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JUDICIARY COMMITTEE
IMMIGRATION AND BORDER SECURITY SUBCOMMITTEE

OVERSIGHT HEARING
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

2:00 pm at 2141 Rayburn

Wednesday, November 1, 2017

- Good afternoon Chairman Labrador and Ranking Member Lofgren, thank you for convening this important oversight hearing of the Executive Office for Immigration Review.

- Let me welcome and thank out **witness** for his testimony:

    - Andrew McHenry, Acting Director, Executive Office for Immigration Review, United Stated Department of Justice

- This hearing is to address concerns with our nation's immigration court system and the administration of various forms of immigration relief and discretionary decisions made by our nation's Immigration Judges.

- Earlier this month, the media reported that EOIR was considering imposing time and numerical quotas on immigration judges.

- The advocacy community, the Judge's union, and the pro bono community have all raised concerns that the quota system would impair due process and legal representation.

- My colleagues and I believe that immigrants have due process rights and deserve the opportunity to present their case fully before an impartial Immigration Judge to determine eligibility for relief under our immigration law.

- We believe this process should be thorough, swift, and most importantly - fair.

- Some Members across the aisle may believe that immigrants do NOT deserve due process and want to streamline immigration court processes to deport the most number of people in the shortest amount of time.

- Republicans have introduced numerous legislative proposals that would remove discretion from Immigration Judges, and institute a streamlined deportation process that does not take into consideration the individual rights of the immigrant.

- On April 6, 2017, I reintroduced H.R. 1985, the "Justice for Children Now Act" of 2017.

- This legislation was a response to the EOIR backlog crisis occasioned by the scarcity of immigration judges and exacerbated by the influx of unaccompanied children (UACs) in 2013 and 2014.

- H.R. 1985 authorizes the Department of Justice to appoint 70 additional immigration judges to reduce the substantial delays in removal proceedings and the crushing caseloads carried by current immigration judges; for some judges that caseload exceeds 3,000 cases.

- In 2014, the U.S. Customs and Border Protection Agency reported that over 52,000 children were caught entering the United States, an unprecedented number that has caught our country off guard.

- By law, these children were sent to various offices of the Department of Health and Human Services after their arrest and are given due process.

- This process means that each child's case is reviewed in court before a decision can be made about their immigration status.

- However, funding for the immigration courts that process the removal hearings has not kept pace with the increase in cases.

- The result is a current average delay of 578 days to hear over 366,000 removal hearings.

- The situation is untenable for all parties involved: law enforcement, taxpayers, and individuals petitioning for relief.

- To respond to the unexpected spike in removal proceedings involving unaccompanied children (UACs), additional immigration judges are needed in the Executive Office of Immigration Review (EOIR).

- This will help ensure a just trial for the children and maintain the integrity of the U.S. immigration system.

- H.R. 1985 would help reduce the backlog in removal proceedings.

- The judges could be appointed immediately to conduct hearings in a timely manner.

Executive Office of Immigration Review (EOIR) Background Information

- EOIR, an agency within DOJ, houses the immigration courts and the Board of Immigration Appeals (BIA).

- The Director of EOIR reports directly to the Deputy Attorney General in DOJ.

- EOIR is responsible for interpreting and administering federal immigration laws through administrative removal hearings and appellate review.

- Within EOIR, Immigration Judges adjudicate cases of noncitizens placed in removal proceedings in 58 immigration courts nationwide, and the BIA conducts appellate review of immigration judges' decisions.

- Generally, for a noncitizen to be removed from the United States, s/he must first appear in removal proceedings before an IMMIGRATION JUDGES, a civil service employee hired by the Attorney General (AG). In such proceedings, the Immigration Judge determines whether the noncitizen is removable from the United States.

