April 3, 2019

Via Electronic Mail

James McHenry, Director
Executive Office for Immigration Review
U.S. Department of Justice
Washington, DC

Michael E. Horowitz, Inspector General
U.S. Department of Justice
Washington, DC

Corey R. Amundson, Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice
Washington, DC

RE: ADMINISTRATIVE COMPLAINT REGARDING EL PASO SERVICE PROCESSING CENTER IMMIGRATION COURT JUDGES

Dear Director McHenry, Inspector General Horowitz, and Director Amundson:

The American Immigration Council ("Council") and the American Immigration Lawyers Association ("AILA") jointly file this complaint[1] on behalf of immigration practitioners and their detained clients who appear for immigration proceedings at the El Paso Service Processing Center immigration court ("El Paso SPC Court") regarding:

> (A) The use of problematic standing orders by Immigration Judges ("IJs") at the El Paso SPC Court[2] that undermine due process and diminish access to counsel;
>
> (B) A culture of hostility and contempt towards noncitizens who appear at the El Paso SPC Court; and
>
> (C) The use of problematic court practices which undermine due process and a fair day in court for noncitizens appearing before the El Paso SPC Court.

This complaint is based on interviews and declarations from legal practitioners who appeared before the detained docket at the El Paso SPC Court, several IJ standing orders, and a court observation project conducted by the University of Texas at El Paso ("UTEP") and the Hope Border Institute involving hundreds of immigration court cases heard at the El Paso SPC Court.[3]

The court observations, declarations,[4] and statistics paint a sobering picture. The data suggest that noncitizens appearing in the El Paso SPC Court face some of the highest obstacles in the nation to due process and fair adjudication of claims for relief. IJs in the El Paso SPC Court granted only 31 out of 808 asylum applications (3.84 percent) decided on the merits between Fiscal Year (FY) 2013 and FY 2017, which makes the El Paso SPC Court the immigration court with the lowest asylum grant rate in the nation during this timeframe.[5] In FY 2016 and FY 2017 combined, IJs at the El Paso SPC Court granted just *seven* out of 225 cases (3.11 percent) that were decided on the merits.[6] The court's asylum grant rate is so low that one IJ referred to the El Paso SPC Court as "the Bye-Bye Place."[7] Showing similar hostility towards a fair day in court, one of the longest serving IJs in the El Paso SPC Court stated that "[d]ue process is an opportunity, not a privilege."[8]

Table 1: Asylum Decision Rate at El Paso SPC Court

Fiscal Year	Grants	Denials	Grant Rate
FY2017	4	88	4.35%
FY2016	3	130	2.26%
FY2015	6	165	3.51%
FY2014	18	307	5.54%
FY2013	0	87	0%

Source: Department of Justice

The due process concerns in the El Paso SPC Court illustrated throughout this complaint reveal a systemic pattern of dysfunction and lack of meaningful oversight in the U.S. immigration court system at large.[9] Immigration courts across the nation are suffering from many of the issues identified here, including the use of problematic standing orders, reports of inappropriate conduct from IJs, and highly disparate grant rates which suggest that outcomes may turn on which court or judge is deciding the case rather than established principles and rules of law.

The Executive Office for Immigration Review ("EOIR") should address these endemic problems in the El Paso SPC Court and other courts through corrective action. EOIR's failure to act is a strong indication that it is not providing adequate management and oversight to ensure that court proceedings are conducted in a fair and efficient manner. The agency's inadequate response also illustrates the weakness of an immigration court system not overseen by an independent judicial agency whose primary function is to ensure the rule of law, impartiality, and due process in the adjudication of cases.

We conclude by providing recommendations for corrective and remedial action for the EOIR, the U.S. Department of Justice's ("DOJ") Office of Inspector General ("OIG") and the DOJ's Office of Professional Responsibility ("OPR") to address these issues within the El Paso SPC Court and the U.S. immigration court system at large.[10]

KEY FINDINGS

1. IJs in the El Paso SPC Court use standing orders that undermine due process for respondents, including those seeking humanitarian relief, reduce access to counsel, and prevent release from detention, including:
    a. An arbitrary 100-page limit on evidence for applications for asylum, withholding of removal, or protection under the Convention Against Torture ("CAT"), which forces applicants to exclude necessary evidence;
    b. A requirement that applicants for relief from removal submit all evidence before any individual merits hearing is scheduled, which forces detained applicants to proceed without necessary evidence or remain locked up while waiting for additional evidence;
    c. A prohibition on supplementing previously submitted relief applications, including with evidence which was unobtainable at the time of filing;
    d. Blanket denial of telephonic appearances, increasing physical and financial burdens on attorneys and detained individuals and severely reducing access to counsel, especially pro bono representation; and
    e. A requirement to submit extensive evidence regarding applications for relief from removal before any request for bond is considered, leading to IJs denying bond based almost entirely on a prediction of the merits of the case, rather than whether the person is a danger or a flight risk.
2. A culture of contempt and hostility towards respondents and their legal counsel exists in the El Paso SPC Court, which manifests itself in inappropriate and egregious conduct in court. For example, attorneys and court observers witnessed IJs:
    a. Declaring that "You know your client is going bye-bye, right?" and referring to the El Paso SPC Court as "the Bye-Bye Place";
    b. Telling court observers that "There's really nothing going on right now in Latin America" that would provide grounds for asylum;
    c. Stating that "Due process is an opportunity, not a privilege";
    d. Openly calling a mentally ill respondent "crazy" and mocking him; and
    e. Telling an asylum seeker who asked for bond that she seemed "not serious about the process if she only wants to be released."

3. IJs in the El Paso SPC Court run their courtrooms in ways which undermine due process and prevent respondents from getting a fair day in court, including:
    a. Disregarding or ignoring evidence submitted by practitioners or substituting their own preconceptions about the case;
    b. Pre-adjudicating cases, including telling respondents at their initial hearings that they weren't going to win asylum before any application had been submitted, which encourages them to abandon their cases;
    c. Employing multiple problematic bond practices, including the presumptive denial of bond, setting bond amount based on the "going rate" for a respondent's country of origin, and denying bond because a respondent lacks financial resources;
    d. Prohibiting direct examination by counsel, undermining the practitioners' ability to represent the respondent and create a sufficient record for appeal;
    e. Perpetuating a culture of fear among practitioners appearing at the El Paso SPC Court that if they complain about IJ misbehavior, IJs will punish their clients; and
    f. Failing to address a variety of language access issues, including providing interpretation in hearings and interpreters who speak the respondent's language.

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I. The Problematic Use of Standing Orders in the El Paso SPC Court

Standing orders are individual IJ rules regarding the operation of an IJ's courtroom. In the immigration context, these standing orders may address content and format of court filings, relief applications, and associated processes. Several aspects of IJ standing orders at the El Paso SPC Court present serious due process-related concerns. This complaint focuses on three El Paso SPC Court standing orders (with one order containing multiple problematic directives):

1. Standing Order Related to Submission of Evidence ("Evidence Standing Order"). This order contains the following three directives:[11]
    a. Early Submission Rule;[12]
    b. 100-Page Limit on Evidence Rule;[13] and
    c. Supplementary Evidence Order.[14]
2. Bond Hearing Standing Order;[15] and
3. Telephonic Appearance Standing Order.[16]

These standing orders are included in their entirety in Appendix A.[17] Different IJs adopt different standing orders, with only IJ William L. Abbott ("IJ Abbott") adopting all three. It is our understanding that IJ Abbott originally established many, if not all, of these standing orders and other IJs subsequently adopted some orders.[18] The potential impact of IJ Abbott's use of standing orders is extensive. From FY 2013 through FY 2018, IJ Abbott decided 412 asylum claims on their merits, and only granted asylum in 29 of these cases.[19]

The standing orders are not publicly available online. On three separate occasions in February 2019, we attempted to obtain standing orders directly from the El Paso SPC Court. Each time, court representatives said that the orders could not be shared with the general public and could only be shared with EOIR-registered attorneys. Based on our data collection,[20] the table below—*which may not reflect the full extent or adoption of these standing orders*—provides an overview of which IJs use these standing orders:

Table 2. Standing Orders at El Paso SPC Court by IJ

Immigration Judge	*Early Submission (Evidence Order)*	*100-Page Limit (Evidence Order)*	*Supplementary Evidence (Evidence Order)*	*Bond Hearing Standing Order*	*Telephonic Appearance Standing Order*
IJ Abbott	✓	✓	✓	✓	✓
IJ Ruhle					
IJ Tuckman	✓			✓	
IJ Pleters	✓		✓	✓	

Source: Appendices A1 – A3; Appendix B1.

