



April 18, 2018

Senator John Cornyn, Chairman
Senator Dick Durbin, Ranking Member
Subcommittee on Border Security and Immigration
Senate Committee on the Judiciary
226 Dirksen Senate Office Building
Washington, DC 20002

Re: April 18, 2018 Hearing on “Strengthening and Reforming America’s Immigration Court System.”

Dear Chairman Cornyn, Ranking Member Durbin, and Members of the Subcommittee:

On behalf of Amnesty International¹ and our more than seven million members and supporters worldwide, we hereby submit this statement to the hearing record. Amnesty International’s current top priority is refugee protection, and Amnesty International has documented how sexual violence and lethal dangers have forced children and families to flee the northern triangle of Central America in search of humanitarian protection. The northern triangle is one of the deadliest regions of the world with some of the world’s highest rates of femicide.

The U.S. Is Required to Protect Asylum Seekers: The United States has a long and proud tradition of protecting asylum seekers. The U.S. played a leading role in drafting the 1951 [Convention and Protocol Related to the Status of Refugees \(“Refugee Convention”\)](#) and is party to the Convention’s Protocol. In 1980 Congress passed the Refugee Act, thereby enshrining into domestic law the United States’ commitment to protect the persecuted. The U.S. is also a party to the [Convention Against Torture \(“CAT”\)](#). At the heart of the Refugee

¹ Amnesty International was awarded the Nobel Peace Prize in 1977.

Convention and CAT is the principle of *non-refoulement*, which provides that states must not return persons to territories where they would be at risk of persecution or other serious human rights violations.

Access to a fair asylum process is critical to ensuring that the U.S. complies with its legal obligations under CAT and the Refugee Convention. Deportation can have dangerous, even deadly consequences, and yet the U.S. government does not guarantee legal representation to asylum seekers. Many asylum seekers do not speak English and are forced to navigate the complex asylum process without legal representation. If they fail to convince a judge that they should be granted asylum, they could be deported. For asylum seekers, the stakes could not be higher: a fair asylum process can mean the difference between life and death.

Under the current immigration court system, many asylum seekers are forced to wait years for an immigration judge (“IJ”) to hear their case. The current immigration court backlog is at record high levels with nearly 700,000 cases pending and some 334 judges to hear them. This backlog developed over many years, in large part, because Congress declined to provide adequate funding for the immigration courts while at the same time dramatically increasing the immigration enforcement budgets of Homeland Security (“DHS”). This spending pattern left the immigration courts underresourced and understaffed while the DHS enforcement agencies grew massively.

Against this backdrop the Trump administration has implemented a series of new policies aimed at accelerating deportations of asylum seekers. Under Attorney General Sessions, the Justice Department (“DOJ”) has imposed or sought to impose numerous measures designed to rush deportations of asylum seekers by: (1) discouraging continuances or adjournments of immigration court hearings; (2) imposing case completion goals on immigration judges (“IJs”); and (3) suspending the Legal Orientation Program (“LOP”) for detained asylum seekers and other immigration detainees. Taken together, these measures thwart asylum seekers’ access to counsel, deny them a fair day in court, pressure IJs into denying more asylum cases, and place asylum seekers on a fast-track deportation process.

I. Discouraging continuances of immigration court hearings:

Although asylum seekers do not have the right to government-paid counsel, the government should provide, at the very minimum, a reasonable period of time for asylum seekers to retain counsel. In [July 2017 the Justice Department \(“DOJ”\) Executive Office for Immigration Review \(“EOIR”\)](#) issued a directive discouraging IJs from granting continuances of immigration court hearings. The directive compels IJs to deny multiple continuances, including continuances to find an attorney or for an attorney to prepare for a case. The guidance emphasizes that IJs should give weight to “administrative efficiency” when deciding whether to issue a continuance.

In practical terms, this directive will deny access to counsel for many asylum seekers who need additional time to line up pro bono counsel or legal services. According to the Government Accountability Office, the [number one reason](#) people request a hearing continuance is to find a lawyer. An asylum seeker who is diligently looking for counsel but has not yet secured one should not be forced to proceed unrepresented in her or his case. Without counsel, only [one out of every ten](#) asylum seekers is granted asylum. With counsel, nearly half win their asylum claims.

II. Imposing case completion quotas on IJs: In [“Immigration Principles and Policies”](#) (October 2017) the White House revealed plans to impose numerical quotas on IJs, a measure designed to pressure IJs to rush cases through hearings. In April 2018 the [Wall Street Journal](#) reported that EOIR will impose case completion quotas on IJs starting in October 2018 – yet another DOJ measure aimed at pushing IJs to reach decisions quickly instead of giving them the time necessary to decide life-and-death asylum cases.

If EOIR goes through with enforcing the proposed case completion quotas, IJs’ performance reviews will be directly linked to the number

of completed cases. This will heap on even more pressure for IJs to rule under tight deadlines. Case completion quotas will compromise the quality of IJ decisions and could result in grave errors including the wrongful deportation of an asylum seeker to life-threatening conditions.

III. *Suspending the Legal Orientation Program (“LOP”)*: In April 2018 the [Washington Post](#) reported that EOIR plans to suspend LOP, a program that has long enjoyed bipartisan support. Through LOP, representatives from nonprofit organizations educate detained asylum seekers and immigrants about the immigration court system. LOP operates in 38 facilities and provides legal information to over [50,000 people](#) annually, nearly all of whom are [unrepresented](#).

Since its inception in 2003, LOP has proven to be cost-effective as well as effective in [promoting fundamental fairness and judicial efficiency](#). While not a substitute for legal representation, LOP assists detained asylum seekers in navigating a complex asylum and immigration court process. Suspending LOP will leave many asylum seekers locked up in jail. DOJ’s move to end LOP is the latest development that risks undermining due process for asylum seekers.

Taken together, these three measures raise serious concerns that the administration is pushing asylum seekers through the complex immigration court process without legal representation, thereby depriving them of a fair day in court.

IV. Recommendations to Strengthen the Immigration Court System for Asylum Seekers:

A. Provide Necessary Funds to Ensure Adequately Resourced Immigration Court System: Congress should increase funding for additional IJ teams. In March 2018 Congress appropriated funds to hire

100 additional IJ teams. As part of its oversight responsibility, Congress should require that EOIR implement procedures to ensure due process and fairness for asylum seekers in removal proceedings. In addition, for FY19 Congress should appropriate additional funds to hire more IJ teams.

B. Safeguard a Fair Asylum Process: DOJ should continue and expand LOP to all immigration detention facilities nationwide, and Congress should increase funding to ensure that all have detainees have access to LOP. In addition, DOJ should discard any use of case completion quotas on IJs, should rescind the EOIR guidance limiting continuances of immigration hearings, and should end any other measures aimed at rushing asylum cases through the immigration court system.

C. Reject Legislative Proposals that Harm Asylum Seekers. With the administration actively instituting measures to place asylum seekers on fast-track deportation, it is imperative that Congress defend the current asylum process and exercise rigorous oversight over DOJ and DHS. In addition, Congress should oppose any proposals designed to reduce screening protection in expedited removal proceedings and to expand detention of asylum seekers.

For more information, please contact me at jlin@aiusa.org or 202/509-8151.

Sincerely,

Joanne Lin
National Director
Advocacy and Government Affairs