- When a noncitizen is placed in removal proceedings, an Immigration Judge must determine whether the alien in removal proceedings is
    - 1) a noncitizen;
    - 2) inadmissible to or deportable from the U.S. for any of the reasons specified in the Immigration and Nationality Act (INA); and
    - 3) eligible for relief from deportation.
- If the Immigration Judge finds that the respondent is not a U.S. citizen, inadmissible or deportable, and not eligible for relief from deportation, then the respondent is ordered removed from the United States.
- In FY 2014, immigration courts received 306,045 matters and completed 248,078 matters.
- Either party may appeal the IMMIGRATION JUDGES's decision to the BIA, whose members are also attorneys appointed by the Attorney General.
- Depending on the case, one or three BIA members review the IMMIGRATION JUDGES's decision.
- The decision of the BIA can then be appealed to the United States Courts of Appeals (federal circuit courts) in certain statutorily outlined scenarios.
- In FY 2014, the BIA received 29,723 cases and completed 30,822 cases.
- The media is reporting that the Department of Justice (DOJ) plans to use numeric and time-based case completion quotas to evaluate immigration judge performance.
- This process means that an immigration judge could be dismissed or disciplined for failure to complete a certain number of immigration cases in a particular amount of time.
- The National Association of Immigration Judges (NAIJ) explains that this would be "a huge, huge, huge encroachment on judicial independence....It's trying to turn immigration judges into assembly-line workers."
- Last week, the Association of Pro Bono Counsel (APBCo), a membership organization of law firm pro bono practice leaders wrote to Members of Congress to express concern over the proposed EOIR policy.

- "There is neither a sufficient number of immigration judges nor enough law clerks to support them.

- Imposing numerical quotas and case- completion deadlines on an already overloaded system, with no additional resources, is merely an excuse in whip-cracking that values speed, or rather the prospect of speed, over fairness and due process."

- The Association of Pro Bono Counsel expressed concern that the change in policy would make it harder to provide pro bono representation in immigration courts because a time based system would discourage the granting of continuances to find legal representation and incentivize immigration judges to shorten hearings thus limiting the time for evidentiary presentation.

- This availability of pro bono counsel is critical because there is no right to counsel in removal proceedings and representation rates are incredibly low (fewer than 20% of immigrants in detention are able to find counsel).

- Immigration judges need to be able to use their discretion to grant continuances so immigrants can find representation.

- The very real concerns among immigrants and their attorneys that cases will be rushed through the system at the expense of due process are heightened by an Operating Policies and Procedures Memorandum issued by EOIR on July 31, 2017 on the "efficient handling of motions for continuance in order to ensure that adjudicatory inefficiencies do not exacerbate the current backlog of pending cases nor contribute to the denial of justice for respondents and the public..."

- I am deeply concerned that the "numeric performance quota" is emphasizing removals rather than fair adjudications.

- In August, the Department of Justice issued a press statement touting statistics released by EOIR as a demonstration of the "return to rule of law" under the Trump administration.

    - The data included a showing of a 28% increase in total orders of removal over a six month period in 2017 as compared to the same period in 2016.

- The press statement also touted as a victory the finding that over 90% of the cases decided by immigration judges engaged in "details" to border facilities resulted in deportation or removal.

- During the time period referenced in this press statement, immigrants and immigration service providers have concerns regarding an erosion of due process in the immigration court system.

- According to Human Rights First:

  - "Some attorneys report that immigration judges are increasingly rushing cases.

  - For example, a pro bono attorney practicing in Laredo, Texas said that detained asylum seekers were sometimes given only weeks to prepare their case—generally, far too little time to gather evidence, prepare witnesses, and prepare a full asylum case for trial."

- Moreover, as Immigration and Customs Enforcement (ICE) increasingly denies parole on a systematic basis for asylum seekers, advocates report that the physical and emotional stress of prolonged detention is causing many bona fide asylum seekers to abandon their claims and agree to deportation.
  While this may speed up the court system, it is not for a just result.

- There are many reasons for the backlog, but immigration judge speed and efficiency is not one of them.