The lack of transparency around the existence and use of standing orders is troubling, particularly in light of EOIR's Immigration Court Practice Manual ("ICPM"),[21] a nationwide

practice resource that EOIR adopted in 2008 with the stated goal of "establish[ing] uniform procedures" nationwide.[22] At the time that the ICPM was first brought into use, EOIR told immigration lawyers that the ICPM would supersede any contradictory local standing orders.

> The provisions in the Immigration Court Practice Manual are to be applied in a uniform manner nationwide. Therefore, local practices which contradict the Practice Manual's provisions *are no longer permitted, including local practices expressed through "standing orders."* If an Immigration Judge is continuing to use standing orders, this should be brought to the attention of the appropriate Assistant Chief Immigration Judge.[23]

Nothing in the ICPM explicitly authorizes the use of standing orders, and EOIR itself agrees that the ICPM precludes the usage of "local rules."[24] Nevertheless, many of the El Paso SPC Court standing orders—some of which have been in place for years—directly contradict guidelines established by the ICPM.

In fact, EOIR has been on notice of this issue for years and has failed to address these concerns. In 2017, AILA specifically notified EOIR Headquarters in advance of a stakeholder meeting that IJs in El Paso had adopted the practice of issuing blanket denials of motions for attorneys to appear by telephone at Master Calendar Hearings ("MCHs").[25] EOIR subsequently canceled the stakeholder meeting. We are unaware of any action taken by EOIR in regards to this matter.

Further, EOIR is *statutorily required* to post standing orders on its website pursuant to 5 U.S.C. §§ 552(a)(1)(A) and (B), which require that an agency proactively disclose how "… the public may obtain information, make submittals or requests, or obtain decisions… or statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available."

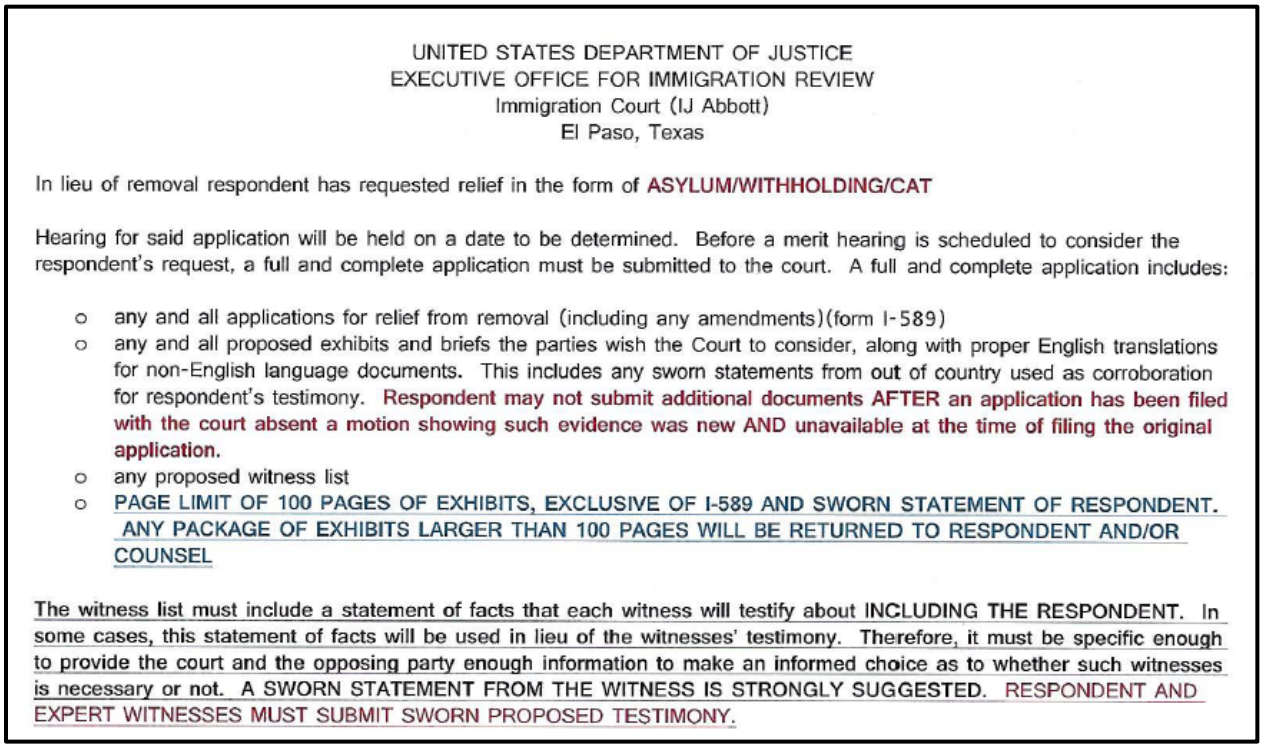
A. The Evidence Standing Orders

The Immigration and Nationality Act ("INA") provides that respondents must be given "a reasonable opportunity . . . to present evidence on [their] own behalf."[26] However, IJs in the El Paso SPC Court have standing orders which contain various rules which limit the ability of respondents to submit evidence in support of their cases. These rules include requiring respondents to submit their application before a merits hearing is even scheduled; limiting that submission's exhibits to 100 pages; and then refusing to accept supplementary evidence. The standing orders related to evidence strip due process away from respondents and unreasonably prevent them the opportunity to present evidence on their own behalf.

Each rule contained within the Evidence Standing Order violates the ICPM and raises serious concerns about fairness and due process; but when operating in tandem, they severely limit the universe of available supporting evidence, require respondents to limit the quantity of submitted evidence, and force respondents to submit their claims on an expedited timeline. The Evidence Standing Order is problematic, not just for an individual preparing for his or her merits hearing before an IJ, but because of the limitations on the individual's ability to seek

meaningful legal review of the case by the Board of Immigration Appeals ("BIA") or other appellate body.

Figure 1: Excerpt from IJ Abbott's Evidence Standing Order (Containing All Three Rules)



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
Immigration Court (IJ Abbott)
El Paso, Texas

In lieu of removal respondent has requested relief in the form of ASYLUM/WITHHOLDING/CAT

Hearing for said application will be held on a date to be determined. Before a merit hearing is scheduled to consider the respondent's request, a full and complete application must be submitted to the court. A full and complete application includes:

- any and all applications for relief from removal (including any amendments)(form I-589)
- any and all proposed exhibits and briefs the parties wish the Court to consider, along with proper English translations for non-English language documents. This includes any sworn statements from out of country used as corroboration for respondent's testimony. Respondent may not submit additional documents AFTER an application has been filed with the court absent a motion showing such evidence was new AND unavailable at the time of filing the original application.
- any proposed witness list
- PAGE LIMIT OF 100 PAGES OF EXHIBITS, EXCLUSIVE OF I-589 AND SWORN STATEMENT OF RESPONDENT. ANY PACKAGE OF EXHIBITS LARGER THAN 100 PAGES WILL BE RETURNED TO RESPONDENT AND/OR COUNSEL

The witness list must include a statement of facts that each witness will testify about INCLUDING THE RESPONDENT. In some cases, this statement of facts will be used in lieu of the witnesses' testimony. Therefore, it must be specific enough to provide the court and the opposing party enough information to make an informed choice as to whether such witnesses is necessary or not. A SWORN STATEMENT FROM THE WITNESS IS STRONGLY SUGGESTED. RESPONDENT AND EXPERT WITNESSES MUST SUBMIT SWORN PROPOSED TESTIMONY.

