Statement for the Record of the American-Arab Anti-Discrimination Committee, American Immigration Council, American Immigration Lawyers Association, HIAS, Human Rights First, Kids in Need of Defense (KIND), Lutheran Immigration and Refugee Service (LIRS), the National Immigrant Justice Center (NIJC), the National Immigration Law Center, Northern Illinois Justice for Our Neighbors, Tahirih Justice Center, USC International Human Rights Clinic, U.S. Committee for Refugees and Immigrants (USCRI), Women's Refugee Commission

U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration and Border Security

Hearing on Oversight of the Executive Office for Immigration Review

Dear Chairman Labrador, Ranking Member Lofgren, and Members of the Committee,

Thank you for the opportunity to submit a statement for the record for the Hearing on Oversight of the Executive Office of Immigration Review (EOIR). This hearing comes after the White House announced its Immigration Principles, and as EOIR and the National Association of Immigration Judges (NAIJ) negotiate new performance evaluation standards.

This statement addresses the concerns of the aforementioned signatories regarding: 1) efforts to impose quotas on immigration judges; 2) the immigration court backlog; 3) the detailing of immigration judges to border facilities; 4) the mission of EOIR; 5) access to counsel; 6) asylum-free zones; 7) stakeholder engagement and transparency issues; 8) immigration judge hiring practices; 9) EOIR's recent memo regarding the definition of an unaccompanied alien child (UC); and 10) due process violations for asylum-seeking individuals and families.

1. **EOIR seeks to use numeric and time-based case completion quotas to evaluate immigration judges' performances.**

Various news sources, including the Washington Post,[1] have reported that the Department of Justice (DOJ) plans to use numeric and time-based case completion quotas to evaluate immigration judges' performances. The National Association of Immigration Judges (NAIJ) reports that the agency is moving to make this change through its Collective Bargaining

[1] Maria Sachetti, Washington Post, "Immigration judges say proposed quotas from Justice Dept. threaten independence," Oct. 12, 2017, https://www.washingtonpost.com/local/immigration/immigration-judges-say-proposed-quotas-from-justice-dept-threaten-independence/2017/10/12/3ed86992-aee1-11e7-be94-fabb0f1e9ffb_story.html?utm_term=.3c7ea8e11d45.

Agreement with NAIJ by striking language that has long prevented EOIR from rating judges based on number or time-based production standards.[2]

NAIJ perceives this move as the "death knell for judicial independence" in the immigration court system.[3] The Washington Post Editorial Board urged DOJ to back away from its plan, noting that implementing quotas could *worsen* rather than help the immigration court backlog. Warning of due process repercussions, the board wrote: "...pushing judges to resolve cases quickly to meet performance standards could put judges in the position of choosing between keeping their jobs and the interests of fairness. Judges would end up rushing through complex cases that require more time to reach a quota. If the hurry were extreme enough, a judge's brisk handling of a case might not meet the minimum standards for constitutionally required due process."[4]

Presently, there is no recognized right to a government-funded attorney in removal proceedings, and representation rates are very low (fewer than 40% of immigrants nationally and fewer than 20% of immigrants in detention have counsel[5]). According to Transactional Records Access Clearinghouse at Syracuse University, currently 55% of immigrants in immigration proceedings between the fiscal years of 2001 and 2017 have no legal representation.[6] It is thus imperative that immigration judges can use their discretion to grant continuances for immigrants to find representation and, if they cannot, to gather their evidence and prepare their cases. The Association of Pro Bono Counsel—a membership organization of pro bono practice leaders—submitted a letter to this Committee expressing its concern that the imposition of quotas "will inevitably reduce our ability to provide pro bono representation to immigrants in need of counsel" for these very reasons.[7]

The very real concerns among immigrants and their attorneys that cases will be rushed through the system at the expense of due process are heightened by an Operating Policies and Procedures Memorandum issued by EOIR on July 31, 2017. The memo focused on "efficient handling of motions for continuance in order to ensure that adjudicatory inefficiencies do not exacerbate the

