Filing Master Calendar Hearing has not been scheduled (or has been continued by the Immigration Judge to allow the Applicant to seek counsel) meets all three (3) elements of the "extraordinary circumstances" exception:

(i) Such a delay in filing was not intentionally created by the Applicant through his/her own action or inaction;

(ii) The delay in scheduling a Filing Master Calendar Hearing is the direct cause of the Applicant's failure to file the application within the one (1) year period; and

(iii) Filing the I-589 at the first Filing Master Calendar Hearing scheduled by the Immigration Court after one (1) year of entry delay is reasonable under the circumstances, even when the delay is caused by the Applicant's need to retain counsel.

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[8] *Id.*

[9] 8 C.F.R. §1208.4(a)(5)(i)-(vi)

[10] *Supra* note 1 at Section V(B) p.13, 20 - Other circumstances that are not specifically listed in the non-exclusive list in the regulations, but which may constitute extraordinary circumstances depending on the facts of the case, include, but are not limited to , severe family or spousal opposition, extreme isolation within a refugee community, profound language barriers, or profound difficulties in cultural acclimatization.

[11] *Id.*

3. Implementation of Guidance on the "Exceptional Circumstances" Exception

Based on the aforementioned laws and regulations, we respectfully request that EOIR issue an OPPM that incorporates the following considerations into determinations of the application of the "extraordinary circumstance" to the OYFD when delayed adjudication is caused by backlogs in the Immigration Court docket. Utilizing such an exception does not contravene the purpose of the OYFD, as Asylum Applicants who meet the exception will have already demonstrated an intention to seek asylum in the United States. Rather, it ensures that administrative delays do not bar bona fide asylum seekers from pursuing relief to which they are entitled.

a. No Asylum Applicant shall be considered to have missed the One-Year Filing Deadline if s/he files the I-589 at the first Filing Master Calendar Hearing scheduled subsequent to the one (1) year anniversary of entry.

An Immigration Court's inability to schedule a Filing Master Calendar Hearing—whether due to venue changes, the transfer or an Asylum Applicant from the detained to the non-detained docket, Court backlogs or to delays on the part of Department of Homeland Security ("**DHS**") in filing the NTA with EOIR— should be considered an extraordinary circumstance excusing a late filing at least until the first Filing Master Calendar Hearing. This is particularly true when an Applicant has expressed an intention to apply for asylum or seek protection, via a Credible Fear Interview and/or at the pleading stage, or been told that they can request asylum in Immigration Court proceedings. In such cases where the Applicant is waiting for the Immigration Court to schedule his/her Filing Master Calendar Hearing, there is no valid reason to hold the Applicant responsible for missing the OYFD.

If the Immigration Court is unable to schedule the first Filing Master Calendar Hearing within the OYFD and asylum applications can only be filed before an Immigration Judge at a Filing Master Calendar Hearing, the Immigration Court is denying Asylum Applicants the right to file on time.[12] Additionally, a refusal to consider the current unprecedented backlog and administrative delays as "circumstances out of the ordinary" and as reasonable explanations of Asylum Applicant's inability to meet the OYFD denies basic due process rights to Asylum Applicants.

Considering administrative delays as one of the "extraordinary circumstances" would not promote fraudulent filings or otherwise provide Applicants with incentives to delay their applications because Immigration Judges would carefully review the procedural progression of the asylum applications and would assess all relevant factors in considering whether to apply the

[12] *See* Immigration Court Practice Manual Sec 3.1(b)(iii)(A)

"extraordinary circumstances" exception. Asylum Applicants, who are already in removal proceedings, waiting for a Filing Master Calendar Hearing to be scheduled to be able to file their I-589, should not be barred from asylum due to scheduling backlogs and administrative delays plaguing the system. Furthermore, an Applicant who has already indicated an intention to seek asylum or protection, during a Credible Fear Interview and/or at the pleading stage, should not be required to file emergency motions for a Filing Master Calendar Hearing or take the unusual step of "lodging" an application or sending a completed application to USCIS. In addition, these extraordinary approaches should be considered a legal impossibility for unrepresented Applicants given the underlying procedural and subject-matter complexities. Overall, when the EOIR sets a Filing Master Calendar Hearing after the OYFD, it should expect a "late" filing. Therefore, Asylum Applicants should be able to file their I-589, under the guidance of the Immigration Court, at the time that the Court directs and provides, and the Immigration Judges should excuse such "late" filing due to the current extraordinary circumstances.

b. Only Filing Master Calendar Hearings should be considered to have been an opportunity to file the I-589.