1. The Evidence Standing Order: 100-Page Limit on Evidence

In order to win asylum, withholding of removal, or protection under CAT, an applicant bears the burden of proving to a judge that he or she qualifies for protection.[27] To meet this burden, applicants for relief often must submit significant amounts of evidence. Evidence in support of an application for protection typically may include documentation of the harm the applicant has experienced in the past (such as medical records, police reports, sworn affidavits, newspaper articles, and even written threats from persecutors), and evidence that indicates that the applicant is at a risk of persecution in the future (such as expert reports, reports on country conditions, or evidence that internal relocation is impossible). Unfortunately, at least one IJ in the El Paso SPC Court has a standing order that makes meeting this legal burden effectively insurmountable.

Under the 100-Page Limit Rule, part of the Evidence Standing Order, applicants for humanitarian protections are required to meet a "page limit of 100 pages of exhibits, exclusive of I-589 and sworn statement of respondent."[28] Any applications in excess of 100 pages of

exhibits "*will* be returned."[29] Currently, we believe that only IJ Abbott has formally adopted this requirement as part of his Evidence Standing Order.[30]

The 100-Page Limit Rule forces practitioners to exclude critical or supporting evidence and undermines practitioner efforts to build a record for future appeals. By forcing attorneys to limit the evidence they can submit on their client's behalf, the standing order requires respondents with fear-based claims and others to make a "difficult and unfair decision in determining what evidence is most helpful even though additional evidence might also be equally as important."[31]

As Brooke Bischoff ("Ms. Bischoff"), an attorney who has represented numerous detained respondents before the El Paso SPC Court, notes, the standing order "prejudiced [her] clients by limiting the amount of evidence [she] can submit in support of an application for relief."[32] This impact is not just felt at the trial level, but also on appeal:

> [t]he 100-Page Standing Order is especially harmful because it not only hinders clients' cases during initial hearings, but the inability to fully include all relevant evidence on the record is also harmful to clients in their future ability to properly appeal an unfavorable decision due to the inability to develop a more complete record.[33]

This order is particularly harmful for individuals seeking protection whose cases are more complex or where country conditions are at issue. One pro bono attorney noted that his client—a rare language speaker who appeared before the El Paso SPC Court—required extensive evidence to demonstrate persecution stemming from indigenous ancestry, a need which was undermined by the order.[34]

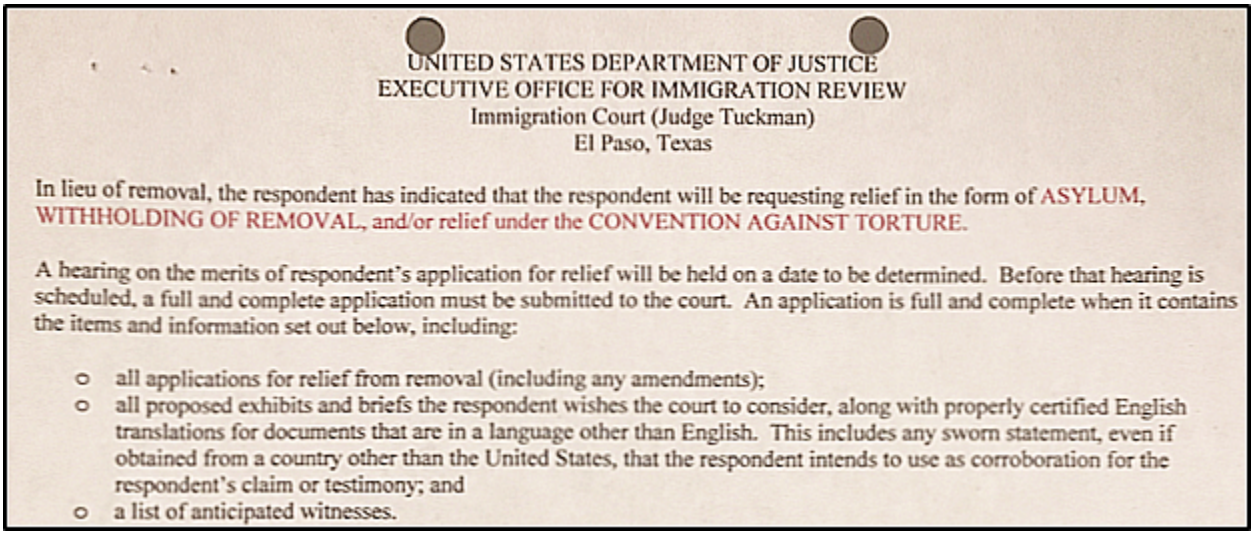
2. The Evidence Standing Order: Early Submission Requirement

The Early Submission Requirement, part of the Evidence Standing Order, forces respondents to expedite the timeframe for submission of an application for relief, reducing the amount of time available for the respondent to prepare and document their case, and decreasing the likelihood that the respondent will be able to locate and retain counsel.

Under this order, "[b]efore a merits hearing is scheduled to consider the respondent's request, a full and complete application must be submitted to the court," which includes all applications for relief, exhibits, and a proposed witness list.[35]

IJs Abbott, Tuckman, and Pleters have adopted this requirement as part of their Evidence Standing Order.[36] Court observers have also witnessed IJ Ruhle requiring the submission of the asylum application before he would schedule an individual merits hearing.[37]

Figure 2: Excerpt from IJ Tuckman's Evidence Standing Order



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
Immigration Court (Judge Tuckman)
El Paso, Texas

In lieu of removal, the respondent has indicated that the respondent will be requesting relief in the form of ASYLUM, WITHHOLDING OF REMOVAL, and/or relief under the CONVENTION AGAINST TORTURE.

A hearing on the merits of respondent's application for relief will be held on a date to be determined. Before that hearing is scheduled, a full and complete application must be submitted to the court. An application is full and complete when it contains the items and information set out below, including:

- all applications for relief from removal (including any amendments);
- all proposed exhibits and briefs the respondent wishes the court to consider, along with properly certified English translations for documents that are in a language other than English. This includes any sworn statement, even if obtained from a country other than the United States, that the respondent intends to use as corroboration for the respondent's claim or testimony; and
- a list of anticipated witnesses.

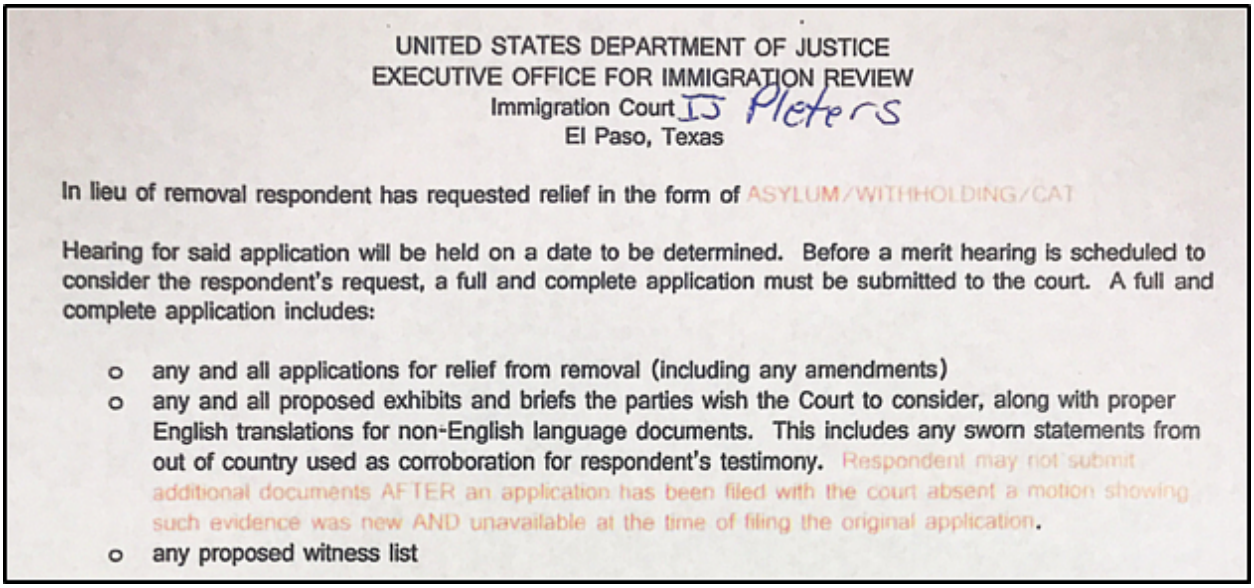
Winning a case for asylum or other humanitarian protection often requires substantial evidence, including evidence produced from the applicant's country of origin. Because obtaining evidence through international mail is difficult—particularly for those who are incarcerated in an immigration detention facility—respondents may wait weeks to obtain evidence necessary for their case. Respondents who have been detained for lengthy periods of time may be forced to choose between submitting an application for relief and receiving a trial date or asking for a continuance to wait for more evidence, thus unnecessarily prolonging detention. As Ms. Bischoff noted, her clients were prejudiced as a result of the order because evidence "being mailed from abroad [was] not received before the full 100-page submission in support of the asylum application [was] due."[38]