[2] The statement of the National Association of Immigration Judges on this issue is available online at http://www.aila.org/infonet/naij-states-that-performance-quotas-on-immigration.
[3] Maria Sachetti, Washington Post, "Immigration judges say proposed quotas from Justice Dept. threaten independence," Oct. 12, 2017.
[4] Editorial Board, Washington Post, "Sessions's plans for immigration courts would undermine their integrity," Oct. 22, 2017, https://www.washingtonpost.com/opinions/sessionss-plan-for-immigration-courts-would-undermine-their-integrity/2017/10/22/ce000df6-b2aa-11e7-9e58-e6288544af98_story.html?utm_term=.a872b75eb400.
[5] Ingrid Eagly and Steven Shafer, American Immigration Council, *Access to Counsel in Immigration Court* (2016), https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court.
[6] Data pulled from TRAC immigration tool, available at: http://trac.syr.edu/phptools/immigration/nta/ (Data reflects "current status" of legal representation on October 30, 2017).
[7] The letter is available at https://immigrantjustice.org/sites/default/files/content-type/press-release/documents/2017-10/APBCo_Letter_to_Congress_re_Immigration_Court_Quotas_2017.pdf.

current backlog of pending cases nor contribute to the denial of justice for respondents and the public..."[8]

Taking the discretion away from judges to properly manage their own dockets will mean that bona fide asylum seekers will be sent back to harm when they cannot properly represent themselves or find counsel. Creating pressure for judges to expedite cases to meet performance goals will jeopardize immigrants' rights and lives, as well as the credibility of the U.S. justice system.

Imposing numeric quotas on immigration judges will contribute to the Trump Administration's broader agenda to streamline removal procedures and deport massive numbers of people at the expense of due process. The Department of Homeland Security (DHS) plans to expand other procedures that undermine due process, as well, such as the nationwide use of expedited removal,[9] which enables DHS to bypass immigration court proceedings altogether. Expedited removal is now used in more than 80 percent of all removals. Taken together, these policies demonstrate a clear design to speed up the deportations of more people with little regard for due process or principles of fairness and humanitarianism that have long been the foundation of America's immigration policy. By compelling judges to decide cases even faster, the Administration will achieve more rapid deportation rates. Immigration courts should be an instrument of justice, not a tool to further an enforcement agenda. EOIR should not proceed with this plan to impose numeric quotas on judges.

2. The immigration backlog reached an all-time high in August 2017.

For over a decade, the immigration courts have been severely underfunded as compared to the skyrocketing budget increases Congress has provided to immigration enforcement. The combined budgets of Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) exceed $20 billion.[10] By comparison, the EOIR budget is about $420 million.[11] Unable to keep pace with ICE and CBP's aggressive prosecution of removal cases, the immigration backlog has continued to grow.

In August 2017, the backlog in the U.S. immigration courts reached an all-time high, with 632,261 cases pending.[12] In some of the nation's largest immigration courts, people wait an

[8] U.S. Department of Justice, Executive Office for Immigration Review, "Operating Policies and Procedures Memorandum 17-01: Continuances," July 31, 2017, https://www.justice.gov/eoir/file/oppm17-01/download.
[9] Executive Order 13768, "Enhancing Public Safety in the Interior of the United States," (Jan. 25, 2017), available at https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united
[10] DHS Budget in Brief, Fiscal Year 2017, *available at* https://www.dhs.gov/sites/default/files/publications/FY2017BIB.pdf.
[11] EOIR FY2017 Budget Request At A Glance, *available at* https://www.justice.gov/jmd/file/821961/download.
[12] *See* TRAC Immigration, Immigration Court Backlog Tool; *available at* http://trac.syr.edu/phptools/immigration/court_backlog/.

average of three to five years for their next hearing. Because of the long wait times, many immigrants and their families face hardships ranging from physical danger to financial difficulties. In some cases, asylum seekers' children and spouses—who cannot be brought to safety until their family member receives asylum—continue to face persecution in their home countries. Many asylum seekers, as well as other immigrants, are in desperate need of an earlier court date.

