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Giving Immigration Judges the Tools to Achieve Justice

Immigration Judges face an overwhelming caseload. Approximately 220 Immigration Judges decided 229,316 cases in fiscal year 2008 alone, which works out to over 1,042 cases per judge. Effectively, this means that we are asking each Immigration Judge to make more than four potentially life-altering decisions every business day. And the caseload is growing.

These daunting numbers support the perception among a number of the people we interviewed that America's Immigration Courts have turned to assembly line justice. As one interviewee put it, "When Immigration Judges run through applications like a mill, that simply doesn't allow a judge to review and weigh the facts of a particular case very closely. If a judge can do three asylum merits cases in a morning from 8:00 to 12:30, I don't see how a normal individual can weigh all the factors and give a reasoned decision." Another said, "Immigration Judges are ... up against a wall." Considering that Immigration Judges have less than two hours on average to review each case file, conduct a hearing and render a decision, it should not be surprising that they do not always reach a reasoned, accurate decision.

This country is asking each Immigration Judge to make more than four potentially life-altering decisions every day. To reduce that number by one case per day would require about 76 new judges.

But even this assembly line justice breaks down. Many interviewees also complained that DHS Trial Attorneys regularly show up to court completely unprepared to discuss the case at hand, or missing critical evidence or even the case file itself. When this happens, Immigration Judges

have little choice but to delay the hearing, further clogging the system.

Immigration Judges need tools to control their courtrooms and achieve justice in an Immigration Court system that is bursting at the seams. As it stands, Immigration Judges—no matter how professional and competent—simply do not have what they need to be effective. Appleseed therefore recommends the following action items.

Increase the number of Immigration Judges.

The single most important way to help Immigration Judges achieve justice is by hiring more Immigration Judges—this would give Immigration Judges the tool of time. We heard repeatedly from interviewees that Immigration Judges simply do not have the time to hear their cases fully. One interviewee complained that the shortage of Immigration Judges causes the hearings to be shorter than they should be: "Compared to other hearings, immigration hearings are much shorter, and there are not enough judges to permit longer hearings to happen."

Therefore, it appears that an average of more than four cases per day is too many for an Immigration Judge to handle. Simply to reduce that number by one case per day, and considering the need for regular training sessions each year for all Immigration Judges, about 296 Immigration Judges would be needed, or about 76 new judges. A reduction of two cases per day would require about 424 Immigration Judges, or about 204 new judges. We do not profess to know the magic number of new Immigration Judges needed. It is clear, however, that even a small improvement will require significant additional resources. DOJ should work with Congress to put in place a multi-year plan to address the fundamental problem of too many cases for too few Immigration Judges.

Provide additional clerks to assist Immigration Judges in writing opinions.

Increasing the number of Immigration Judges should go hand in hand with increasing the number of clerks to assist them. At more than four cases per day, Immigration Judges are pressed to even consider all of their cases, let alone to write reasoned opinions when necessary. Currently, each clerk on average serves more than four Immigration Judges, while as many as 14 Immigration Courts do not have any clerks at all. At a minimum, each Immigration Judge should have a dedicated clerk to help work through the caseload, including helping the judge write opinions. Dedicated clerks would free up judges to conduct full hearings and evaluate the issues each case presents, which would lead to more accurate decisions and greater efficiency in the Immigration Court system.

Expand Immigration Judges' sanctioning authority to include the ability to sanction DHS Trial Attorneys.

With the mountain of cases facing Immigration Judges every day, judges need to run their courtrooms as efficiently as possible; this necessarily requires the power to discipline all attorneys who come to court unprepared, including DHS Trial Attorneys. Immigration Judges currently have, and on occasion make use of, the authority to sanction private attorneys. But even though Congress has specifically provided contempt authority to Immigration Judges, DOJ has yet to implement the regulations necessary to give Immigration Judges the authority to sanction Trial Attorneys, arguing that DHS already has the power to discipline its own attorneys. As a result, many interviewees complained that when Trial Attorneys show up unprepared for a proceeding there is little an Immigration Judge can do. One interviewee said, "[I] can't think of a single Immigration Judge" who would grant an immigrant attorney's request to delay the

proceeding because they are not fully prepared, but this is precisely what Immigration Judges routinely do for Trial Attorneys under the same circumstances, creating at least the appearance of unfairness.

The number of complaints we heard about Trial Attorneys' lack of preparation suggests that the existing DHS disciplinary policies and procedures are not addressing this conduct. In coordination with DHS, DOJ should implement the intent of Congress and extend Immigration Judges' disciplinary authority to allow them to sanction Trial Attorneys. Once provided, Immigration Judges must consistently and vigorously apply this sanctioning authority to both immigrants' counsel and Trial Attorneys.

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