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In the Balance

Backlogs Delay Protection in the U.S. Asylum and Immigration Court Systems

April 2016



ON HUMAN RIGHTS, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability, and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

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Executive Summary

As the world faces the greatest refugee crisis since World War II, the need for effective, timely, and fair processing of asylum claims could not be greater. But the U.S. asylum and immigration court systems are failing refugees. Chronic underfunding, hiring challenges, and shifting enforcement strategies have left the asylum office and the immigration courts in a state of crisis. More than 620,000 removal and asylum cases are pending, and many asylum seekers are waiting three to six years for resolution of their claims. The growing backlogs threaten to undercut the integrity of the U.S. immigration system and expose vulnerable people and their families to prolonged separation and anguish as they wait.

“I left my home and lost my home over there, nobody knows when the bombs [will] come,” says one asylum seeker from Syria. Delays have left him—like thousands of others—stranded in legal limbo and unable to bring his family to safety in the United States until his asylum request is granted. “When you hear every day from your daughters that ‘we want to come,’ and they start to cry when they hear the bomb noises, it’s horrible.”

Since 1978, Human Rights First has represented refugees seeking asylum in the United States in partnership with pro bono attorneys at law firms. With offices in New York, Washington, D.C., and Houston, Human Rights First has a national, on-the-ground perspective of the challenges faced by asylum seekers. Staff attorneys and pro bono partners alike identify the backlogs as the number one problem facing their asylum clients today. Human Rights First currently represents, with its pro bono partners, more than 550 asylum seekers stuck in the backlogs.

As detailed in this report, there is strong and diverse support for addressing the backlogs. The

Bipartisan Policy Center, American Bar Association, the Association of Pro Bono Counsel (APBCo), editorial boards from Texas to Los Angeles, and bipartisan Congressional leaders have all called for additional resources. Representative John Culberson (R-TX) said additional funding “will help reduce the growing backlog of cases that are holding up our courts and compromising the rule of law.”

The report examines the impact that systemic delays in both the Asylum Division of the United States Citizenship and Immigration Service (USCIS) and the immigration courts have on the integrity of the U.S. immigration system and on asylum seekers and their families. It also offers solutions for eliminating the backlogs and lessening delays.

Informed by in-depth interviews with asylum seekers and legal service providers, detailed analysis of data, a survey of pro bono managers at law firms, meetings with current and former government officials, and consultation with numerous experts, Human Rights First finds the following:

Backlog in the Asylum Division

- **The number of backlogged cases at the Asylum Division has more than quadrupled since 2013.** The number of cases before the nation’s eight asylum offices has ballooned from 32,560 in 2013 to some 144,500 in March 2016. This growth is largely due to an increase in the number of credible fear and reasonable fear interviews—which are part of the expedited removal and reinstatement of removal procedures that have been increasingly employed by DHS over the years—along with an increase in affirmative asylum applications. Since 2013, credible fear interviews have nearly quadrupled and reasonable fear interviews have nearly doubled.

- **Average wait times for initial affirmative asylum interviews exceed two years.** Six of the eight asylum offices are scheduling interviews for asylum applications filed more than two years ago. As of February 2016, the asylum office in Los Angeles was scheduling interviews for applications filed in August of 2011. All offices are scheduling initial interviews over the statutory requirement of 45 days for initial interview and 180 days for complete initial adjudication. For many years, the Asylum Division had typically scheduled most interviews within two months of filing, a time period that provided timely protection to many and safeguarded the integrity of the system by promptly referring those who were not granted asylum into immigration court removal proceedings.
- **Additional asylum officers are needed as the number of backlogged affirmative asylum applications will continue to grow even if the Asylum Division fills all 533 currently funded positions.** Some 144,500 applications were pending in March 2016. The total number of backlogged affirmative asylum cases grew by over 40,000 in the first six months of FY 2016 alone. The Asylum Division is on track to complete about one third of new asylum applications in FY 2016, given the credible fear and reasonable fear workload.
- **Despite extensive hiring efforts, the Asylum Division of USCIS lacks the funding for sufficient asylum officers.** Additional funding will be required to grow the asylum corps to a size—700 to 800 officers—sufficient to eliminate the backlog and adjudicate all applications in a timely fashion. Moreover, the Asylum Division expects to lose 58 officers to refugee resettlement details in 2016.

Backlog in the Immigration Court System

- **Without additional judges the backlog in the immigration courts will top 500,000 by the end of FY 2016 and reach 1 million in FY 2022.** As of February 2016, 480,815 removal cases were pending before the immigration courts—nearly double the number of cases pending in 2009. About 20 percent of incoming immigration court removal cases are applications for asylum.
- **The immigration courts are woefully understaffed.** In February 2016 the court was staffed with just 254 judges. But 524 (and corresponding support staff) are needed to eliminate the backlog and adjudicate new cases within an average of one year. Congress recently appropriated funding for an additional 55 immigration judge teams—a welcome but insufficient step.
- **Hundreds of thousands of immigrants are stuck in legal limbo for years.** On average, people whose cases are before the immigration courts can expect to wait over three years. In many courts, the wait time can be much longer, five or six years. In Texas, for example, immigrants and asylum seekers must wait on average over 1,700 days—nearly five years.
- **An asylum seeker who files an affirmative asylum application today could wait more than six years.** Asylum seekers wait well over two years on average for an initial interview at the Asylum Division. When the Asylum Division does not grant a case, it refers it to the immigration court removal process. (Human Rights First often takes on asylum cases for legal representation at this stage, and many are ultimately granted by the immigration courts.) Those seeking relief before the immigration court now face a three and a half year wait on average. These combined delays can total more than six years.

■ **The Executive Office of Immigration Review (EOIR) faces challenges hiring judges promptly enough to combat attrition.** On February 1, 2015, EOIR swore in nine judges, bringing the total to 254 – four fewer than began 2015. According to recently retired judges and the National Association of Immigration Judges, the huge caseloads lead many to retire. At the end of FY 2015, some 130 judges were eligible for retirement.

The Human Impact of the Backlogs

■ **Family separation leaves children and spouses in danger and strains family relationships.** Many asylum seekers with strong protection claims remain separated for prolonged periods from family members who face ongoing persecution and imminent danger.

- **Joshua, a Christian missionary recently granted asylum,** feared for his family's lives for over three years while they hid from Boko Haram. Joshua fled to the United States in 2013 and waited in the backlog until he was granted asylum in March 2016, but his wife and children are still in hiding.
- **Diana, from Honduras,** was subjected to years of violent domestic abuse in front of her young daughter. She fled to the United States, where her case has been pending more than three years. In 2015, the court cancelled her latest hearing and gave her a new date in 2017. Threatened by Diana's ex-partner and abuser, her daughter remains in hiding.

■ **Delays harm asylum seekers' mental health.** Mental health professionals report that many asylum seekers stuck in the backlog are unable to fully recover from past trauma and struggle with worsened symptoms.

- **Ibrahim, a comedian and political activist from the Ivory Coast,** had his immigration court hearings canceled twice, resulting in a five-year delay. Tortured in his home country for his political beliefs, Ibrahim says, "I feel like I am in prison waiting for my sentence."

■ **Employment and education are often put on hold while asylum seekers wait.** Many asylum seekers struggle to support themselves and their families in the many months before they receive work authorization. Even once they do, they face barriers—an unreliable work authorization renewal system, for example—to sustainable employment. Education, too, is difficult to access for a variety of reasons, including the requirement in most states that immigrants have permanent status to qualify for in-state tuition and other financial aid options.

Impact on Pro Bono Representation

■ **Years of delays undercut pro bono legal representation.** According to a survey by Human Rights First in February 2016, nearly 75 percent of pro bono coordinators at many of the nation's major law firms indicated that delays at the immigration court are a significant or very significant negative factor in their ability to take on a pro bono case. More than 60 percent also say delays at the Asylum Office hurt their ability to take on affirmative asylum cases pro bono. Representation can make the difference between deportation or relief—and between life or death. Given the lack of government funding for legal representation of indigent asylum seekers, the backlog's effect on pro bono representation is particularly concerning.

Recommendations

Both executive and legislative leaders should take straightforward steps to ensure the U.S. asylum and immigration court systems are an embodiment of U.S. ideals, advancing both the rule of law and the protection of individual rights. Providing these systems with the necessary staffing levels constitutes a smart investment in the effectiveness of the asylum system and the immigration court removal system—minimizing unnecessary expenditures caused by the backlogs, preventing potential abuse of these systems and allowing refugees to contribute to this country sooner without years of delay. To these ends Human Rights First recommends:

To the United States Congress:

- **Authorize and appropriate funds for an additional 150 judges—over two years—in order to reach the recommended level of 524 immigration judges.** To do so, Congress should fund 75 immigration judge teams for fiscal year 2017, and an additional 75 for fiscal year 2018.
- **Allocate requisite funding to EOIR to expedite the hiring process of immigration judge positions.** All currently funded immigration judge positions, 374 total, should be filled as soon as possible through the allocation of resources to conduct prompter background checks. Such resources should also be allocated to ensure all 150 newly funded judges can be hired as soon as possible.
- **Support efforts to expand and expedite the hiring of additional USCIS asylum officers.** Without additional staffing, the backlog at the Asylum Division will continue to balloon even when all 533 current positions are filled.

To the Department of Justice and its Executive Office of Immigration Review (EOIR):

- **Redouble efforts to fill all currently funded immigration judge positions.** The Department of Justice and EOIR should improve the pace of hiring and immediately direct the necessary resources, including resources needed to conduct prompter background checks, towards hiring all currently funded immigration judge positions as quickly as possible—while assuring the integrity and fairness of the hiring process.
- **Create an effective process for advancing cases due to humanitarian considerations and issue guidance to immigration judges on pre-trial communication and pre-trial conferencing.** Such guidance could narrow the issues requiring time at hearings, reducing the length of some hearings. EOIR must create a reliable and fair system through which asylum seekers who have urgent or humanitarian needs can request and receive an early hearing date.

To the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) and its Asylum Division:

- **Increase the total number of asylum officer positions to 700-800, which requires adding 167 to 267 positions.** Even after the Asylum Division fills the 533 currently funded asylum officer positions, the backlog will continue to grow at a rate of around 20,000 cases per year. At 700 total officers the Asylum Division would begin to reduce the backlog and could eliminate it by FY 2025. With 800 officers on board by FY 2019, the division would eliminate the backlog by FY 2022. Under both scenarios the Asylum Division could adjudicate all new incoming asylum applications within 60 days of receipt after eliminating the backlog. Normal attrition rates would allow the Asylum Division to level off, after the backlog is eliminated.

- **Create an effective process to advance asylum interviews for those with humanitarian or urgent concerns.** Current mechanisms, including “short lists” and requests for expedited interviews, are insufficient and often unreliable. A fair and uniform process for scheduling cases that need prompt interviews is needed to ensure that cases with urgent humanitarian concerns are considered by the Asylum Division without delay.

To the Department of Homeland Security:

- **Limit the use of expedited removal against Central American families and other populations with high percentages of asylum seekers.** The significant increase in the use of expedited removal in areas beyond ports of entry has greatly impacted the Asylum Division as it conducts the protection component of expedited removal and reinstatement of removal. Based on FY 2016 projections for credible fear interviews (expedited removal) and reasonable fear interviews (reinstatement of removal), 272 officers must be devoted solely to protection screening requests. UNHCR has recognized a growing refugee crisis in the Northern Triangle (El Salvador, Guatemala, and Honduras). The use of summary proceedings against known refugee populations diverts substantial asylum office staffing, resources, and time to screen a population that will ultimately be largely entitled to apply for asylum.

- **Issue guidelines to DHS trial attorneys establishing steps to narrow issues, preserving limited court time for vital issues.** Guidelines for trial attorneys, including requiring pre-trial conferencing to reduce unnecessary hearing time, by narrowing the issues for trial, where appropriate, could increase the efficiency of the court system and help free up some court time to complete more cases.

To the Executive Office of the President:

- **Request funding to grow the immigration court to adequate size.** Despite the positive step to request 55 new immigration judge teams in FY 2016, a request granted by Congress, the Obama Administration did not request funding to increase the number of immigration judges and support staff for fiscal year 2017. The next administration must request the necessary appropriations and prioritize the hiring of immigration judges.

Introduction

“I feel like waiting for this long ruined my life. I feel like I ran from the rain and fell into the sea.”

–Marcel, a political activist and survivor of torture, waited three years for an asylum interview and struggles to maintain hope.

This report analyzes backlogs in two distinct systems: the U.S. Asylum Division, a division of U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security (DHS), and the immigration court system, managed by the Executive Office for Immigration Review (EOIR) within the U.S. Department of Justice (DOJ). While the Asylum Division exclusively handles asylum and other protection claims, the immigration courts handle all types of immigration removal cases. Asylum cases have made up approximately 20 percent of incoming immigration court caseloads in recent years. With more than 620,000 removal and asylum cases pending and total wait times topping six years, asylum seekers hang in legal limbo—separated from families, struggling to recover from trauma, and unable to rebuild their lives.

Seeking asylum in the United States is a complex process. Asylum seekers must demonstrate that they meet the legal definition of a “refugee”—a person unable or unwilling to return to their country of origin because of persecution or a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. They must present evidence to support their case and convince the decision maker of their credibility, often while suffering from trauma and other effects of persecution. The government does not provide legal counsel to indigent asylum seekers, and many go through this complex process without a lawyer, even as studies show that, more than any

other variable, whether they have a lawyer determines the outcome of their cases. Asylum law has become even more complex in recent years, further exacerbating the need for counsel.

People present in the United States can make an “affirmative” application for asylum to the USCIS Asylum Division, voluntarily coming forward to file an application. An officer at the Asylum Division will interview the applicant and if the officer grants the application, the person—who is now an “asylee”—can petition for a spouse and children to join him or her in the United States.

