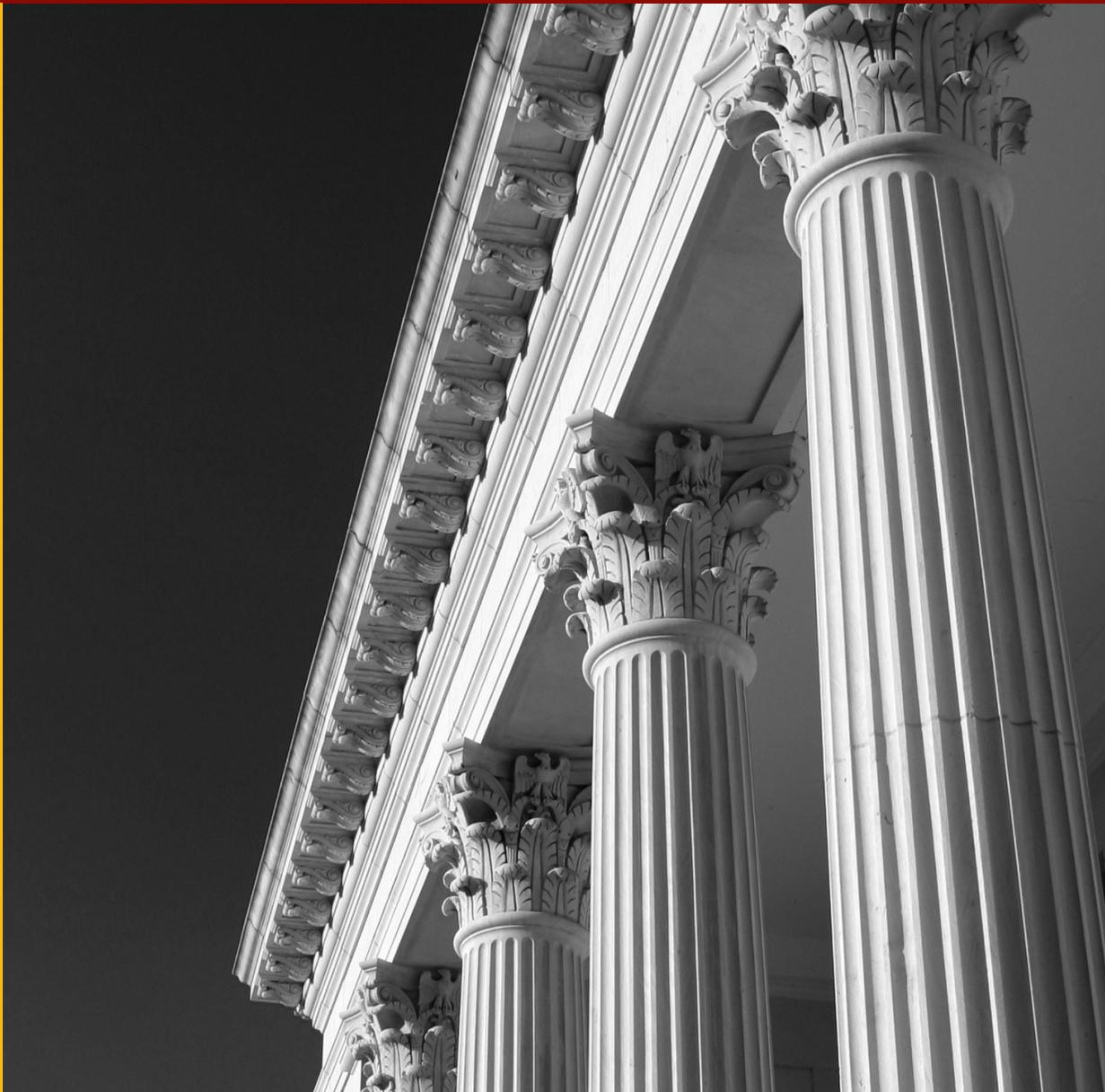


Assembly Line Injustice

Blueprint to Reform America's Immigration Courts



Acknowledgments

This report is the product of close collaboration between Appleseed and Chicago Appleseed, with the generous support of our pro bono partners at Latham & Watkins LLP and, more recently, with Texas Appleseed and Akin Gump Strauss Hauer & Feld LLP. The result of thousands of hours of research and field work by volunteer attorneys in Chicago, New York, Washington, Los Angeles and Houston, *Assembly Line Injustice* stands as a powerful demonstration of Appleseed's unique approach to promoting social justice.