Scheduling or Initial Master Calendar Hearings are the Applicant's first appearance before an Immigration Judge in removal proceedings and are used to address administrative issues, including scheduling, pleading to the immigration charges and other matters that may arise ("**Initial Master Calendar Hearings**"). In numerous instances, Initial Master Calendar Hearings are also the first time that many Applicants hear their rights from the Immigration Judge, and request a continuance to seek counsel or meet their attorney. Indeed, Immigration Judges frequently and appropriately encourage Applicants who appear unrepresented at their Initial Master Calendar Hearing to seek counsel, rather than engaging them about the substance of their cases and their plans for relief at such initial appearance. For these reasons, Initial Master Calendar Hearings are typically not an appropriate opportunity to file the I-589.

Accordingly, when applying the "extraordinary circumstances" exception, Immigration Judges should consider only whether the Filing Master Calendar Hearing has been held, not whether the Asylum Applicant has had any scheduled hearings.

c. Continuances Executing the Right to Be Represented by Counsel Should Take Priority over the One-Year Filing Deadline

The United States created one of the first legal systems to provide the right to legal representation. The American jurisprudence model has been replicated all around the world, using such rights as cornerstones to develop fair and equitable justice systems. These principles are clearly reflected in the EOIR's policies, reinforced recently in the context of unaccompanied minors ("**UCs**") and adults with children ("**AWCs**"), to allow at least two (2) Master Calendar

Hearing continuances for an Applicant to seek counsel.[13] The current backlogs plaguing the Immigration Courts might create an incentive to press Asylum Applicants to file their application without being afforded the opportunity to secure counsel. However, such administrative approach would be short-sighted and ill-advised, directly jeopardizing one of the most valuable legal principles in the United States. It would also simply create additional complications and time waste down the road, as complex application forms, involving technical legal requirements, would need to be corrected and supplemented after Applicants retained counsel. These policies must not be altered merely to ensure that the I-589 is filed within one (1) year of entry, when the EOIR docketing has delayed such hearings too close or after the OYFD. Rather, such continuances should be granted without consideration of the OYFD, with instructions for Immigration Judges to apply the exceptional circumstances exception when the I-589 is filed at the first Filing Master Calendar Hearing scheduled after the OYFD.

Indeed, neither the Applicant nor the Immigration Courts are well-served by the filing of *pro se* asylum applications if counsel is later retained. Denying a continuance solely in order to meet the OYFD may in fact prove to be a disincentive for the Applicant to later seek counsel.

Accordingly, we ask that the EOIR issue guidance to Immigration Judges through an Operating Policies and Procedures Memorandum that establishes that Asylum Applicants are to be granted an "extraordinary circumstances" exception to the OYFD when they file their I-589 at the first available Filing Master Calendar Hearing even when that hearing occurs more than one (1) year after entry to the United States. For these purposes, hearings where a continuance is granted to seek counsel shall not be considered an "opportunity to file."

The EOIR should also instruct Immigration Judges that the policy to grant continuances for an Asylum Applicant to find and retain counsel should not be discarded in order to schedule a Filing Master Calendar Hearing before the OYFD. Rather, when such continuances are granted and the next Filing Master Calendar Hearing occurs more than one (1) year after entry, the "extraordinary circumstances" exception should be utilized to excuse such late filing.

[13] See "Docketing Practices Related to Unaccompanied Children's Cases in Light of New Priorities," Chief Judge O'Leary, Sept. 10, 2014.

We look forward to discussing these issues with you at your earliest convenience. You can contact me at any time via email (sschulman@akingump.com), or by phone (202-887-4071), or Eleanor Acer of Human Rights First (eacer@humanrightsfirst.org; 212-845-5227).

Sincerely,

Steven H. Schulman
Partner

cc: Eleanor Acer, Human Rights First

Ms. LOFGREN. Doesn't it seem to me, and doesn't it seem to you, that if the delay is not caused by the applicant but by the administrative delay in the courts, that that shouldn't be an adverse finding for the applicant themselves?

Mr. OSUNA. Congresswoman, thank you for your question. I am aware of this issue. I can tell you that we are looking at it, and we have heard from the stakeholders on this issue.

I would note that the law does provide some exceptions to the 1-year deadline, as you know——

Ms. LOFGREN. Right.

Mr. OSUNA [continuing]. That judges consider on a case-by-case basis every day. And what we do see is respondents filing motions to advance their cases to earlier court hearing times in order to address this issue. So that does happen. But to your point, I understand the issue. We're working on it, and we have heard from the stakeholders on the concerns.