If the officer does not grant the asylum application, the case will be “referred” to the immigration court, where an attorney from U.S. Immigration and Customs Enforcement (ICE) will argue for the person’s removal from the United States and an immigration judge will consider the asylum case or other available forms of relief from removal. While some affirmative cases referred to the immigration court are ultimately denied, a significant number are granted by immigration judges. Thus, referrals to the court do not necessarily indicate an unmeritorious claim.

If a person is already in active immigration removal (deportation) proceedings, the asylum application must be filed directly with the immigration judge, a process known as a “defensive” application for asylum. An exception to this rule exists for unaccompanied immigrant children. If an unaccompanied child is subject to removal proceedings and files an application for asylum, the Asylum Division will hear that asylum case initially. During this time, the immigration judge may adjourn the hearing to allow time for the Asylum Division to issue a decision. The judge will consider the merits of the unaccompanied child’s asylum case only if the case is not granted by the asylum officer and “referred” to the court.¹

Backlogs in both systems are getting worse. The backlog at the Asylum Division is growing at a rate

of approximately 20,000 cases every three months, and the pending caseload at the immigration court has grown by more than 50,000 each year since 2013. The courts will soon have more than 500,000 pending removal cases. Without action, the immigration court backlog will grow to more than 1 million by 2022. The Asylum Division is on track to have more than 200,000 pending cases by December 2016.

Chronic underfunding has caused the immigration court backlog to grow at a steady pace since 2008, spiking slightly in 2014 and 2015. Despite the increasingly complex caseloads and demands on judges, the number of immigration judges hearing cases grew only from 223 to 254 since 2008. Sequestration caused a DOJ hiring freeze from 2011 to 2014, which stymied growth in the number of immigration judges. EOIR has recognized the need to improve its hiring process to get judges on the bench more quickly, and recently issued a request for proposals (RFP) for an in-depth case processing study that would produce an objective and standardized measure of judicial workloads.²

Numerous groups, editorial boards, and bipartisan leaders have called for increased funding of the immigration courts. The Bipartisan Policy Center argues, “Funding immigration courts should not be controversial.” The U.S. Conference of Catholic Bishops contends, “The U.S. immigration court system should increase by an order of magnitude.” The Houston Chronicle recently explained, “The backlog hurts almost everyone.” Representative John Culberson (R-TX) expressed his support for increased resources in connection to the FY 2016 budget bill: “The funding in this bill will help reduce the growing backlog of cases that are holding up our courts and compromising the rule of law.”

In conjunction with the FY 2017 budget the Association of Pro Bono Counsel (APBCo), which consists of the pro bono leaders of many of the

nation's leading law firms, issued a letter to Congress requesting adequate funding to eliminate the backlog in the immigration courts.

At the same time, the United States is seeing an increase in the number of people seeking asylum. Global displacement has reached record highs as wars, conflict, and persecution have caused more people to flee their homes. The targeted violence of transnational criminal organizations in Central America's Northern Triangle—Guatemala, El Salvador, and Honduras—has led to a significant increase in protection requests in the United States, as well as in other countries. EOIR's decision to prioritize cases of recently arrived unaccompanied children and families has exacerbated the backlog, causing greater delays for asylum seekers already awaiting their hearing.

The expansion in the use of expedited removal beyond ports of entry over the years has also added to the backlog. While in 2004 51,014 people were removed via expedited removal, in 2013 there were 193,032 expedited removals.³ DHS has also increased its use of reinstatement of removal, another form of summary removal. Since 2005, the number of removals based on a reinstatement of a final order has increased every year.⁴

Asylum Division officers are responsible for conducting protection screening interviews—known as credible fear interviews (CFI) and reasonable fear interviews (RFI)—with people subject to expedited removal or reinstatement of removal who have indicated a fear of return. In a credible fear interview the asylum officer must determine if there is a “significant possibility” that the person could establish an asylum or withholding of removal claim before an immigration judge.⁵ In a reasonable fear interview the officer must determine if there is a “reasonable possibility” of future persecution based on one of the five protected grounds under the refugee definition.⁶

Since 2009, credible fear and reasonable fear interviews have gone up nine and seven fold, respectively. While a tripling of affirmative asylum applications has also contributed to the backlog, the Citizenship and Immigration Services Ombudsman reports that the Asylum Division backlog is “largely” a result of the increase in these protection-screening interviews.

This report first examines the growing backlogs at both the Asylum Division and the immigration courts. Projections show that backlogs will continue to balloon, causing lengthening waits for all immigrants with cases pending before either system. Second, the report explains the underlying causes of the backlogs and the challenges impeding progress. Third, the report examines the impact of these delays on asylum seekers and pro bono representation. Finally, the report proposes solutions for eliminating the backlogs in both systems and steps for increasing efficiency.

The Backlogs—A Ballooning Problem

The Asylum Division

The Asylum Division of USCIS is facing a growing crisis. Over the last three years, the backlog of affirmative asylum applications has more than quadrupled, from 32,560 at the end of fiscal year 2013 to some 144,500 as of March 2016.⁷

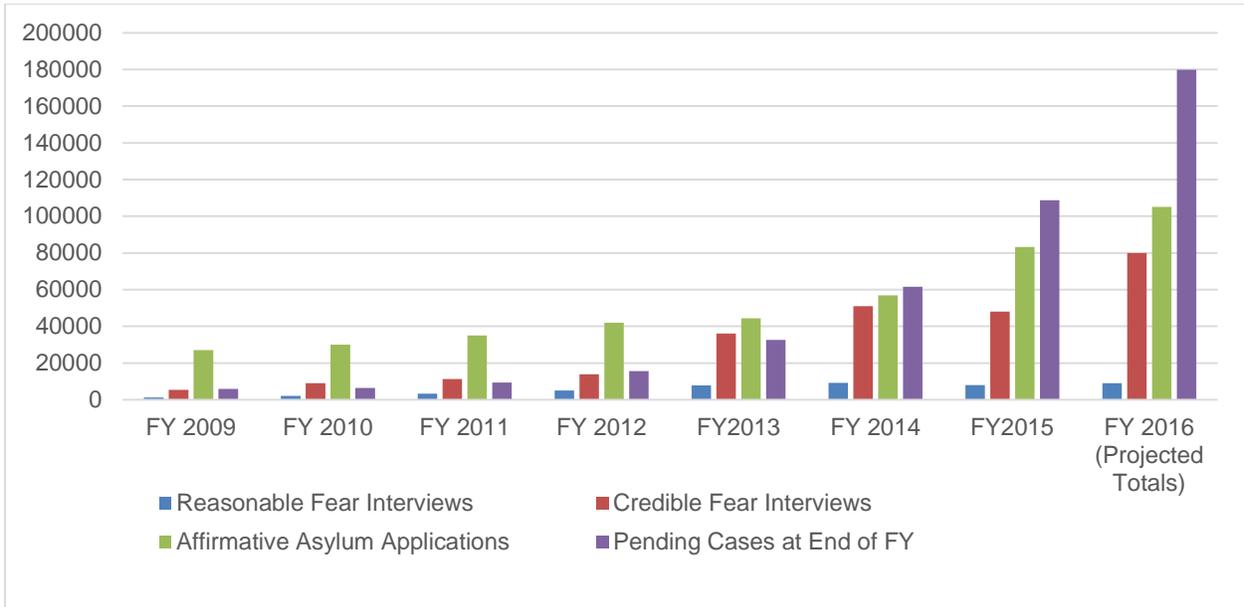
The number of new affirmative asylum applications grew from 44,446 in 2013 to nearly 57,000 in FY 2014 and 83,254 in 2015, which, according to UNHCR, is part of a global trend that

reflects the increase in displaced people fleeing persecution, war, and deteriorating security.⁸ The Asylum Division is on track to receive more than 100,000 affirmative asylum applications in FY 2016.⁹ There have been notable increases in applications from asylum seekers fleeing the Northern Triangle. While applications from El Salvador, Guatemala, and Honduras totaled less than 1,900 in FY 2013 (or about 4 percent of the total number), the Northern Triangle countries accounted for more than 20,000 affirmative applications in FY 2015 (or about 25 percent of total applications). At the same time, an increase in the use of expedited removal and reinstatement and the increase in CFI and RFI requests have syphoned Asylum Division resources and undercut its ability to adjudicate affirmative asylum claims.

A confluence of factors has contributed to the increase in the number of credible fear and reasonable fear interviews. The escalation of immigration enforcement, the significant expansion in the use of expedited removal beyond ports of entry, and the increased violence pushing people to flee are all putting pressure on U.S. protection screening and adjudication systems. The violence in Central America has affected a wide range of people, including women targeted for murder, rape, and domestic violence, LGBT persons, journalists, police officers, and others terrorized by transnational criminal organizations that sometimes have close ties to government.

Figure 1 depicts the number of reasonable fear interviews, credible fear interviews, and affirmative applications filed each fiscal year, along with the number of pending cases that

Figure 1: The Asylum Office Backlog¹⁰



remained at the end of each year.¹¹ In FY 2013 the number of CFIs more than tripled, and RFIs went up by more than 50 percent. CFIs and RFIs continued to grow in 2014 and 2015, peaking at 51,001 and 9,084 respectively. The Asylum Division is on track to receive more than 80,000 credible fear interviews and more than 8,000 reasonable fear interviews in FY 2016.¹² (These are only a portion of overall CBP apprehensions.)

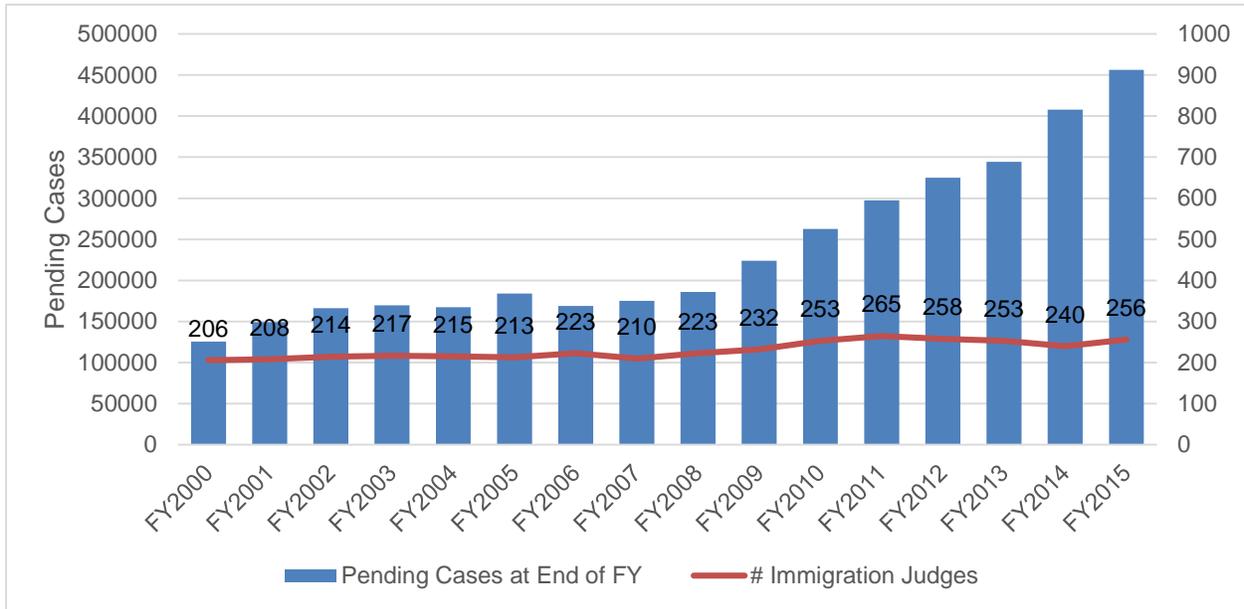
As a result of the increasing demands on the Asylum Division that stem from the expedited removal process and increasing affirmative applications, the number of pending cases doubled in FY 2013 from 15,526 to 32,560, doubled again during FY 2014, and nearly doubled in FY 2015, with 108,749 cases pending at the end of that year. By March 2016, some 144,500 affirmative cases were pending before the Asylum Division.¹³

By the end of FY 2015, the Asylum Division had 375 asylum officers, and a budget to grow to 533 officers.¹⁴ This includes a significant increase in the number of authorized positions since the beginning of 2015, when funding provided for just

448 officer positions.¹⁵ At current staffing levels, the number of pending cases continues to increase by approximately 20,000 every three months; by the end of 2016 the Asylum Division could face over 180,000 pending asylum applications. Even if it is fully staffed at 533 asylum officers, the backlog will grow at a rate of approximately 20,000 cases per year.¹⁶

As a result of the growing backlog, most people who file an affirmative asylum application wait two years, and many longer, before USCIS asylum officers adjudicate their cases. As of February 2016, the asylum office in Los Angeles was scheduling interviews for asylum applications filed in August of 2011—more than four years ago. Six of the eight asylum offices across the country are scheduling interviews for applications filed more than two years ago.¹⁷ For example, the asylum office in Miami scheduled interviews in February 2016 for people who had applied for asylum in May 2013. With the remaining two asylum offices scheduling interviews for applications filed well over one year ago, all asylum offices are processing cases well over the 45-day statutory

Figure 2: Ballooning Backlog without Increase in Immigration Judges ¹⁸



requirement for initial interviews and well over the 180-day statutory requirement for final adjudication of an asylum claim at the Asylum Division.¹⁹

From April 2015, when USCIS began posting information related to the backlog in an online bulletin, to March 2016, asylum offices in Arlington, Chicago, Houston, Los Angeles, Miami, and Newark have made little to no progress in adjudicating affirmative asylum claims. For example, between April 2015 and February 2016 the asylum office in Houston was scheduling interviews with applicants who had filed in April or May 2014. USCIS notes this on the asylum bulletin by explaining, “Offices that do not appear to be progressing by filing date [...] may have diverted resources to credible and reasonable fear interviews, or be experiencing high volumes in the first two affirmative priority categories, or may have large numbers of pending category three [affirmative asylum] cases with filing dates from that particular month.”²⁰

The New York asylum office is the only location making consistent progress on backlogged cases.

