



STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

SUBMITTED TO THE HOUSE COMMITTEE ON THE JUDICIARY 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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The American Immigration Council (“Council”) is a non-profit organization that has worked to increase public understanding of immigration law and policy—and the role of immigration in American society—for over 30 years. We write to thank the Subcommittee for scheduling this hearing to discuss the state of judicial independence and due process in U.S. immigration courts.

The nation’s immigration courts are plagued by a systemic pattern of dysfunction and lack of meaningful oversight.¹ The Council has long been concerned with the deteriorating state of the immigration courts, and the ways in which these conditions have curtailed the due process rights of individuals in the system. In support of our mission of protecting due process and ensuring a fair day in court, on April 2, 2019, the Council and the American Immigration Lawyers Association (“AILA”) jointly filed an administrative complaint on behalf of immigration practitioners and their detained clients who appear for immigration proceedings at the El Paso Service Processing Center immigration court (“El Paso SPC Court”).² The court observations, declarations, and statistics contained within the complaint detail the use of capricious standing orders by Immigration Judges (“IJs”) that undermine due process and diminish access to counsel; a culture of hostility and contempt by IJs towards immigrants; and the use of problematic court practices which undermine due process and a fair day in court for immigrants.

The data suggest that immigrants appearing in the El Paso SPC Court face some of the highest obstacles in the nation to due process and fair adjudication of claims for relief. IJs in the El Paso SPC Court granted only 31 out of 808 asylum applications (3.84 percent) decided on the merits between Fiscal Year (FY) 2013 and FY 2017, which makes the El Paso SPC Court the immigration court with the lowest asylum grant rate in the nation during this timeframe.³ In FY 2016 and FY 2017 combined, IJs at the El Paso SPC Court granted just *seven* out of 225 cases (3.11 percent) that were decided on the merits.⁴ The court’s asylum grant rate is so low that one IJ referred to the El Paso SPC Court as “the

Bye-Bye Place.”⁵ As we detailed in the complaint, although the problems in the El Paso SPC Court are particularly egregious, they should not be viewed as isolated instances, but as symptomatic of recurring problems with adjudications throughout the system.

The El Paso SPC Court’s extremely low grant rates are emblematic of inconsistent adjudication practices nationwide. Some courts grant less than 5 percent of asylum cases, while grant rates in other courts exceed 60 percent.⁶ As advocates have long pointed out, other “asylum free zones” exist in immigration courts around the country.⁷ The American Bar Association recently concluded that the systemwide “disparity of asylum grant rates and the fact that such case outcomes often depend on which immigration judge and court is adjudicating a case” call into question the “fundamental fairness of the system and implicate due process.”⁸

Beyond the dismal asylum grant rate, there are numerous examples of questionable practices and unprofessional conduct by IJs in the El Paso SPC Court, such as:

- An arbitrary 100-page limit on evidence for applications for asylum, withholding of removal, or protection under the Convention Against Torture, which forces applicants to exclude necessary evidence.
- A prohibition on supplementing previously submitted relief applications, including with evidence which was unobtainable at the time of filing.
- Telling court observers that “There’s really nothing going on right now in Latin America” that would provide grounds for asylum.
- Openly calling a mentally ill respondent “crazy” and mocking him.
- Pre-adjudicating cases, including telling respondents at their initial hearings that they weren’t going to win asylum before any application had been submitted, which encourages them to abandon their cases.
- Perpetuating a culture of fear among practitioners appearing at the El Paso SPC Court that if they complain about IJ misbehavior, IJs will punish their clients.

Uncorrected, these deficiencies will only fester and weaken the capacity of the courts to administer justice. For that reason, we called for extensive investigation and remedial steps to be taken not only at the El Paso SPC Court, but also at other courts where similar concerns have been observed. These remedial steps include the reinforcement of the prohibition on standing orders, providing additional training on appropriate conduct, reforming the complaint process to prevent retaliation against whistleblowers, and investigating the culture of denials at the El Paso SPC Court.

We ask that the Subcommittee enter the complaint into the record and direct the Executive Office for Immigration Review (“EOIR”) to address these endemic problems in the El Paso SPC Court and other courts through corrective action. In December, we submitted a subsequent request to the agency seeking information as to whether any corrective actions had been taken.⁹ A meaningful EOIR investigation may not be enough, however, to ensure that future court proceedings are conducted in a fair and efficient manner.

The concerns raised in the complaint regarding the El Paso SPC Court—and other immigration courts around the country—illustrate the weakness of an immigration court system overseen by the same executive branch department responsible for prosecuting people for violations of immigration law. The Council believes that American values of fundamental fairness and due process require a

meaningful commitment to the rule of law, impartiality, and providing vulnerable people with greater access to a fair day in court.

We thank you for the opportunity to submit this statement, and for the Subcommittee's efforts to engage in a thoughtful conversation about the state of judicial independence and due process in our immigration courts.

¹ AILA has long documented the chronic and systemic problems within the Executive Office for Immigration Review, a component of the Department of Justice. See AILA Statement on Strengthening and Reforming America's Immigration Court System Hearing, AILA Doc. No. 18041646, April 18, 2018, available at <https://www.aila.org/advocacy/media/press-releases/2018/aila-statement-on-strengthening-and-reforming>.

² American Immigration Council & AILA, "Re: Administrative Complaint Regarding El Paso Service Processing Center Immigration Court Judges," April 3, 2019, available at https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_how_the_el_paso_immigration_court_fails_to_uphold_due_process.pdf.

³ See EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, Statistics Yearbook, available at <https://www.justice.gov/eoir/statistical-year-book> (data compiled from the FY 2013-2017 Statistics Yearbooks).

⁴ See EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, Statistics Yearbook: Fiscal Year 2017 28 (2018) available at <https://www.justice.gov/eoir/page/file/1107056/download>; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, Statistics Yearbook: Fiscal Year 2016 K2 (2017) available at <https://www.justice.gov/eoir/page/file/fysb16/download>.

⁵ Appendix B3, El Paso SPC Complaint, at ¶ 4.

⁶ See, e.g., 2017 Statistics Yearbook.

⁷ John Washington, "These Jurisdictions Have Become 'Asylum Free Zones,'" The Nation, January 18, 2017, available at <https://www.thenation.com/article/archive/these-jurisdictions-have-become-asylum-free-zones/>.

⁸ American Bar Association, "2019 Update Report, Reforming the Immigration System, Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases," March 2019, UD 2-17, UD 6-8, available at https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2019_reforming_the_immigration_system_volume_2.pdf.

⁹ American Immigration Council & AILA, "Re: Administrative Complaint Regarding El Paso Service Processing Center Immigration Court Judges," December 2, 2019, available at https://www.americanimmigrationcouncil.org/sites/default/files/complaint_how_the_el_paso_immigration_court_fails_to_uphold_due_process_supplement.pdf.