

**Senate Judiciary Committee Chair Richard J. Durbin—Statement for the Record
Senate Judiciary Subcommittee on Immigration, Citizenship, and Border Safety Hearing
on “Preserving Due Process and the Rule of Law: Examining the Status of Our Nation’s
Immigration Courts”
October 18, 2023**

I thank Chair Padilla for holding today’s important hearing, and I thank you the witnesses for their testimony. I look forward to working with my colleagues on a bipartisan basis to address this critical issue.

Our immigration courts are essential to a functional and orderly immigration system, but they are in desperate need of reform and improvements. As of August 2023, there were more than 2.6 million pending cases before the nation’s immigration courts. As a result, many immigrants must wait for years until their cases are decided.

While the Department of Justice has made significant progress in hiring more immigration judges, reducing this backlog will require additional efforts. For example, similar advances have not yet been made in hiring the support staff that judges need to help efficiently manage their daily dockets, reduce the backlog, and stay on top of new cases.

The Trump Administration played a significant role in the growth of the backlog, due to the Administration’s efforts to restrict the ability of immigration judges to manage their dockets. For example, they restricted the use of administrative closure (when a case is temporarily removed from the active docket, often to allow the respondent time for USCIS to adjudicate their application for immigration relief). I was pleased to see the Department of Justice’s proposal to reverse those harmful Trump Administration changes and codify administrative closure in regulation. This will permit immigration judges to better manage their dockets and be more efficient.

Access to legal counsel in immigration court also contributes significantly to court efficiency. Unlike in criminal proceedings, noncitizens in removal proceedings have no right to counsel at government expense. Noncitizens in removal proceedings generally show up for their hearings, and having a lawyer actually further increases the rates at which immigrants show up. Improving access to counsel thus is a win-win proposition, making courts more efficient, increasing appearance rates, and helping ensure meritorious cases are successful.

Of course, there are other reasons why the backlog has increased. One is the large increase in asylum seekers over the last several years. Because of the immigration court backlog, new asylum seekers can wait years to have their cases processed. There is evidence that many of these asylum seekers will follow the law and succeed in their claims. We should all be able to agree that we must improve our immigration court system to ensure efficient and humane processing of asylum seekers. Those who have meritorious claims should be able to get on with their new lives in America, and those who do not should receive a prompt ruling so they are not stuck in limbo for years.

The immigration court backlog has been building over the past 15 years across both Democratic and Republican Administrations. As with so many aspects of our immigration system, we need legislation to fix this problem.

To reduce the backlog, we must work together on a bipartisan basis to adequately fund the hiring of additional judges and support staff, and improvements in technology. Congress must also act to ensure that immigration courts are not subject to the political whims of any administration.

I welcome this opportunity to have a bipartisan discussion on how we can improve our immigration court system.