STATEMENT FOR THE RECORD

On

“Building an Immigration System Worthy of American Values”

Submitted to the

Senate Judiciary Committee

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By Americans for Immigrant Justice and Women's Refugee Commission

Americans for Immigrant Justice\(^1\) and the Women’s Refugee Commission\(^2\) welcome the Senate Judiciary Committee’s hearing "Building an Immigration System Worthy of American Values." Commitment to due process of law is a fundamental principle of the United States. We are a fair people who believe that everyone has the right to a fair trial, and that all individuals are innocent until proven guilty. Over the last 25 years, the immigration system has slowly eroded these principles. As Congress considers how to build a new system, it is critical that we ensure that due process is reinvigorated into the system. In particular, Americans for Immigrant Justice and the Women’s Refugee Commission, encourage Congress to limit the use of stipulated orders, to increase protections during screening at the border, to ensure that all immigrants have access to counsel and to vigilantly protect the rights of parents to remain with their children.

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\(^1\) AI Justice is an award winning, nationally recognized pro bono law firm that protects the basic right of America’s immigrants. Since its founding in 1996, AI Justice lawyers have closed over 80,000 cases of vulnerable immigrants from Central and South America, Africa, Europe and Asia.

\(^2\) The Migrant Rights and Justice Program of the Women’s Refugee Commission protects migrants’ human rights and their ability to access justice and due process through research and advocacy, offering solutions to ensure vulnerable migrants rights are respected.
Stipulated Orders of Removal

Stipulated Orders of Removal are a legal procedure that allows the removal or deportation of a noncitizen without a hearing before an Immigration Judge. Immigrants who sign stipulated orders of removal waive their rights to hearings and agree to have a removal order entered against them, regardless of whether they are eligible to remain in the United States. According to Immigration Court procedures, before an Immigration Judge approves a stipulated order, he or she must determine that a detainee has waived his or her rights in a “voluntary, intelligent and knowing” manner. From 1999 to 2009, the United States deported over 160,000 immigrants who had signed stipulated orders.

Unfortunately, many detainees encountered by Americans for Immigrant Justice in South Florida immigration detention centers, and the Women’s Refugee Commission at the southwest border and throughout the United States, do not know their rights. Most of these individuals have not had the opportunity to consult with an attorney and do not understand the consequences of signing stipulated orders. Worse, some detainees have reported feeling bullied or tricked into signing such orders. Some detainees have said they were erroneously told by immigration officials that they had no immigration relief. One study found that the federal government has used stipulated removal primarily on noncitizens in immigration detention who lack lawyers and are facing deportation due to minor immigration violations.

The Women’s Refugee Commission has received an alarmingly high number of reports of asylum seekers forced to sign stipulated orders of removal despite stating their fear of return. Legal service providers on the southwest border also reported to the Women’s Commission that children who were not represented by attorneys were asked to sign stipulated orders.

Although there have been efforts by the Department of Justice to improve the stipulated orders process, serious concerns with abuse of this procedure persist.

In order to prevent further abuse of the stipulated order process, any comprehensive immigration law passed by Congress should direct the Executive Office for Immigration Review (EOIR) to require Immigration Judges to hold in-person, individualized hearings to determine whether noncitizens understand the consequences of signing a stipulated removal order. EOIR and ICE should also institute a 72 hour waiting period from the time a detainee signs a stipulated order to when a judge considers whether to approve it. ICE should give notice of the 72 hour period and provide the detainee with a list of pro bono and low-cost legal services.

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3 See 8 U.S.C. section §240(d) of the Immigration and Nationality Act; 8 C.F.R. 1003.25(b).
4 8 C.F.R. § 1003.25(b).
providers before obtaining the detainees’ signature. Alternatively, judges should not approve stipulated orders for respondents who are not represented.

**Border Screening**

The U.S. has rapidly expanded its forces on the border, with thousands of border patrol officers patrolling ports of entry and surrounding areas. But, U.S. migration policies are outdated and Customs and Border Protection (CBP) officers are in many ways unequipped to handle the new migrants. They use an “enforcement with consequences” policy that seeks to deter the single person looking for better economic opportunities; this policy is inappropriate for women, children and families who are seeking protection in the United States.

After visiting the border and interviewing many migrants who are now detained, Women’s Refugee Commission staff found that the rights of many to seek asylum were not being met. According to the Trafficking Victims Protection Reauthorization Act and asylum law, migrants should be screened to determine whether they have a fear of returning to their country, and Mexican children must be screened to ensure they are not a victim of human trafficking and feel safe to be returned to their home country after apprehension. Our interviews show that many who are eligible for protection are instead being repatriated against their will to dangerous and exploitative situation.