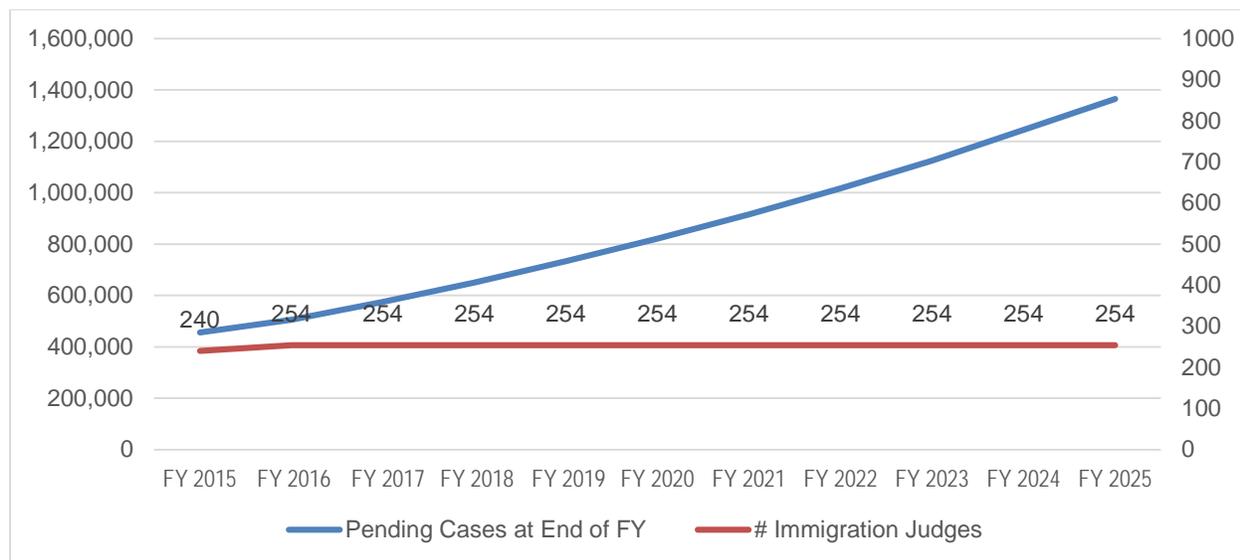
New York happens to be the only asylum office with minimal responsibilities over immigration detention facilities that hold asylum seekers, meaning it receives little to no requests to conduct credible fear and reasonable fear interviews.²¹

The Immigration Court

The backlog in the U.S. immigration court system also continues to grow. Beginning in FY 2007, the number of cases pending before the immigration courts began to rise (in previous years it had hovered between 150,000 and 200,000), with the greatest spikes in FY 2014 and 2015. But the number of immigration judges on the bench increased only slightly, from 210 in FY 2007 to 256 at the end of FY 2015.

Unable to keep up with the growing demands, judges’ caseloads continued to grow, and as of February 2016, 480,815 cases were pending.²² Based on data provided by Syracuse University’s Transactional Records Access Clearinghouse (TRAC), Human Right First calculates the number

Figure 3: Predicted Backlog Expansion at Current Prosecutorial, Case Completion, and Staffing Rates



of cases pending before the court will soon exceed 500,000. The immigration courts in Texas and California have the largest caseloads, with 89,000 and 81,000 respectively. The number of cases pending in the Houston court grew from 6,423 to 36,136 between 2010 and 2016. In Baltimore, pending cases nearly tripled between 2013 and 2016. The Atlanta court, which hears nearly all cases of immigrants residing in Georgia and Alabama, has experienced more than 100 percent growth, from 6,297 to 12,408 cases in the past four years. Six judges in Atlanta handle 12,408 cases. In Phoenix, only four immigration judges handle nearly 10,000 cases.

At current prosecutorial, case completion, and staffing levels, the number of pending cases will increase to 504,394 by the end of FY 2016 and will continue to expand unless the federal government takes action. As shown in Figure 3, if the corps of immigration judges remains at its current size of 254 judges, the number of pending cases would reach over 1 million in FY 2022.

As a result of the ballooning backlogs at the immigration courts, hundreds of thousands of immigrants are in a state of legal limbo for more than three years on average. The most delayed courts have wait times of four to five years. For example, it will take the Newark court more than five years to hear currently pending cases.²³ In Texas, immigrants and asylum seekers must now wait on average over 1,700 days—nearly five years—for their cases to be resolved. In Maryland they wait nearly two years, in Georgia and Alabama three and a half years, in Arizona more than three years, and in California nearly three years. Since 2014 alone, wait times have grown by 34 percent in Houston, 28 percent in Dallas, 20 percent in Newark, and 15 percent in Baltimore. Immigrants in New York can expect to wait at least two and a half years for the court to consider their case.

How We Got Here: Causes and Challenges

This section provides a more in-depth analysis of the underlying reasons for the backlogs, beginning with the chronic underfunding that has plagued the immigration court for years. The expanded use of expedited removal and increased demand for protection screening interviews have added substantially to the Asylum Division's workload. Finally, shifting docketing and scheduling priorities and hiring and staffing challenges have further exacerbated the problem and undercut the systems' ability to stem growing backlogs.

Chronic Underfunding

Congress has continually increased immigration enforcement budgets to widen the administration's capacity to apprehend and prosecute immigrants, but has not proportionately increased the budget for systems charged with handling the resulting cases.²⁴ Over the last five years, resources for immigration enforcement, including Customs and Border Protection (CBP) and ICE, have more than quadrupled—from \$4.5 billion in 2002 to \$20.1 billion in fiscal year 2016.²⁵ Funding and staffing for the immigration courts lagged far behind, increasing by only 74 percent.²⁶ Moreover, the increase in asylum applications associated with rising violence and persecution in Central America and a global refugee crisis call for more, not less, funding for the bodies that adjudicate these life-saving claims for protection.

A wide variety of experts and former government officials have expressed concern about this funding imbalance. In a 2015 op-ed, former George W. Bush Administration ICE Assistant Secretary Julie Myers Wood noted that the backlog undermines both immigration enforcement and due process. She stated, "Adequate immigration court staffing is an

essential component of enforcement. With an appropriate number of judges and staff, cases will be decided in a timely and fair manner."²⁷ A Georgetown University report concluded: "Immigration courts remain chronically underfunded, particularly so in comparison to increased funding given to other enforcement activities. This has led to a court system that is unable to keep pace with heightened demand and extensive backlogs." David Martin, a law professor at the University of Virginia who worked for two Democratic presidents, recently explained: "You fund more investigators, more detention space, more border patrol; almost all of these are going to produce some kind of immigration court case." He further pointed out, "You are putting a lot more people into the system. It's just going to be a big bottleneck unless you increase the size of that pipeline."²⁸

Former Attorney General Alberto Gonzalez believes that investing in the immigration courts makes fiscal sense. In an August 2014 piece in *USA Today*, he emphasized that investing in our immigration court system along with broader immigration reforms would save money in the long run as well as "adhere to our principles of fairness and justice."²⁹

A report issued by the American Bar Association's Commission on Immigration in 2010, authored by pro bono attorneys at the law firm Arnold & Porter LLP, concluded: "The EOIR is underfunded and this resource deficiency has resulted in too few judges and insufficient support staff to competently handle the caseload of the immigration courts." The Administrative Conference of the United States (ACUS) confirmed in June 2012 that the immigration court backlog and "the limited resources to deal with the caseload" present significant challenges. In 2014 two expert roundtables convened by Georgetown University's Institute for the Study of International Migration called for increased resources for the

immigration court system to reduce the growing backlog.³⁰

Beyond chronic underfunding, the automatic spending cuts, known as sequester, that Congress passed in August 2011 as part of the Budget Control Act led to a hiring freeze at EOIR from 2011 to 2014. During this period the number of cases before the court grew by 100,000 while the number of immigration judges dropped from 265 to 240.

The Asylum Division, on the other hand, does not receive *any* congressional allocation. Its resources derive entirely from fees charged by USCIS on other immigration applications.³¹ This largely remained the case even as USCIS was faced with the escalating demands stemming from the increased use of expedited removal. In 2011, Congress appropriated \$25 million to the Asylum Division after USCIS eliminated surcharges on other immigration applications, which had previously supported the Asylum Division. But the following year, Congress made no allocation and the Asylum Division returned to a system that relied solely on USCIS fees, without a surcharge.³² Additional funding, whether from Congress or USCIS, will be required to grow the Asylum Division to a sufficient size to begin to address the backlog.

Expanded Use of Expedited Removal

According to the USCIS Ombudsman, “Spikes in requests for reasonable and credible fear determinations, which have required the agency to redirect resources away from affirmative asylum adjudications, along with an uptick in new affirmative asylum filings, are largely responsible for the backlog and processing delays.”³³ This increase in credible fear and reasonable fear interviews stems from the Obama Administration’s increased use of expedited removal, particularly against families traveling with children, and from the escalating violence and persecution in the

Northern Triangle, which has led to increased asylum filings in other countries in the region as well. In the first three months of 2015, 23 percent of the credible fear interviews conducted by the Asylum Division were for families detained at family detention centers.³⁴

Established by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, expedited removal is a process by which immigration enforcement officers, rather than judges, order the deportation of certain individuals. Those potentially subjected to expedited removal include people arriving at ports of entry, people arriving by sea, and non-citizens apprehended within 100 miles of any land border.³⁵ Originally, expedited removal was implemented only at ports of entry, but in 2004, DHS began to expand its use to areas between ports of entry. Some people may be subject to reinstatement of removal if they have had a prior order of deportation. The charging officer may invoke either process at their discretion.³⁶ In recent years, the Department of Homeland Security has increased its use of expedited removal and reinstatement of removal.³⁷

Many groups, including Human Rights First, have recommended that the administration refrain from using expedited removal and reinstatement against populations largely fleeing persecution, both for humanitarian and efficiency purposes.³⁸ Likewise, UNHCR has called upon the administration to recognize that the majority of Central American families and children seeking protection in the United States are part of a growing regional refugee crisis³⁹ and eligible for relief. In 2015, 88 percent of families who had been placed in expedited removal proceedings and expressed a fear of return passed their initial credible fear screenings.⁴⁰ Thus, most of the families placed in expedited removal were ultimately docketed for a hearing before an

immigration judge, arriving where some families and people had been placed immediately.

The use of expedited removal and reinstatement also impacts the immigration courts. Immigration judges review negative fear determinations and hold custody determinations for those subjected to detention (and people in summary removal proceedings are normally held in detention, at least until sometime after fear is established).⁴¹ For example, the number of credible fear and reasonable fear reviews completed by the immigration court increased from 1,126 and 385 in FY 2010 to 6,345 and 1,710 in FY 2014.⁴²

Priorities Adjustments

Modifications to docketing priorities and asylum interview scheduling have also impacted asylum seekers' wait times. In July 2014 the Department of Justice announced new docketing procedures to address the "surge of migrants crossing into the U.S."⁴³ EOIR re-prioritized its dockets to focus on cases involving unaccompanied children and adults with children.⁴⁴ This decision, coupled with the pre-existing backlog, led the immigration courts to re-calendar other non-priority cases for as late as November 2019.⁴⁵ An EOIR spokesperson indicated that these delays were a direct result of the decision to shift priorities and that many cases will be given a different hearing date, some sooner and some later.⁴⁶ If current rates remain the same and EOIR does not significantly expand its corps of immigration judges, many cases will still not be heard by 2019.

The Asylum Division followed suit in December 2014 by reprioritizing the order in which it adjudicates all affirmative asylum claims, including claims on behalf of unaccompanied children.⁴⁷ The Asylum Division now first adjudicates rescheduled cases, then cases filed by children, then other pending affirmative asylum applications in the order they were received. With respect to this third category, the Asylum Division shifted

from a "last in first out" to a "first in first out" order. Although reprioritization guaranteed that the longest pending cases would be heard first, the overwhelming number of fear screening interviews has largely prevented any progress whatsoever on affirmative asylum cases.

Hiring and Staffing Challenges

Both systems face hiring and staff turnover challenges. The Asylum Division is authorized to employ 533 asylum officers. As of March 2016, it had only 447. The Asylum Division indicated that it aims to fill 90 percent, or 480, of the 533 funded positions by the end of FY 2016. However, the Division will lose the equivalent of 58 officers to refugee resettlement details in coming months, adding to the challenge of creating and sustaining a robust corps of asylum officers.⁴⁸

Several challenges face EOIR as it works to increase the number of immigration judges. At the end of FY 2015, some 130 immigration judges were eligible for retirement. Due to worsening working conditions attributable to huge caseloads, some experts predict that many will accept the opportunity to retire.⁴⁹ Since 2010, EOIR has not hired more than 39 judges in any given year.⁵⁰ With only moderate hiring and regular turnover, the corps of immigration judges has not increased. On February 1, 2015, EOIR swore in nine new judges, bringing the total number to 254. But there were 253 judges in 2010.⁵¹ Due to lengthy hiring procedures and trainings, it generally takes EOIR 10 months, at the very least, to process a new judge.⁵² Without extensive improvements to the hiring process, new hires will largely fill positions of retired judges.⁵³

The Human Impact

“It’s not easy to wait. It’s not a little thing, it’s your life.”

–Tural, a refugee from Azerbaijan, waited over two years for an asylum office interview. He was recently granted asylum.⁵⁴

Nearly every asylum seeker interviewed for this report invoked the refrain “stuck in limbo.” Representing twenty-two different countries and a range of socio-economic backgrounds, those interviewed discussed the devastating effects on their families, the harm to their mental health, and their inability to move forward with their lives.