Chronic Backlogs in Immigration Courts

- The integrity of our immigration system depends on functional immigration courts able to efficiently process and adjudicate cases, yet a chronic and growing backlog of unadjudicated cases continues to plague EOIR.

- Yet, despite widespread recognition of the problem, EOIR is currently managing the largest caseload the system has ever seen.

- As of August 2017, the backlog in the U.S. immigration courts has reached an all-time high, with 632,261 cases pending.

- In some of the nation's largest immigration courts, people wait an average of three to five years for their next hearing.

- As a result of the long wait times, many immigrants and their families face significant hardships ranging from physical danger to financial difficulties.

- In some cases, refugees' children and spouses—who cannot be brought to safety until their family member receives asylum—continue to face persecution in their home countries.

- For these reasons, I introduced H.R. 1985, the "Justice for Children Now Act" of 2017, aiming to efficiently and rightfully remediate the asylum backlog problem.

- The Trump Administration's proposal to speed up immigration court hearing is misguided and does not address the root causes of the immigration court backlog.

- There are multiple root causes of the immigration court case backlog:
    - Insufficient and imbalanced resources for EOIR when compared to Immigration and Customs Enforcement and Customs and Border Patrol;
    - Insufficient staffing and hiring of Immigration Judges, judicial law clerks, and court personnel;
    - The prioritization of cases from the southern border ("The Rocket Docket") and movement of Judges to the Southern border; and
    - The lack of guaranteed legal representation in immigration court, especially for unaccompanied alien children.

Asylum Seekers

- But the more importantly than any judicial backlog are the lives of human beings desperately seeking asylum.

- Mr. Chairman, let us not forget that these immigrants are coming to the United States as a last resort in seeking their survival.

- Like the story of two Honduran women who told their coincidentally similar stories to the immigration courts, relating tales of fear for their lives and for the lives of their children that drove them to seek asylum in the United States.

- They were elected in 2013 to the board of the parent-teacher association at their children's school in the Honduran capital, Tegucigalpa.
- They hoped that mothers working together could oust the violent gangs that plagued the campus.
- Instead, they became targets.
- Weeks apart, in the spring of 2014, each of the women was confronted by armed gang members who vowed to kill them and their children if they didn't meet the thugs' demands.
- Unaware of each other's plight, both fled with their children, making the dangerous trek across Mexico.
- Both were taken into custody near Hidalgo, Texas, and ended up finding each other in the same U.S. Immigration and Customs Enforcement (ICE) detention center in Artesia, New Mexico.
- There, they applied for asylum. That is when their fates diverged. One woman was granted asylum.
- The other woman, Ana, was denied asylum and is now appealing the decision.
- Taken together, the two cases – nearly indistinguishable in their outlines but with opposite outcomes – illustrate a troubling fact: An immigrant's chance of being allowed to stay in the United States depends largely on who hears the case and where it is heard.
- Judge Stuart Couch, who heard Ana's case in Charlotte, orders immigrants deported 89 percent of the time, according to a Reuters analysis of more than 370,000 cases heard in all 58 U.S. immigration courts over the past 10 years.
- Judge Dalin Holyoak in San Francisco orders deportation in 43 percent of cases.
- In Charlotte, North Carolina, immigrants are ordered deported in 84 percent of cases, more than twice the rate in San Francisco, California where 36 percent of cases end in deportation.
- Judge Olivia Cassin in New York City allows immigrants to remain in the country in 93 percent of cases she hears.

- Judge Monique Harris in Houston allows immigrants to stay in just four percent of cases.

- In Atlanta, 89 percent of cases result in a deportation order. In New York City, 24 percent do.

- The Reuters analysis used data from the Executive Office for Immigration Review (EOIR), the U.S. Justice Department unit that oversees immigration courts.

- The count of deportations included cases in which judges allowed immigrants to leave the country voluntarily.

- Thank you, I yield back the remainder of my time.