



Department of Justice

STATEMENT OF
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BEFORE THE
UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

HEARING ON
“The Unaccompanied Alien Children Crisis: Does the Administration
Have a Plan to Stop the Border Surge and Adequately Monitor the
Children?”

PRESENTED
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Introduction

Mr. Chairman, Senator Leahy, and other distinguished Members of the Committee, thank you for the opportunity to speak with you today about the role of the Department of Justice's Executive Office for Immigration Review (EOIR) with respect to unaccompanied alien children (UAC or unaccompanied child) coming to the United States.

EOIR administers the Nation's immigration court system, composed of both trial and appellate tribunals. Removal proceedings for all respondents, including UAC, begin when the Department of Homeland Security (DHS) files a formal charging document with an immigration court. EOIR's immigration judges decide whether the alien respondent is removable from the United States based on the DHS charges and, if removable, whether the respondent is eligible for any relief or protection from removal. EOIR is responsible for civil immigration proceedings, and EOIR's adjudicators do not determine the guilt or innocence of individuals charged with criminal wrongdoing at the border or in the interior of the country. Overall in EOIR's 57 immigration courts nationwide, there are now 254 immigration judges, who are supported by 137 judicial law clerks and other staff.

EOIR's appellate level is the Board of Immigration Appeals (BIA), which consists of 17 Board Members, who are supported by teams of attorney advisers. The BIA has nationwide jurisdiction and hears appeals from immigration judge decisions. When appropriate, the BIA issues binding precedent decisions interpreting complex areas of immigration law and procedure. Either the respondent or DHS may file an appeal with the BIA. A respondent who loses an appeal before the BIA may seek review of that decision in the applicable federal circuit court of appeals.

State of the Immigration Courts

The immigration courts' pending caseload continues to increase. The immigration court caseload is tied directly to DHS enforcement and detention activities. DHS makes initial detention determinations and decides whether to file charging documents with the immigration court. Due to DHS's integral role, EOIR is in regular and continuing contact with DHS to anticipate and respond to caseload trends, including those related to unaccompanied children and other recent border crossers.

EOIR recognizes the continuing public interest in the immigration court pending caseload and the impact of that caseload on the nation's immigration system. At the end of January 2016, EOIR's immigration courts had 474,322 cases pending, marking an increase of more than 176,000 cases pending over the end of FY 2011.

The last several years have presented tremendous challenges for EOIR. The sharp increase in UAC arrivals in 2014 put unprecedented pressures on EOIR, and the agency has continued to respond to such challenges by updating its practices and policies. In particular, since 2014, we have strengthened the immigration court system through

improved docketing practices and policies. EOIR is hiring immigration judges to increase the size of the immigration judge corps, thereby augmenting adjudicatory capacity and working to reduce the case backlog and wait times for those in proceedings. We thank members of this Committee and Appropriators for supporting our requests for increased funding to hire additional immigration judges; we hope you will continue to support these requests in our FY 2017 budget request. EOIR is making organizational changes, at its headquarters and in the individual immigration courts, to increase efficiencies, and the agency is leveraging technology to increase its capacity to hear more cases in a more timely manner.

In July 2014, EOIR acted to include in its priority caseload the cases of those respondents whom DHS identifies as unaccompanied children. This reprioritization was in direct response to the increase in arrivals at the Southwest border in summer 2014, and in support of the Administration's effort to address the reasons that individuals leave their home countries and the misinformation that led people to come into the United States, both of which contributed, in part, to an unusually high number of people crossing the southwest border without authorization.

Processing of UAC cases

As of January 26, 2016, DHS had filed with the immigration courts 52,344 cases involving unaccompanied children who crossed the southwest border on or after May 1, 2014. Each of these DHS filings marks the beginning of an unaccompanied child's case before EOIR. When the unaccompanied child's immigration proceedings before EOIR have concluded, EOIR no longer has any jurisdiction over the child.