Diana, an asylum seeker from Honduras, has had her hearing cancelled three times by the court. “I continue in limbo,” Diana says, “I don’t know if I am beginning or ending, because my next court date is not until 2017.”⁵⁵ Augustin, a torture survivor from the Congo (Brazzaville), says, “I feel like what immigration is doing is mental torture. When I first arrived I was told it would take two weeks to get an interview, it took two years and two months.”⁵⁶

Carlos and Iris, pro-democracy political leaders from Venezuela, are stuck in the backlog at the Houston asylum office. “It is very difficult to speak about the future here, because we don’t know what will come,” they explain. A successful business owner and a lawyer, the couple now struggles to support themselves and their young daughter. Having spent their life savings to flee Venezuela, Carlos and Iris struggle to rebuild. “If you had asked my daughter what she wanted for Christmas she would have answered, ‘Mommy I just want them to give you your papers.’”⁵⁷

Separated Families Face Ongoing Danger

“They feel like it is a prison, because it is not safe at all to go outside the home, go to the city... Every day we worry until my daughter makes it home from school.”

–Ammar, a Syrian refugee, seeking asylum in Texas.⁵⁸

Asylum seekers often point to family separation as one of the most devastating consequences of being stuck in the backlog. When granted asylum, asylees can immediately petition for their spouse and children to join them in the United States.⁵⁹ The family is a protected and fundamental unit of society under international law.⁶⁰ In a paper prepared for UNHCR, researchers found that “although the right to seek and enjoy asylum in another country is an individual human right, the individual refugee should not be seen in isolation from his or her family.”⁶¹

Family members often face persecution in their home countries while awaiting the result of their loved one’s asylum claim. Some are forced into hiding, others may endure torture by authorities seeking information about their loved one.

■ **Ammar, a Syrian refugee, waits for his asylum case as his wife and daughters remain trapped in Syria, seeking shelter from bombs.** Ammar fled to the United States in October 2013 fearing persecution due to his refusal to take part in the Syrian war. His wife and two daughters went into hiding and his youngest daughter cannot go to school because it is not safe. His older daughter goes to school on occasion but he constantly worries about her safety. “When you hear every day from your daughters that ‘we want to come.’ And they start to cry when they hear the bomb noises, and it’s ... horrible.” Without a lawyer, the Asylum Division referred his case to the

immigration court, where he was scheduled for his first court hearing in 2019. His new pro bono lawyers are fighting to get an earlier date.⁶²

■ **Jonathan, a Christian pastor in Dallas, TX, is stuck in the backlog while his family is terrorized in the Democratic Republic of Congo (DRC).**

Jonathan arrived in the United States and sought protection in 2014. He was placed in removal proceedings and filed his application for asylum with the immigration court, where the first hearing was scheduled for 2015. Two weeks prior to the scheduled hearing, it was canceled and rescheduled for 2017. “Since I got the letter from the court I have not told [my family], because if I tell them it will not be good for them,” says Jonathan. His wife and five children are still in the DRC where they have been terrorized by security forces.⁶³

■ **Khanh, a Vietnamese journalist, is stuck in the Los Angeles backlog while his family faces ongoing persecution.**

After promptly filing his asylum application upon arrival in the United States in 2014, Khanh finds himself in the four-year backlog of affirmative asylum cases at the Los Angeles asylum office. A prominent journalist in Vietnam, Khanh formed an organization for journalists reporting on stories censored or banned by state-controlled media. “Due to my work while I was in Vietnam my family had a lot of repression,” says Khanh. Security forces have threatened to attack his son, who has been repeatedly arrested and beaten, and his children are monitored both at work and at school. His youngest daughter was followed and assaulted in front of the family's apartment building. Absent the successful expediting of Khanh's claim, a rare occurrence in Los Angeles, he can expect to wait years for the asylum office to hear his claim and give his family the possibility of relief.⁶⁴

■ **Joshua, a Christian missionary recently granted asylum, feared for his family's lives for over three years while they hid from Boko Haram.**

Joshua is a Christian missionary and social outreach worker from Nigeria, a husband and the father of young children. Boko Haram militants targeted him and his family because of his religious activities and because he provided information about Boko Haram crimes to the police. Joshua fled to the United States in 2013 after a period in hiding. At his first hearing in immigration court in late 2013, Joshua was scheduled for a hearing on the merits of his case in March 2016, where he was granted asylum. Joshua's wife and children are still in hiding. He continues to fear for their safety as he begins the process of petitioning to bring them to safety in the United States.⁶⁵

■ **Elisa, a female police officer in El Salvador for sixteen years, fled severe domestic violence but her child remains at risk in her home country.**

To avoid her own death from her brutal abuser, Elisa was forced to leave her two young sons and daughter in El Salvador with relatives. Soon after arriving in the United States in 2013, just fifteen minutes after her children had been dismissed from school at the end of the day, the director of their school was killed by gang members. Elisa's children no longer attend school because of the violence and avoid going outside for fear of forced gang recruitment. Elisa was scheduled for a hearing in 2015, which the court cancelled. She has been in the backlog for three years, uncertain when she will see her children again.⁶⁶

Prolonged Separation Destroys Familial Relationships

“As long as my family is not here I am not free.”

—Richard, an asylum seeker from Togo whose case began in 2013.⁶⁷

Long waits can be destructive to asylum seekers' relationships with family members left behind. Rogers, an asylum seeker from Uganda, explains how not receiving an interview date from the asylum office, despite applying in 2013, has impacted his relationship with his children:

They miss me, I miss them, and every time I talk to any of them they question when I am coming. “Next year...next year...” I tell them. Sometimes, you cannot explain all these things on [the] phone to kids so I try to tell them “don't worry I will come ...concentrate ... go to school... I'll come for you.” Every day you have to find something to tell them. Not to keep disappointing them and to keep them motivated. They are young. Like any parent I have to see them, be with them, talk to them, be in their life. I want to be in their life as well. Influence what they become. I want to see them grow. I want to be a factor in their life.”⁶⁸

Thousands of asylum seekers stuck in the backlogs want nothing more than to reunite with their children and spouses. As explained by Dr. Asher Aladjem, Chief Psychiatrist at the Bellevue/NYU Program for Survivors of Torture, asylum seekers struggle with “the sense that their own lives aren't only in limbo, but the whole family and the children and the whole [familial] system that they're part of is impacted.”⁶⁹ Whether a wife and child hiding from further persecution or a daughter longing for the love and support of her father, the innocent victims of excessive delays are commonly those left behind—and the family unit itself.

■ **Marcel, a political activist and survivor of torture, waited three years for an asylum interview and struggles to maintain hope.** Marcel was forced to leave his wife and children in Cameroon after he was tortured on account of his political opinions. His family left the capital city and is in hiding in a remote village. “My daughter told me two years ago that if my father doesn't come get me, he is no longer my father.” Marcel does all he can to reassure his family that he is still fighting for them to be together. Unfortunately, his weekly calls with them have become less frequent. “Whenever I call them, they're crying. I cry, the children cry, and it's really hard to bear that.” After waiting three years for an interview, the Asylum Division referred his case to the New York immigration court, where he will likely wait several more years for a hearing.⁷⁰

■ **Muzi, a father of two and political activist from Zimbabwe, sees his relationship with his daughters deteriorate.** Muzi fled Zimbabwe after being persecuted for his activities in a political party. Speaking of his first born daughter, Muzi says, “We were like very good friends ever since she was young, we were always together. It just hit her hard because she never expected that I would leave, so after I left it just hurt her heart.” Muzi fears that his emotional bond to his daughter is slowly breaking while he is stuck in limbo. Muzi filed for asylum in August 2014 with the Houston asylum office, which has been scheduling interviews for applications filed in April and May 2014 for the past 10 months, so it is unclear when he can expect his initial interview.⁷¹

■ **Richard, an asylum seeker from Togo, has been separated from his wife and children since his case began in 2013.** Richard was forced to flee Togo due to threats of violence resulting from his political activities. His child was just ten months old at the time. Now she is

almost four. “I don’t know my child and my child does not know me,” says Richard, whose relationship with his wife is also affected. Authorities have arrested Richard’s wife several times and mistreated her as they questioned her about his whereabouts. “She says if the threats continue, she will have to leave me. Everything is very confusing to her, she does not know how long it’s going to take, how long until we see each other again.”⁷²

Delays have Mental Health Consequences

“[Waiting] is non-stop pain that cannot be treated with medicine. We are in a blind spot in the system.”

– **Kashif, a human rights lawyer fighting for rights of persecuted Christians**⁷³

Many asylum seekers endured severe persecution and frequently endure further trauma during dangerous journeys to the United States. At their destination, they may experience still more suffering resulting from family separation, the inability to work, or discrimination while waiting for the outcome of their asylum case.⁷⁴

Delays impede asylum seekers’ ability to overcome trauma, and may compound it. Several studies have shown that extended delays in adjudicating claims—and the resulting uncertainty in asylum seekers’ futures—are associated with psychological distress “above and beyond the impact of traumatic events.”⁷⁵ Dr. Melba Sullivan, Staff Psychologist at the Bellevue/NYU Program for Survivors of Torture, observes that prolonged delays in the adjudication of asylum claims is an “ongoing stressor,” causing asylum seekers to experience prolonged exposure to the trauma trigger of uncertainty of future protection. This prolonged exposure impedes all phases of trauma recovery.⁷⁶ Kristina Jones M.D., Clinical Assistant Professor of Psychiatry at the Bellevue/NYU Program for Survivors of Torture explained that

she often struggles to keep her clients hopeful in the face of delays. “It’s hard to show someone a path with a light at the end of the tunnel when you don’t know how long the tunnel is.”

Dr. Jones explains that the lack of certainty created by extensive delays causes an “acute stressor” for asylum seekers remaining in limbo. As she states:

Some people who have been actively shot at, or burnt, or raped feel safer. But it’s relative. It’s great they’re not going to kill me, rape me, or burn me, but what if they send me back? Because “what if they send me back” is an idea that is very corrosive to the mind and we’re asking them to hold onto that idea for longer. So they don’t feel permanently safe here—they feel quite insecure.⁷⁷

This insecurity undermines asylum seekers’ ability to begin the process of trauma recovery, and instead causes some asylum seekers to develop mental health symptoms they otherwise may not have experienced.⁷⁸ “[The] delay is causing new episodes of depression that weren’t there before – definitely,” says Dr. Jones.

Several mental health professionals at the Bellevue/NYU Program for Survivors of Torture observed distinct changes in patients’ mental health after they received asylum. “The level of stress diminishes once you get granted asylum,” Dr. Asher Aladjem explains, “They go to school, they bring their family, they have jobs.”

■ Emanuel, an Ethiopian political activist, lost nearly 30 pounds waiting for his hearing.

Emanuel fled Ethiopia after authorities threatened his life for his support of a political party. He is scheduled for his first master calendar hearing in May 2016 after filing for asylum in 2013, and struggles to manage his emotions in the meantime. “I don’t even talk to my friends, I don’t really talk to people that remind me [of what I am going through]. I barely

sleep, I've lost like 20 to 30 pounds and lost my appetite for food. I feel like I'm in some kind of punishment here."⁷⁹

■ **Zahra, who fled Iran after being persecuted for converting to Christianity, struggles with depression and memory problems.** Zahra's case has been pending for six years before the Dallas immigration court. Zahra goes to school but struggles with the mental health consequences of years in legal limbo. "I am going to school, I know the material, but I forget. I cannot think really well." Zahra continues to struggle with depression due to years of separation from her children resulting from her prolonged wait in the backlog.⁸⁰

■ **Lionel, a political opposition leader in Cameroon, experiences memory loss due to trauma and extended delays.** Lionel said his friends used to say he had "an elephant memory," an assertion supported by Lionel's fluency explaining complex topics. "Now, I can't remember things I said yesterday," says Lionel. Lionel's case has been pending before the New York immigration court for three years, with three hearings canceled by the court. His next hearing is scheduled for October 2016. Lionel's wife left him and his brother was killed as a result of his political activities, leaving him with debilitating guilt and mental health challenges, exacerbated by his four-year wait.⁸¹

■ **Patrick, a survivor of severe torture on account of his political opinions, struggles with the emotional consequences of three years in the backlog.** Patrick fled to the United States in 2013 after suffering torture at the hands of his country's government. Patrick was not scheduled for an interview at the Asylum Division for over two years. At times he struggles with suicidal ideation. "I am thinking everyday if I can just go and kill myself and be free and have nobody talk about me anymore," Patrick says. "If there was not people

surrounding me, yes I could commit suicide."⁸² Patrick also suffers from sleep disturbance and migraines around thoughts of his current situation and past traumas.⁸³

■ **Ibrahim, a comedian and political activist from the Ivory Coast, had his immigration court hearings canceled twice due to the court backlogs, resulting in a five-year delay.** Imprisoned and tortured in his home country for his political beliefs, Ibrahim explains, "Every time I wake up all I think about is my situation with immigration... I feel like I am in prison waiting for my sentence."⁸⁴

Delays Complicate Work Authorization

"It is like you want to move forward but everyone is pushing you back."

—Komi has waited for an asylum office interview since August 2013.⁸⁵

Asylum seekers are entitled to work authorization after their case has been pending for 180 days.⁸⁶ The inability to work for at least six months after applying for asylum leaves many asylum seekers, already vulnerable and traumatized, in precarious situations. Those without means to survive must rely on friends, family, or local communities for support. But many lack support networks and face further abuse and other difficulties in informal or illicit labor markets and tenuous housing.⁸⁷ Many become homeless, live in overcrowded or unsafe conditions, and lack basic needs like food and clothing.

Sixty percent of the asylum seekers interviewed for this report experienced problems either obtaining their work authorizations or renewing their work permits. For example, a complex system of coding sometimes causes the so-called "asylum clock" to stop counting toward the required 180 days.⁸⁸ Sometimes asylum seekers' "asylum clocks" are erroneously stopped and they might not be able to rectify it until their next

hearing. Moreover, while statute requires the adjudication of the work authorization application within 90 days, many asylum seekers and immigrants have to wait much longer.⁸⁹

The renewal process also creates financial burdens, challenges with employers, and additional possibilities for administrative errors. Asylum seekers must renew their work permits every year while their cases are pending. Each renewal costs \$380 and permits the applicant to apply three months before their current work authorization expires, ostensibly so that a renewed permit can be delivered before the other lapses.⁹⁰ With cases pending for multiple years, asylum seekers must navigate this process several times.

