

Statement for the Record

Yael Schacher, Senior U.S. Advocate

Refugees International

House Judiciary Committee

Subcommittee on Immigration and Citizenship

**“Courts in Crisis:
The State of Judicial Independence and Due Process in U.S. Immigration Courts”**

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Thank you for the opportunity to submit this written statement for this important hearing today.

Refugees International is a non-governmental organization that advocates for lifesaving assistance and protection for displaced people and promotes solutions to displacement crises. We conduct fact-finding missions to research and report on the circumstances of displaced populations. Refugees International does not accept government or United Nations funding, which helps ensure that our advocacy is impartial and independent.

Over the last year, Refugees International’s Senior U.S. Advocate has observed numerous ways in which policies put in place by the Department of Homeland Security (DHS) and the Department of Justice (DOJ) influence the immigration courts to the detriment of those seeking protection. One of our key concerns is that those seeking humanitarian protection have access to due process and that asylum seekers receive fair adjudication of their claims. The immigration courts, part of the executive branch and increasingly manipulated by the administration, are currently falling far short. For the system to best serve those seeking protection, the hiring of judges must not be politicized; judges from diverse professional backgrounds must have the ability to adjudicate cases independently, at a fair pace, and according to uniform principles and rules of law.

DHS and DOJ policies that alter immigration court procedures to the detriment of those seeking protection should be reversed. In research for an extensive [report](#) on T visas, Refugees International’s Senior U.S. Advocate found that trafficking victims had been deported while appeals of their visa applications were pending before United States Citizenship and Immigration Service. This was a direct result of DHS’s enforcement priorities and the limits placed by the DOJ on the ability of immigration judges to continue or suspend cases awaiting adjudication by other agencies.

Individual asylum hearings in immigration court should not be delayed or dictated by detention policies. A French-speaking Ghanaian man who fled severe persecution in his home country and was eventually granted asylum was cruelly imprisoned for more than a year in a

south Texas detention center as he was ineligible for a bond hearing with an immigration judge. While detained at the remote prison, he could only infrequently meet with his attorney, who was required to talk to him through a glass partition that made translation difficult. His detention was prolonged because his individual merits court hearing was delayed because of a quarantine in a different part of the prison from his and despite the fact that the judge appeared via video teleconference. The vast majority of asylum seekers on detained dockets have their hearings conducted via video, which can impede fair credibility determinations, effective translation, and the ability to examine and present evidence and witnesses.

The Attorney General should not issue decisions that include broad generalizations and dicta that impede case by case adjudication of asylum claims and upend asylum standards determined by Board of Immigration Appeals and Federal Courts. A Honduran woman was the victim of brutal domestic violence at the hands of her husband who was affiliated with a powerful gang in Honduras. Though she had reported the abuse to the police twice and had moved to different parts of the country to escape, her partner followed her and continued to threaten to kill her even after she fled to Mexico. She asked for asylum at a California port of entry last year and was placed in the Remain in Mexico program. Because she is stuck in Mexico and because of the limits placed by the Attorney General on domestic violence related asylum claims, her chances of winning asylum are steep. This is exacerbated by the fact that her case is being decided by a new judge who supports the administration's limits on asylum.

DHS should not dictate the pace of asylum adjudication in the immigration courts, the role that judges play in assessing claims of persecution, or the ability of asylum seekers to have access to counsel. Immigration judges in San Antonio and Harlingen hearing Remain in Mexico cases are handling proceedings according to the dictates of DHS. They adhere to a speeded up timeline: taking pleadings at the first hearing regardless of whether the asylum seeker has counsel, requiring that asylum applications and supporting documentation be submitted within a month of the first hearing, and refusing to remove anyone from the Remain in Mexico program. At one master calendar hearing, a judge in Harlingen left the courtroom while the attorney for DHS and the officer in the Brownsville tent court determined who would be referred to an interview with an asylum officer about their fear of return to Mexico. The judge told the asylum seekers that it was not her role to listen to their expression of fear, and that instead they should tell DHS. In the "tent courts" run by Custom and Border Protection at Laredo and Brownville, attorneys cannot provide the vast majority of asylum seekers in the Remain in Mexico program who appear pro se with any know your rights or legal orientation.

Experienced judges should not be removed without cause and inexperienced judges should not be promoted. A Remain in Mexico case involving an indigenous language speaker was assigned to a recently appointed assistant chief immigration judge with no immigration law background who dismissed numerous procedural problems involving faulty notices and access to translation in the case. Summarily denying all of the motions of the asylum seeker's attorney, the judge then continued the case because the DHS attorney did not have any access to his files in the case and had not reviewed the record of previous hearings.

The U.S. immigration court system must be made independent to ensure due process and a fair day in court. In the long term, Congress should consider a structural overhaul of the immigration

court system so that those seeking protection have a true chance to achieve justice. Right now, it should request copies of all instructions regarding the adjudication of Remain in Mexico cases by immigration judges and changes to the qualification requirements and hiring criteria for judges.