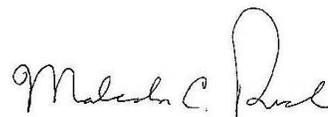
By appealing to the highest ideals of the bar, and by engaging top pro bono legal talent throughout the country, Appleseed uncovers systemic impediments to justice and economic opportunity and crafts effective, comprehensive solutions. Individuals and communities on the margins of society—the working poor, minorities, disadvantaged children or, as shown in this report, immigrants—too often fall through the cracks of our legal system, unfairly denied the opportunity to pursue the American dream.

Appleseed's pro bono partners share our commitment to advocating for practical, achievable ways to tear down barriers to justice, and we are grateful for their support. Indeed, Latham & Watkins committed more than 90 lawyers and 22 professional staff members to this critical effort. We would especially like to thank Jim Rogers, who led and inspired Latham's nationwide team. Special thanks also go to Dennis Craythorn, Daniel Glad and Seth Goldstein, the report's lead authors and national coordinators. Akin Gump added 12 attorneys in Texas, who were led by Steven Schulman. Without the concerted efforts of these scores of attorneys, such a groundbreaking assessment of the Immigration Court system—and future reform resulting from the project—could not have been accomplished.

Assembly Line Injustice would not have been possible without the collaboration and commitment of all these participants, applying their legal expertise to an issue of utmost relevance to this country's fundamental ideals. The report, to be sure, represents a milestone in the campaigns for immigrants' rights and a legal system befitting American ideals of justice. But Appleseed's work on this project is far from complete. Now begins the crucial advocacy stage to ensure the implementation of our numerous recommendations, which in turn will ensure that immigrants encounter a fair and unbiased system of justice. Please join Appleseed as we continue down this road to a stronger, more inclusive society. We wholeheartedly thank all of our partners and volunteers for helping us pave the way.



Betsy Cavendish
Executive Director
Appleseed



Malcolm Rich
Executive Director
Chicago Appleseed

Appendices

The main body of the report stands on its own and may be read without the appendices. The appendices are intended only to amplify and extend the discussion of our recommendations and to provide interested readers with the underlying support for specific issues. Because some of the most useful data on Immigration Courts is difficult to find, the appendices provide a direct link to many of the resources we discovered during our investigation. Each section of this report will have a corresponding appendix that will be electronically available on Appleseed's website. The appendices will also include a fuller presentation of our methodology, including copies of the interview questionnaires.

The appendices will be available by clicking on hyperlinks contained in a PDF version of this report to be found on Appleseed's website at <http://www.appleseednetwork.org/bProjects/ImmigrantRights/tabid/81/Default.aspx>. Phrases or concepts in the report that benefit from some elaboration or are supported by a citation will be underlined in blue, indicating a hyperlink to the relevant portion of the appendix. Then, from the appendix, click on the heading of the appendix entry to return to where you were in the body of the report.

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Introduction

Every year, millions of people arrive at America's borders fortified by the hope of a better life. Some come to escape persecution or torture; others, to improve their economic situation; still others, to seek education or training. Some of these newcomers enter lawfully; others, illegally; still others enter lawfully but overstay their welcome and remain here in violation of our immigration laws.

Whatever brings them here, virtually all are inspired by the American promise of opportunity in a free society and our traditions of fair play and equal justice under the law. But many, particularly those who enter or remain illegally or who are simply unable to document their right to remain, get swept up in Immigration Courts that do not faithfully carry out these ideals. It is well documented that the single best predictor of an immigrant's success or failure in Immigration Court is the identity of the judge who hears the case. Moreover, countless immigrants are subjected to harassing or denigrating treatment in Immigration Court, cannot understand what they are being asked or told, or have no assistance in navigating the byzantine court process. Far too many immigrants are held in detention for so long, while their cases grind on at a glacial pace, that they ultimately decide to go back home, even if they are entitled to be here. Many immigrants face a courtroom experience that does not uphold America's commitment to the fair and dispassionate administration of the laws.

The sharp increase in the number of cases in Immigration Courts over the past decade, without a corresponding increase in resources, lies at the root of many of these problems. Immigration Judges, their clerks and the DHS Trial Attorneys who represent the government are overwhelmed, yet the stakes to the immigrants involved could not be higher: the outcome of these cases often determines whether a person will lose his livelihood, be torn from his family or even sent back to persecution. As one Immigration Judge, commenting on the crushing burden, said to us, "These are death penalty cases being handled with the resources of traffic court."