Even those who receive their work permits are sometimes unable to work due to administrative errors. Augustin, a survivor of torture from the Congo (Brazzaville), was granted a work permit containing the wrong country of origin. It took nine months for a correction to be made, leaving Augustin without work authorization for more than a year after he became eligible.

Lack of work authorization for extended periods causes various challenges for asylum seekers as they attempt to survive. Some who were professionals and leaders in their home countries may be relegated to low-skilled jobs for employers more willing to accept temporary work authorizations that expire each year and often lapse due to delays in the renewal process. Asylum seekers with tenuous work authorization may also be affected by workplace violations, particularly in low-wage sectors.⁹¹

Finally, work authorization provides an asylum seeker the ability to obtain a Social Security number and a state-issued identification card, such as a driver's license. Many states set license expiration dates as the same date the work authorization expires.⁹² Social Security cards

include a notation that they are only valid in combination with a valid work permit.⁹³ Without valid work authorization, particularly in cities that have more restrictive laws on issuing identification, asylum seekers face obstacles to accessing transportation and other services, further undermining their ability to survive and rebuild their lives.

- **Eric, a refugee who fled Rwanda due to persecution on account of his sexual orientation, struggled to sustain himself despite his professional experience.** Eric is a statistician and has experience working for international organizations. He applied for asylum in 2013 and was granted asylum in March 2016, after a three-year delay at the Asylum Division. He attempted to find a job using his work authorization, but some employers turned him away due to the uncertainty of his future immigration status. "It is hard for any employer to give you a job offer because they need to know you will be there more than one year," he said. "They are not sure what's going to happen after the current work permit expires."⁹⁴
- **Mohammed, a student leader from Sudan, survived from donations for more than two years without a work permit.** Mohammed applied for his work authorization after the required 180 days. For reasons never explained to Mohammed or his attorneys, his asylum clock was stopped at nine days. Despite their extensive efforts, Mohammed and his attorneys could not rectify the mistake prior to his hearing some two years later. Mohammed received his work authorization only after his application for protection was granted. For two years he struggled to survive, often having to take donations from people in the Sudanese community where he lives in Texas.⁹⁵

- **Laura, persecuted on account of her profession in Colombia, remains unable to reestablish her career while her asylum case is pending.** A trained nutritionist in Colombia, Laura worked for a major international organization running a center for malnourished children in war-torn areas. Due to her efforts to provide care to children on both sides of the conflict, she was forced to flee the country and seek protection in the United States. Without permanent immigration status, she was unable to get certified as a nutritionist in the United States, so she went to cosmetology school and worked in a beauty salon instead. However, her work at the beauty salon ended due to problems with her work permit renewal. Despite applying on time, Laura's work permit was not adjudicated within the 90-day statutory period and expired three months ago.⁹⁶
- **Emanuel, Ethiopian political activist, struggles to survive in Dallas.** Emanuel struggles to survive while awaiting word on his next immigration court hearing. Several employers turned him away because his work permit expires after a year and renewal is difficult. "Even after I got my work permit, it's really hard to survive because there are some jobs I went to apply [for] and they see my work permit and they tell me, they don't hire with a work permit."⁹⁷
- **Christian, who fled persecution due to his sexual orientation, has waited seven years for protection in the United States.** Christian fled Cameroon in 2009 seeking protection from persecution based on his sexual orientation. The Asylum Division referred his case to the immigration court. Two days before the scheduled hearing, the court informed Christian that his hearing was cancelled, and his next hearing was scheduled for December 2018. Christian had dreams of opening his own business in the United States, but his ability to rebuild his life has been stunted by the backlog and the resulting lack of access to higher education.⁹⁹
- **Rogers, a Ugandan social worker, wishes he could again contribute to the lives of others through his profession.** The Ugandan government persecuted Rogers due to his political opinion. Despite his desire to continue his education in social work in the United States, two community colleges in Massachusetts declined to offer him in-state tuition without permanent immigration status. Massachusetts has not passed legislation extending in-state tuition to immigrants without permanent status.¹⁰⁰
- **Richard, trained as an accountant in Togo, faces roadblocks when attempting to go back to school in Maryland.** Maryland does not extend in-state tuition at community colleges to immigrants without permanent status who have not attended or graduated from a Maryland high school.¹⁰¹ "I was interested in going to school but they told me I will not receive any financial aid because I [only] have a work permit," says Richard. "My dream job would be like what I did in my country: being an accountant."¹⁰²

Access to Education is Impeded by Long Delays

More than half of the asylum seekers interviewed for this report expressed a desire to pursue higher education. But thirty-two states do not provide in-state tuition rates to certain categories of immigrants.⁹⁸ Without permanent status, many asylum seekers are unable to access in-state tuition or financial aid.

■ **Komi, a political activist from Togo, applied for asylum in 2013 and remains stuck in the backlog.** Komi lost his father in 2005 because there was no doctor available to care for him. Determined to ensure that others do not endure such tragedy, Komi decided to pursue a career in medicine. “I made a decision to go back to school,” Komi explains. However, because he does not yet have asylum status, he must work nights as a store attendant to afford the tuition.¹⁰³

Delays Impair Access to Representation

“Without my lawyers I would have died.”

–**Judith, from Cameroon, was granted asylum in Dallas, Texas after a three and half year delay.**¹⁰⁴

Legal representation can vastly improve asylum seekers’ chances of receiving protection. One study found that the grant rate at the asylum office nearly tripled when people were represented, and that it went up to nearly 90 percent when asylum seekers were represented by Georgetown University’s clinical program, one of many law school clinics that take on asylum cases.¹⁰⁵ A recent analysis of cases involving women with children—largely asylum seekers—demonstrated that legal representation made them seventeen times more likely to get a favorable ruling.¹⁰⁶

Despite the undisputed importance of legal counsel in asylum proceedings, the government does not generally fund legal representation in asylum and immigration proceedings.¹⁰⁷ Recent studies have shown that only 37 percent of immigrants in immigration court proceedings are able to secure legal representation.¹⁰⁸ Indigent asylum seekers must rely on the limited resources

of nonprofit organizations, law school clinics, and law firm pro bono programs.

Long delays in the immigration courts and the Asylum Division have impaired pro bono legal providers’ ability to accept cases for representation. In a survey of 24 pro bono coordinators at major law firms conducted by Human Rights First, nearly 75 percent of pro bono professionals indicated that delays at the immigration court are a significant or very significant negative factor in their ability to accept a case. Attorneys at these law firms represent asylum seekers pro bono at their offices across the country including in Baltimore, Atlanta, San Francisco, Chicago, Los Angeles, Philadelphia, San Antonio, Seattle, New York, Newark, and Washington, D.C. Over 60 percent also see recent delays at the Asylum Division as a negative factor in their firm’s ability to take on cases. Pro bono leaders pointed to the standard turnover of attorneys, combined with long wait times for asylum interviews and final hearings, as the main impediment to taking asylum cases.¹⁰⁹

In conducting research for this report, Human Rights First interviewed pro bono lawyers and pro bono partners at a number of major law firms. One pro bono leader, Harlene Katzman, former president of the Association of Pro Bono Counsel (APBCo) and director of pro bono at Simpson Thacher Bartlett LLP, described how asylum delays are a major threat to the pro bono model of representation. Steven Schulman, Partner at Akin Gump Strauss Hauer & Feld LLP, also noted the negative impact and re-traumatization on clients as they are prepped multiple times when hearings are postponed or cancelled. Katzman found the greatest challenge to be taking on cases with hearing dates several years away. Associates at major law firms generally do not remain at the firm for more than a few years, so cases delayed for three to five years must be reassigned.¹¹⁰

Moreover, many attorneys who take on a pro bono case will not take on other pro bono matters until the pending case is resolved. Fewer cases are being placed, and fewer asylum seekers are receiving the legal representation necessary to properly present their claims.¹¹¹ Nonprofits have felt the impact of the backlogs on their case management model as well. With fewer cases placed with pro bono attorneys, some nonprofits are managing larger caseloads in house without the additional capacity often provided by firms.

Private immigration attorneys also face new obstacles due to the backlog and extended wait times. “It makes it very hard to practice both financially, and ethically and morally,” explains prominent private immigration attorney Cheryl David. Managing cases has become challenging for private lawyers who must keep in contact with their clients without being able to take any concrete steps on their case for many years.¹¹² Law school clinics also report wasted resources and concerns about clients’ re-traumatization when they repeat their stories to new students.¹¹³

Addressing the Backlogs

First and foremost, the United States immigration and asylum systems require an injection of resources to protect the integrity of the system and the rights of those seeking asylum. Recognizing the problem, leaders from both parties, including Senators Richard Shelby (R-AL) and Barbara Mikulski (D-MA), and Representatives John Culberson (R-TX) and Michael Honda (D-CA), passed the FY 2016 budget that funded an additional 55 immigration judge teams. But additional resources will be needed to eliminate the backlogs and promptly adjudicate cases. The Asylum Division also needs increased staffing. In addition to increasing the resources of the immigration courts and the

Asylum Division, the Department of Homeland Security (DHS) and the courts should implement practical measures, such as pre-trial conferences and enhanced case management systems, to improve efficiency.

The Asylum Division

Human Rights First estimates a total of 700 to 800 asylum officers are required to eliminate the affirmative asylum backlog and adjudicate all incoming cases within 60 days, if incoming caseloads remain the same. The Asylum Division is on track to meet its goal of filling 90 percent, or 480, of the available 533 positions. At 2016 CFI, RFI, and affirmative application rates, 272 asylum officers would be needed to adjudicate CFI and RFI protection screenings alone.¹¹⁴ Based on a case completion rate of 328 affirmative asylum interviews per year per officer, if the Asylum Division were fully staffed at 533 positions (leaving 261 officers available for affirmative asylum interviews), the Division could complete 85,608 cases per year. With new affirmative asylum applications predicted at 105,000 for FY 2016, the backlog will continue to grow by approximately 20,000 cases per year unless additional asylum officers are added.

The Asylum Division should hire 53 additional asylum officers in FY 2017, growing its corps of officers to the fully funded 533 positions. In the meantime, the backlog will grow to over 210,000 by the end of FY 2017. If funding for 117 additional positions were added in FY 2018 and those positions were filled bringing the total to 650 officers, the backlog would begin to decrease by some 8,000 cases per year. If an additional 50 officers were added in FY 2019, bringing the total to 700, the backlog would be eliminated by FY 2025. Or, if 150 new officers were funded and added in FY 2019 bringing the total to 800 officers, the backlog would be eliminated by FY 2022, and all new cases would be adjudicated

within 60 days. A detailed breakdown of these calculations is provided in Appendix II.

Beyond increasing the number of asylum officers at the Asylum Division, the Obama Administration should consider reducing the use of expedited removal against families or other populations that have high percentages of asylum seekers. The Asylum Division recently indicated that absent the increase in credible fear and reasonable fear interviews, at FY 2013 staffing levels, a backlog would have still developed “but nowhere close to the size of the current backlog.”¹¹⁵

The Immigration Court

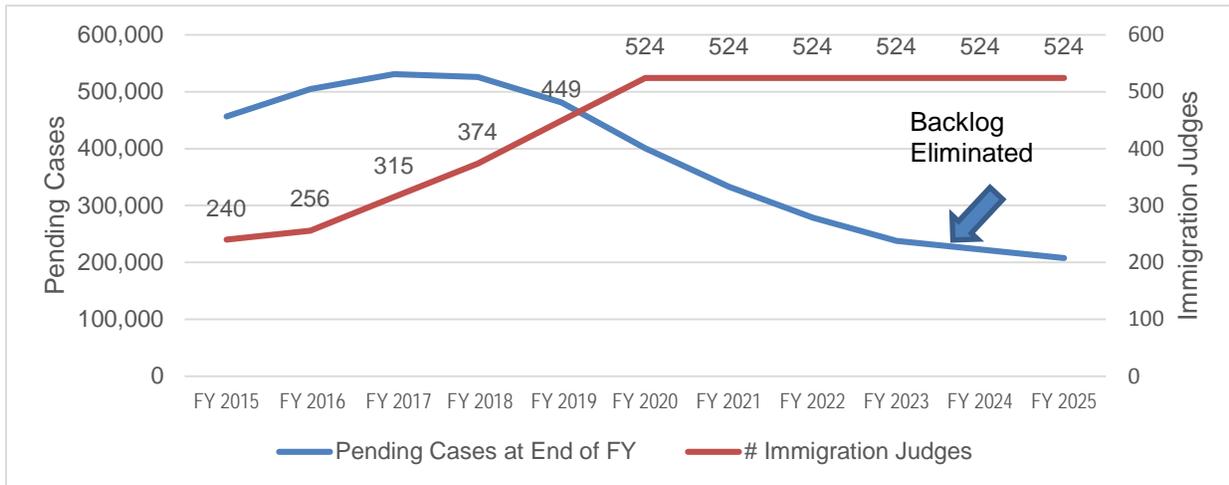
Human Rights First estimates that 524 immigration judges are needed to eliminate the current backlog and adjudicate new cases within an average of one year.¹¹⁶ As of February 2016, there were 254 judges employed by EOIR, and funding allocated for 374 judges.¹¹⁷ Filling the 120 vacant positions and allocating funds for an additional 150 judges would produce the 524 judges needed to eliminate the backlog and promptly adjudicate incoming cases.

