

**Written Statement for the Record
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**Hearing on:
“IMPROVING EFFICIENCY AND ENSURING JUSTICE IN THE
IMMIGRATION COURT SYSTEM”**

**Senate Committee on the Judiciary
May 18, 2011**

Chairman Leahy and Honorable Members of the Committee:

Thank you for convening this hearing on the immigration court system, and for providing the opportunity to share the perspectives of the Tahirih Justice Center (“Tahirih”) on the impact that court delays have on women who have fled gender-based persecution and seek refuge in the United States. Tahirih deeply appreciates this Committee’s attention to the need for swift access to justice for victims of persecution, and we look forward to further opportunities to assist the Committee as it considers proposals to reform the immigration court system.

Tahirih is a national legal advocacy organization with offices in Falls Church, VA, Houston, TX, and Baltimore, MD, that provides free legal representation to women and girls fleeing human rights abuses such as domestic violence, rape, human trafficking, female genital mutilation, torture, “honor” crimes, and forced marriage. Since 1997, through direct services and referrals, Tahirih has assisted over 12,000 women and children. Rooted in our direct services experiences, Tahirih’s national advocacy initiatives seek systematic change to ensure the long-term protection of women and girls from violence.

Tahirih has a substantial stake in ensuring that immigration courts operate in an efficient and just manner. The women and girls we represent constitute a highly vulnerable population of asylum-seekers that can find themselves in especially precarious situations while they await a decision on their case. In some cases, long delays and court backlogs can even compromise the ability of women and girls fleeing gender-based violence to move forward with their legal claims.

In Tahirih’s experience, when an asylum hearing is delayed for any reason, an asylum-seeker is typically unable to get a new hearing date until well over a year after the originally scheduled court date. For example, in February of 2010 a Tahirih client’s asylum hearing was cancelled due to a record-breaking snowstorm in the Washington, DC area. Although this delay was caused by extraordinary circumstances beyond her control, her asylum hearing was not re-scheduled until June of 2011—*16 months* later.



Protecting Immigrant Women and Girls Fleeing Violence

Such long waits for hearings in immigration court, coupled with other crippling constraints imposed on asylum-seekers during the pendency of their claims (a lack of access to work authorizationⁱ or public benefits), can be particularly devastating for women and girls fleeing gender-based persecution. Women and girls seeking asylum have often rejected cultural norms or practices (such as female genital mutilation or forced marriage) that make them unable to access help from their own families and communities, isolating them from the most common support systems available to other refugees or immigrants seeking protection in the United States.ⁱⁱ For example:

- One of Tahirih's clients, a woman who fears that both she and her daughter will be subjected to female genital mutilation if they are returned to her home country in West Africa, is *still waiting* for the immigration court in Houston, Texas, to reschedule a hearing that has already been postponed twice because the immigration judge assigned to her case is on extended leave. Disowned by her family and forced to take whatever help with housing she could find while her case languishes, the client and her two small children had to re-locate from Houston to Austin, Texas. The client's mental health is deteriorating, and she has lost the benefit of having a social worker from our Houston-based office provide case management services to ensure that she has access to medical care, counseling, and other desperately needed basic services.
- In the case of another Tahirih client, a woman from Liberia who faced persecution at the hands of Charles Taylor's brutal regime, long scheduling delays have forced her to wait almost *two and a half years* for a hearing on the merits of her claim—and, because of confusion over when to restart the "clock" that counts how long her claim has been pending and thus when she can access work authorization, she has still not received work authorization. She has no choice but to rely on others for her most basic daily needs (such as food and shelter) and has difficulty securing the ongoing mental health treatment she needs to recover from the years of torture she endured in her home country.

This prolonged uncertainty and debilitating dependence can be profoundly depressing and re-traumatizing for victims of persecution, whose lives may literally hang in the balance of the decisions that the immigration court will ultimately make. Although Tahirih's social workers diligently try to connect our clients with housing, counseling, and other help to meet their basic needs (through shelters, faith communities, etc.), there are few resources available to help asylum seekers survive while they prepare their application and await a decision on their case. In fact, one Tahirih client became so desperate that when she overheard a family speaking her native language at a bus stop, she went up to them and implored them to take her in. In some instances, this sort of random appeal does lead our clients to experience the wonderful kindness of strangers. In other instances, however, a client may find herself in renewed danger, trapped in an abusive or exploitative situation in the country where she hoped to find safety and protection.



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The chronic and growing backlogs in the immigration court system can also adversely affect an asylum-seeker's ability to successfully present and pursue her asylum claim. Many asylum-seekers rely on non-profit or pro bono attorneys for legal representation, and significant delays in court proceedings can affect their ability to enlist and retain such counsel. The Tahirih client referenced above, who was forced to relocate from Houston to Austin, Texas, to find shelter for herself and her children, does not have access to transportation to return to Houston to work with her Houston-based pro bono attorneys, nor does she have anyone to drive her to appointments with her attorneys. She is now risks losing her pro bono representation and limiting her access to Tahirih's specialized expertise. The ultimate harsh consequence of court delays in this client's case, therefore—as in other gender-based asylum cases that often present complex legal issues—may be that her very ability to prepare her case and obtain protection is jeopardized.

Finally, the lack of binding guidanceⁱⁱⁱ as to the legal standards that should govern gender-based asylum claims compounds the adverse impact that immigration court delays have on women asylum-seekers. The combination of all these factors uniquely places women and girls at increased risk of being subjected to long delays as their cases are shuttled through repeated cycles of appeals and remands in the immigration court system. While the scope of this hearing does not expressly extend to this pressing concern, we urge the Committee to take action to set clear national policy on gender-based asylum claims, and commend legislation introduced by Senator Leahy last March, the Refugee Protection Act of 2010 (S. 3113), for provisions he included to clarify the proper legal framework for evaluating gender-based claims.

We deeply appreciate this opportunity to share Tahirih's perspectives and experiences with the Committee. Please do not hesitate to contact us if we can provide additional information. Thank you.

ⁱ Asylum seekers are statutorily unable to obtain work authorization until their claim has been pending for 180 days, and are ineligible for most forms of public assistance during that time. INA § 208(d)(2). In addition, immigration judges can start and stop the asylum "clock" (which counts how many days an asylum claim has been pending) for dozens of different clock-impacting events. See Office of the Chief Immigration Judge's Operating Policies and Procedures Memorandum (OPPM) 05-07: "Definitions and Use of Adjournment, Call-up and Case Identification Codes" (Jun. 16, 2005), available at <http://www.usdoj.gov/eoir/efoia/ocij/OPPM LG2.htm> (reviewing the 55 separate codes immigration judges must use to designate types of adjournments, 27 of which toll the clock until the next hearing). Current regulations toll the 180-day clock for any applicant-caused delay (8 C.F.R. § 208.7(a)(2)), even for reasonable requests related to the full and fair preparation of the case (such as requests to reschedule or continue a hearing to enable all evidence to be presented).

Given current court backlogs, therefore, asylum-seekers who ask for continuances in order to fully prepare their cases are perversely punished not only by enduring tortuously long waits to schedule that continued hearing, but also, by being prevented from obtaining employment authorization or having any other means of support for far longer than the prescribed 180-day waiting period.

ⁱⁱ Tahirih Justice Center, *Precarious Protection: How Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution* (2009), at 35 (available at <http://www.tahirih.org/2009/10/asylum-report/>).

ⁱⁱⁱ The Department of Justice issued draft regulations intended to govern gender-based claims in 2000; these draft regulations have never been updated or finalized.