Ms. LOFGREN. Two other questions. I think when we want speedy resolution of matters, but you can go so fast that you end up causing delays. And I'll give you an example of a young person who fled gang violence in Honduras. He got death threats. He fled. He has an asylum case to be heard. He was released from detention, placed with a family. But it moved so fast that the notice was sent to where he had been. He never got it. And so by the time he lined up with a pro bono attorney, he had been ordered removed in absentia, but he never even knew about the hearing. So now there's a motion to reopen the hearing. It causes more work for everyone.

And I am wondering if you've given some thought to how we might ensure that there's actually notice received by people when we've accelerated these cases, not only in terms of fairness for the individuals involved, but also for the system because you've got to spend a lot of time and effort on the motions to reopen as well that could be resolved.

Mr. OSUNA. Thank you, Congresswoman. In the prior discussion with Representative Jackson Lee, I did mention that we have decided to make a change as to the initial timeline. As you recall last year, we committed to holding the first hearing for an unaccompanied child from 10 to 21 days after the case is filed.

We have been pondering changing that for the exact reason that you mention, that it actually helps court efficiency to actually provide more time at the beginning. So we have decided to change that, and we will be instructing our courts to hold that first hearing from 30 to 90 days after the case is filed rather than the 21 days. We do strongly think that that will help with a lot of these kids getting counsel and thereby helping the efficiency of the court.

Ms. LOFGREN. Final question. EOIR lags behind other court systems in terms of filing documents electronically. Now, all the Federal courts and all the courts in California, you can file your documents electronically. It's a convenience not only to the bar, but it's a convenience for the court. You still have to get paper filing. I assume that's a resource issue. But what steps can be taken to bring EOIR up to modern standards in terms of electronic filing?

Mr. OSUNA. Electronic filing is one of the things that I feel strongly that we need to move towards. And we actually have

taken some steps on that. We were able to secure some internal funding, I believe it was about 18 months ago, to begin the first step of this, which was electronic registering of attorneys practicing before our immigration courts.

That would be one of the foundations for a system that we hope will eventually allow us to file and exchange documents electronically.

Ms. LOFGREN. Do you have a timeline for that?

Mr. OSUNA. I don't have a timeline, but we do have a plan. It's an aggressive plan. I think 2016 we're going to see some progress on that. And we hope that we eventually will get to the point where people will be able to file electronically.

Ms. LOFGREN. Thank you.

Thank you, Mr. Chairman.

Mr. GOWDY. The gentlelady yields back.

The Chair will now recognize himself.

Director, I wanted to ask you about the inspector general for the Department of Justice, but my friend from Texas' line of questioning prompted me to want to go a little further there. I'm going way back in time to a period where I wasn't all that knowledgeable even back then.

So I'm less knowledgeable now. But if memory serves, the government and the defendant can consent to a bond. It doesn't necessarily have to be adjudicated by a judge, does it, or is immigration different?

Mr. OSUNA. You are talking about a bond, sir?

Mr. GOWDY. Bond.

Mr. OSUNA. The bond process, what I think happens is that ICE actually makes the first determination on bond when they are detaining an individual. And in some instances, that individual can then request a redetermination by an immigration judge.

Mr. GOWDY. Well, you had a line of questions with the former U.S. Attorney in Texas about the 33 who were charged with homicide, I assume—well, homicide is not a charge in South Carolina—murder, some form of murder. I'm just wondering whether or not the government consented to bond in any of those cases, or whether or not you've had a chance to look at that?

Mr. OSUNA. I believe in the majority of cases the judge made the determination on bond and the Department of Homeland Security did not appeal that determination.

Mr. GOWDY. All right. In the area of appeal, I think you mentioned the standard for continuance is good cause.

Mr. OSUNA. Correct.

Mr. GOWDY. Can you cite me to any opinions of record where a judge was reversed for granting a continuance?

Mr. OSUNA. I can't cite you any particular cases, but I do know from my experience when I was on the Board of Immigration Appeals many years ago, that judges would get reversed for granting too many continuances when the DHS appealed that decision.

Mr. GOWDY. Well, good cause is probably hard to define, despite the efforts of courts to do so. What would be a reason not to grant a continuance?

Mr. OSUNA. It depends on the individual case. But, for example, if a judge had granted a couple of continuances already for the in-

dividual to get counsel and the individual has made no reasonable efforts to secure counsel, a judge can very well, and often do, say, you know, I've given you a couple of chances here; it's time to move on. And judges make those decisions every day. That's a fairly frequent occurrence.

