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Improving the Reliability and Availability of Court Records

The process for filing, storing and requesting documents in Immigration Court seems more fitting for 1909 than 2009. Many government agencies and most federal courts have transitioned to electronic filing and retrieval of documents from just about anywhere in the country, but the Immigration Courts still require immigrants to deliver paper copies of documents to the Immigration Court, even if they live hundreds of miles away. As a result, immigrants have no easy access to their case files. One interviewee told us that she could not find out whether the government had filed a motion by the deadline because government lawyers would not get back to her. She asked the court clerk, who told her that the clerk's office was not permitted to tell her whether something had been filed. In another case, she was not even able to see the motion the government had filed before the Immigration Judge considered it, violating basic principles of fairness and denying her the right to respond to the government's request.

The fact that the government rejects fewer than one percent of Freedom of Information Act requests by immigrants to get their own case files indicates that the entire process obstructs justice rather than serves it.

The government makes matters worse by putting up unnecessary roadblocks. Immigrants must file a Freedom of Information Act request, usually to both DHS and DOJ, to get their own case records. This process can take months, needlessly delaying an immigrant's hearing until the documents are received or leaving the immigrant with inadequate time to prepare his or her case. One government official admitted to us that this process is "arbitrary, slow and arcane." In the end,

both DHS and DOJ deny fewer than one percent of properly submitted requests. The entire process obstructs justice rather than serves it.

Not only paper documents get stuck in this morass of inefficiency. Audio recordings of hearings fall into this abyss as well. Interviewees pointed to several cases where Immigration Courts lost the recordings to their clients' hearings. They further stated that such errors could have been "fatal" to their cases, especially on appeal. Even when recordings are not lost, the transcriptions of recordings are too often unusable. One interviewee told us that 75 percent of one transcript he received simply said "inaudible." Another told us about large portions of a transcript labeled "indcipherable." When this happens, it is effectively the same as if the hearing was not recorded at all or if the recording was lost. Lost recordings or unusable transcripts can prevent any meaningful appellate review because there is no record of the hearing. In some cases, the BIA (or the federal Court of Appeals) has ordered an entirely new hearing, forcing the government to duplicate its efforts and often prolonging detention.

Appleseed recommends the following action items to improve the efficiency and fairness of the immigration records system.

Provide immediate access to records, filings and dockets.

President Obama has already asked the Attorney General to issue new Freedom of Information Act guidelines with the directive that agencies "take affirmative steps to make information public . . . [rather than] wait for specific requests from the public." DHS and DOJ should apply this principle to the Immigration Courts. The government should automatically provide all immigrants who are summoned to appear in Immigration Court their full case files, excluding only those

items the government determines may properly be withheld under FOIA. Detained immigrants in particular often have little or no help in navigating the immigration process, which means that requiring detained immigrants to submit a formal request can be tantamount to denying them their file. Providing detained immigrants with immediate access to their records will help resolve their cases faster and will reduce their time in custody. Even for those who are not in detention, forcing them to go through the hollow formality of a FOIA request wastes both their time and the government's resources.

DOJ and DHS should also publish a list of documents that can be immediately released, including all court filings, the Record of Deportable/Inadmissible Alien, the Warrant for Arrest of Alien, the Notice of Custody Determination and other salient and standard documents that are helpful to immigrants. If the immigrant believes that the government has wrongfully withheld materials, he or she can file a FOIA request. By giving immigrants immediate access to these routine documents and limiting the need to submit a FOIA request to only the most sensitive government documents, Immigration Court cases can proceed more efficiently while still addressing legitimate national security concerns. This recommendation is also consistent with the BIA Practice Manual, which does not require a FOIA request to access the record of proceedings.

Create an electronic document filing system.

To EOIR's credit, one of the goals of its strategic plan is to implement an electronic document filing system, called eWorld—a long overdue improvement. To be most effective, eWorld must be a comprehensive electronic document filing, recordkeeping, docketing and notification system, similar to the systems operating in many state and federal courts. It must provide immigrants and their lawyers with immediate access to all unclassified court filings. Such a system will significantly reduce the recordkeeping burdens of the Immigration Court staff and vastly improve access to the documents needed to resolve cases.

Some immigrants lack the resources or know-how to use computers or the Internet, and so for them EOIR should still permit paper filings, just as federal courts do.

Provide copies of recordings of Immigration Court hearings.

Rather than use court reporters, Immigration Judges themselves operate the typically antiquated equipment used to record the hearings in their courtrooms. These audio recordings are the basis for the official transcripts of these hearings, providing immigrants with valuable information as they prepare their cases for review. The process for obtaining these recordings varies among Immigration Courts. Generally, an immigrant must submit a request to the court clerk far in advance, and then in order to listen to the recording the immigrant must go to the Immigration Court during limited business hours, taking notes of any relevant information on the spot. This process is unnecessarily cumbersome.

The Immigration Courts should provide all immigrants, on request, with a copy of the recording (whether cassette or digital) of their proceeding. Each Immigration Court should be required to make these recordings available to the immigrant within five business days. We can see no acceptable reason for longer delays, particularly for those Immigration Courts that have converted to digital recording systems.

In addition, EOIR should create simple procedures and standardized forms for obtaining a recording. In addition to benefiting immigrants, these reforms will also reduce the burden on court staff, who must schedule these listening sessions, decipher poorly written requests and follow up with immigrants for missing information.

Continue the installation of digital recording systems.

Over the past few years, EOIR has been replacing its outdated cassette tape recording systems with digital recording systems. In its strategic plan and 2009 budget request, EOIR recognizes that a digital system will solve many of the problems of

inaudible or indiscernible statements in hearing transcripts and lost or damaged tapes, which sometimes are so bad that the courts must repeat the hearings. EOIR has already installed these digital audio recording systems in 21 Immigration Courts and the BIA Oral Argument Room. EOIR intends to install these digital recording systems in the remaining 35 Immigration Courts by the end of 2010. We applaud EOIR's efforts to meet this important goal. Once digital equipment has been implemented throughout the system, each immigrant should be provided with a digital copy of the recording at the conclusion of the hearing.

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