In response to this crisis of justice, the national nonprofit organization Appleseed decided in 2008 to investigate the Immigration Court system by gathering the opinions of those who face the challenges of that system on a daily basis. Appleseed sought practical, achievable steps to bring the system closer to our American ideals and prepared this report to highlight its findings and propose workable recommendations. This report takes no position on who should be entitled under the nation's immigration laws to stay, leave or become a U.S. citizen. Nor does it address every problem facing immigrants or the government that deals with them. (For example, we heard from many of our interviewees about—but do not address—problems in the private immigration bar.) Instead, our recommendations have been narrowly tailored to bring the reality—and the perception—of fair play and equal justice to the Immigration Court system.

Methodology

This report reflects our findings from a robust and comprehensive evaluation of the Immigration Court system across the country. In signature Appleseed style, we relied on the generous pro bono contributions of counsel in Chicago, New York, Washington, Los Angeles and Houston, with Latham & Watkins LLP committing more than 90 lawyers and 22 professional staff members and Akin Gump Strauss Hauer & Feld LLP adding 12 attorneys in Texas. What sets this report apart is that it is based on interviews of those who have actual day-to-day experience in Immigration Courts. Throughout 2008 and into 2009, we conducted well in excess of 100 interviews among a broad sample of experts, including practitioners (both fee-charging and pro bono), officials of nonprofit associations, leaders of professional organizations, academics and governmental players.

At the project's outset, we designed a structured interview questionnaire to elicit the stakeholders' views on the courts, with both broad questions (for example, "What is the biggest problem

with the Immigration Courts today?”) as well as specific, narrowly targeted questions (for example, “What is your experience with videoconferencing equipment?”). We then used the questionnaire to conduct more than 70 confidential, in-depth stakeholder interviews. These structured dialogues drew on the experience of a broad cross-section of participants to identify the most pressing problems facing the Immigration Court system. These interviews elicited numerous suggestions for reform and identified additional Immigration Court experts who were then interviewed.

We sought to interview various actors from within the government, including Immigration Judges and Trial Attorneys, but we were generally refused access. Fortunately, however, we were able to have very thoughtful, in-depth conversations with Immigration Judges Dana Leigh Marks of San Francisco and Denise Slavin of Miami, president and vice president, respectively, of the National Association of Immigration Judges, and BIA Chairman Juan Osuna, and their comments informed our final analysis and recommendations. We also were able to speak with only a very limited number of current and former Trial Attorneys, who provided comments on many of our proposals.

While we were conducting the initial interviews, teams of trained court watchers observed more than 100 hours of hearings in the Immigration Courts in Chicago, Los Angeles and New York. The court watchers reported their observations, identifying issues related to hearing procedures and outcomes. These court-watching sessions confirmed the findings of our initial interviews and gave rise to a handful of very informal but useful off-the-record conversations with Immigration Judges at the conclusion of a day’s hearings. As the interviews and court-watching were ongoing, we also undertook a thorough review of the literature pertaining to the Immigration Court system.

Following the completion of the first-round interviews and the initial court-watching sessions, we carefully researched and evaluated the identified issues and corresponding recommendations to develop a list of preliminary proposals for reform. This list served as the basis for more than 35 additional interviews with the stakeholders whom we had identified as

particularly knowledgeable. We used these second-round interviews to solicit these stakeholders’ opinions about our identified issues and the efficacy of our preliminary recommendations. We then carefully re-evaluated each recommendation and developed a refined list of our most promising preliminary recommendations, which we presented to members of President Obama’s transition team in late 2008. After further interviews, research and analysis, we developed the final recommendations contained in this report.

Underlying Values and Summary of Recommendations

In the course of conducting our interviews, we came to identify three core goals of any adjudicative system in the United States, and these are critical to the proper functioning of the Immigration Courts:

Accuracy—the system should achieve the correct result under the law. It should recognize truly meritorious claims and deny legally insufficient claims. Naturally, no court system will be accurate 100 percent of the time, but the system should strive for accuracy above all else. Achieving accuracy also results in similarly situated litigants receiving similar outcomes.

Legitimacy—the system must not only be accurate, it must be perceived to be accurate. Parties and observers must believe that each immigrant is given a fair opportunity to present his or her case to a neutral party, leading to the correct result. The goal of legitimacy requires that Immigration Courts operate in a professional, unbiased and transparent manner.

Efficiency—the system should operate as efficiently as possible, subject to maintaining accuracy and legitimacy. Efficiency is a goal for all litigants, but it is a particularly compelling goal for the Immigration Court system, which will always need to cope with a staggering caseload in a resource-constrained environment. Practices that waste the time and resources of Immigration Judges, Trial Attorneys or other governmental actors should be eliminated.

In the current budgetary environment, we recognize that only limited funds will be available to solve the nation’s Immigration Court problems,