We recommend that EOIR implement a mechanism to allow individual respondents to seek an earlier merits hearing when a hearing opens on a judge's calendar. This would mitigate hardships experienced by asylum seekers and other immigrants and ensure the most effective use of court time. We remain uncertain about the effects of the new streamlined hiring plan, announced by Attorney General Sessions in April, on the backlog and the welfare of asylum seekers. The plan is to reduce the hiring timeline for immigration judges. It remains unclear, however, what that timeline will be, what effect it will have on the recruiting process, how EOIR intends to onboard these new immigration judges, or when it intends to share its plans with Congress.

3. EOIR has detailed immigration judges to border facilities, despite low caseloads there and high caseloads elsewhere.

Purportedly pursuant to the White House's January Executive Order regarding border security,[13] EOIR began scrambling in early 2017 to remove immigration judges from already backlogged immigration courts to be sent on one- to two-week "detail" assignments in courts in at least a dozen detention centers around the country.[14] Internal EOIR documents obtained through FOIA[15] reveal that in the first months of the so-called "surging" of judges, more than 20,000 non-detained immigration court hearings were rescheduled when judges left for details. EOIR sent these judges to courts that were selected for unclear reasons and in some instances unprepared

[13] Section 5(c) of the January 25, 2017 Executive Order regarding "Border Security and Immigration Enforcement Improvements" instructed the Attorney General to: "take all appropriate action and allocate all legally available resources to immediately assign immigration judges to immigration detention facilities operated or controlled by the Secretary, or operated or controlled pursuant to contract by the Secretary, for the purpose of conducting proceedings authorized under title 8, chapter 12, subchapter II, United States Code."

[14] These details were preliminarily announced via press release. See Executive Office for Immigration Review, EOIR Provides New Hearing Location Details, Mar. 17, 2017, https://www.justice.gov/sites/default/files/pages/attachments/2017/03/17/noticeresixhls_03172017_1.pdf; Executive Office for Immigration Review, EOIR Provides Information for Two New Hearing Locations, Mar. 24, 2017, https://www.justice.gov/sites/default/files/pages/attachments/2017/03/24/noticenewhearinglocations03242017.pdf.

[15] Meredith Hoffman, Politico Magazine, "Trump sent judges to the border. Many had nothing to do," Sep. 27, 2017, http://www.politico.com/magazine/story/2017/09/27/trump-deportations-immigration-backlog-215649. The FOIA documents are available on the National Immigrant Justice Center website at http://immigrantjustice.org/immigration-surge-courts.

for detailed judges. These judges then frequently sat on empty dockets with little or nothing to do.[16]

On October 4, 2017, DOJ issued a Press Statement[17] presenting statistics intended to support a conclusion that the "surge of immigration judges" had been successful. The statistics provided in this statement, however, do not add up in the context of the real-life functioning of the immigration court system. For example, the statement claimed that "the mobilized immigration judges have completed approximately 2,700 more cases than expected if the immigration judges had not been detailed." A DOJ spokesperson clarified to the press that this number was calculated "by using historical data to compare the cases judges were projected to complete at their home courts with those they completed at the surge courts."[18] But this comparison of detained to non-detained court processing is, according to National Association of Immigration Judges' President Emeritus Dana Marks, "comparing apples to orange." As Judge Marks explains, "detained dockets always have a higher volume and a greater percentage of cases where people are not eligible to seek some reprieve from removal or are not inclined to because they don't want to remain in custody."

EOIR should provide an update as to the status of the "immigration judge border surge" initiative. It has not yet addressed the average delay when a case is continued so that an immigration judge can be detailed. It remains unclear, moreover, what procedures are in place 1) to ensure adequate and timely notice is given to respondents and their counsel when judge details delay home court cases; and 2) to allow for expedited rescheduling of cases when urgent humanitarian considerations are present, such as derivative family members remaining abroad in danger awaiting the outcome of an asylum hearing.