Mr. GOWDY. Speaking of frequency, is the first continuance fairly much for free? I mean, do you get the first continuance just simply by asking for it?

Mr. OSUNA. Again, it depends on the context. In detained cases, it's not that way, and nondetained cases it can be in some courts, depending on what the situation is.

Mr. GOWDY. All right. You mentioned the factors that the court considers in either detaining somebody or setting bond, flight risk and a danger to the community, which cause me to want to ask about folks who abscond. What percentage of folks fail to appear for their court date after a bond is set?

Mr. OSUNA. I don't have that number for you, Mr. Chairman. Some do fail to appear. The size of the bond is designed to make sure that they appear, but, you know, some sometimes don't.

Mr. GOWDY. I'm with you, Director. I used to live it. But from where I sit, the number of folks who fail to appear would be a pretty serious issue. I'm assuming you don't try them in their absence?

Mr. OSUNA. Well, actually, they do. There is a process for if somebody has received——

Mr. GOWDY. You have to prove they got notice.

Mr. OSUNA. They got notice of the hearing.

Mr. GOWDY. Okay.

Mr. OSUNA. The law does provide, and our judges every day hold hearings in absentia. What happens at that hearing is the Department of Homeland Security comes forward, presents evidence of the individual's removability. The judge considers whether the person got adequate notice. If the answer is yes, then the judge will order an in absentia order, and that order can be enforced by DHS.

Mr. GOWDY. All right. If somebody fails to appear, what is the mechanism by which you compel their appearance? Do judges issue bench warrants?

Mr. OSUNA. No, our judges don't have that authority. We don't have anything like the marshals service or anything like that. The judge will consider if the person got adequate notice that they will issue the in absentia order if appropriate, and then DHS has the responsibility of picking them up and actually removing them.

Mr. GOWDY. Of your backlog, what percentage would you say are folks who absconded or failed to appear after a bond was set and a trial date was set?

Mr. OSUNA. If they have received a final removal order in absentia or otherwise, they are actually not included in the 450,000 caseload. Those are out of the system. There is a final removal order. Unless they file a motion to reopen later to come back in, and the judge grants that, in absentia orders or any removal orders are not included in that number.

Mr. GOWDY. All right. Given your background and your expertise, what percentage of folks who abscond are tried in their absence?

Mr. OSUNA. Sorry, sir. You're asking how many folks that don't——

Mr. GOWDY. Failure to appear are tried in their absence.

Mr. OSUNA. Actually get an absentia order?

Mr. GOWDY. Yes.

Mr. OSUNA. I don't have a number for you.

Mr. GOWDY. What other tools do you have other than trying someone in their absence? If there's a failure to honor a court date, what other tools do you have? You don't have a bench warrant. There's no presumption that is lodged against that—there's no evidentiary presumption, I would assume. Can the judge consider the evidence of flight as some evidence of guilt or consciousness of wrongdoing if they don't show up?

Mr. OSUNA. No. What the judge will consider is whether the person actually is removable from the country under the law. And that's really the end of the inquiry. Once that is done, the removal order is issued and then the person can be removed—can be picked up at any time by ICE and deported.

Mr. GOWDY. Let me ask you one more question, and I'm going to let the Congresswoman follow up.

I assume DOJ inspector general is still Michael Horowitz?

Mr. OSUNA. It is.

Mr. GOWDY. I'll tell you, from where we sit, he is a pretty good balls-and-strikes caller. He's a fair guy. All my dealings with him, he's been kind of straight down the middle. So when I see that he has concluded that even as the number of judges increases, the disposition number of those judges decreases, that catches my attention. It makes me think maybe something else is going on, and it's not just more judges. I don't want to minimize—I mean, if that's the explanation, then that's the explanation. But when Mr. Horowitz says that may not be the full explanation, what else could be going on?

Mr. OSUNA. Mr. Chairman, I do think that the single biggest reason for the caseload is the shortage of judges over the last few years. I don't think that you can lose as many judges as we did at a time when enforcement was going up and not have that be a significant impact on the caseload and on wait times.

We have taken a look at this issue repeatedly. We've kicked the tires. We've looked under the hood. We have tried to see what else is going on. One thing that we do hear quite a bit from all of our judges and from ICE trial attorneys as well is that the complexity of the law has gotten—the law has gotten much more complex over the last 10 years.

