

March 24, 2015

The Honorable, Chairman John Culberson
House Appropriations Subcommittee on
Commerce, Justice, Science and Related Agencies

The Honorable Chaka Fattah, Ranking Member
House Appropriations Subcommittee on
Commerce, Justice, Science and Related Agencies

The Honorable Richard Shelby, Chair
Senate Appropriations Subcommittee on
Commerce, Justice, Science and Related Agencies

The Honorable Barbara A. Mikulski, Ranking Member
Senate Appropriations Subcommittee on
Commerce, Justice, Science and Related Agencies

Dear Chairmen and Ranking Members:

On behalf of the undersigned organizations, we are writing to urge you to provide funding for authorized programs in your FY 2016 Commerce, Justice, Science and Related Agencies Appropriations bills: (1) \$ 60 million for an additional 55 Immigration Judge Teams to begin to address understaffing that has led to backlogs and long delays; (2) \$50 million to expand the pilot program for legal representation; (3) \$25 million to expand the legal orientation program (LOP); and (4) \$1 million to initiate an information desk pilot program for non-detained individuals in immigration court.

Protecting the persecuted is a core American value. Reflecting this country's deep-seated commitment to liberty and human dignity, as well as its pledge to refugees and asylum seekers under the Refugee Convention's Protocol, the United States has long led efforts to protect those who flee from political, religious and other persecution. These refugees include victims of religious persecution; women targeted for honor killings, victims of trafficking and horrific domestic violence; human rights advocates and defenders who stand up against the perpetrators of brutal violence in Central America; and ordinary people who are persecuted for who they are or what they believe.

We understand the tremendous fiscal challenges the nation faces. However, during this time, we cannot lose sight of the importance of providing fair, timely and effective adjudication of asylum and other cases in our immigration removal system, including the cases of families and children who have sought U.S. protection from persecution and violence in Central America. We describe below the critical need for funding to the Department of Justice to provide order to the situation and safe haven to

those in need of refugee protection. In addition, our funding recommendations will help reduce existing backlogs in immigration courts and will result in the more timely removal orders for undocumented and out of status individuals who are not entitled to any form of immigration relief.

1. Administrative Review and Appeals – Executive Office of Immigration Review (EOIR) – Increasing Immigration Judge Teams

We support the President’s budget request increase of \$60 million to support an additional 55 Immigration Judge Teams. Several years ago, the American Bar Association and the Administrative Conference of the United States (ACUS) expressed concern that the immigration courts did not have the resources necessary to deal with their caseload. That caseload has grown larger since then, by over 87 % from FY 2010. Over 430,000 cases have now been waiting an average of 587 days and immigrants who arrived before May 1, 2014 are waiting an average of 14 months before their first hearing. Many are slated to wait two, three, or four years for their asylum case to be heard. The *Wall Street Journal* and other media recently reported that non-priority non-border cases have been calendared for late November 2019 – nearly five years from now. While 55 new Immigration Judge Teams will certainly help alleviate the strains facing the immigration court system, we are concerned that even more resources are necessary to address the backlog and non-priority cases - which include many asylum cases that did not originate at the border - in addition to the priority cases. To address the backlog as well as priority and incoming cases, we estimate that the immigration courts will need at least 250 to 275 additional immigration judge teams – significantly more than the administration’s FY 2016 request for 55 additional immigration judge teams.

Immigration judges handle more than three times the number of cases handled by Article III federal district judges and they do so with less staff. Too few judges and staff mean that people with strong cases languish for years waiting in the system while people without viable claims for relief from removal also remain in the U.S. For asylum seekers, this means that their separation from children stranded in dangerous and difficult situations abroad will be prolonged for years. For example, the family of a Syrian torture survivor is stranded at risk in Syria while he awaits resolution of his asylum case, and the wife and children of a Christian targeted by the Boko Haram are living in hiding in Nigeria while awaiting the pastor’s delayed day in court. In addition family separation often results in children who fear harm in their home country escaping by undertaking dangerous routes to seek safety in the United States. These challenges have been compounded by the Obama Administration’s recent interest in processing the cases of unaccompanied children and recent arrivals of parents with children at an expedited rate. This means that others in the immigration court removal system, including asylum seekers may have their cases delayed for many more years. These delays increase the cost to the U.S. taxpayer by increasing detention costs and reconsideration of cases that have languished in the courts. Addressing the long-standing funding imbalance that has left the immigration courts with insufficient staff to handle the number of cases referred into removal

proceedings by the significantly higher-funded DHS immigration agencies is a wise investment in both the effectiveness and fairness of the immigration removal system as well as the U.S. asylum and protection systems.

Proposed Report language on Immigration Judge Training:

EOIR's ongoing trainings for immigration judges should specifically address how to adjudicate cases involving vulnerable populations seeking asylum including how to best illicit information from trauma survivors, victims of gender based violence, and children.