This rule also interferes with due process because it does not apply equally to respondents and government attorneys. As recently as January 16, 2019, a practitioner witnessed IJ Pleters grant government counsel from U.S. Immigration and Customs Enforcement (ICE) a greater number of days to submit evidence, while not providing that same date to the respondent.[39]

3. The Evidence Standing Order: Supplementary Evidence Rule

The Supplementary Evidence Rule, part of the Evidence Standing Order, effectively prevents respondents from submitting newly discovered or acquired evidence after submission of an initial application for relief. The order states that a "[r]espondent may not submit additional documents AFTER an application has been filed with the court absent a motion showing such evidence was new AND unavailable at the time of filing the original application."[40] Both IJ Abbott and IJ Pleters have adopted this requirement as part of their Evidence Standing Order.[41]

Figure 3: Excerpt from IJ Pleters' Evidence Standing Order



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
Immigration Court IJ Pleters
El Paso, Texas

In lieu of removal respondent has requested relief in the form of ASYLUM/WITHHOLDING/CAT

Hearing for said application will be held on a date to be determined. Before a merit hearing is scheduled to consider the respondent's request, a full and complete application must be submitted to the court. A full and complete application includes:

- any and all applications for relief from removal (including any amendments)
- any and all proposed exhibits and briefs the parties wish the Court to consider, along with proper English translations for non-English language documents. This includes any sworn statements from out of country used as corroboration for respondent's testimony. Respondent may not submit additional documents AFTER an application has been filed with the court absent a motion showing such evidence was new AND unavailable at the time of filing the original application.
- any proposed witness list

The Supplementary Evidence Rule, in conjunction with the Early Submission Requirement, creates serious obstacles to the submission of evidence. A blanket prohibition on *any* supplementary evidence outside of a limited exception does not provide respondents a reasonable opportunity to submit evidence and may also limit their ability to later seek meaningful review of their case if the IJ denies their application for relief.

Making matters worse, IJ Abbott has interpreted the Supplementary Evidence Rule to bar respondents from submitting supplementary evidence that was unavailable at the time of the initial evidentiary submission, so long as that evidence "existed" somewhere.[42] When a practitioner informed IJ Abbott that supplementary evidence would likely be necessary because the respondent was waiting for ICE counsel to provide additional evidence, IJ Abbott denied the request.[43]

According to the transcript of the hearing, IJ Abbott stated, "Well, this is closed—the case closes for you today," indicating that IJ Abbott would not accept further evidence after that day's hearing.[44] IJ Abbott then declared that information in the possession of ICE—and unobtainable by the respondent—was "not evidence that didn't exist," and stated "there's a reason why I issued a pre-trial order."[45] The practitioner responded by saying, "Your honor, I understand that. But just if anything else comes up, due process-wise—." IJ Abbott then interjected and declared that: "*Due process is an opportunity not a privilege*. So, believe me, if you don't submit it with your application of this size, we will not hear that information."[46]

Other attorneys have noted the ways in which this standing order affected their cases. Ms. Bischoff noted that she had to "exclude highly relevant and supportive country conditions that supported the Respondent's claim for relief" because of the order.[47]

As with the Early Submission Requirement, the Supplementary Evidence Rule has been applied only to respondents, leaving ICE counsel free to submit supplementary evidence.[48]

B. The Telephonic Appearance Standing Order

Respondents in immigration court have a statutory and regulatory right to be represented by an attorney at their own expense.[49] Under the INA, immigration hearings, such as a MCH (a brief hearing usually for initial procedural matters or scheduling) and bond hearing, may be conducted through telephone conference.[50] The implementing regulations state that an IJ may "conduct a hearing through telephone conference," excepting evidentiary hearings without the respondent's consent.[51] The ICPM explicitly spells out that IJs "are authorized by statute to hold hearings by . . . telephone conference."[52] Despite the clear availability of telephonic hearings, the Telephonic Appearance Standing Order—which is currently in use by at least IJ Abbott and has historically been used by other judges in El Paso[53]—leads to the denial of *essentially all* telephonic MCHs. This imposes a substantial cost on respondents and their attorneys, and limits access to due process.

Figure 4: IJ Excerpt from IJ Abbott's Telephonic Appearance Standing Order

STANDING ORDER OF THE IMMIGRATION JUDGE
REGARDING TELEPHONIC APPEARANCES
(IJ Abbott Only)

A. Master Calendar Hearings

This Court does not routinely allow the appearance of attorneys by telephone. Pursuant to 8 C.F.R. part 1003.17, a respondent may be represented by anyone authorized pursuant to 8 C.F.R. part 1292 upon the filing of form EOIR-28. Nothing in the regulation requires the court to accommodate an attorney's request to appear by telephone.

This Court is cognizant of the hardship this standing order may place upon a respondent who seeks to hire an attorney or representative from outside the El Paso metro area. Nevertheless, the Court has experienced significant delays in being to complete its docket because of the large number of attorneys requesting permission to appear by telephone. The additional time and effort to call the respondent's attorney, wait for them to be found by their staff, and the occasional communication problems experienced in the past has caused this Court to suffer considerable frustration...all because of telephonic appearances.

Therefore, in an effort to expedite my docket, and provide for expediency at the master calendar, this Court, as of July 1, 2007, will no longer allow an attorney to appear by telephone for any master calendar hearing conducted by me in El Paso, Texas absent exceptional circumstances (e.g. distance from El Paso is not an exceptional circumstance).

Under the Telephonic Appearance Standing Order, IJ Abbott "does not routinely allow the appearance of attorneys by telephone."[54] Attorneys are not allowed "to appear by telephone for any master calendar hearing conducted by [IJ Abbott] in El Paso, Texas absent exceptional circumstances (e.g. distance from El Paso is not an exceptional circumstance)."[55]

The blanket denial of motions requesting telephonic appearances denies respondents access to this important statutory and regulatory right and violates due process. The Telephonic Appearance Standing Order prevents attorneys from appearing telephonically and makes obtaining representation significantly more difficult, especially for pro bono attorneys.

One pro bono attorney indicated that the denial of a single motion to appear telephonically for a brief hearing "cost my firm $5,000 in expenditure for travel and lodging."[56] He also noted that the difficulties of travel from New York to El Paso "increased the physical and emotional burden associated with representing my client."[57]

Alexandra Bachan ("Ms. Bachan"), an Oakland-based immigration attorney, undertook the representation of a client at the El Paso SPC Court.[58] As Ms. Bachan resided over 1,000 miles from the El Paso SPC Court, she filed a motion for telephonic appearance for a forthcoming MCH.[59] IJ Abbott denied the motion, stating that vast distance from the court was not an "extenuating circumstance," and issued a boilerplate denial.[60] Consequently, Ms. Bachan was forced to hire a local attorney to attend the MCH—essentially a scheduling hearing—at significantly extra cost to the client.[61] Ms. Bachan states, "I strongly feel my client would have been even better served by my representation if I had been able to appear telephonically," especially because of her sensitivity and understanding of the language issues associated with Mam, the indigenous language spoken by her client.[62]

Facing prolonged detention and a negative credible fear review by IJ Abbott, Ms. Bachan's client ultimately chose voluntary departure.[63] Ms. Bachan indicated that, based on her experience, she believed that her client, in another jurisdiction, would have likely succeeded on the merits and that the "[d]eterminative factor in [her] client being deported was his assignment in front of Judge Abbott and not the underlying merits of the case."[64]

C. The Bond Hearing Standing Order

Many individuals held in ICE detention are eligible for release on a bond.[65] In order to qualify for bond, respondents must demonstrate to a judge that it is more likely than not that they are not a danger to the community or a flight risk.[66] An IJ must consider a wide variety of factors when determining whether to grant bond, such as the respondent's ties to the United States (whether they have family or friends here who can help them appear in court), criminal record, history of employment, credibility, immigration history, financial resources, and any other factors which may have a bearing on flight risk or danger.