Upon discharge of the unaccompanied child from the custody of the Department of Health and Human Services (HHS), HHS provides DHS with the address of where the unaccompanied child will reside with his or her sponsor. DHS includes this address with the Notice to Appear (NTA) that it files with the immigration court, if the child is released from HHS care in advance of the NTA filing. When the NTA is filed while the child is still in HHS custody, it would be the responsibility of the child's custodian to file a change of address and a motion to change venue upon release. The court staff creates a new case file in EOIR's case management system, and includes the child's address as it is provided on the NTA. That address is important to the immigration court process.

EOIR mails a hearing notice, generally by first class mail, to the unaccompanied child's or custodian's address (as applicable) as indicated on the NTA. The hearing notice contains the date, time, and location where the proceeding will be held, the rights the child has in removal proceedings, notice of a requirement to inform the immigration court of any address changes, and other information. EOIR also operates an automated case information hotline to allow respondents to call to receive the date, time, and location of upcoming hearings. The unaccompanied child's custodian is responsible for providing notice of address changes, which must be filed with the immigration court within five business days of the address change.

To supplement the information provided on the NTA and hearing notice, EOIR operates the Legal Orientation Program for Custodians of Unaccompanied Alien Children (LOPC), which provides group orientations, individual orientations, and pro bono referral services to the adult caregivers of unaccompanied children in EOIR removal proceedings at 14 sites nationwide. In FY 2015, LOPC providers held approximately 2,100 group orientations and 2,200 individual orientations, serving close to 14,000 custodians (adult caregivers) of unaccompanied children released from federal custody. The LOPC also operates a National Call Center to assist in scheduling individuals for LOPC services as well as to help in providing basic legal information to those custodians who have no access to local LOPC services. The National Call Center receives a steady number of calls that generally ask questions about where and when they can attend LOPC orientations, when and where their hearings are scheduled, how to change the venue of their immigration court, how to change their address, the consequences of not appearing at their hearings, and the availability of pro bono legal services to assist them in their area; in FY 15, the Call Center received approximately 5,300 calls. Overall, the program helps the immigration court process function more efficiently and effectively by providing valuable information to the custodians of children who arrive in the United States without a parent or guardian.

LOPC providers attempt to follow-up with UAC custodians when children do not appear in court or are issued in absentia orders by conducting outreach by phone, text message, email and/or regular mail.

EOIR is working to hear as many of these and other priority cases as quickly as possible while protecting due process. Immigration courts are still hearing all cases, including non-detained, non-priority cases, as quickly as available docket time allows. Nevertheless, the addition of the UAC and other recent border crosser cases to EOIR's priority dockets has had a significant impact on the non-detained, non-priority cases awaiting adjudication. Thousands of such cases have had to be scheduled for dates further in the future to make room for the priority cases.

Earlier this month, EOIR provided to immigration judges guidance regarding changes to docketing priorities. On February 8, 2016, EOIR began docketing the initial master calendar hearing for DHS-designated unaccompanied children no earlier than 30 days and no more than 90 days from the immigration court's receipt of the NTA. This was a change from the initial 10-to-21-day guideline, and EOIR believes this greater scheduling flexibility will benefit both parties to the hearing by allowing them more time to prepare and providing respondents more opportunity to retain counsel, thereby furthering immigration court efficiency and diminishing the need for continuances.

It is important to note that immigration judges will administratively close or terminate cases where it is determined that another agency is evaluating or has evaluated a case for relief from removal. As of January 26, 2016, immigration judges had administratively closed 6,090 cases of UAC and had terminated 4,786 of these cases.

There are circumstances when an immigration judge may have to issue a removal order *in absentia*. There are proper and consistent procedures in place when respondents

do not appear for proceedings. Immigration judges review cases consistent with all applicable law and regulations and issue an order of removal *in absentia* when the NTA in court comports with the law and the person is removable and received proper notice of his or her hearing. This is to say that the law requires an immigration hearing to proceed with the issuance of an order of removal *in absentia* if the immigration judge is satisfied that the respondent or a relevant representative received proper notice of the hearing, and that DHS has established that the respondent is removable as charged in the charging document.