2. Administrative Review and Appeals –EOIR – Expanding the Pilot Program for Legal Representation

We support the President's budget request to provide \$50,000,000 for EOIR to promote innovations, including leveraging federal funds to bolster pro bono efforts, and augment the "Justice AmeriCorps" program, to improve the level and quality of legal representation for vulnerable populations, including unaccompanied children, and to protect children from mistreatment, exploitation, and trafficking. This funding is vital to address the unprecedented legal needs of unaccompanied children in the United States that results from their surge in number in recent years. This funding request is extremely modest given that legal representation for unaccompanied children *alone* is estimated to cost between \$150 and \$200 million based on fiscal year 2014 arrival numbers. Without representation, it is nearly impossible for unaccompanied children – who range in age from toddlers to teenagers – to navigate our complex immigration laws and system. Immigration proceedings are adversarial and children are required to meet the same procedural, evidentiary, and legal rules as adults. It has also been demonstrated that children who have representation are more likely to appear for their court dates. We are concerned that the majority of the unaccompanied children do not have representation in their immigration proceedings, which in addition to being a grave violation of due process, leads to inefficiencies and a waste of resources in our immigration courts. Recent studies by the National Economic Research Associations and the Transactional Records Access Clearinghouse (TRAC) at Syracuse University have confirmed that representation facilitates appearance at hearings, and actually saves the government money. We recommend that EOIR use this funding to explore ways to better serve vulnerable populations such as children and improve court efficiency through pilot efforts aimed at increasing both *pro bono* and direct representation for children and other vulnerable populations. We also encourage EOIR and the Department of Health and Human Services (HHS) to continue to support and increase funding for *pro bono* initiatives that will enable federal dollars to go much further in securing representation for children.

3. Administrative Review and Appeals – EOIR – Expanding LOP

We request \$25 million to expand LOP and legal orientation programs for custodians of unaccompanied children (LOPC) nationwide. While we support the President's \$10 million increase to LOP to add 40 additional sites to the 37 sites EOIR expects to be operating by the end of FY2015, (35 of which are in immigration detention centers), we do not think it is sufficient to meet current needs. These programs provide critical, comprehensive information about the immigration court process, promoting efficiency for the courts and fostering due process for noncitizens in removal proceedings, particularly those who do not have legal counsel. Studies have demonstrated the time and cost savings of LOP, as noncitizens require fewer days in court and spend less time in immigration detention. LOPs, which have been praised for their cost-effectiveness and for increasing immigration court efficiency, currently provide legal information and, in some cases, referrals to counsel, to some but not all immigration detainees.

Approximately 80 percent of detained individuals do not have representation in their immigration proceedings. LOPs – and quality legal counsel – can help non-represented individuals understand their eligibility, and in some cases lack of eligibility, for asylum and other potential forms of immigration relief. According to a 2012 Department of Justice (DOJ) report, LOP reduced the amount of time to complete immigration proceedings by an average of 12 days. Factoring in the savings –primarily to DHS through reduced length of time spent in detention –LOP has been shown to have a net savings of approximately \$18 million. LOP and LOPC also foster compliance with the immigration court process, as individuals better understand their obligations to appear. Recent studies have confirmed that counsel in immigration proceedings encourages appearance for hearings, and saves government money.

4. Administrative Review and Appeals – EOIR – Information Desk Pilot Program

Non-detained immigrants struggle to navigate the complex immigration court system as well because they do not receive information on the process or court-appointed counsel and often cannot afford attorneys. Report language in the FY 2015 Commerce, Justice, Science and Related Agencies appropriations bill directed EOIR to consider ways to provide information to non-detained individuals, including through the use of information desks, but without funding it will be difficult for EOIR to realize this directive. Therefore, we urge you to include \$1,000,000 to fund a competitive grant process in the CJS appropriations bill for an Information Desk Pilot Program to assist noncitizens in the 10 immigration courts with the biggest backlogs, currently: New York City, Los Angeles, Houston, San Francisco, San Antonio, Newark, Arlington, Miami, Chicago, and Atlanta. These information desks would be staffed with bilingual attorneys to provide very brief consultations to the non-detained docket, including information about the court process, potential forms of immigration relief under the law, and list of free and low-cost legal services. Individuals who receive these consultations will be able to proceed more swiftly with their

proceedings, as the Immigration Judge need not provide this information during valuable court time and individuals better understand the process. These efficiencies will save taxpayer dollars.

We look forward to working with you to secure the funding necessary for efficient operation of the immigration courts as well as access to counsel and information about the removal and protection processes.

Sincerely,

American Civil Liberties Union

American Immigration Lawyers Association

Bellevue/ NYU Program for Survivors of Torture, NYU Center for Health and Human Rights

Center for Gender & Refugee Studies (CGRS)

Center for Survivors of Torture and War Trauma

Center for Victims of Torture

Deborah Anker, Clinical Professor of Law and Director, Immigration and Refugee Clinical Program

HIAS

Human Rights First

Human Rights Initiative of North Texas

Immigrant Legal Advocacy Project

International Institute of Connecticut

Kids in Need of Defense

Lawyers' Committee for Civil Rights of the San Francisco Bay Area

Lutheran Immigration and Refugee Service

National Immigration Forum

The National Immigrant Justice Center

United States Conference of Catholic Bishops/Migration and Refugee Services

U.S. Committee for Refugees and Immigrants

Utah Health & Human Rights