Despite the law requiring a careful balancing of the factors, for individuals seeking protection in the El Paso SPC Court who request bond, IJs in the El Paso SPC Court focus almost exclusively on a single factor: whether they believe the person requesting bond will win humanitarian protections. Indeed, IJ Abbott has stated on the record that "the majority of factors that I take into account is the strength of the application for asylum" when "determin[ing] whether a bond will be set."[67]

Figure 5: Excerpts from IJ Tuckman's Bond Hearing Standing Order[68]

Custody Redetermination ("Bond") Hearings
Judge Tuckman

Respondent's counsel need not be present for any bond hearing. The Respondent's bond package must be filed no later than two business days prior to the bond hearing regardless of whether counsel intends to attend the hearing. Bond hearings may be conducted on the papers, including those contained in the bond package. **THE ATTACHED "BOND EXHIBIT SUMMARY" MUST BE FILLED OUT COMPLETELY AND SUBMITTED AS PART OF THE BOND PACKAGE.** In addition to the "Bond Exhibit Summary" the bond package must include documents relating and responding to the following issues and questions:

...

13. Identify any defense to, or relief from, deportation/removal Respondent intends to pursue. A sworn statement of facts supporting any intended relief request must also be submitted. For example, if Respondent will be seeking cancellation of removal and is not a Legal Permanent Resident, Respondent must submit a sworn statement that articulates the facts Respondent is intending to later introduce to meet Respondent's burden of proof on Respondent's request for relief (such as length of residence in the U.S., any departures, family ties, a brief description of the hardship to family members removal would cause, criminal history, etc.). If Respondent is seeking asylum, withholding of removal, or relief under the Convention Against Torture, Respondent must submit a sworn statement that articulates the facts Respondent is intending to later introduce to meet Respondent's burden of proof on any of the intended applications for relief, including:
    a. Who wants to harm Respondent? (identify the persecutor);
    b. What has happened in the past and/or what might happen in the future? (identify the persecution); and
    c. Why is the persecutor motivated to harm Respondent? (Identify the nexus).

Under the Bond Hearing Standing Order, a version of which is in use by IJs Abbott, Pleters, and Tuckman, respondents seeking relief must submit a sworn declaration that identifies their persecution, describes past or future persecution, and explains the persecutor's motives and their connection to the legal grounds under which asylum may be granted.[69] The latter requirement is especially difficult for respondents without an attorney; "identify[ing] the nexus" often requires extensive fact investigation and complicated legal analysis, all of which can take substantial time and effort even for experienced practitioners.

Under this standing order, IJs essentially pre-adjudicate the merits at the bond hearing—before respondents have had the opportunity to develop the record and submit evidence—and then grant or deny bond based on that factor alone.[70] These observations match a June 2018 Human Rights Watch report, which noted that "[o]ne immigration judge in El Paso stated that he rarely grants bond for asylum seekers because he determines flight risk not by whether or not the individual will appear for hearings, but by whether they are likely to be successful in their application for relief in the federal circuit."[71]

At a bond hearing on November 9, 2017, IJ Abbott denied bond after explaining to a respondent—who had not yet submitted an asylum application—that he had not tried hard enough to avoid threats in Guatemala, then stated, "[h]aving money in your pocket is not grounds for asylum. Bond is denied."[72] At a bond hearing on November 15, 2017, IJ Abbott stated that a respondent did not have an asylum claim because the threat was localized and not national in nature, then qualified the comment by stating that it was "just a preliminary

observation," but denied bond anyway.[73] In another case that day, IJ Abbott refused to issue bond until the respondent "developed a better case" in support of a CAT claim.[74]

During a bond hearing on November 11, 2018, an observer noted that the attorney for the respondent was attempting to present the case for bond, but IJ Abbott only wanted "to talk about [the] asylum proceeding," and that IJ Abbott was "dismissive of bond talk."[75] It goes without saying that an IJ should not dismiss "bond talk" during a bond hearing.

IJ Abbott is not alone in basing bond decisions on an inappropriate pre-adjudication of the merits of a protection application. At a hearing on November 29, 2017, IJ Ruhle opined that "I prefer to deny bond" to individuals who may not win asylum because "I'm sure that if bond is given and at the end of trial the person is not approved… there would be no way to make them leave."[76]

The adjudication of these cases at the bond stage can have significant consequences on respondents, with IJs "known to discourage clients from fighting their cases by citing likelihood of long-term detention or expressing a presumptive opinion before hearing any evidence or testimony," and openly telling respondents they "would be better off choosing deportation."[77]

D. Impact of Standing Orders on Access to Counsel and Representation

Together, the various standing orders serve to discourage representation of individuals detained in the El Paso SPC Court and reduce access to counsel. Without appointed counsel, detained individuals in remote facilities such as those in and around El Paso, have a very difficult time locating and affording an immigration attorney who can provide them with critical legal services. According to a 2016 study, only about 14 percent of detained individuals are represented by counsel in their immigration proceedings, and they rely heavily on the services of pro bono attorneys from around the country.[78]

As one long-time practitioner shared:

> I am frequently contacted by out-of-town attorneys both private and pro-bono, who contact me for insight in navigating the immigration courts in the El Paso area. The various standing orders discourage these out-of-town attorneys from taking on cases as those attorneys are intimidated and discouraged by the strict nature of the standing orders. It is my belief that approximately a dozen out-of-town attorneys who reach out to me each year ultimately decide not to take an El Paso case because of the . . . standing orders.[79]

In one case, the practitioner described an instance of an attorney who, after appearing before IJ Abbott, swore "they would never accept another case in the El Paso area or before IJ Abbott" because of the Bond Hearing Standing Order.[80]

Similarly, a pro bono attorney from outside of El Paso stated that his firm incurred "unnecessary and costly hardship" as a result of the Telephonic Appearances Standing Order.[81] As this

particular attorney was traveling from New York, the forced travel "increased the physical and emotional burden associated with" representation and "ma[de] pro bono representation generally more burdensome and discouraging."[82]

Taken together, the standing orders in the El Paso SPC Court make it substantially more difficult to place pro bono attorneys and for them to serve noncitizens held at detention facilities in the El Paso area.

II. Inappropriate and Egregious Conduct by IJs in the El Paso SPC Court

A. Comments and Behavior by IJs Which Demonstrate a Lack of Professionalism And Undermine Confidence in Their Impartiality

IJs have a duty to "observe high standards of ethical conduct, act in a manner that promotes public confidence in their impartiality, and avoid impropriety and the appearance of impropriety in all activities."[83] Unfortunately, both declarants and court observers have noted a variety of inappropriate statements and conduct by the IJs in the El Paso SPC Court. These comments violate basic courtroom decorum, denigrate respondents and attorneys, and indicate bias on the part of IJs.

One declarant shared firsthand accounts of IJs openly voicing disapproving and negative opinions about attorneys, calling them "dishonest" and "lazy."[84] These statements infringe on the right to "a hearing before a fair and impartial arbiter" absent "pervasive bias and prejudice."[85] EOIR's Ethics and Professionalism Guide directs that IJs be "patient, dignified, and courteous, and should act in a professional manner towards all litigants, witnesses, lawyers, and others with whom the Immigration Judge deals in his or her official capacity," and states that "[a]n Immigration Judge . . . should not, in the performance of official duties, by word or conduct, manifest improper bias or prejudice."[86]

Examples of inappropriate comments by IJ Abbott include:

- "Due process is an opportunity not a privilege."[87]
- "I'm going to basically go through your application and pick about three or four things that I think that are important . . . the rest of the application I'll most likely ignore."[88]
- Asking whether a respondent on probation for prostitution was "still in the oldest profession."[89]
- Calling a respondent who suffered a mental breakdown while in detention "crazy" and openly mocking his mental health in court.[90]
- Reading the results of a credible fear interview in court and then commenting, "I wonder if and how the asylum officer passed the required test for his job," indicating his belief that the underlying case was frivolous.[91]

Figure 6. Excerpt from Transcript of Master Calendar Hearing before IJ Abbott

JUDGE TO [redacted]

Well, this is the closed -- the case closes for you today.