Cases that used to be fairly simple are now complicated. Let me give you an example. It used to be fairly straightforward to determine whether somebody is an aggravated felony under certain provisions. Because of Supreme Court precedent and other decisions, in many instances, the drug trafficking area is one, for example, it is actually much more complicated these days than it was 10 years ago to determine whether somebody is deportable as an aggravated felony for certain offenses. So that is one area that we have concluded—you know, a judge may have spent, you know, an hour on a case 10 years ago and that same type of case now may take 4 hours because the law has gotten more complicated.

We have taken a look at other issues as well, but we're convinced that hiring the requisite number of judges is actually going to

make a difference. Let me actually give you an example from within the agency, and that's the Board of Immigration Appeals. The BIA is doing very good decisions these days, very legally excellent decisions, providing guidance to the courts and their caseload is stable. In fact, it has actually decreased slightly over the last few years. The lesson we took from that is that the board has actually had, unlike the immigration courts, a balance between the incoming caseload and the adjudicators necessary to adjudicate that caseload. That's a lesson we've drawn, and that's why hiring is such an important priority for us, for the immigration courts, because we are convinced that that is how we will address this caseload.

Mr. GOWDY. I recognize the gentlelady from California.

Ms. LOFGREN. Thank you, Mr. Chairman.

Just a couple of follow-up questions if you can get back to us if you don't know now. I would like to know what failure to appear rate is on various categories. Looking at some of the data, you know, it's very low if individuals are represented by counsel. There are different outcomes if someone isn't. And so if you are able to make those distinctions, I think that would be helpful.

I would like to know among the 30 who committed homicide or were charged with homicide, how many of them was the Diaz case releases or not, and if they were the Diaz case releases, how many of them were Cubans, and with the change in status between the United States and Cuba, there's apt to be—I mean, the last time we looked at it, the vast majority of the Diaz cases were Cubans. And if they are removable to Cuba because of our new relationship with Cuba, we're going to have a very different outlook in terms of the criminal issues and the Diaz.

And then I just want to clarify for the Chairman and others in terms of notice, because there's no requirement that the person receive actual notice. I mean, what you're looking at in the courts is was something mailed to the person. I mean, that person could have moved. He might never have lived there. We had a case a number of years ago of a legal permanent resident who failed to file the removal condition on her marriage who was active duty Navy, in a uniform, was mailed a notice, never got it, because she was deployed to Kuwait and was found deportable in absentia because it was something she never heard of. So I think it's important to note that it's not like the criminal courts or the civil courts, that you're not getting, you know, a server handing you the notice. It's just in the mail. You may or may not even know what's going on.

Thank you, Mr. Chairman.

Mr. GOWDY. I thank the gentlelady.

I would recognize the gentleman from Texas for any concluding remarks he may or may not have. And he is indicating that he is done.

So this concludes today's hearing. I want to thank you for attending. I want to tell you, again, that the fact that folks may have been in and out or not able to come is no reflection of the seriousness with which they take this hearing. Fly-out days are always troublesome, but that's on us and not on you. You were here like you were supposed to be.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witness or additional written materials for the record. With that, we thank you for your testimony this morning and your willingness to answer our questions, and we will be adjourned.

Mr. OSUNA. Thank you, Mr. Chairman.

[Whereupon, at 10:05 a.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Questions for the Record submitted to Juan P. Osuna, Director, Executive Office for Immigration Review, United States Department of Justice*

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6216

(202) 225-3951

December 17, 2015

Mr. Juan P. Osuna
Director, Executive Office for Immigration Review
United States Department of Justice
5107 Leesburg Pike
Falls Church, Virginia 22041

Dear Mr. Osuna,

The Committee on the Judiciary's Subcommittee on Immigration and Border Security held a hearing on oversight of the Executive Office for Immigration Review on December 3, 2015 in room 2141 of the Rayburn House Office Building. Thank you for your testimony.

Questions for the record have been submitted to the Committee within five legislative days of the hearing. The questions addressed to you are attached. We will appreciate a full and complete response as they will be included in the official hearing record.

Please submit your written answers by Thursday, February 11, 2016 to Kelsey Williams at kelsey.williams@mail.house.gov or 2138 Rayburn House Office Building, Washington, DC, 20515. If you have any further questions or concerns, please contact or at 202-225-3951.

Thank you again for your participation in the hearing.

Sincerely,

Bob Goodlatte
Chairman

Enclosure

*__Note:__ The Committee did not receive a response to these questions at the time this hearing record was finalized and submitted for printing on March 21, 2016.

