TAHIRIH JUSTICE CENTER®

Protecting Immigrant Women and Girls Fleeing Violence

Statement of the Tahirih Justice Center:

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON BORDER SECURITY AND IMMIGRATION

HEARING

"Strengthening and Reforming America's Immigration Court System"

April 18, 2018

The Tahirih Justice Center ("Tahirih") respectfully submits this statement to the United States Senate Committee on the Judiciary, Subcommittee on Border Security and Immigration, as it considers *"Strengthening and Reforming America's Immigration Court System."*

Tahirih is a national, nonpartisan advocacy and direct services organization that has assisted over 20,000 immigrant survivors of gender-based violence over the past 20 years. Our clients include women and girls who have endured horrific abuses such as rape, domestic violence, and human trafficking and are in dire need of humanitarian relief.

Congress has repeatedly expressed its longstanding, bipartisan, and unwavering resolve to provide a safe haven for traumatized survivors of human rights abuses such as our clients. Recognizing our responsibility to protect those whose own countries will not protect them, the U.S. codified the tenets of the "United Nations Refugee Convention" and "Protocol" of 1951 as our domestic asylum laws in 1980.[i]

In 1994, Congress first passed the Violence Against Women Act, followed by the Trafficking Victims Protection Act in 2000.[ii] These laws give immigrant survivors of horrific violence the opportunity to apply for legal relief and if granted, to rebuild their lives in safety and contribute to society. In passing laws, Congress not only presumes – but implicitly requires – meaningful access to the legal process for those it is trying to protect. Yet, for the many survivors who apply for relief in immigration court, fundamental due process is scarce and rapidly disappearing. Our country's very identity is at stake when those who are charged with effectuating the will of Congress take actions that undermine it.

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Sacrificing Due Process Should Not, and Need Not, be the Solution to Restoring Efficiency in the U.S. Immigration Courts

The acute need to reduce the crushing backlogs in our immigration courts is indisputable. With cases pending for an average of over 700 days,[iii] evidence grows outdated and opportunities for witnesses to testify are diminished. Survivors of gender-based violence are eager to begin healing, yet are re-traumatized when recounting details of rape and torture after many years in legal limbo. Severe backlogs can cause asylum seekers to wrongly and unfairly fail in their claims, while the threats they confront upon deportation remain.

At the other extreme, inappropriately expedited dockets inevitably yield the same result – putting survivors' lives at risk. Yet, the administration recently announced the following new measures, citing the backlogs to justify them:

- Imposing a job performance rating system for immigration judges that ties their remand rate and number of cases completed to his or her performance rating;[iv]
- Pressuring judges to only grant continuances in very limited circumstances, even where, for example, an indigent asylum seeker is having difficulty securing *pro bono* counsel;[v]
- Reconsidering well-settled case-law defining "good cause" to support continuances, for example, where a survivor of violence waits for USCIS to adjudicate her petition for relief under the Violence Against Women Act. If the judge denies her request and she is sent home to wait, she might be forced to leave her U.S. citizen child in the custody of her abuser;[vi]
- Reconsidering whether immigration judges can "administratively close" cases, raising the same issues as above for survivors of violence[vii]
- Vacating a precedent decision holding that asylum seekers are entitled to a full evidentiary hearing in immigration court.[viii]

Punishing judges for taking the time they need to accurately and carefully review cases and ensure that applicants are represented is anathema to justice. Notably, there is only one likely outcome for cases so swiftly disposed of that no testimony or evidence is even permitted - deportation. This will result in individuals who fear persecution being sent home to face it, a violation of U.S. obligations under international law. Furthermore, precisely because the law entitles immigrants to due process,[ix] appeals alleging due process violations will skyrocket. Ironically, the administration's efforts will *increase* inefficiency by simply shifting the backlogs to the federal appellate courts.

At the immigration court stage, safeguarding due process for *pro se* applicants and detainees in particular is critical. Applicants who are unaware of their rights cannot exercise them. Asylum seekers suffering from Post-Traumatic-Stress-Disorder may be too traumatized to navigate our complex and daunting immigration process alone.

In 2003, the bipartisan Legal Orientation Program was implemented nationwide by the Department of Justice to, among other reasons, ensure immigrants' basic access to the legal

process. Yet, the administration just suspended the program, along with the Immigration Court Helpdesk. The LOP was also intended to promote efficiency in immigration court, which it indisputably does according to the Department of Justice itself.[x]

In enacting laws to protect the most vulnerable among us, Congress undoubtedly did not contemplate the Executive Branch distorting, thwarting, and rendering them meaningless. Rather, Congress has the power to appropriate additional funding for the immigration courts to accommodate its caseload, without sacrificing integrity, accuracy, and fairness in adjudication of high-stakes immigration cases.

We urge you to carefully evaluate strategies to strengthen and reform our immigration courts that also protect due process. We appreciate the opportunity to submit this statement.

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[i]The United States Refugee Act of 1980 amended the Immigration and Nationality Act of 1965 and the Migration and Refugee Assistance Act of 1962.
[ii]https://www.gpo.gov/fdsys/pkg/BILLS-113s47enr/pdf/BILLS-113s47enr.pdf;
https://www.gpo.gov/fdsys/pkg/BILLS-114s178enr/pdf/BILLS-114s178enr.pdf
[iii]http://trac.syr.edu/phptools/immigration/court_backlog/.
[iv] http://cdn.cnn.com/cnn/2018/images/04/02/immigration-judges-memo.pdf.
[v] https://www.justice.gov/eoir/file/oppm17-01/download.
[vi] https://www.justice.gov/eoir/page/file/1045661/download.
[vii]https://www.justice.gov/eoir/page/file/1022366/download.
[viii]https://www.justice.gov/eoir/page/file/1040936/download.
[ix] See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Shaughnessy v. Mezei,* 345 U.S. 206 (1953).
[x] https://www.justice.gov/eoir/legal-orientation-program;
https://www.justice.gov/sites/default/files/eoir/legacy/2013/03/14/LOP_Cost_Savings_Analysis_4-04-12.pdf.