[redacted] TO JUDGE

Your honor, I understand that. But just if anything else comes up, due process-wise --

JUDGE TO [redacted]

Due process --

[redacted] TO JUDGE

I mean, we are hoping --

JUDGE TO [redacted]

-- is an opportunity not a privilege. So, believe me, if you don't submit it with your application of this size, we will not hear that information.

- In response to attorneys challenging documents prepared by Border Patrol agents, declaring that federal agents never lie on the forms and implying that any contradiction on the form is a result of asylum seekers fabricating claims for asylum.[92]
- Stating that "it would not be so bad" if respondent was removed to Mexico because he has friends there, it is an inexpensive place to live, and respondent's children were so young she could convince them they were still living in the United States.[93]
- Stating that a female respondent was very attractive and that that was likely the reason she was being persecuted.[94]
- Use of an incredulous and abrasive tone when examining respondents who are women, compared to male respondents.[95]
- Making comments about a female respondent's appearance that her attorney found inappropriate.[96]

Examples of inappropriate comments by IJ Ruhle include:

- Berating attorneys as "useless" and baselessly accusing attorneys of submitting too much evidence because they "charge clients by the page."[97]
- Referring to El Paso as the "bye-bye place" due to the low rate grant rate for asylum.[98]
- Stating "this is not the time to cry," in response to a respondent sobbing in court.[99]
- Telling a respondent to "sit right and take your elbow off the chair."[100]

These comments, drawing from only a handful of court observations over a relatively short period of time, are likely just the tip of the iceberg. The comments create serious concerns about impartiality and the appearance of impropriety, both of which are the guiding principles behind EOIR's Ethics and Professionalism Guide. As discussed below, unprofessional behaviors such as this have also raised fears that if an attorney files a formal ethics complaint, the IJ will retaliate against him or her.

B. Fear of Retaliation by Immigration Judges

In the Fall of 2018, we contacted private and pro bono practitioners who appeared in the El Paso SPC Court to collect declarations regarding their experiences. Many were reluctant to provide declarations containing personally identifiable information for them or their clients regarding their experiences, for fear of IJ retaliation in current or future cases.

In many cases, practitioners communicated that they did not believe the process by which they could file complaints against IJs was effective and would only serve to bring about retaliation against them and their clients.[101] One long-time practitioner stated that if she submitted a non-anonymous declaration, the "IJs in the El Paso area might use their discretion to deny my clients opportunity to fairly plead their cases, including perhaps denying bond . . ."[102] Another attorney, who represented more than one hundred respondents, was not willing to disclose his identity, that of his office, or his client "for fear of retaliation on future matters."[103]

Ms. Bischoff, stated that, after discussing complaint and retaliation issues in the El Paso area with practitioners, she "believe[s] that attorneys and clients who witness . . . these abuses believe . . . [they] will face retaliation if they file a complaint . . . ."[104]

These statements strongly suggest that EOIR's existing complaint process has not been able to prevent abuses in the El Paso SPC Court. For this reason, we utilize both anonymous and non-anonymous declarations throughout this complaint.

III. El Paso SPC Court Practices that Undermine Due Process and Prevent Respondents From Getting a Fair Day in Court

A. Disregarding Evidence

Multiple practitioners report that IJ Abbott refuses to consider evidence submitted by respondents. In a March 2018 case, IJ Abbott stated on the record: "I'm going to basically go through your application and pick about three or four things that I think are important . . . The rest of the application I'll most likely ignore."[105] In August 2018, IJ Abbott, after receiving respondent's evidence in support of an appeal from a credible fear claim which had been denied by an asylum officer, stated "I don't know why you submit these materials," and quickly

thumbed through the pages, which the practitioner interpreted to mean that IJ Abbott did not plan on reviewing the evidence.[106]

Other practitioners have reported that IJ Abbott frequently will ignore evidence which contradicts his preconceptions about a case. Ms. Bachan describes a case involving a client who spoke the Mam language and "extremely limited Spanish." Ms. Bachan, who speaks fluent Spanish, could only communicate with her client through the use of an interpreter. At the client's bond hearing, IJ Abbott refused to believe that Ms. Bachan's client did not speak Spanish, disregarded evidence submitted in support of his credible fear claim, and determined that the client was lying about not being proficient in Spanish.[107] He then found that the client was a flight risk based on this supposed lack of credibility.[108] IJ Abbott relied primarily on U.S. Customs and Border Protection's ("CBP's") Record of Deportable/Inadmissible Alien (Form I-213), where the respondent was listed as having spoken Spanish and had supposedly said he came to work—even though Ms. Bachan demonstrated that her client had limited English proficiency and could not have made the questioned statements.[109]

As with Ms. Bachan's case, another practitioner confirmed that IJ Abbott provides near-complete deference to statements contained in CBP documents, even when presented with evidence contradicting those statements.[110] The practitioner reports that IJ Abbott frequently expressed his belief that "federal agents never lie on these forms."[111]

B. Pre-Adjudicating Cases

Practitioners also report that IJs in the El Paso SPC Court appear to reach decisions in cases before examining the evidence or hearing any testimony. In one case, IJ Ruhle, before reviewing the merits of a case and shortly after the practitioner said "hello," stated "you know your client is going bye-bye, right?"[112] According to Ms. Bischoff:

> IJ Ruhle would regularly pre-adjudicate clients' cases and expressed opinions regarding the strength of the underlying merits case before submission of an application for relief, going so far as to state for the record that he would likely deny a respondent's case before an application had even been submitted.[113]

In September of 2018, Ms. Bischoff consulted with a potential client who had "a strong claim for derivative citizenship," but who had been told by IJ Ruhle—before reviewing the merits of the case—that he would keep the client detained and ultimately deny his case, convincing the client to pursue voluntary departure instead of protection.[114] In another case, Ms. Bischoff witnessed IJ Ruhle stating that, because of his own hearing loss, he would need respondents to speak loudly, and if they did not speak loudly enough, he would find "that they were not being cooperative in their claims for relief and may consider their claims abandoned."[115]

Court observers also have witnessed behavior from IJs that indicate prejudgment of cases. In one situation, IJ Ruhle brought the court observers to the front of the court room and shared his opinion that "there's really nothing going on right now in Latin America" that would provide a ground for which people would qualify for asylum.[116] In another case, IJ Ruhle quickly flipped

through a client's file and stated something similar to "Oh yeah, this case is not going to take long."[117] In another case, IJ Abbott actively discouraged a group of respondents from applying for asylum by stating that it was nearly impossible to succeed without a lawyer; and that they would be detained for at least half a year—causing many of the respondents to cry.[118]

C. Presumptive Denial of Bond

Other than having legal representation, an individual's ability to secure release from detention—either on a grant of parole or bond before an IJ—may be the single most determinative factor influencing whether an individual is able to succeed on the merits of his or her case. It is easier to locate and retain an attorney when not detained; according to a national study released in 2016, a mere 14 percent of detained individuals were represented by counsel, compared to approximately 66 percent of non-detained individuals, demonstrating how high the stakes are in bond hearings.[119] However, in the El Paso SPC Court, even where respondents are able to submit bond motions, many report that IJs deny bond as a matter of course or rely on improper factors to set bond. [120]

One practitioner appeared in front of IJ Ruhle for a bond hearing only to have the IJ indicate that "he had not read the bond motion." The IJ subsequently denied the bond "without considering the client's individual circumstances."[121] Court observers also witnessed IJ Abbott indicate that he views requests for release as inherently suspicious. At a hearing on October 25, 2017, IJ Abbott told a respondent that he thought she was "not serious about the process if she only wants to be released," after she asked if she could get bond because she had recently given birth prematurely.[122]