Questions for the record from Chairman Goodlatte (VA-06):

1. Are immigration judges instructed by anyone within EOIR by any mode of communication, including oral, on how many continuances they should grant in cases involving unaccompanied minors?
2. Are immigration judges instructed by anyone within EOIR by any mode of communication, including oral, to not enter in absentia removal orders against minors when the minors fail to appear for their hearings and the immigration judge is satisfied that service of the charging document and notice of the hearing on the minor was proper?
3. Are immigration judges instructed by anyone within EOIR by any mode of communication, including oral, to grant one or more continuances in the cases of minors, even if the judge is satisfied that the charging document and notice of the hearing were properly served on the minor, the minor's parent, or the minor's legal guardian and the issuance of a removal order in absentia is proper?
4. According to an October 2012 report from the DOJ Office of Inspector General (OIG) (I-2013-001), frequent and lengthy continuances granted by immigration judges were found to be the primary factor contributing to excessive case processing times. In the 953 cases reviewed by the OIG, there were 4,091 continuances amounting to 375,047 days in the aggregate. Each case had an average of four continuances and the average amount of time granted for each continuance was 92 days, resulting in an average of 368 days per case. Please provide the following information for FY 2014 and FY 2015:
    a. How many continuances were granted?
    b. How many continuances were granted in cases involving Unaccompanied Alien Children (UAC)?
    c. How many continuances were granted in cases involving Adults with Children (AWC)?
    d. How long was the average continuance for unrepresented UACs in removal proceedings?
    e. How long was the average continuance for represented UACs in removal proceedings?
    f. What was the average number of continuances in cases involving UACs?
    g. What was the average number of continuances in cases not involving UACs?
5. Please provide the following information for FY 2014 and FY 2015:
    a. The number of alien removal/deportation/exclusion cases administratively closed by the Board of Immigration Appeals *sua sponte*.
    b. The number of alien removal/deportation/exclusion cases terminated by the Board of Immigration Appeals *sua sponte*.
    c. The number of alien removal/deportation/exclusion cases reopened by the Board of Immigration Appeals *sua sponte*.
    d. The number of alien removal/deportation/exclusion cases administratively closed by an immigration judge *sua sponte*.

e. The number of alien removal/deportation/exclusion cases terminated by an immigration judge *sua sponte*.
f. The number of alien removal/deportation/exclusion cases reopened by an immigration judge *sua sponte*.

6. Please provide the following information for FY 2014 and FY 2015:
   a. The number of in absentia orders of removal issued by immigration judges.
   b. The number of in absentia orders of removal issued by immigration judges in cases involving UACs.
   c. The number of in absentia orders of removal issued by immigration judges in cases involving AWCs.
7. On or about April 12, 2014, EOIR experienced a computer system outage. Two days later, on April 14, 2014, EOIR announced that the agency had experienced a computer system outage caused by a "hardware failure," affecting all immigration courts across the country and the Board. Over one month later, on May 19, 2014, EOIR issued the following press release:

   "At midnight on April 12, 2014, the Executive Office for Immigration Review experienced a catastrophic hardware failure that rendered inaccessible many of its applications."

   According to media reports, five separate computer servers failed.

   a. Please explain in detail why the EOIR system crashed.
   b. When was Director Osuna or anyone else in EOIR leadership aware of the computer system outage?
   c. Was anyone in EOIR aware prior to April 12, 2014, that the EOIR computer system was susceptible to an imminent outage? If so, who?
   d. What operating system (OS) was EOIR utilizing on its computer system on April 12, 2014?
      i. What OS was being utilized on the EOIR system servers on that date?
      ii. What OS was being utilized in the immigration courts on that date?
   e. What operating system (OS) is EOIR utilizing on its computer system currently?
      i. What OS is being utilized on the EOIR system servers currently?
         1. When was that installed?
      ii. What OS was being utilized in the immigration courts currently?
         1. When was that installed?
   f. How many cases in immigration courts were affected by the computer system outage?
   g. How many cases before the Board of Immigration Appeals were affected by the computer system outage?

h. Did the computer system outage increase the number of backlogged cases before the immigration courts or the Board of Immigration Appeals? If so, please explain for each how many cases were added to the backlog.

i. Has the computer system outage on April 12, 2014, been corrected? Please explain in detail how the problem was corrected.

j. What was the cost to EOIR to bring back computer system functionality and to correct the problem of the computer system outage on April 12, 2014? Please explain in detail the costs for consulting, services, parts, etc.

k. Has EOIR experienced another computer system outage since April 12, 2014, which involved the outage of one or more EOIR servers and was not related to routine maintenance? If so, please state the date of the outage and the circumstances related to the outage.