4. EOIR's purported "return to the rule of law" has undermined due process.

In August, DOJ issued a press statement touting statistics released by EOIR as a demonstration of the "return to rule of law" under the Trump administration.[19] The data included a showing of a 27.8% increase in total orders of removal over a six-month period in 2017 as compared to the same period in 2016. The press statement also touted as a victory the finding that over 90% of the cases decided by immigration judges engaged in "details" to border facilities resulted in deportation or removal.

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[16] Women's Refugee Commission, "Prison for Survivors," p. 24, Foonote 102 (Oct. 2017), *available at* file:///C:/Users/GaultL/Downloads/Prison-for-Survivors-REPORT-FINAL%20(1).pdf

[17] Department of Justice Press Release, 17-1100, "Justice Department Releases Statistics on the Impact of Immigration Judge Surge," Oct. 4, 2017, https://www.justice.gov/opa/pr/justice-department-releases-statistics-impact-immigration-judge-surge.

[18] Allegra Kirkland, "What Trump's DOJ's numbers don't say about immigration court backlog," Oct. 20, 2017, http://talkingpointsmemo.com/muckraker/doj-numbers-dont-tell-full-story-immigration-judge-surge.

[19] Department of Justice Press Release 17-889, "Return to rule of law in Trump administration marked by increase in key immigration statistics," Aug. 8, 2017, https://www.justice.gov/opa/pr/return-rule-law-trump-administration-marked-increase-key-immigration-statistics.

During the time-period referenced in this press statement, immigrants and immigration service providers have been sounding alarm bells regarding an erosion of due process in the immigration court system. According to Human Rights First, "some attorneys report that immigration judges are increasingly rushing cases. For example, a pro bono attorney practicing in Laredo, Texas said that detained asylum seekers were sometimes given only weeks to prepare their case—generally, far too little time to gather evidence, prepare witnesses, and prepare a full asylum case for trial…."[20] Moreover, as ICE increasingly denies parole on a systematic basis for asylum seekers, advocates report that the physical and emotional stress of prolonged detention is causing many bona fide asylum seekers to abandon their claims and agree to deportation.[21]

EOIR should ensure that the protection of due process rights is paramount as it pursues its mission. At present, EOIR sees an increase in removal orders as a "return to the rule of law." Given the erosion of due process protections in the immigration court system, however, the increase in the percentage of immigration court cases resulting in removal orders is instead attributable to more individuals being wrongly deported and/or given insufficient procedural protections to allow them to properly present their claims to relief.

5. Immigrants in removal proceedings often lack access to counsel, undermining due process.

There is a statutory right to counsel in removal proceedings, but at no expense to the government. This means that immigrants facing deportation can only get a lawyer if they can afford to pay one or if they are one of the lucky few who can find pro bono representation. We face a due process crisis in the immigration court system today—nationally only 37% of immigrants have a lawyer as they face an immigration judge, with a government prosecutor arguing for their deportation.[22] Even unaccompanied children, regardless of their tender age, are not given appointed counsel.

This has immense consequences. It is widely recognized that immigration law is highly complex, and immigration cases often raise issues of life and death.[23] Studies repeatedly find that non-citizens are more likely to succeed in their removal cases if they have a lawyer. This is not surprising given the complexity of the federal immigration laws, which are frequently compared to the tax code in their density. One recent study found women and children facing deportation to

[20] Human Rights First, *Tilted Justice* (October 2017), at p. 17, https://www.humanrightsfirst.org/sites/default/files/hrf-tilted-justice-final%5B1%5D.pdf.
[21] *See* Human Rights First, *Judge and Jailer: Asylum Seekers Denied Parole in Wake of Trump Executive Order* (Sept. 2016), https://www.humanrightsfirst.org/sites/default/files/hrf-judge-and-jailer-final-report.pdf.
[22] Ingrid Eagly and Steven Shafer, American Immigration Council, *Access to Counsel in Immigration Court* (2016), https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court.
[23] Dana Leigh Marks, CNN, "Immigration judge: Death penalty cases in a traffic court setting," June 26, 2014, http://www.cnn.com/2014/06/26/opinion/immigration-judge-broken-system/index.html.