Another practitioner stated that IJ Abbott frequently denies bond without an individualized consideration of the bond packet if the respondent did not provide an initial claim of fear to the arresting CBP agents.[123] The same practitioner alleges that IJ Abbott on multiple occasions expressed his belief that "immigrants conspire with other detained persons . . . to fabricate a story of credible fear. Thus, if a respondent did not initially express fear upon apprehension, any subsequent claim of fear is automatically presumed dubious and fabricated," leading IJ Abbott to view the respondent as not credible and thus more likely to be a flight risk.[124]

The refusal to grant bond to any individual whose fear was not recorded by CBP has serious repercussions. In Ms. Bachan's declaration, she notes that IJ Abbott heavily relied on Form I-213, the Record of Deportable/Inadmissible Alien—the immigration equivalent of a police report—to deny bond, despite a comprehensive bond packet filled with evidence that contradicted the I-213.[125] Unable to accept the possibility of prolonged detention, her client elected to abandon a chance at asylum and accepted a deportation order.[126] In a similar case on October 31, 2018, court monitors observed a respondent in a MCH in front of IJ Tuckman abandon their asylum claim because they were previously denied bond, suggesting the respondent could not stand to be detained for any longer.[127]

D. Prohibiting Direct Examination by Counsel

Practitioners report that IJs in the El Paso SPC Court often prevent attorneys from eliciting testimony from their detained clients. Despite the law stating that respondents have the burden to demonstrate eligibility for relief, IJs in the El Paso SPC Court interrogate respondents without permitting attorneys to ask their clients questions to supplement the record.

Practitioners report that IJ Ruhle and IJ Abbott have at times actively prevented and discouraged counsel from "asking direct examination questions to clients on the stand."[128] Rather than permit respondents to present their own evidence, "both IJs conduct the majority of direct examination, limiting or discouraging oral testimony from respondents."[129] In many circumstances, both judges only accept written declarations and sharply limit spoken testimony from respondents.

In a March 2018 hearing which lasted at least three hours, IJ Abbott prohibited the practitioner from conducting any direct examination of the client, ignoring the practitioner's objections.[130] In this case, IJ Abbott permitted government counsel to cross-examine the respondent.[131] The practitioner stated that the prohibition on direct examination "made it significantly harder for me to build a record for any eventual appeal and undermined my ability to represent my client to the best of my abilities."[132]

Preventing counsel from conducting their own line of questioning impedes respondents from establishing a comprehensive record, which undermines the strength of subsequent appeals and makes it more difficult for respondents to satisfy their burden of credibility.

F. Interpretation and Language Access

The due process problems at the El Paso SPC Court also extend to language access and interpretation. Under the ICPM, the immigration court must provide interpreters at government expense, including interpretation during the MCH.[133] Unfortunately, the ICPM provisions are sometimes ignored or marginally satisfied in the El Paso SPC Court.

Appendix C contains a table with a collection of observations from October and November 2017 and November 2018 related to language access and interpretation issues. During this time frame, observers noted several issues, including:[134]

- Eight cases where interpretation was unavailable and the hearing was rescheduled, resulting in extended detention for respondents;
- Eight cases where interpretation was unavailable and the hearing proceeded, but was conducted in a language the respondent could not fully understand; and
- Five cases where the court provided incorrect interpretation (e.g., the interpreter spoke an entirely different language or a different dialect than the respondent) or there were technical difficulties associated with interpretation.

In one case, IJ Tuckman provided a Spanish-language interpreter to an indigenous language speaker.[135] In another, IJ Ruhle provided a Spanish-language interpreter for a Portuguese-speaking respondent.[136] In a third case, IJ Abbott conducted a portion of a hearing in Spanish before the IJ realized the respondent spoke Romanian.[137] In another case, IJ Abbott attempted to communicate with an indigenous Akatecco speaker in Spanish (no interpretation was available) and commented that "her Spanish was worse than his."[138] IJ Abbott also partially conducted a hearing in English before discovering that the respondent could only speak French.[139] On at least one occasion, IJ Abbott, in summarizing the removal process, only provided information in Spanish and English for a group of respondents, even though it was clear many of them did not speak either language.[140] In one case, observers noted that an attorney became extremely frustrated at the court interpreter over the quality of interpretation. The attorney feared that the quality of interpretation would negatively impact the respondent.[141]

Notably, issues involving indigenous language speakers are increasingly occurring in courts around the United States as well as El Paso.[142] Given the issues occurring in the El Paso SPC Court in just the few cases observed, this issue is of particular concern.

IV. Conclusion

The El Paso SPC Court, through the use of problematic standing orders and improper IJ conduct, systematically undermines the meaningful opportunity for a fair hearing. The consequences of these practices are not academic—as previously stated, between 2012 and 2017, IJ Ruhle's denial rate for asylum was an astonishing 95.5 percent; for IJ Abbott, that denial rate was 94.6 percent.[143] These denial rates represent some of the highest rates in the nation. In FY 2016 and FY 2017, judges in the El Paso SPC Court granted just *7 out of 225* cases, or 3.2 percent.[144]

These practices are having a devastating impact on the ability of respondents and their legal counsel appearing before the El Paso SPC Court to have a full and fair opportunity to present their cases. The numbers speak for themselves. IJs sitting in the El Paso SPC Court have jurisdiction over approximately 1,500 individuals detained in three facilities in the El Paso area, amounting to thousands of cases every year.

The practices in the El Paso SPC Court cannot be viewed as isolated instances. At a minimum, the court's extremely low grant rates are emblematic of inconsistent adjudication practices nationwide. Some courts grant less than 5 percent of cases, while grant rates in other courts exceed 60 percent.[145] The American Bar Association recently concluded that the systemwide "disparity of asylum grant rates and the fact that such case outcomes often depend on which immigration judge and court is adjudicating a case" call into question the "fundamental fairness of the system and implicate due process."[146] Uncorrected, these deficiencies will only fester and weaken the capacity of the courts to administer justice. For that reason, extensive investigation

and remedial steps must be taken not only at the El Paso SPC Court, but also at other courts where similar concerns have been observed.

V. Recommendations and Corrective Action

For the foregoing reasons, we recommend the following corrective and remedial actions:

A. EOIR Should Post All Standing Orders

We urge EOIR to make the standing orders publicly available. EOIR is statutorily required to post standing orders on its website pursuant to 5 U.S.C. §§ 552(a)(1)(A) and (B).[147]

B. EOIR Should Repeal and Prohibit Problematic Standing Orders

EOIR should conduct a thorough investigation regarding the use of these standing orders at the El Paso SPC Court and repeal and explicitly prohibit standing orders in immigration courts that:

- Require the complete submission of evidence in support of an application for relief at an unreasonable period of time *before* the individual merits hearing;
- Prohibit respondents from submitting supplementary evidence after submission of an initial application for relief;
- Establish an upper limit for the number of pages that may be filed as part of an initial application for relief; and
- Prohibit or discourage motions of telephonic appearances.

C. EOIR Must Provide Additional Training on Appropriate Conduct

EOIR must enforce the mandates of the Ethics and Professionalism Guide.[148] EOIR should direct IJs at the El Paso SPC Court to undergo additional in-person training on the Ethics and Professionalism Guide, addressing proper courtroom conduct and decorum, including acceptable commentary to counsel and respondents. Moreover, EOIR should mandate that IJs at El Paso SPC Court take training courses on implicit bias and cultural communication styles.

D. IJs Must Utilize Recording Equipment

EOIR should instruct all IJs and staff that the recording equipment must remain turned on whenever an IJ is present in the courtroom, including during bond proceedings, to ensure transparency and accountability for prejudicial statements made in hearings.

E. EOIR Must Reform the Complaint Process

EOIR should reform its existing complaint process[149] to promote independence and transparency. EOIR should take the following steps:

- Establish a new office in EOIR that would segregate the disciplinary function from other supervisory functions;

- Provide quarterly public access to detailed statistics and summary reporting of disciplinary actions; and
- Amend the complaint process to guarantee confidentiality of the complainant's identity to protect counsel, representatives, or clients from possible retaliation.

