

Prepared Remarks of Senator Charles E. Grassley
Chairman, Senate Judiciary Committee
For a Subcommittee hearing entitled
“Strengthening and Reforming America’s Immigration Court System”
Wednesday, April 17, 2018

I want to thank Chairman Cornyn and Ranking Member Durbin for having this hearing today. I look forward to a productive dialogue about the status of our nation’s immigration court system.

As this Committee knows, the current state of our immigration court system is abysmal.

There are more individuals waiting in the immigration court backlog than ever before, with fewer and fewer cases being completed every year.

This undermines the American people’s faith in our lawful immigration system.

According to data from a June 2017 GAO report, the immigration court backlog more than doubled from fiscal years 2006 through 2015.

In 2006, there were roughly 212,000 pending immigration court cases, with an average wait time of 198 days. By 2015, that had grown to 437,000 pending cases with an average wait of 404 days.

This year, there’s more than 685,000 pending cases, with the average case taking 561 days to close. Those numbers are *astounding*, and they’re having a real impact on the government’s ability to enforce immigration law.

While the purpose of today’s hearing is to consider potential immigration court reforms, it’s also important to take a look at exactly why the case backlog has exploded. There are a number of contributing factors.

First, due to the former Obama Administration’s lax enforcement policies, our immigration courts were overwhelmed with new cases for years. As more and more people entered our country illegally, the immigration courts simply couldn’t keep up with the ever increasing caseload.

This was especially true for legally complex cases dealing with unaccompanied alien children and family units. As one expert and stakeholder told GAO, those types of cases take “longer to

adjudicate than other cases because...[they] could apply for various forms of relief...including asylum.”

Second, for years the immigration court system has suffered from a lack of adequate resources and staffing. These courts have too few judges, and not enough support staff. Right now, each judge has a case load of anywhere between 1500 and 2000 cases.

Third, and finally, the Obama Administration’s “prosecutorial discretion” policies made it clear that cases involving non-criminal aliens weren’t a priority.

Naturally, immigration judges responded by granting more continuances and administrative closures in those cases.

For perspective, between 2006 and 2015, continuances increased by 23 percent and immigration judge related continuances increased by 54 percent.

These continuances resulted in further delays and increased case lengths so that by 2015, actual case completion decreased by 31 percent.

Thankfully the Trump Administration, under the leadership of Attorney General Sessions, has made reducing the immigration court backlog a top priority.

They’re doing this by prioritizing the hiring of more immigration judges, and taking administrative steps to reduce unnecessary case closures and increase case completion rates. I’m looking forward to hearing about these measures in more detail from Mr. McHenry.

But, while the Trump Administration’s measures should be commended, the fact remains that real, long-term reform is only possible from Congress.

While I’m open to listening to many of the perspectives that will be presented here today, I’ve got serious concerns with recommendations for turning immigration courts into Article I courts.

At this time, I don’t agree that a wholesale restructuring of the immigration court system is necessary.

In particular, I’m hesitant to support creating either a specialized Article I court or a brand new agency to oversee the system. Everyone here knows that once a new bureaucracy is created, it’s difficult to reform and almost impossible to undo.

Before we create any new bureaucracy, we should look at fixing the inefficiencies in the current immigration system. There are a number of simple, common-sense steps we as Congress can take to reduce the immigration court backlog.

Before we do anything else, we need to at least provide Justice the resources it needs to hire and *quickly* train new judges.

Let's also be cognizant of the fact that immigration court judges are short on support staff, and make sure we're providing them with law clerks and other necessary staff needed to quickly move along cases.

We then need to consider what types of cases immigration judges consider. Some would argue certain types of cases, most notably asylum cases, are best decided by professionals at the Department of Homeland Security, instead of by the immigration courts.

Any reform to the current court system should consider which types of cases the courts should hear.

Finally, Congress should set Administration wide guidelines and parameters governing case management and how immigration judges grant continuances.

Once we've taken these steps, and seen the impact they have, we should then begin to have a discussion about broader reforms to the court system. Creating a brand new structure *before* we take targeted measures is, in my opinion, simply premature.

Again, I want to thank Chairman Cornyn and Ranking Member Durbin for holding this hearing today. I'm looking forward to hearing from the witnesses, and to beginning a discussion about reforming our nation's immigration court system.