be fourteen times more likely to be allowed to remain in the United States if they had counsel in immigration court.[24]

This crisis is particularly acute in detention, where fewer than 20% of immigrants are represented.[25] Because of the constraints and impact of detention, including the barriers to obtaining evidence and preparing witnesses, and the retraumatization detention engenders in asylum seekers, detention greatly intensifies the need for representation. Studies show that only 3% of detained immigrants even proceed to seek relief from removal, as opposed to 32% of those represented.[26] EOIR oversees the Legal Orientation Program, through which legal service organizations provide basic information to individuals in immigration detention about the detention and deportation process. This program has seen remarkable success, including great cost savings to the government.[27] Nonetheless, the program does not fund direct representation and is operational at less than a quarter of the existing ICE detention sites.

Just this month, ICE issued a Request for Information to assist in its plans to open new detention centers in or near Chicago, Detroit, St. Paul, and Salt Lake City. Yet the primary legal service providers in all four jurisdictions have gone on the record to state that they do not have the resources or capacity to meet the *existing* legal services needs of those detained in these areas, let alone to provide more. In a response to the RFI, a group of 14 NGOs including these legal service providers stated, "the expansion proposed by this RFI cannot be effectuated in a manner that will provide meaningful access to pro bono legal services for the vast majority of those detained."[28]

EOIR should report on 1) the procedures it has in place to ensure that pro se respondents have sufficient time and assistance to properly prepare their cases, especially when they are detained in remote detention centers; 2) the training it provides to immigration judges who routinely hear detained cases to ensure that they are providing ample continuances to pro se respondents to find lawyers and—if that is impossible—to prepare their cases pro se; and 3) the procedures it has in place on these detained dockets to facilitate access to pro bono representation. EOIR should also affirm that access to basic know your rights programming is critical for unrepresented immigrants, especially those in detention who are unable to find a lawyer.

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[24] TRAC, "Representation makes fourteen-fold difference in outcome: immigration court 'women with children' cases," July 15, 2015, http://trac.syr.edu/immigration/reports/396/.

[25] Ingrid Eagly and Steven Shafer, American Immigration Council, *Access to Counsel in Immigration Court* (2016), https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court.

[26] *Id.*

[27] A 2012 study conducted by the Department of Justice found that detained immigrants who received LOP completed their court proceedings more quickly and therefore remained detained for an average of six fewer days, yielding the government a net savings of more than $17.8 million over a three year period. https://www.justice.gov/sites/default/files/eoir/legacy/2013/03/14/LOP_Cost_Savings_Analysis_4-04-12.pdf.

[28] *See* letter to ICE submitted on Oct. 26, 2017 by the National Immigrant Justice Center, Detention Watch Network, the American Civil Liberties Union, and 11 legal service providers in the affected areas, online at http://immigrantjustice.org/sites/default/files/content-type/press-release/documents/2017-10/NGOResponsetoICE-RFI_FINAL_10-26-17.pdf.

In early 2017, the New York Immigration Court disbanded the unaccompanied children's docket. This significantly limits the ability of pro bono attorneys to screen and provide counsel for unaccompanied children. It has caused confusion for asylum seekers and is a hardship on immigration judges not familiar with this population. EOIR should report on why this docket disbanded, whether it has plans to do so in other courts as well, and how it will facilitate representation of UACs as a matter of fairness and court efficiency.

