



## Statement for the Record

### House of Representatives Committee on the Judiciary, Subcommittee on Immigration and Citizenship

#### Courts in Crisis: The State of Judicial Independence and Due Process in U.S. Immigration Courts

January 29, 2020

Human Rights First applauds the House Judiciary Committee for holding a hearing on the Courts in Crisis: The State of Judicial Independence and Due Process in U.S. Immigration Courts.

Since 1978, Human Rights First has worked to protect and promote fundamental human rights. We have long advocated for fair and timely asylum procedures and U.S. compliance with international refugee and human rights law, in addition to providing pro bono legal representation – in partnership with many of the nation’s leading law firms - to asylum seekers in U.S. asylum and immigration court proceedings. Over the years, we have issued a [series of reports](#) on the immigration courts, warning of the negative impact of delays and backlogs on asylum seekers and calling for fair and timely adjudications.

The Trump Administration has grossly mismanaged the immigration courts and weaponized them to deny asylum to refugees, thwart due process, and influence decision-making in individual cases. The administration’s assault on the immigration courts has confirmed that the immigration court system itself is fatally flawed.

Since January 2017, the administration has eliminated safeguards against [politicized hiring](#), repeatedly [encouraged](#) immigration judges to deny asylum by [falsely](#) painting asylum cases as meritless and fraudulent, pushed immigration judges to rush through cases through the use of [case quotas and other changes](#), and launched secret hearings at “[immigration adjudication centers](#)” where judges conduct hearings closed to the public by remote video-conferencing.

In addition, former Attorney General (AG) Jeff Sessions and current Attorney General William Barr have used – and abused - the Attorney General’s “[certification](#)” power – which allows attorneys general to issue their own precedent-setting rulings in individual cases – to issue a barrage of [decisions](#) that attempt to deny asylum to many refugees and undermine due process in the immigration courts. For example, through a highly flawed ruling in [Matter of A-B-](#), former AG Sessions attempted to change U.S. asylum law to deny asylum to many victims of persecution perpetrated by violent criminal organizations or domestic violence abusers. In [Matter of L-E-A](#), AG Barr [attempted](#) to block members of persecuted family groups from

receiving asylum protection. Through a decision in [Matter of E-F-H-L-](#), the Attorney General opened the door for immigration judges to potentially deny asylum without full evidentiary hearings.

Over the last year, the Trump administration has forced asylum seekers to “wait” in Mexico for their immigration court hearings under a policy it has absurdly dubbed the “Migrant Protection Protocols” (MPP), turning them back to some of the most notoriously dangerous parts of Mexico and [making it impossible](#) for the overwhelming majority of them to find a U.S. lawyer to represent them in their immigration court hearings. Attorneys, legal monitors, and a [former immigration judge](#) have monitored these hearings on behalf of Human Rights First. We have documented how asylum seekers are [often kidnapped and attacked](#) on their way [to, and from, U.S. immigration courts](#), explained how this policy violates U.S. law and treaty obligations, and identified the many nearly insurmountable barriers to legal representation in MPP immigration court proceedings and the secretive MPP “tent courts.”

In a statement issued earlier today, the [Roundtable of Former Immigration Judges](#) explained that:

This administration has systematically attacked due process in the immigration court system through new rules, memoranda, and policies. However, the largest assault to due process is the Migrant Protection Protocols (MPP) program. MPP prevents access to the court, to counsel, and to resources refugees need to effectively present their cases. The limitations on due process in MPP are not incidental to the program, they are intentional.

In addition to the elimination of due process in MPP, the government is putting vulnerable refugees in grave danger. Refugees are forced to wait in dangerous border towns in Mexico without any protection or resources. As with the elimination of due process, the state created danger generated by MPP is intentional. It is part of the government’s attempt to eliminate access to asylum.

It should be no surprise, in light of these and other Trump administration actions, that the rate at which immigration judges grant asylum has [plummeted under](#) the Trump administration.