Children who appear in immigration court proceedings without an accompanying adult may require special care and modifications to normal courtroom procedures. EOIR has in place guidance for adjudicating cases where the respondent is an unaccompanied child. The guidance assists the judge in evaluating whether the child understands the nature of the proceedings, effectively presents evidence about the case, and has appropriate assistance, taking into account the respondent's age, development, experience, and self-determination. Following the increase in arrivals of UAC in 2014, most immigration courts are equipped to handle a juvenile docket.

In January 2013, EOIR established a dedicated Assistant Chief Immigration Judge (ACIJ) for vulnerable populations. That individual liaises with the immigration courts on a routine basis and determines what training the immigration judges need to assist them in their duty. Immigration judges receive ongoing specialized training regarding the vulnerabilities of unaccompanied children in proceedings, each of which occurs as part of a docket dedicated to juvenile cases. In April 2015, more than 40 immigration judges who handle juvenile dockets received in-person supplementary training on issues related to juveniles, including the issuance of *in absentia* removal orders in children's cases. Additional training took place in August 2015, and more is planned for this summer.

Cases involving minor respondents often can be adjudicated more efficiently with the assistance of counsel. For example, cases involving represented minors often have fewer continuances. Therefore, in addition to the LOPC program noted above, EOIR is also working with our partners at the Corporation for National and Community Service to continue the justice AmeriCorps program, in which EOIR funds representation for certain UAC. Also assisting in this realm are two EOIR pilot programs that provide representation for certain UAC. The first program is the Baltimore Representation Initiative for Unaccompanied Children in which attorneys represent certain UAC appearing before the Baltimore Immigration Court. The second pilot program will provide legal representation to UAC who, due to their long distance from the immigration court, are more likely not to be represented by counsel or not appear at their court hearings.

Trafficking of UAC

EOIR's adjudicators work to identify victims of trafficking. EOIR has in place several procedures to assist its staff with carrying out that important responsibility.

Following the passage of the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) in 2008, EOIR issued mandatory, comprehensive digital training on human trafficking. Training sessions for both immigration judges and members and staff of the BIA often include trafficking topics, most recently in August 2015. All new immigration judges receive training on human trafficking before they begin hearing cases. We expect to continue to provide training to adjudicators and staff on this important topic.

As noted above, immigration judges receive ongoing specialized training, including specialized training regarding the vulnerabilities of unaccompanied children in immigration court proceedings. Immigration judges hearing cases may contact the ACIJ for vulnerable populations to identify cases that may be appropriate for referral for pro bono resources or child advocates.

In April of last year, EOIR updated its 2012 protocol on the identification and referral of potential trafficking victims or traffickers. The current protocol provides important information to court personnel regarding the indicators of trafficking and how to refer potential trafficking cases to DOJ's Human Trafficking Prosecution Unit, which resides in the Civil Rights Division's Criminal Section. The Human Trafficking Prosecution Unit was formed in 2007 to consolidate the expertise of some of the nation's top human trafficking prosecutors and to lead prosecutions of complex, multi-jurisdictional, and international human trafficking cases. EOIR is also currently evaluating ways to enhance its protocol to include additional resources for personnel when they encounter suspected victims of child abuse and neglect.

In addition, EOIR's LOPC addresses the adult caregivers' responsibility to protect the child from mistreatment, exploitation, and trafficking. LOPC providers are also provided guidance and training on identifying potential victims of trafficking and abuse and referring such cases to the appropriate social services and law enforcement authorities.

Conclusion

Mr. Chairman, Senator Leahy, and distinguished Committee Members, EOIR is dedicated to processing these cases as quickly as possible with deference to due process and the care and caution they require. Our adjudicators and staff are dedicated professionals who work every day to provide efficient and fair immigration court proceedings, both at the trial and appellate levels. EOIR faces the demands of a large and increasingly challenging caseload, but, with Congress's continued support, we are confident that EOIR will effectively meet that challenge.

Thank you for your interest and for the opportunity to speak with you today. I am pleased to answer any questions you might have.