Americans for Immigrant Justice is currently representing one woman, Amelia, who was apprehended by Texas CBP officers in early 2013. She is a twenty-eight year old mother of three, who, after suffering sexual violence, fled to the United States with her two sisters and five year-old niece. Shortly after arriving in the U.S., they were arrested by CBP officers who told them they were being taken to a "hielera" which means “freezer” or “icebox” in Spanish.

The hielera turned out to be a freezing cold cell where Amelia and her family were locked up along with many other immigrant women. The hielera had no beds, no chairs, and a single sink and toilet sitting in plain view in the cell. The temperature in the hielera was so cold that Amelia's lips chapped and split, her face hurt and peeled. Her sisters' and her niece's lips and fingertips turned blue. They were forced to sleep on the concrete floor without even a blanket. They huddled together on the floor at night for warmth, but slept very little.

They had no access to a bath or shower. They were not provided with even the most basic personal hygiene products like toothbrushes, toothpaste, combs, or soap. Nor were they ever provided with a change of clothing. They were fed only once or twice a day, and received no more than a single sandwich. They were constantly hungry and suffered headaches as a result. The only water available to them and the other women in the cell was provided in a single thermos shared by all the detainees. There were no cups to drink the water. The water smelled like bleach and burned Amelia's throat when she drank it.

Amelia was incarcerated in the hielera for six days. AI Justice and the Women’s Refugee Commission have spoken to women and children kept in the “hieleras” for as long as two
weeks. To escape the hieleras, many of these women ultimately agreed to sign documents they could neither read nor understand. The documents they signed turned out to be orders for their expedited removal from the United States.

Amelia is just one of many migrants who report such atrocious conditions in border holding facilities and mistreatment by border officials. ⁷ Despite numerous reports of rights violations in these facilities, there is currently no procedure for regular oversight or monitoring by non-governmental organizations that is crucial to ensure migrants’ rights are respected and that the U.S. is meeting its international obligations.

Any Immigration Reform must include measures to ensure that the Customs and Border Protection agency:

- implements meaningful screening practices for vulnerable populations
- enacts a zero tolerance policy towards agents who violate international law or commit human rights abuses
- provides independent monitoring, transparency and access to facilities by NGOs and international organizations

Access to Counsel
U.S. immigration law is one of the most complex and complicated area of U.S. law. In addition to its complicated laws and regulations, immigration court is an adversarial proceeding involving a DHS trial attorney who acts as a prosecutor and an Immigration Judge who presides over the formal proceedings. The consequences of losing an Immigration case include immigration detention, removal from the United States and long-term or permanent separation from family. Yet, despite its similarity to a criminal trial, only half of respondents in immigration proceedings are represented by counsel. ⁸ This is due in part to the fact that immigration law is considered to be civil in nature. Thus, while immigrants have a right to counsel in removal proceedings, the law states that it is at “no expense to the government.” This provision does not necessarily preclude government-funded counsel; it merely provides that counsel need not be provided as a matter of right. ⁹ Thus, under the current system, for those who cannot afford (or find) an attorney, one will not be provided for them by the government. Not surprisingly,

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⁸ In the landmark Supreme Court decision addressing the right to government-appointed counsel in criminal proceedings, the Court noted that America's criminal justice system is "adversarial," meaning that the state assumes and uses its resources to establish the defendant's guilt before the defendant is proven guilty in a court of law. Gideon v. Wainwright, 372 US (1963). Because, in this adversarial system, "even the intelligent and educated layman has small and sometimes no skill in the science of law," the Court concluded that the presence of defense counsel is "fundamental and essential to fair trials" in the United States.

⁹ In further extending these rights, the Supreme Court recognized that, in a society of profoundly unequal resources, adversarial criminal justice, and ignorance of complex law, justice can only prevail if the state provides an indigent defendant with an attorney. See, http://www.pbs.org/wnet/supremecourt/rights/landmark_gideon.html
studies have demonstrated that asylum-seekers and others who are represented at their hearings, have a higher chance of receiving relief from removal.

Currently, 84 percent of detained immigrants appear before an immigration judge without counsel. These unrepresented individuals include mentally ill respondents who may not recognize their surroundings or the nature of the proceedings. They also include children, as young as two years old, who are unaccompanied in the United States and appear before Immigration Judges alone, unable to speak for themselves. These two populations are often unable to articulate their claims for legal relief without the assistance of an attorney, and are often unable to secure the resources needed to acquire representation on their own. For such an individual to appear in any court without counsel is surely a denial of their due process.