Expectations related to the rate at which judges adjudicate or complete cases—called “case completion rates”—are a determining factor in predicting the right court size. In FY 2015 judges, on average, completed some 777 cases. However, this completion rate remains higher than that of any other comparable judge. Experts indicate that current caseloads are untenable for immigration judges and lowering judicial caseloads would lessen judge turnover.¹¹⁸ A case completion rate of 500 cases per judge per year has been recommended by experienced immigration judges. The National Association of Immigration Judges (NAIJ) recommends this rate

based on the experiences of judges and administrators, the need for available docket space within eight to twelve months, the need for immigration judges to have sufficient time off the bench to consider and decide cases. NAIJ also points to the caseloads of district court judges, social security judges, and Veterans Affairs Appeals Board members to support their assertion that 500 cases completed per year is the more appropriate workload for immigration judges.¹¹⁹

If Congress funds and EOIR staffs an immigration court with 524 judges by the end of FY 2019, and immigration judges incrementally move toward the recommended 500 case completion rate per judge, the court will be free from the backlog, adequately staffed, and adjudicating incoming cases within one year on average.¹²⁰ As shown in Figure 4, the backlog will begin to decrease in FY 2018 and will be eliminated by FY 2023. Appendix III provides a complete explanation of this calculation. Assuming immigration prosecutions, case completion rates, and other factors remain the same, after FY 2024 EOIR would be well equipped to avoid a backlog, process cases in a timely fashion, and deal with moderate fluctuations in new cases without developing a new backlog.¹²¹ Working conditions of judges would also improve, potentially leading to longevity and efficiency. Appendix III provides a detailed description of the calculations behind this three-step recommended course of action: hiring all currently funded immigration judge positions by the end of FY 2017, allocating funding for and hiring an additional set of 75 judges in FY 2018 and again in FY 2019, and incrementally lowering judges’ average case completion rate to 500 cases per year.

Figure 4: Recommendation for Eliminating Backlog by FY 2023



Improving System Effectiveness and Measures to Advance Pressing Humanitarian Cases

To eliminate the current backlogs and establish capable asylum and immigration systems, additional funding and increased staffing are required. Adequately staffed systems with proportionate workloads will maximize effective resource allocation, promote a fair and efficient process, and limit staff turnover. A number of additional steps are also necessary to improve efficiency, supporting the progress resulting from the injection of resources and further expediting a fair and robust review of each case. These steps are not, however, a substitute for adequate staffing levels. Human Rights First is preparing more detailed recommendations for needed administrative adjustments.

Humanitarian Priorities: Because backlogs are likely to persist while Congress appropriates necessary resources, it is important for effective humanitarian mechanisms to be in place to facilitate timely hearing dates and interview dates in cases involving pressing circumstances—such as when a spouse and children are stranded abroad in dangerous circumstances. The Asylum Division employs, in some of its offices, a “short

list” allowing for prepared applicants to be called when other interviews are cancelled. While challenging for pro-bono counsel to be available on short notice, this mechanism provides a means for some asylum seekers to receive a more timely interview. It is not used in all offices. However, the Asylum Division has indicated that the short list could be implemented across the country. Short lists are also efficient, ensuring that no available interview slot is left empty.

Immigration courts could institute an approach similar to the short list across all immigration courts. Such a list would include any person whose counsel has requested an earlier merits hearing for humanitarian purposes and has prepared and filed all evidence. When cancellations occur, those on the list can be offered an earlier hearing. However, any such process should assure adequate notice of hearing dates to allow for case preparation.

EOIR currently has no effective mechanism for seeking and receiving an expedited hearing even in cases where humanitarian hardships are clear and well-documented. Motions to advance often go un-decided or judges simply do not have docket space to grant such motions. EOIR should establish a fair and efficient process for deciding

cases with serious and imminent humanitarian concerns. Such a process might include designating certain judges to decide motions for humanitarian expedition or a separate magistrate to hear motions to advance hearing dates.

Pre-Trial Conferences: With regard to the immigration courts, in 2014 the National Immigrant Justice Center (NIJC) released a study on ways to improve the efficiency and fairness of the immigration court system. NIJC calls for changes that would increase immigration judges' ability to make decisions with sufficient time and information, thus capitalizing fully on resources. NIJC and other groups have called for increased use of pre-hearing conferencing and other mechanisms for narrowing the issues for trial, thus taking up less hearing time and leaving more time for the adjudication of additional cases.¹²² Immigration judges have the legal authority to require pre-hearing stipulation of facts through pre-hearing conferences.¹²³

A 2009 memorandum from EOIR headquarters reminded immigration judges of their ability to require such conferences and stated that judges should "encourage pre-hearing conferences between the parties to narrow the issues and to prompt the timely submission of evidence, which fosters more efficient proceedings and more efficient use of limited pro bono resources."¹²⁴ A 2009 study and 2012 follow-up report issued by the Appleseed Network also called on EOIR to require counsel to "meet and confer before a hearing, and file a joint pre-hearing statement demonstrating how they have narrowed the issues."¹²⁵ The Administrative Conference of the United States (ACUS) also recommended a pilot project to evaluate the effectiveness and feasibility of mandatory pre-hearing conferences to be convened in specified categories of cases.¹²⁶

DHS Attorney Responsibility: One obstacle to the use of pre-hearing conferences is the length of time DHS trial attorneys remain unassigned to a

case. Current practices in most courts do not allow pre-hearing discussions to occur until a few weeks prior to the hearing when a DHS attorney is assigned to the case. Adjustment in DHS policy to ensure a trial attorney is assigned to every case at all times would facilitate additional opportunities for pre-hearing stipulations and agreements.¹²⁷ Appleseed suggests that DHS should "re-define the mission of Trial Attorneys to seek justice, not only removal [and] [h]old Chief Counsel Offices accountable for implementation of prosecutorial discretion in every context."¹²⁸ ACUS has also recommended amending the Immigration Court Practice Manual to "explicitly include best practices for the activities of trial counsel in immigration removal proceedings."¹²⁹ Such adjustments would further facilitate the use of mechanisms for humanitarian prioritization in that the trial attorney would be assigned to the case for a longer period and therefore be more likely to limit issues requiring judicial review, meaning that trial attorneys would be more ready and able to prepare for "short list" cases.

EOIR Case Management System: EOIR and stakeholders also point to the need to modernize the immigration courts' case management system and implement an electronic document filing system.¹³⁰ Electronic filings and calendaring improvements would facilitate the reallocation of staff and resources away from organizational tasks more efficiently managed by technology upgrades. In his December 2015 testimony before Congress, EOIR Director Juan Osuna stated, "EOIR is actively evaluating how to best update our case management and other electronic databases to enable the agency's adjudicatory components to manage their workload in a more efficient manner."¹³¹

Asylum Division: The attrition rate of asylum officers may lessen the efficiency of the division. The USCIS Ombudsman recognizes that "even as newly authorized officers are hired and trained,

the departure of more seasoned officers compromises USCIS capacity to efficiently meet its caseload and reduce the affirmative asylum backlog.”¹³² The Asylum Division’s hiring philosophy has long been to get the most capable and promising applicants. However, this hiring practice means many officers quickly move on to higher positions with the government, leaving less experienced officers on the front line of case adjudication. Despite the potential inefficiency inherent in staff turnover, the Asylum Division has proved its hiring can keep up, as the Division had significantly expanded its corps in the past year. Further investigation is required to fully measure the impact staff turnover may have on the overall efficiency of the Asylum Division, and multi-year planning to ensure hiring rates keep up with attrition will be key.

Maintaining the Integrity of the Immigration Removal and Asylum Systems

A number of experts have expressed concerns that unaddressed backlogs could undermine the integrity of the immigration removal system. Russell Wheeler and Lenni Benson, retained by the Administrative Conference of the United States to study the immigration court system, described a number of ways in which immigration court understaffing and delays can undermine the integrity of the immigration enforcement system. In a 2012 report, they point out, “Excessive delay degrades adjudication as memories fade,” and, “delay becomes a goal for some with no legitimate claims to legal status, because it lets them remain in the country for up to several years while their cases wait in the court queue.”

A 2014 report by experts at the Georgetown University Institute for the Study of International Migration also identified the immigration court

backlog as a challenge for the removal system, stating: “Some unauthorized migrants may benefit from the delays and remain longer in the country than they should, but those with legitimate grounds for relief from removal, such as many asylum seekers, remain in limbo for unnecessarily long periods.” Wheeler and Benson concluded, “There can be no effective and fair enforcement of our immigration laws if the immigration courts cannot keep up.”¹³³

In a 2015 article, the Bipartisan Policy Center concluded, “More judges would reduce the backlog, which would allow the enforcement system to function more efficiently and help migrants receive a fairer hearing.”¹³⁴ Former ICE Assistant Secretary Julie Myers Wood wrote, in a 2015 op-ed, “People who have no legitimate claim for relief languish in the system—and in the country—at taxpayer expense. At the same time, people with strong claims—including those fleeing persecution—now often wait years for their day in court.”¹³⁵

If the backlogs in the asylum and immigration court systems are not addressed, they could leave these systems vulnerable to abuse. In the early 1990s, the asylum system was under-resourced and under-staffed. The number of asylum filings, prompted by civil wars and human rights abuses in Central America, increased. With the settlement of a class-action lawsuit and continued insufficient staffing, a large backlog of asylum cases grew. Seeing an opportunity to exploit the system, some ill-intentioned lawyers and others advised people that they could simply sign a form that would immediately give them work authorization and allow them to stay in the United States for years. The backlog that grew was devastating to those with bona fide asylum applications, who were left in limbo and separated from their children and families for years. According to statistics issued by the former Immigration and Naturalization Service

(INS), there were some 425,000 asylum cases pending by the end of fiscal year 1994.¹³⁶

In response, INS revamped the system. Under the new procedures, asylum officers adjudicated cases within a few months of affirmative asylum filings (rather than after years of waiting in the backlog), and those not granted protection were promptly referred into immigration court deportation proceedings. To enable this timely adjudication, the number of asylum officers was doubled and the number of immigration judges was increased through the 1994 Violent Crime Control and Law Enforcement Act.¹³⁷ The new procedures also took away the provision of automatic work authorization immediately upon the filing of an asylum application, blocking access to work authorization for at least six months.¹³⁸ This move has left many legitimate asylum seekers and their families in dire circumstances, struggling to survive for months while they await adjudication of their cases.¹³⁹

Government officials believed this reform was necessary to protect the asylum system from abuse. Several years later, INS officials documented the success of these reforms.¹⁴⁰ Yet, even after the problems had been rectified, the impression that the system was in disarray was hard to correct, and this ultimately contributed, along with other developments, to the push for harsh legislation passed in 1996 that dramatically affected access to asylum for legitimate asylum seekers with well-founded fears of persecution. These experiences suggest that prompt action should be taken to tackle backlogs before they can make systems vulnerable to abuse.

Domestic and International Legal Implications

Article 14 (1) of the Universal Declaration of Human Rights states, “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”¹⁴¹ The cornerstone of the refugee protection regime is the principle of “non-refoulement,” which prohibits the return of refugees to persecution. This obligation is contained in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The United States is a party to the Protocol and has committed to comply with the Convention’s protections for refugees.¹⁴² UNHCR has stated that asylum applications should be processed in a timely manner, condemning nations that do not have a just and efficient asylum processing system.¹⁴³

The International Covenant on Civil and Political Rights (ICCPR), which the United States has signed and ratified, preserves the right of access to the court in Article 14. The United Nations Human Rights Committee (HRC), established to monitor implementation of the ICCPR, says, “an asylum seeker must be allowed sufficient time to lodge their claim and conversely access to asylum procedures must be granted within a reasonable time.”¹⁴⁴ Relatedly, the committee also states, “An important aspect of the fairness of a hearing is its expeditiousness.”¹⁴⁵

Applying the importance of expeditiousness to civil proceedings, which encompass civil immigration matters, the committee says, “delays in civil proceedings that cannot be justified by the complexity of the case or the behavior of the parties detract from the principle of a fair hearing.”¹⁴⁶ It further clarified that where “delays [in civil cases] are caused by a lack of resources and chronic under-funding, to the extent possible supplementary budgetary resources should be

allocated for the administration of justice.”¹⁴⁷ The application of these principles is illustrated by the committee’s 2003 review of Russia, when it concluded that the two-year delays in asylum adjudications were of particular concern.¹⁴⁸

Other countries that receive high numbers of asylum seekers have time limits to adjudicate claims. In 2013, the European Parliament and the Council of the European Union issued a directive of common procedures for granting and withdrawing international protection.¹⁴⁹ Member states were instructed to “ensure that examination procedures are concluded within six months of the lodging of the application.”¹⁵⁰ Under limited circumstances, the state is allowed to extend the processing time to “a period not exceeding a further nine months.”¹⁵¹ Furthermore, the directive sets an absolute maximum limit for adjudication of 21 months from the lodging of the application.¹⁵²

U.S. asylum law developed from international law instruments, primarily the 1967 Protocol which the United States embraced in 1968. To fulfill its international obligations under the 1967 Protocol, Congress enacted the Refugee Act of 1980, which incorporated key provisions of the Refugee Convention into the Immigration and Nationality Act. Importantly, the Refugee Act incorporated the refugee definition from the Convention and established uniform procedures for the treatment of asylum claims in the United States.¹⁵³

U.S. law provides two indications of time limitations on the initial adjudications of asylum claims. First, initial interviews or hearings on asylum applications “shall commence no later than 45 days after the date an application is filed,” in the absence of exceptional circumstances.¹⁵⁴ Statute also dictates that in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed.”¹⁵⁵

According to the U.S. Government Accountability Office (GAO), as of September 2015, 61 percent of the over 100,000 pending applications at the asylum office have exceeded the 180-day requirement.¹⁵⁶ From 2010 to 2014 the number of affirmative asylum applications adjudicated past the 180-day requirement nearly doubled.¹⁵⁷

For asylum cases adjudicated before the immigration courts, there is no statutorily imposed timeline. However, constitutional due process rights may demand the need for additional resources for the immigration courts, such that cases can be afforded adequate consideration by judges with caseloads that allow for fair and meaningful adjudication. The Immigration and Nationality Act includes a guarantee that “the alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien’s own behalf, and to cross-examine witnesses presented by the Government.”¹⁵⁸ The Seventh Circuit indicates that immigration court procedures “must satisfy currently prevailing notions of fairness.”¹⁵⁹ That court has also characterized the due process rights of immigrants to include the right to “meaningfully present” evidence in a “meaningful way.”¹⁶⁰ Scholars argue that in order for judicial fact-finding to be conducted in a meaningful way, immigration judges must have sufficient time to review documentation and access witnesses. In an interview conducted by Dr. Alicia Triche and published in 2015, Judge Dana Marks, president of the National Association of Immigration Judges, indicated the following:

A typical workweek includes 36 hours on the bench and a meager four hours of time spent in chambers. That is four hours to review documentation for every individual case occurring that week—a total that, especially if a law school or large firm is involved, can span hundreds or even thousands of pages.¹⁶¹

Limited time to review complex cases with often life threatening implications leads Judge Marks to characterize immigration court as “death penalty cases in a traffic court setting.”¹⁶² Ballooning backlogs cause immigration judges to face a growing number of pending cases, and increased pressure to examine them as expeditiously as possible. The large caseloads threaten the fundamental fairness required by due process.

