

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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Chairman, Senate Committee On The Judiciary
Hearing On "Improving Efficiency
And Ensuring Justice In The Immigration Court System"
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Immigration is an issue that has led to fierce debate, but no comprehensive solution over the last several years. Just a week ago, the President went to the border to renew the discussion and called for Congress to enact comprehensive reform, something I have long supported. While we struggle to attract bipartisan support for a comprehensive solution, the current system continues to be hobbled by a complex immigration statute and overburdened immigration courts. Today the Committee is taking a look at those courts.

The immigration courts have not attracted much attention in our immigration debates, but decisions made by immigration judges carry great weight. To an asylum seeker with a valid claim of persecution in her home country, a denial may be tantamount to a death sentence. If the courts do not operate fairly and efficiently, long delays are additional burdens. A successful petitioner may not be able to reunite with her family or bring her children away from danger and to the United States during the pendency of her case. In my home state, Vermont Immigration and Asylum Advocates assists hundreds of immigrants and asylum seekers each year, and works hard to overcome the challenges to winning a claim.

Let me give you an example of what I am concerned with: The Associated Press recently reported on an asylum seeker who had been jailed and tortured for supporting the political opposition in Cameroon. Her husband died behind bars for his activism. Her brother and mother were tortured. This woman, who fled and had to leave behind two sons and a 20-month-old daughter, waited for five years for her case to be resolved by the immigration courts. Five years while her children were separated from her. By the time she completed all the steps to bring her children to the United States, her daughter, who she had last seen as an infant, had reached the age of 10.

The pace of justice in the immigration courts is too slow. The courts operate under the Executive Office for Immigration Review, or EOIR, within the Department of Justice. They have struggled for years under heavy caseloads, insufficient staffing, and technological weaknesses. The Federal Circuit Courts have excoriated the immigration courts and the administrative appeals board for shoddy work, including denials of due process, bias against immigrants, and unreasoned opinions. Under the previous administration's Justice Department, the hiring of immigration

judges was politicized, with candidates vetted for political affiliation, voting records, and personal views on abortion, rather than immigration law expertise.

The courts have come a long way since that point. The Obama administration revamped the personnel policies and hired immigration judges with higher qualifications and a diversity of backgrounds. Clerks and support staff have been added. Training and technology have both improved. I want to commend our witness, Juan Osuna, Director of EOIR, for his leadership in steering this ship onto a steady course. Just at this moment, however, new challenges have arisen that are not of the courts' making.

The heavy emphasis on enforcement by the administration has led to a sharp increase in caseloads. At the same time, the Department of Justice faces budget cuts across the board, and can no longer hire judges to keep up with the caseload. As a result, the case backlog rose 44 percent from the end of fiscal year 2008 to the end of the calendar year 2010.

And so the example of the asylum seeker from Cameroon has become all too typical. The average time to complete a case in immigration court is over 15 months. Cases involving claims for relief, such as asylum or protection against torture, average more than 23 months.

I called this hearing not to criticize the immigration courts, but to have a constructive discussion about how they can be improved. We should ask what the courts can do with current resources to increase efficiency and improve the quality of adjudication. How many new judges and support staff are needed to bring the case backlog under control? What innovative steps are being taken by nongovernmental entities, such as the New York Immigrant Representation Study, launched by Judge Robert Katzmann of the Second Circuit Court of Appeals? How can bar associations, law firms, and non-profit organizations contribute?

We are joined by experts who understand all aspects of this challenge. In addition to Mr. Osuna of EOIR, I welcome Julie Myers Wood, the former Director of U.S. Immigration and Customs Enforcement, who brings an enforcement perspective. We also welcome Karen Grisez, the Chair of the ABA Commission on Immigration, which released a comprehensive study on immigration adjudication in 2010, the most significant report of its kind in more than a decade.

I believe the challenges facing the immigration courts are not partisan or ideological. We all want courts to operate fairly and efficiently and serve the interests of justice. Today, I hope we will discuss how best to achieve those goals. I welcome our witnesses and look forward to their testimony.

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