Tatiana was a long-term lawful permanent resident who suffered from schizophrenia. When AI Justice took her case, she was detained and had been placed in removal proceedings based on several arrests for petty crimes all related to her illness. She was so incompetent that she was not communicating with her United States citizen daughter who had no idea that her mother had a removal hearing. With the assistance of her AI Justice attorney, she applied for and was granted cancellation of removal and released from detention to her daughter’s care. The client was stateless (with no recognized right to live in any country). Without the assistance of an attorney, she likely would have remained detained indefinitely because she would not have been granted relief from removal, DHS would not have felt comfortable releasing her and no country would take her on account of her stateless status.

Current law calls for the government to ensure that unaccompanied children have legal representation in immigration proceedings and other matters, but only “to the extent practicable.” Despite heroic efforts by both the government and non-governmental organizations, it is estimated that currently half of unaccompanied children are not represented in immigration court. The number for mentally ill individuals is not known. Fundamental principles of fairness and due process require that these vulnerable persons receive legal representation and guardians to represent their interests throughout the immigration process. While pro bono representation should be encouraged and utilized to the maximum extent possible, it cannot meet the need in all cases, particularly for those who are detained in remote border areas.

One of the ways that detained immigrants can be provided with appropriate legal information is through the Legal Orientation Programs (LOP). The LOP program is administered by the Executive Office for Immigration Review (EOIR), which contracts with nonprofit organizations to provide LOP services at 25 detention facilities around the country. Under this program, an attorney or paralegal meets with the detainees who are scheduled for immigration court

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hearings to educate them on the law and to explain the removal process. Based on the orientation, the detainee can decide whether he or she potentially qualifies for relief from removal. Persons with no hope of obtaining relief – the overwhelming majority – typically submit to removal. Currently only detained persons are eligible for LOP services.\(^\text{11}\)

EOIR has expressed “great concern” about the large number of individuals appearing in immigration court without representation, and has also noted that “[n]on-represented cases are more difficult to conduct.” According to EOIR, LOPs improve the administration of justice, save the government money by expediting case completions which leads to shorter detention stays, improves appearance rates in court and deters frivolous claims. Most importantly, it helps to ensure that immigrants in immigrant proceedings receive due process of law.

The Attorney General should be given executive authority to pay for counsel in cases where the Attorney General deems the fair resolution or effective adjudication of proceedings would be served by such appointment. Counsel should be appointed for minors, those incompetent to represent themselves due to a mental disability and those deemed particularly vulnerable.

### Parental Rights

The [Women’s Refugee Commission](http://www.americanbar.org/content/dam/aba/migrated/poladv/priorities/immigration/lop_immigrationdetainees.authcheckdam.pdf) works to protect the rights of families impacted by immigration enforcement. Many of AI Justice’s clients have been separated from their children. Both organizations focus on the thousands of undocumented, immigrant women and men whose parental rights are violated, and sometimes terminated, when they are detained or deported. We regularly speak with parents who do not know what happened to their children when they were detained by immigration officials. We have met women who have lost permanent custody of their children because they are deported or are either unaware of or unable to attend family court proceedings while in detention. In other cases, women are deported without seeing their children and without the opportunity to arrange their care prior to deportation.\(^\text{12}\) U.S. Immigration and Customs Enforcement (ICE) does occasionally release parents from detention, or places them in an “alternatives to detention” program. But at this time, there is no clear set of regulations for cases where children are involved.

The Department of Homeland Security must institutionalize sufficient protections to keep families together. Moreover, the government must create policies and procedures that guarantee child welfare practices do not discriminate against parents on the basis of their immigration status or cultural background.

Conclusion

Due process is a fundamental American value that cannot be compromised. In considering any reform to our immigration system, we must make sure due process, and the right to a fair and accessible judicial process is at the forefront of any reform. Providing attorneys to Respondents, particularly those deemed especially vulnerable, in an adversarial proceeding who may not speak English and have no knowledge of U.S. law is essential to efficient and fair adjudications. Ensuring those eligible for humanitarian protections such as asylum are appropriately identified and treated with dignity complies with our international obligations and own American values. Finally, adopting procedures and policies that ensure families can be kept together and parents have the freedom to make decisions regarding the care of their children will ensure strong and healthy communities.