Conclusion

Protecting refugees is a core American ideal, central to the country’s identity and history. As the asylum and immigration court systems struggle with large backlogs, those who need America’s protection suffer in a state of perpetual limbo. For thousands of asylum seekers, permanent protection in the United States is key to security and freedom from future persecution—protection now on hold for hundreds of thousands.

Uprooted by persecution, asylum seekers in the United States fully expect to struggle as they rebuild their lives. Yet extended delays in their cases make this struggle at times insurmountable. Unable to reunite with their family or work or pursue an education or overcome the trauma of their persecution, asylum seekers must simply subsist for years—their lives hanging in limbo.

Continued and strengthened bipartisan support will be essential to secure the vital resources needed to reduce and ultimately eliminate the growing backlogs at the Asylum Division and immigration courts. The human rights of asylum seekers and the very integrity of the United States immigration system are at stake. ■

Appendix I: Methodology

This report compiles research and analysis conducted by Human Rights First on the backlogs and delays in the U.S. asylum and immigration court system. It draws from Human Rights First's 40 years of experience providing legal representation through a vast pro bono network to tens of thousands of people fleeing persecution. Currently Human Rights First, along with its pro bono partners, represents over 300 asylum seekers in the immigration court, and 255 asylum seekers before the Asylum Division of USCIS.

Human Rights First conducted in-depth, in-person interviews between September 2015 and January 2016 with 34 asylum seekers who had experienced delays in the courts and/or the Asylum Division. The study participants were identified through outreach to Human Rights First's Refugee Representation staff, as well as attorneys at other leading nonprofit organizations that work with refugees, including the Bellevue/NYU Program for Survivors of Torture, the Human Rights Initiative of North Texas, and the Tahirih Justice Center. Attorneys were asked to identify clients who had waited at least one year for an asylum interview or hearing. Of the 34 asylum seekers interviewed, 18 had been waiting more than three years. Study participants lived in different parts of the United States, with 13 in Texas, eight in the Washington, D.C. area, nine in the New York City area, two in Los Angeles, one in Boston, and one in Pennsylvania. Countries of origin included Afghanistan, Azerbaijan, Cameroon, Colombia, Congo (Brazzaville), Democratic Republic of Congo, El Salvador, Ethiopia, Honduras, Iran, Iraq, Ivory Coast, Pakistan, Rwanda, Sudan, Syria, Togo, Uganda, Venezuela, Vietnam, Yemen, and Zimbabwe.

Human Rights First conducted interviews with 17 practitioners who provide services to asylum seekers, including mental health professionals,

law firm attorneys, law school clinical instructors, and private attorneys. Practitioners were asked to comment on the impact of the backlogs on asylum seekers and their own practices. To further investigate the impact of delays on pro bono representation models, Human Rights First worked with Simpson Thacher & Bartlett LLP to distribute a survey to pro bono professionals across the United States, and received 24 responses.

The authors of this report also reviewed a wide range of literature, including government and news reports, statistical reports, and academic and law review articles. Experts in refugee law, immigration policy, federal legislation, mental health and physical health, and government officials were consulted throughout the research and drafting of the report. The report also includes an analysis of public source data and information received through direct communications with agency leadership.

Appendix II: Asylum Division Backlog Calculations

About the Data: Assumptions and Gaps

Calculations regarding the backlog at the Asylum Division are based on data provided by the Asylum Division at quarterly stakeholder meetings, which are publicly available on the USCIS website. Human Rights First sought additional information related to asylum officer caseloads, case completion rates, and hiring challenges in a meeting with Asylum Division senior leadership.

The total number of asylum officers required to deal with current caseloads is likely higher than predicted by this report. For simplicity Human Rights First assumes full production from each asylum officer based on ideal case completion

rates provided by the Asylum Division. In reality, the Asylum Division takes into account a number of factors that likely reduce the projected output of an asylum officer. These factors include staffing unavailability, including attrition rates, trainings, union duties, special projects, and refugee details. Therefore, the Asylum Division will require additional officers to account for the difference in case completion and availability of officers as a result of these factors.

Defining the Backlog: This report refers to the number of pending cases before the Asylum Division as the “backlog.” However, the Asylum Division is expected to have a number of cases pending based on normal circulation of cases through the system. The calculations in this report assume that the Asylum Division should interview affirmative asylum applicants within 60 days of receiving their application.¹⁶³ Therefore, the Asylum Division should never have more cases pending than it can complete within 60 days (assuming a rate of 8 cases per week per officer working 41 weeks a year). This number will fluctuate depending on the number of asylum officers available to complete affirmative asylum applications. For example, in FY 2016, an estimated 103 officers will be available for affirmative asylum adjudications; at this size the Asylum Division can complete around 6,500 cases in 60 days, meaning all other pending applications are considered backlogged.

Incoming Credible Fear and Reasonable Fear Workloads and Completion Rates:

The calculations in this report assume the Asylum Division will receive 80,000 CFI requests and 9,000 RFI requests each year, based on 2016 projections provided by senior Asylum Division leadership. Human Rights First requested information related to case completion rates from Asylum Division senior leadership and was provided such information at a meeting on March 25, 2016. All calculations in this report are based

on a case completion rate of 353 credible fear interviews per officer per year and a case completion rate of 200 reasonable fear interview per officer per year. To determine the number of asylum officers needed to handle all CFI and RFI requests, the following calculation was used: (annual number CFI requests) / (CFI completion rate per officer) + (annual number of RFI requests) / (RFI completion rate per officer) = total number of asylum officers required to complete all CFI and RFI requests for the year.

Incoming Affirmative Asylum Application Workloads and Completion Rates:

The calculations in this report assume a steady incoming affirmative asylum application rate of 105,000 per year, based on FY 2016 first quarter statistics and information provided by senior Asylum Division leadership. Case completion rates for affirmative asylum applications are eight cases per week over 41 weeks per year, or 328 cases per year. This report calculates the number of asylum officers needed to complete affirmative asylum interviews with the following formula: (annual number of affirmative asylum applications) / (affirmative case completion rate) = total number of asylum officers needed to adjudicate affirmative asylum applications.

Calculating Pending Affirmative Asylum Applications:

Human Rights First predicts the number of pending cases at the end of the fiscal year by adding the number of pending affirmative asylum applications at the end of the prior fiscal year to the number of new applications received that year, minus the number of completed affirmative asylum applications. Completed affirmative asylum applications are calculated based on the total number of asylum officers on staff, minus the number of asylum officers required to complete CFIs and RFIs, multiplied by the affirmative case completion rate. The formula used is: (pending at

end of prior FY) + (new applications received) - (cases completed) = pending cases at end of FY. To arrive at cases completed during the year, the formula used is: (total number of asylum officers on staff) - (total number of asylum officers required to complete all CFI and RFI requests for the year) x (328 cases per year) = Number of affirmative asylum applications completed.

Figure 5: Projected Asylum Division Data based on Recommended Increase in Asylum Officers

	Additional Asylum Officers (AOs)	Total AOs at Beginning of Fiscal Year	Total AOs at End of Fiscal Year	New CFI Requests Per Year	New RFI Requests Per Year	# Officers Required for CFI/RFI Requests	# AOs Available for Affirmative Cases	Affirmative Cases Completed	New Affirmative Asylum Applications	Pending Affirmative Asylum Cases at End of FY *
FY 2015	0	350	375	80,000	9000	272	78	25,706	105,000	108,749
FY 2016	105	375	480	80,000	9000	272	103	33,906	105,000	179,843
FY 2017	53	480	533	80,000	9000	272	208	68,346	105,000	216,498
FY 2018	117	533	650	80,000	9000	272	261	85,730	105,000	235,768
FY 2019	150	650	800	80,000	9000	272	378	124,106	105,000	216,662
FY 2020	0	800	800	80,000	9000	272	528	173,306	105,000	148,356
FY 2021	0	800	800	80,000	9000	272	528	173,306	105,000	80,051
FY 2022	0	800	800	80,000	9000	272	528	173,306	105,000	11,745

If the Asylum Division grows to 700 asylum officers by the end of FY 2019 the backlog will be eliminated in FY 2025

FY 2019	50	650	700	80,000	9000	272	378	124,106	105,000	216,662
FY 2020	0	700	700	80,000	9000	272	428	140,506	105,000	181,156
FY 2021	0	700	700	80,000	9000	272	428	140,506	105,000	145,651
FY 2022	0	700	700	80,000	9000	272	428	140,506	105,000	110,145
FY 2023	0	700	700	80,000	9000	272	428	140,506	105,000	74,639
FY 2024	0	700	700	80,000	9000	272	428	140,506	105,000	39,133
FY 2025	0	700	700	80,000	9000	272	428	140,506	105,000	3,628

*The backlog will be eliminated when the number of pending cases falls below the number of affirmative asylum applications available officers can complete within 60 days.

Appendix III: Immigration Court Backlog Calculations

All data related to the immigration court backlog came from the Transactional Records Access Clearinghouse (TRAC) of Syracuse University, which analyses and publishes immigration court data received from the Executive Office for Immigration Review (EOIR) through Freedom of Information Act (FOIA) requests. TRAC data provides national statistics on cases pending before the court, the average number of days cases have been pending, and the number of cases completed each year by the immigration courts. TRAC data does not disaggregate detained and non-detained cases, meaning averages for non-detained cases are likely much higher given EOIR's policy of prioritizing detained caseloads. Thirty-seven percent of cases handled by the immigration court in 2013 and 2014 were detained cases. For this report, Human Rights First utilized TRAC national averages and current trends, with respect to incoming caseloads and case completion rates, to predict the growth of the backlog, when the backlog will be eliminated, and recommended increases in immigration judges.

Defining the Backlog: Throughout this report the number of pending cases is referred to as “the backlog.” However, the immigration courts should always have a certain number of cases pending at any given time. If the recommended average case completion time is one year, then the courts should never have more cases pending than they could complete within one year. The recommended 524 judges should be completing 262,000 cases per year, meaning the backlog is any number of pending cases above 262,000. For example, in 2015, the immigration court had 456,216 cases pending at the end of the fiscal year. Therefore, FY 2015 resulted in a backlog of 194,216 cases. Based on our projections, including recommended hiring of additional

judges, the backlog would be eliminated by the end of FY 2023 when the pending cases drop below 262,000 for the first time. This presumes incoming caseloads do not dramatically increase and case completion rates are adjusted as illustrated in Figure 6.

Incoming Caseloads: Human Rights First calculates that since FY 2000 the immigration court has averaged approximately 238,000 new cases per year. TRAC data does not provide the exact number of new cases each year.¹⁶⁴ Human Rights First found that in FY 2014 and FY 2015 the court received 248,429 and 247,090 cases, respectively. Given the stability of incoming caseloads over the past 15 years, Human Rights First predictions utilize the number of new cases in FY 2015 as a constant for future predictions. If the immigration court system receives an increased number of cases, the backlog will persist for longer, delay time will lengthen, and, ultimately, more judges will be required to handle the court's caseload. The calculation used is: (pending cases at end of fiscal year) - (pending cases at end of prior fiscal year) + (number of cases completed within fiscal year) = number of incoming cases.

Case Completion Time: The calculations in this report assume that immigration courts should complete cases within an average of one year.¹⁶⁵ Therefore, at any given time the immigration court should not have more cases pending than it can complete within one year. Thus, any cases pending at the end of a given fiscal year over the number of cases the court completed that year are considered backlogged cases. Prior to 2010, EOIR maintained case completion goals, focused on the timely adjudication of each type of removal case. In 2010 EOIR abandoned case completion goals involving non-detained cases, except for asylum cases, which carry a statutory 180 day requirement for final administrative adjudication absent exceptional circumstances and not

including administrative appeal.¹⁶⁶ However, recent prioritization of border arrival cases has pushed most non-detained, non-prioritized defensive asylum cases deeper into the backlog.

Case Completion Rates per Judge: The number of cases completed per immigration judge each year has a dramatic effect on backlog predictions. Human Rights First calculates national average case completion rates per judge by dividing the total number of cases completed per year, as reported by TRAC, by the number of immigration judges on the bench that year, as reported by the Bipartisan Policy Center. Case completion rates have fluctuated significantly over the past 15 years from over 1,300 per judge in FY 2005 to 777 per judge in FY 2015. Experts indicate that a case completion rate of 500 would be ideal; this would allow immigration judges to allot adequate time to each case and respect the due process rights of each immigrant. Human Rights First's predictions for eliminating the backlog incorporate a slow trend toward a case completion rate of 500 cases per judge by FY 2024.

Predicting Future Pending Immigration Court Cases

Human Rights First predicts the number of pending cases at the end of the fiscal year by adding the number of pending cases at the end of the prior fiscal year to the number of new cases received that year, to get a total number of cases handled by the court in that fiscal year. The total number of cases completed that fiscal year is subtracted from this total to arrive at the number of pending cases at the end of the year. The calculation used is: (pending at end of prior fiscal year) + (new cases received) - (cases completed) = pending cases at end of fiscal year.

Predicating Future Number of Cases Completed Each Year

Human Rights First predicts the number of cases completed each year by multiplying the number of immigration judges at the beginning of the fiscal year by the average case completion rate per judge. The calculation used is: (total number of judges at beginning of fiscal year) x (recommended case completion rate) = cases completed per fiscal year.