Over many years, chronic underfunding of the immigration courts helped create a massive backlog, a growing problem that was recognized in 2006 and 2007 as Human Rights First has detailed in its [prior reports](#). Other factors contributed to the growth of cases, including the bottleneck created by lack of sufficient judges and staff, the “sequestration” freeze in hiring, and a subsequent increase in the number of people seeking asylum due to displacement stemming from human rights abuses and conditions in [Central America](#), Venezuela, and other places.

Instead of effectively addressing challenges relating to the immigration courts, the Trump administration imposed policies that exacerbated the backlog and used it as a pretext for

advancing policies that block access to asylum and undermine justice, as Human Rights First explained in an October 2017 [report](#). A July 2019 [study](#) issued by the Marshall Project detailed how Trump administration policies and practices led to even greater delays and backlogs in the courts “making it harder for judges to move cases efficiently, extending processing times and compounding a nationwide backlog that has grown by 68 percent under President Trump” as of the time of the study. Due to these delays, asylum seekers often wait years for their immigration court hearings, leaving them separated from their families and unable to rebuild their lives in safety.

The immigration courts must be totally overhauled, transformed, and upgraded in order to ensure due process, judicial independence, and fair and timely hearings. Congress has a critical role to play in this transformation, as would an executive branch committed to due process and fairness. Key recommendations for Congress include:

- 1. Make the immigration courts independent Article I courts.** The [American Bar Association](#) (ABA) and other legal groups have recommended that the courts be made independent of the Department of Justice (DOJ) and transformed into Article I courts, a recommendation that the ABA has explained in detail in its most recent report. This reform would secure due process and judicial independence and prevent political appointees from continuing to improperly influence the courts’ decisions in asylum and other cases. It would also eliminate an Attorney General’s ability to issue his or her own decisions to essentially re-write asylum law and overturn court decisions.
- 2. Pass the [Refugee Protection Act](#) to restore access to asylum.** Congress should pass the Refugee Protection Act, legislation [restoring access](#) to asylum and refugee protection, and overturning Trump Administration rulings to prevent refugees from receiving asylum in the United States—including former Attorney General Sessions’ ruling, through the certification process, to deny protection to women who have fled domestic violence and families escaping from deadly criminal organizations where their governments fail or refuse to protect from such persecution.
- 3. Launch a major legal representation and legal information initiative.** Congress should launch a major legal representation initiative that provides support for legal counsel for asylum seekers and immigrants in immigration court proceedings – including children and those with mental health issues. Legal representation will make the courts more efficient, helping to ensure that eligible refugees receive protection at the earliest stages of the process. Moreover, statistical studies have repeatedly [confirmed](#) that asylum seekers represented by counsel overwhelmingly appear for their immigration court hearings. Legal representation is also a more [fiscally prudent expenditure](#) than detention. Congress should also expand funding for legal information and institute universal legal orientation presentations (LOPs)—including for families released from DHS/Customs and Border

Protection (CBP) custody—to explain appearance obligations, the legal system, and how to secure counsel.

- 4. Defund the Migration Protection Protocols and its secretive tent courts.** Congress should refuse to fund MPP and its flawed tent courts.
  
- 5. Press for the End of Other Policies that Undermine Independent Adjudication and Fairness.** Through its oversight authority, Congress should:
  - Urge political appointees leading the immigration courts – and DOJ, where the immigration courts are currently housed - to stop painting asylum claims pending before the immigration courts as false and/or lacking in merit;
  - Press DOJ to halt the [politicization](#) of [immigration judge hiring](#) and to implement safeguards against politicized hiring, including by restoring the role of career professionals in final hiring decisions;
  - Urge an end to policies that pressure judges to deny asylum cases – including case quotas and rushed rocket-dockets; and
  - Press DOJ to end its use of “immigration adjudication centers” that are closed to the public and unfair and technically deficient video-conference hearings.
  
- 6. Increase immigration court interpreters, staff and judges.** Congress should provide funds to support an increase in immigration court interpreters (including those who speak indigenous dialects to assure accurate hearings and prevent continued adjournments), court support staff and – with reforms to eliminate politicized hiring – immigration judges selected through fair and objective hiring. Along with the other reforms outlined above, Congress must ensure funding to support necessary staff levels in order to reduce backlogs and ensure fairness and timely asylum and immigration court adjudications.