6. The disparity in asylum grant rates has, in effect, created asylum-free zones.

It has been well documented by scholars[29] and journalists[30] that there is an unacceptable disparity in asylum grant rates across the immigration court systems. Although the national rate at which immigration judges grant asylum applications is 52%, some immigration courts have grant rates so low that it is virtually impossible to obtain protection. As recently as 2016, the Government Accountability Office (GAO) confirmed this disparity, noting that, for example, "the grant rate in the New York immigration court was 52 percent, while the grant rates in the Omaha, Atlanta, and Bloomington, Minnesota, courts were less than 5 percent."[31] The GAO also found that this disparity persisted even holding constant various case and judge characteristics.

These jurisdictions with grant rates of between 2 and 15% have earned the name "asylum free zones," and include Houston, Dallas, Charlotte, Atlanta, and Las Vegas. The asylum denial rate in Atlanta, for example, is 98%.[32] Advocates who practice in these jurisdictions report that it is as though they are practicing in an entirely different legal system, one that does not recognize the binding nature of jurisprudence regarding asylum law.

A recent Reuters report[33] told the story of two women with nearly identical experiences of persecution in their home countries - both women and their families had been targeted and threatened because of their involvement in a parent-teacher association. A San Francisco immigration judge granted one woman asylum, while a Charlotte immigration judge denied the

[29] Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Philip G. Schrag, Legal Times, "Random Refuge," Aug. 20, 2007, http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/Ramji-NogalesSchoenholtzandSchrag8-20-07.pdf.

[30] John Washington, The Nation, "These jurisdictions have become asylum free zones," Jan. 18, 2017, https://www.thenation.com/article/these-jurisdictions-have-become-asylum-free-zones/.

[31] Government Accountability Office, *GAO-17-72: Variation Exists in Outcomes of Applications Across Immigration Courts and Judges*, Nov. 2016, Variation Exists in Outcomes of Applications Across Immigration Courts and Judges, http://www.gao.gov/assets/690/680976.pdf.

[32] For a detailed history and analysis of this problem, see the Petition regarding the Human Rights of Asylum Seekers in the United States prepared for the Inter-American Commission on Human Rights by numerous NGOs, dated Dec. 2, 2016 and available at https://cgrs.uchastings.edu//sites/default/files/Human%20Rights%20of%20Asylum%20Seekers%20in%20US%20%5bPetitioners%5d_0.pdf.

[33] Micah Rosenberg, Reade Levinson and Ryan McNeill, Reuters, "They fled danger at home to make a high-stakes bet on U.S. immigration courts," Oct. 17, 2017, https://www.reuters.com/investigates/special-report/usa-immigration-asylum/.

other woman asylum outright. Reuters' analysis of immigration court data found that the two women's story was not an outlier, but rather an illustration of consistent trends.

According to a petition brought to the Inter-American Commission on Human Rights, credible reports show that "...claims based on gender violence and other persecution perpetrated by non-state actors, such as gangs and other criminal organizations, are disfavored," despite clear Board of Immigration Appeals and circuit precedent recognizing their viability. The petition goes on to state: "Qualitative reports from the undersigned attorneys and others working in the field describe the situation as a combination of factors that are unrelated to the governing law and instead appear to originate in the national government's inability or unwillingness to supervise asylum adjudications in these jurisdictions. The result of this inability or unwillingness to supervise asylum adjudications in these jurisdictions has been the creation of rogue immigration judges who serve as a second prosecutor instead of a neutral fact-finder."[34]

EOIR should clarify that all immigration judges—regardless of where they sit—must render their decisions in accordance with binding precedential decision of the Board of Immigration Appeals and the governing circuit court. It should also immediately provide plans for investigation into jurisdictions like the Atlanta immigration court, where asylum rates are so low as to suggest that judges are denying meritorious claims, and report what its standards are for triggering an internal investigation. EOIR should also commit to taking steps to investigate the problem of "asylum free zones" and develop training and accountability procedures to ensure that judges are not allowed to get away with systematically withholding relief from meritorious applicants.