Expected Delays for Currently Backlogged Cases

Human Rights First estimates the time it will take the immigration court system to complete the number of cases currently pending by dividing the number of cases pending by the number of cases completed during the same year. This is a reasonable prediction based on the fact that the court has, on average, completed some 217,000 cases per year for the past 15 years.

In February 2016, TRAC calculated that the average case had already been pending for 666 days. Given current pending caseloads and case completion levels, Human Rights First estimates that the immigration court will likely complete the nearly 500,000 cases currently pending in approximately three years and six months from the time they were filed.

These averages are likely significantly lowered by the inclusion of detained cases, which made up 37 percent of cases in 2013 and 2014. The immigration court system prioritizes and completes detained cases more quickly due to the legal restraints placed on keeping people in detention for long periods without a hearing. People who are not detained could expect significantly longer delays.

Figure 6: Projected Immigration Court Data based on Recommended Increase in Immigration Judges

	Additional Judges*	Total Judges at Beginning of Fiscal Year	Total Judges at End of Fiscal Year	Case Completion Rate Per Judge	Cases Completed Per Year	New Cases Per Year	Pending at End of FY	Backlogged Cases
FY 2015	16	240	256	777	186,480	247,090	456,216	194,216
FY 2016	59	256	315	777	198,912	247,090	504,394	242,394
FY 2017	59	315	374	700	220,500	247,090	530,984	268,984
FY 2018	75	374	449	675	252,450	247,090	525,624	263,624
FY 2019	75	449	524	650	291,850	247,090	480,864	218,864
FY 2020	0	524	524	625	327,500	247,090	400,454	138,454
FY 2021	0	524	524	600	314,400	247,090	333,144	71,144
FY 2022	0	524	524	575	301,300	247,090	278,934	16,934
FY 2023	0	524	524	550	288,200	247,090	237,824	0
FY 2024	0	524	524	500	262,000	247,090	222,914	
FY 2025	0	524	524	500	262,000	247,090	208,004	

*Recommended number of judges that should be hired within each fiscal year. Fifty-nine judges added in FY 2016 and FY 2017 are intended to be judges for which EOIR already has funding. Seventy-five additional judges in FY 2018 and FY 2019 will require additional Congressional funding, ideally in FY 2017 and FY 2018 respectively.

Endnotes

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and Arlington average over 5,500 cases per judge. New Orleans tops the chart with over 7,000 cases pending per immigration judge.

- ¹⁹ See 8 U.S.C. § 1158(d)(5)(A)(iii) (in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed).
- ²⁰ See U.S. Citizenship and Immigration Services, *supra* note 17. Every month the Asylum Division publishes an “Affirmative Asylum Scheduling Bulletin” listing the delay in interviews being conducted at each asylum office. The Asylum Division prioritizes cases in three categories. First, applications scheduled for an interview that were rescheduled either by the applicant or by USCIS. Second, any application filed by a child. Third, all other pending affirmative asylum applications in the order they were received, with oldest cases scheduled first. See also USCIS Asylum Division Stakeholder Meeting, February 5, 2016 (notes on file with Human Rights First). For example, in January 2016 the Miami asylum office adjudicated 87 cases in the first category, 78 in the second and 64 affirmative asylum cases were added to the backlog.
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- ¹⁰⁹ Twenty-four pro-bono professionals responded to a survey circulated by Human Rights First. Respondents included pro bono partners at major law firms across the country, as well as pro bono directors at some of the nation’s largest law firms.
- ¹¹⁰ Human Rights First Interview, October 19, 2015.
- ¹¹¹ Human Rights First Interview, December 22, 2015.
- ¹¹² Human Right First Interview, November 23, 2015.
- ¹¹³ Human Rights First Interview with Professor Susham Modi, Adjunct Professor & Clinical Supervising Attorney, University of Houston Immigration Clinic, November 10, 2015; Human Rights First Interview with Philip Schrag, Director, Center for Applied Legal Studies and Delaney Family Professor of Public Interest Law, and Jean Han, Second Year Fellow, Center for Applied Legal Studies, February 05, 2016.
- ¹¹⁴ In addition to attempts to increase the number of asylum officers, the Asylum Division has begun pilot programs aimed at better handling the high number of credible fear and reasonable fear interview requests. In Arlington, VA, the Asylum Division opened a new office of 60 officers dedicated exclusively to conducting credible fear and reasonable fear interviews that would have otherwise been the responsibility of the Arlington or Los Angeles Asylum Offices. This new program does not change the overall calculation that 272 officers, whether dedicated full time to CFI and CFI screenings or not, will be required to handle current CFI and RFI requests.
- ¹¹⁵ See USCIS Asylum Division Stakeholder Meeting, February 5, 2016 (notes on file with Human Rights First).
- ¹¹⁶ See Appendix III.
- ¹¹⁷ Executive Office for Immigration Review, *supra* note 51 (319 immigration judges were authorized through FY 2015). In FY 2016, Congress allocated funding for an additional 55 judges, bringing the total to 374.
- ¹¹⁸ Written Statement of Hon. Dana Leigh Marks, President, National Association of Immigration Judges before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the House Committee on the Judiciary on Oversight Hearing on the Executive Office for Immigration Review, June 17, 2010, available at http://judiciary.house.gov/_files/hearings/pdf/Marks100617.pdf.
- ¹¹⁹ Communication with the National Association of Immigration Judges (notes on file with Human Rights First).
- ¹²⁰ Human Rights First suggests the ideal adjudication timeline for cases before the immigration court be one year on average. This average would still allow some complex cases to be adjudicated beyond one year, but would ensure the majority of cases be completed in a timely fashion, while respecting the due process rights of each individual.
- ¹²¹ See Appendix III.
- ¹²² Charles Roth and Raia Stoicheva, *Order in the Court: Common Sense Solutions to Improve Efficiency and Fairness in the Immigration Court* (Chicago: National Immigrant Justice Center, October 2014), available at <https://www.immigrantjustice.org/publications/orderinthecourt>.
- ¹²³ 8 CFR §1003.21.
- ¹²⁴ Hon. David L. Neal, “Memorandum: Operating Policies and Procedures Memorandum 08-0, Guidelines for Facilitating Pro Bono Legal Services,” Executive Office of Immigration Review, U.S. Department of Justice, March 10, 2008, available at <http://www.justice.gov/sites/default/files/eoir/legacy/2008/04/24/08-01.pdf>.
- ¹²⁵ Betsy Cavendish and Steven Schulman, *Reimagining the Immigration Court Assembly Line: Transformative Change for the Immigration Justice System* (Washington, D.C.: Appleseed Network, 2012), available at <http://www.appleseednetwork.org/wp-content/uploads/2012/03/Reimagining-the-Immigration-Court-Assembly-Line.pdf>.

- ¹²⁶ Administrative Conference of the United States, “Administrative Conference Recommendation 2012-3: Immigration Removal Adjudication,” adopted June 15, 2012, available at <https://www.acus.gov/sites/default/files/downloads/2012/06/Recommendation-2012-3-Immigration-Removal-Adjudication.pdf>.
- ¹²⁷ Betsy Cavendish and Steven Schulman, *supra* note 125.
- ¹²⁸ *Ibid.*
- ¹²⁹ Administrative Conference of the United States, *supra* note 125.
- ¹³⁰ Betsy Cavendish and Steven Schulman, *supra* note 125.
- ¹³¹ Statement of Juan P. Osuna, *supra* note 45.
- ¹³² Citizenship and Immigration Services Ombudsman, *supra* note 33, p.61.
- ¹³³ Institute for the Study of International Migration, *Detention and Removal: What now and What Next?* (Washington, D.C.: Institute for the Study of International Migration, Georgetown University, Oct. 2014), p. 13; Russell Wheeler and Lenni Benson, “Immigration courts would benefit with more staff,” *Houston Chronicle*, November 14, 2013, available at <http://www.chron.com/opinion/outlook/article/Wheeler-Benson-Immigration-courts-would-benefit-4983968.php>.
- ¹³⁴ Matt Graham, “Funding Immigration Courts Should Not be Controversial,” *Bipartisan Policy Center*, May 20, 2015, available at <http://bipartisanpolicy.org/blog/funding-immigration-courts-should-not-be-controversial/>.
- ¹³⁵ Julie Myers Wood, *supra* note 27.
- ¹³⁶ U.S. Department of Justice, “Asylum Reform: Five Years Later—Backlog Reduced and Number of Non-Meritorious Claims Drops,” press release, February 1, 2000, available at <http://www.uscis.gov/sites/default/files/files/pressrelease/Asylum.pdf>.
- ¹³⁷ *Ibid.*
- ¹³⁸ Serious concerns have been raised regarding the issue of work authorization waiting periods; see Human Rights Watch and Seton Hall University School of Law’s Center for Social Justice, *supra* note 87.
- ¹³⁹ Immigration Policy Center, *Removal Without Recourse: The Growth of Summary Deportations from the United States* (Washington, D.C.: American Immigration Council, April 2014), available at <http://www.immigrationpolicy.org/just-facts/removal-without-recourse-growth-summary-deportations-united-states>.
- ¹⁴⁰ U.S. Department of Justice, *supra* note 136.
- ¹⁴¹ Nash, Alan Eric, and John P. Humphrey, *Human rights and the protection of refugees under international law* (Halifax: The Institute for Research on Public Policy, 1987), p. 4; Roman Boed, *The State of the Right of Asylum in International Law*, 5 DUKE J. COMP. & INT’L L. 5: 1, 6-7 (1994), available at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1342&context=djCIL>.
- ¹⁴² The Refugee Convention Relating to the Status of Refugees, July 28, 1951 189 UN.T.S. 137; Optional Protocol to the 1951 Convention Relating to the Status of Refugees, January 31, 1967, 606 U.N.T.S. 267.
- ¹⁴³ See Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007); see also UNHCR, Procedural Standards for Refugee Status Determination under UNHCR’s Mandate, available at <http://www.unhcr.org/4317223c9.pdf>; see also UNHCR, UNHCR monitoring visit to the Republic of Nauru, November 26, 2013, available at <http://www.refworld.org/docid/5294a6534.html>.
- ¹⁴⁴ Santhosh Persaud, *Protecting refugees and asylum seekers under the International Covenant on Civil and Political Rights*, UNHCR Paper No. 132, November 2006, p. 16, available at <http://www.unhcr.org/4552f0d82.pdf> (citing Latvia (CCPR/CO/79/LVA), November 6, 2003, para. 9.).
- ¹⁴⁵ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007).
- ¹⁴⁶ *Ibid.*
- ¹⁴⁷ *Ibid.*
- ¹⁴⁸ UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Russian Federation*, 1 December 2003, CCPR/CO/79/RUS, available at: <http://www.refworld.org/docid/3fdc68914.html>.
- ¹⁴⁹ Eur. Parl. Ass., *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection* (June 26, 2013), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0032>. Article 12 of the directive both ensures that asylum seekers be informed of the time frame for the adjudication of their application and that they be “given notice in reasonable time of the decision by the determining authority on their application.” (Art. 12 (1)(a) and (e)).
- ¹⁵⁰ *Ibid* at (Art. 31 (3)).
- ¹⁵¹ *Ibid* at (Art. 31 (3) (a)-(c))) (These circumstances include instances where complex issues of fact and/or law are involved, where a large number of application are received simultaneously, or where the delay can be clearly attributed to the applicant’s own failure to comply with the procedure.) See UN High Commissioner for Refugees (UNHCR), *Comments on the European Commission’s Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) COM (2011) 319 final* (Geneva: UNHCR, 2012), p. 23, available at <http://www.unhcr.org/4f35256c9.pdf>.
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- ¹⁵⁵ 8 U.S.C. § 1158(d)(5)(A)(iii).
- ¹⁵⁶ U.S. Government Accountability Office (GAO), *Asylum: Additional Actions Needed to Assess and Address Fraud Risks* (Washington, D.C.: GAO, December 2015), p. 28, available at <http://www.gao.gov/assets/680/673941.pdf>.
- ¹⁵⁷ *Ibid.*
- ¹⁵⁸ Immigration and Nationality Act, section 240(b).
- ¹⁵⁹ *Podio v. INS*, 153 F.3d 506, 509 (7th Cir. 1998), citing *Batanic v. INS*, 12 F.3d 662, 666 (7th Cir. 1993).
- ¹⁶⁰ *Drobny v. INS*, 947 F.2d 241, 245 (7th Cir. 1991).
- ¹⁶¹ Alicia Triche, "Due Process in a Deluge: Minimum Procedures for Meaningful Fact-Finding on an Overloaded Docket," *The Federal Lawyer*, August 2015, available at <http://naij-usa.org/wp-content/uploads/2015/08/FederalLawyer-ImmigrationUpdate-August2015-Due-process-in-a-Deluge.pdf>.
- ¹⁶² *Ibid.*
- ¹⁶³ In 2013, the Asylum Division established its own timeliness goal of 60 days for full adjudication of asylum applications, in line with timeliness goals of asylum reform. Internal systems establish a "60-day referral clock" from the time a complete application is received.
- ¹⁶⁴ EOIR yearly statistical yearbook data departs slightly from the number of incoming new cases calculated by Human Rights First. This discrepancy of approximately eight percent likely results from the way TRAC and EOIR count and report completed cases. Utilizing the slightly higher number derived from TRAC data may provide a slight buffer given increased numbers of new cases in recent years.
- ¹⁶⁵ Human Rights First suggests the ideal adjudication timeline for cases before the immigration court be one year on average. This average would still allow some complex cases to be adjudicated beyond one year, but would ensure the majority of cases be completed in a timely fashion, while respecting the due process rights of each individual.
- ¹⁶⁶ U.S. Department of Justice Office of the Inspector General, *Management of Immigration Cases and Appeals by the Executive Office of Immigration Review*, October 2012, p. 6, available at <https://oig.justice.gov/reports/2012/e1301.pdf>.



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