8. Does EOIR count administrative closures as case "completions" for reporting purposes or otherwise?

9. Are immigration judges evaluated, to any degree, on the number of cases they complete?

10. An October 2012 report from the DOJ Office of Inspector General (OIG) (I-2013-001) "found that immigration court performance reports are incomplete and overstate the actual accomplishments of the courts. These flaws in EOIR's performance reporting preclude the Department from accurately assessing the court's progress in processing immigration cases or identifying needed improvements." The OIG made nine recommendations for improvement. In a letter from Director Osuna to the DOJ Office of Inspector General, dated September 14, 2012, EOIR concurred or partially concurred with all nine recommendations. Please explain the actions that EOIR took in response to each of the nine recommendations.

11. That same OIG report found that EOIR also abandoned case completion goals for non-detained cases (except asylum) beginning in FY 2010. Does EOIR have case completion goals for all non-detained cases? If not, please explain why.

12. The same OIG report recommended that EOIR "improve its collecting, tracking, and reporting of BIA appeal statistics to accurately reflect actual appeal processing times." In a letter from Director Osuna to the DOJ Office of Inspector General, dated September 14, 2012, EOIR concurred with that recommendation and stated that EOIR is willing to report the total appeal processing time by the end of FY 2013.

    a. Did EOIR report the BIA's total appeal processing time at the end of FY 2013, FY 2014, and FY 2015? If so, where is this information reported?

    b. If not reported, please provide the information for FY 2013, FY 2014, and FY 2015.

13. Are immigration judges or Board members authorized or permitted to administratively close a case or reopen a case solely to allow an alien to request prosecutorial discretion from DHS, where there is no indication that DHS has or will agree to prosecutorial discretion?

14. Has anyone in EOIR with first-line supervisory authority over an immigration judge or higher, instructed an immigration judge that he/she should not report conduct that the

immigration judge reasonably believes is a violation of federal law, including fraud, to the EOIR Fraud and Abuse Prevention Program's antifraud officer or other designated person?

15. Are immigration judges free to report conduct by the respondent or other person that an immigration judge reasonably believes is a violation of federal law to the EOIR Fraud and Abuse Prevention Program's antifraud officer or other designated person, when the immigration judge becomes aware of such conduct during the course of proceedings?
16. Are there any written or unwritten policies or procedures that relate to immigration judges and their ability to report conduct that they reasonably believe is a violation of federal law by the respondent or other person, of which the immigration judge becomes aware during the course of proceedings? If so, please provide them.
17. If an alien testified that he/she unlawfully obtained a Social Security card and/or number that belonged to another person and used the name and Social Security number when completing the alien's federal tax returns, submitted to the Internal Revenue Service, would it be appropriate for the immigration judge to report that information to the antifraud officer or other official for investigation or prosecution? If so, to whom should the immigration report it? If not, why not?
18. If an alien admits under oath that he/she entered the United States without inspection and concedes that he/she is removable from the United States, and further testifies that he/she unlawfully purchased a firearm from another individual one month prior to the hearing, should the immigration judge report that conduct? If so, to whom should the immigration judge report it? If not, why not?
19. Are the decisions of certain immigration judges subjected to a greater degree of review or scrutiny by anyone within EOIR, including anyone within the Board of Immigration Appeals?
20. Are certain decisions by immigration judges, such as those involving domestic abuse or asylum claims involving certain particular social groups, reviewed by a particular EOIR employee that is not within the normal review process by a Board member or a Board staff attorney? If so, please explain.
21. Has anyone with first-line supervisory authority over an immigration judge or higher reassigned a juvenile docket from one immigration judge to another because the first immigration judge entered removal orders in absentia against minors or failed to grant one or more continuances in cases involving minors? If so, please explain.
22. If a minor alien is classified as an unaccompanied alien child (UAC) by DHS and then the minor is released by DHS or other federal agency to the custody of a parent and subsequently appears before an immigration judge in removal proceedings with his/her parent, may an immigration judge independently determine whether the minor is an unaccompanied alien child, as that term is defined by statute, at the time the minor applies for relief? If not, please explain why.
23. A report issued by the Government Accountability Office (GAO) titled, "Asylum: Additional Actions Needed to Assess and Address Fraud Risks," issued on December 2, 2015 (GAO-16-50), indicates that immigration judges granted 3,709 asylum applications for aliens who were connected with attorneys and document preparers who were investigated and convicted in

"Operation Fiction Writer," a large-scale investigation into fraudulent asylum claims in New York.

a. How many of the 3,709 cases has EOIR reviewed as of December 3, 2015?

b. How many of those cases have been reopened as of December 3, 2015?

c. What action has EOIR taken as of December 3, 2015, to determine if any of the 3,709 cases granted involved fraud? Please explain in detail.