7. EOIR has decreased its engagement with stakeholders and reduced transparency.

Advocates and immigration practitioners have observed a disturbing pattern by EOIR officials of discontinuing any engagement with stakeholders. On April 3rd, 2017, EOIR unexpectedly cancelled via email a national stakeholder engagement scheduled for two days later, on April 5th.[35] That same week, EOIR leadership withdrew its scheduled participation in an engagement on April 7, 2017 at the American Immigration Lawyers' Association's spring conference. In September, EOIR headquarters informed the American Immigration Lawyers Association that EOIR would not be scheduling a Fall EOIR Stakeholder Meeting this year.

Stakeholder engagement is critical for an adjudicative agency like EOIR. EOIR leadership should outline what steps it is taking nationally and at the local level to receive meaningful feedback from stakeholders, including the private immigration bar, free and low cost legal service providers, and civil society organizations.

[34] *Id.*

[35] EOIR Cancels Stakeholder Meeting, April 3, 2017, https://www.justice.gov/sites/default/files/pages/attachments/2017/04/03/eoirstakeholdermtgcancelle_040517.pdf.

8. Immigration judge hiring is biased in favor of those with enforcement backgrounds.

Hiring the best immigration judges from a broad range of backgrounds is critical to the proper functioning of our nation's immigration courts. An overwhelming majority of immigration judge appointees come from an immigration enforcement background.[36]

EOIR should outline 1) what steps it has taken to ensure that it is hiring a diverse group of immigration judges with backgrounds not only in the public sector, but also in private practice, academia, and the nonprofit sectors; 2) the criteria for new immigration judge hires; and 3) the process it uses to review candidates and evaluate propensity for fairness on the bench. To assess EOIR's hiring practices, EOIR should provide information regarding past work experience of all immigration judges, particularly as to which sectors they worked in; racial and/or ethnic background of all immigration judges; and the gender of all immigration judges.

9. EOIR's legal opinion regarding the definition of an unaccompanied alien child (UC) is concerning.

On September 9, 2017, EOIR issued a legal opinion addressing the definition of "unaccompanied alien child" (UC), a legal term to which certain substantive and procedural rights attach.[37] The legal rights include the right to an asylum interview before U.S. Citizenship and Immigration Services (USCIS) instead of, or prior to, adjudication of an asylum claim by the immigration court. The internal memo addresses two pivotal conclusions:(1) that immigration judges may independently determine whether a child meets the definition of UC during removal proceedings; and (2) that statutory protections for UC may not apply to children who cease to meet that definition.

In a shocking departure from consistent policy, EOIR's Office of General Counsel determined that a DHS determination as to whether a child was a UC does not bind EOIR. The Legal Opinion considers that a respondent previously determined to be a UC will no longer meet that definition if he or she reaches age 18, or if a parent or legal guardian to provide care and custody is located.

EOIR has not yet provided information regarding how many children have been stripped of the procedural protections that Congress intended for children apprehended alone, nor has it

[36] For background information on AILA's analysis of this issue, see question 8 from EOIR Liaison Agenda Submitted on 3/22/2017. In March of 2017, AILA reviewed the qualifications of recent IJ hires published on EOIR's website and found that 43 of the 54 recently sworn-in immigration judges previously worked for the federal government; of these 43 IJs that previously worked for the federal government, 30 specifically worked for DHS; and only 9 of these recently sworn-in immigration judges previously worked at a private practice, 1 from academia, and 1 from the nonprofit sector.

[37] For background on the protections that attach to the UC designation and the ways in which actions taken by this administration threaten their erosion, see the National Immigrant Justice Center, Policy Brief: Proposed policies target children," June 14, 2107, http://www.immigrantjustice.org/research-items/policy-brief-proposed-policies-target-children-deportation.

addressed how placing more children into the backlogged courts for their asylum hearings will reduce the court's current backlog.

Conclusion:

Immigration court backlogs, judge detailing, detention policies, asylum-free zones, UC definitions, and other challenges currently undermine due process within the immigration courts and harm the most vulnerable among us—those seeking refuge in the United States. We stand willing and ready to work with EOIR to address these concerns and recommendations, and to adopt policies which protect and promote due process in our immigration courts.