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Statement of the Tahirih Justice Center:

House Committee on the Judiciary, Subcommittee on
Immigration and Citizenship Hearing “For the Rule of Law,
An Independent Immigration Court”

January 20, 2022

The Tahirih Justice Center (Tahirih) respectfully submits this statement to the United States House Committee on the Judiciary, Subcommittee on Immigration and Citizenship, to urge Congress to establish an immigration court system that is independent of the U.S. Department of Justice (DOJ) to ensure a fair process for immigrants where matters of life and liberty are at stake.

Tahirih is a national, nonpartisan policy advocacy and direct services organization that has assisted over 30,000 immigrant survivors of gender-based violence over the past 24 years. The survivors we serve have endured horrific abuses such as rape, domestic violence, forced marriage, and human trafficking. Many apply for asylum and other relief before the immigration courts, hoping for the opportunity to rebuild their lives in safety and with dignity.

A conflict of interest inheres in the current structure of the immigration courts, which are housed within the DOJ. While the U.S. Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) supplies trial attorneys for immigration proceedings, the Attorney General (AG) oversees the Office of Immigration Litigation (OIL) that defends immigration cases in the circuit courts of appeals on the government’s behalf. The result has been increasingly politicized courts, which, in recent years, have prioritized the volume and speed of deportations at the expense of due process.

In one example, the former Administration instituted a policy requiring that judges’ performances be evaluated based on case-completion quotas.¹ Yet, imposing strict timeframes for adjudication hinders an individual’s ability to gather evidence or secure representation and witnesses. This is particularly true

¹ <https://cdn.cnn.com/cnn/2018/images/04/02/immigration-judges-memo.pdf>

for traumatized survivors of gender-based violence, who are vulnerable to re-traumatization when testifying before government officials in an adversarial setting, about rape and other sexual violence. The system requires survivors to prove trauma that they have tried to hide for so long; they often need additional time to build trust with service providers and to secure mental health counseling to be able to articulate highly sensitive, critical factual details to support their case. Furthermore, gender-based violence inflicted by family or community members frequently carries searing social stigmas, discouraging survivors from asking witnesses for help in proving their case, and deterring witnesses from obliging.

Under the former Administration, the AG also abused the certification process² to pursue a clear agenda³ of narrowing asylum eligibility for survivors of gender-based violence generally,⁴ and survivors of domestic violence specifically. The former AG's rulings violated the 1951 United Nations Convention and Protocol Relating to the Status of Refugees as interpreted by the United Nations High Commissioner for Refugees, which unequivocally deems persecution on account of gender a valid basis for asylum.⁵

The former AG's actions also emboldened immigration judges to summarily deny relief for survivors fleeing other forms of violence on account of their gender, such as Female Genital Mutilation/Cutting, which had already been well-established as a grounds of asylum.⁶ Survivors have been deterred from seeking relief as a result, and in one case we are aware of, an immigration judge implicitly threatened an attorney's law license, accusing him of potential malpractice for filing a domestic violence claim after these rulings.

The politicization of the courts has set us back decades, such that judges feel empowered to dismiss gender-based violence as merely a private dispute to be kept behind closed doors, rather than a systemic human rights abuse worthy of redress. Independent immigration courts are therefore critical to ensuring access to a full and fair process for survivors and others. Survivors must be able to pursue justice within a system that is credible, neutral, and accountable. We therefore respectfully urge Congress to establish an immigration court system that is independent of the DOJ. If you have any questions, please contact Irena Sullivan, Senior Immigration Policy Counsel, at irenas@tahirih.org.

² See. e.g., <https://www.justice.gov/eoir/page/file/1070866/download>; <https://www.justice.gov/eoir/page/file/969456/download>

³ The former Administration issued a sweeping rule explicitly designed to eliminate gender-based asylum: <https://www.govinfo.gov/content/pkg/FR-2020-06-15/pdf/2020-12575.pdf>

⁴ In overturning cases like *Matter of A-B*- referenced above in FN 2, the former AG attacked claims involving non-state actor persecutors which is a common feature of gender-based claims.

⁵ <https://www.unhcr.org/3d58ddef4.pdf>

⁶ <https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3278.pdf>