24. According to the same GAO report, EOIR's Fraud and Abuse Prevention Program consisted of: one full-time fraud officer, a part-time attorney, and several student interns.

a. On December 2, 2015, what was the employee composition of the EOIR Fraud and Abuse Prevention Program?

b. Has the employee composition of the EOIR Fraud and Abuse Prevention Program changed since its inception? If so, how has it changed and when did it change?

25. According to the same GAO report, in FY 2013, there were 66 complaints of fraud submitted to EOIR's Fraud and Abuse Prevention Program. From those complaints, the Fraud and Abuse Prevention Program opened 16 fraud case files, of which only 3 were asylum-related fraud case files.

a. What actions were taken by EOIR regarding those 3 case files involving asylum fraud?

b. Have those 3 asylum fraud case file investigations been concluded?

c. What were the results of the investigations in those 3 case files involving asylum fraud?

d. In how many of those 3 cases was fraud confirmed?

e. In how many of those 3 cases involving asylum fraud was asylum granted?

26. According to the same GAO report, in FY 2014, there were 71 complaints of fraud submitted to EOIR's Fraud and Abuse Prevention Program. From those complaints, the Fraud and Abuse Prevention Program opened 25 fraud case files, of which only 7 were asylum-related fraud case files.

a. What actions were taken by EOIR regarding those 7 case files involving asylum fraud?

b. Have those 7 asylum fraud case file investigations been concluded?

c. What were the results of the investigations in those 7 case files involving asylum fraud?

d. In how many of those 7 cases was fraud confirmed?

27. How many cases involving identified asylum fraud has the Fraud and Abuse Prevention Program referred for criminal prosecution since its inception?

a. Of those referrals, how many have been prosecuted by any prosecuting agency?

28. According to a Georgetown Immigration Law Journal article, *Inside the Judge' Chambers: Narrative Responses From the National Association of Immigration Judges Stress and Burnout Survey*, 23 Geo. Immigr. L.J. 57 (2008-2009), published on June 26, 2009, a group

of research psychiatrists from the University of California San Francisco sent survey questions to 212 immigration judges, seeking responses on stress levels and burnout experienced by immigration judges. A total of 96 judges responded. Of those, 59 provided narrative responses to survey questions. The psychiatrists concluded that immigration judges "suffer from significant symptoms of secondary traumatic stress and more burnout than has been reported by groups like prison wardens or physicians in busy hospitals."

a. Are you aware of this report?

b. Do you agree with its conclusions? If not, please explain why.

c. Have you taken any action since the issuance of that article to improve the work conditions of immigration judges? Please explain.

d. Have you taken any action since the issuance of that article to improve the employee satisfaction level of immigration judges? Please explain.

Questions for the record from Representative Steve King (IA-04):

Case backlog:

1. How many cases were pending at the end of each fiscal year since FY 2000?
2. How many additional cases have accrued in each fiscal year since FY 2000?

Asylum cases:

1. As a percentage of total pending cases at the end of each fiscal year since FY 2000, how many cases were asylum cases?
2. What is the status of every asylum claim currently pending?
3. How many applicants for asylum came across the southern border in each fiscal year since FY 2000?
4. As a percentage of all asylum applicants, what percentage came coming across the southern border in each fiscal year since FY 2000?
5. As a percentage of those granted asylum, what percentage came across the southern border in each fiscal year since FY 2000?
6. As a percentage of all asylum applicants, how many were minors in each fiscal year since FY 2000?
7. As a percentage of those granted asylum, how many were minors in each fiscal year since FY 2000?
8. Of those seeking asylum who came across the southern border, please break down by country of origin – the raw number and by percentage per country – in each fiscal year since FY 2000.
9. Of those granted asylum who came across the southern border, please break down by country of origin – the raw number and by percentage per country – in each fiscal year since FY 2000.

Effect of continuances:

1. How many continuances were granted in each fiscal year since FY 2000?
2. How many total days of continuances have been granted since FY 2000?
3. What is the average length of a continuance in each fiscal year since FY 2000?

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