F. DOJ OPR/IG Must Investigate the El Paso SPC Court

DOJ OPR/IG should initiate investigations into the El Paso SPC Court regarding:

- Notably high rates of denials for relief by specific IJs;
- The extent and use of the standing orders discussed in this complaint;
- The impact of standing orders on respondents' ability to fully present their cases;
- The impact of standing orders on availability of counsel;
- Inappropriate judicial conduct and comments;
- Retaliation by IJs against individuals (and clients) who file complaints; and
- The availability and use of appropriate interpretation services in bond hearings, master calendar hearings and individual hearings.

G. DOJ OPR/IG Must Investigate Immigration Courts with Similar Problems

DOJ OPR/IG should initiate investigations into other immigration courts that:

- Demonstrate high rates of denials for relief;
- Use standing orders that infringe upon a respondent's ability to fully present their case;
- Use standing orders that impact access to counsel;
- Receive significant reports of inappropriate judicial conduct and comments; and
- Receive significant reports of retaliation by IJs against individuals who file complaints.

Thank you in advance for your time and consideration. We appreciate your prompt attention to these very serious matters and welcome the opportunity to discuss these issues with EOIR, OIG, and OPR. Please do not hesitate to contact us with any questions.

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Endnotes

[1] The Immigration Justice Campaign ("Justice Campaign") is a joint initiative between the American Immigration Council ("Council"), the American Immigration Lawyers Association ("AILA") and the American Immigrant Representation Project ("AIRP"). The Justice Campaign seeks to protect due process and ensure justice for detained immigrants by providing coordination, mentorship, training, and technical assistance to pro bono attorneys and accredited representatives in its broad network to serve some of the many thousands of detained individuals who would otherwise go unrepresented. For more information, visit https://www.immigrationjustice.us/.

[2] The complainant organizations focus this complaint on the detained docket heard by the El Paso SPC Court, which in 2017 completed approximately 1,500 cases of male and female individuals detained within the approximately 1,100 bed facility at the El Paso SPC Court, the West Texas Detention Center in Sierra Blanca, Texas, which holds approximately 450 beds for immigration purposes, and the Federal Satellite Low La Tuna facility located on Fort Bliss, which houses about 200 individuals for immigration purposes. There are currently four judges who handle the detained docket at the El Paso SPC Court: IJs Ruhle, Abbott, Pleters, and Tuckman.

[3] This complaint draws from substantial evidence, all of which may be found in the Appendix and online at http://americanimmigrationcouncil.org/sites/default/files/complaint_the_el_paso_immigration_court_fails_to_uphold_due_process_evidence.pdf. For a full methodology of these court observations, *see* Appendix D.

[4] Because some practitioners expressed a fear of retaliation if they came forward, this complaint utilizes both anonymous and non-anonymous declarations throughout.

[5] *See* EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, Statistics Yearbook, https://www.justice.gov/eoir/statistical-year-book (data compiled from the FY 2013-2017 Statistics Yearbooks). Two "Institutional Hearing Program" courts located in state prisons in New York, which hear cases of inmates, granted zero of fifty applications over that period. *Id.* This is likely because individuals who have been convicted of a "particularly serious crime" are statutorily barred from asylum. The next-lowest grant rate for a standard non-IHP immigration court was the Atlanta Immigration Court, where judges granted asylum in 68 out of 1708 cases during the same time period. *Id.*

[6] *See* EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, Statistics Yearbook: Fiscal Year 2017 28 (2018) *available at* https://www.justice.gov/eoir/page/file/1107056/download; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, Statistics Yearbook: Fiscal Year 2016 K2 (2017) *available at* https://www.justice.gov/eoir/page/file/fysb16/download.

[7] Appendix B3, at ¶ 4.

[8] Appendix B1, ¶ 12; Appendix F, at 112.

[9] AILA has long documented the chronic and systemic problems within the Executive Office for Immigration Review, a component of the Department of Justice. AILA has called for "a complete structural overhaul" of the immigration court system and recommended that Congress "create an independent immigration court system in the form of an Article I court." *See* AILA Statement on Strengthening and Reforming America's Immigration Court System Hearing, AILA Doc. No. 18041646, April 18, 2018, available at: https://www.aila.org/advo-media/press-releases/2018/aila-statement-on-strengthening-and-reforming.

[10] In March 2019, the American Bar Association (ABA) released a comprehensive report on the U.S. immigration system, "2019 Update Report, *Reforming the Immigration System, Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases"* and update to a previously issued 300-page report in 2010. Notably, the 2019 Update Report found, "In light of the fundamentally changed nature of the threat to the immigration court system, the overall conclusion of this Update Report… is that the current system is irredeemably dysfunctional and on the brink of collapse, and that the only way to resolve the serious systemic issues within the immigration court system is through transferring the immigration court functions to a newly-created Article I court." *available at*: https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2019_reforming_the_immigration_system_volume_2.pdf.

[11] The complainant organizations have assigned names to the individual rules contained in the Standing Order related to Evidence for ease of reference.
[12] *See* Appendices A1a, A2a, and A3a.
[13] *See* Appendix A1a.
[14] *See* Appendices A1a and A2a.
[15] *See* Appendices A1b, A2b, and A3b.
[16] *See* Appendices A1d(i), (ii), (iii).
[17] Appendix A also includes a standing order from IJ Abbott relating to the filing of applications for Cancellation of Removal which contains similar language to the Evidence Standing Order. *See* Appendix A1C. The Cancellation of Removal Evidence Standing Order does not contain the 100-Page Limit on Evidence Rule or the Supplementary Evidence Rule, but does contain the Early Submission Rule. *Id.*
[18] Procedurally, some of these standing orders are located in the same document while others are spread across individual orders. *See* generally, Appendix A1-A3.
[19] *Judge William L. Abbott Report*, TRAC Immigration (2017), https://trac.syr.edu/immigration/reports/judgereports/00051EPD/index.html.
[20] *See id.*; *see generally* Appendix B1.
[21] EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, Immigration Court Practice Manual (Aug. 2, 2018), *available at* https://www.justice.gov/eoir/page/file/1084851/download.
[22] *See* EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, Operating Policies and Procedures Memorandum 08-03 (Amended): Application of the Immigration Court Practice Manual to Pending Cases 1 (2008), *available at* https://www.justice.gov/sites/default/files/eoir/legacy/2008/06/24/08-03.pdf.
[23] *AILA-EOIR Liaison Meeting Agenda Questions and Answers* 8, AILA, Oct. 21, 2008, *available at* https://www.justice.gov/sites/default/files/eoir/legacy/2009/01/29/eoiraila102108.pdf (emphasis added).
[24] Meeting notes from a 2016 stakeholder meeting indicate that EOIR believes that IJs "should not be adopting their own local rules that affect groups or classes of respondents appearing before the court" and rejected calls to post standing orders online because "there are no 'local rules', and thus there is no need to post these rules or provide them accordingly." *See* EOIR Liaison Stakeholder Meeting Agenda, Unofficial AILA Notes (Nov. 11, 2016), on file with author.
[25] *See* AILA, *EOIR Stakeholder Meeting Agenda Questions for April 5, 2017 Stakeholder Meeting* (2017), *available at* https://www.aila.org/infonet/questions-submitted-to-eoir-04-05-17-meeting. Although EOIR decided to cancel the stakeholder meeting, the questions had already been submitted to EOIR, putting them on notice. https://www.justice.gov/sites/default/files/pages/attachments/2017/04/03/eoirstakeholdermtgcancelle_040517.pdf.
[26] 8 U.S.C. 1229(a)(b)(4).
[27] *See* 8 U.S.C. § 1158(b)(1)(B).
[28] *See* Appendix A1a.
[29] *Id. (emphasis added).*
[30] Appendix B1, ¶ 7.
[31] *Id.* at ¶ 18.
[32] Appendix B3, ¶ 9.
[33] Appendix B1, ¶ 18.
[34] Appendix B7, ¶ 8.
[35] *See* Appendices A1a, A2a, and A3a.
[36] *See* Appendices A1a, A2a, and A3a; Appendix B1, 2 at ¶ 6.
[37] UTEP/Hope Institute Asylum Observatory. Master Calendar Hearing. IJ Pleters. Nov. 9, 2017.
[38] Appendix B3, ¶ 9.
[39] Appendix B5, ¶ 8.
[40] *See* Appendices A1a and A2a.
[41] *See* Appendices A1a and A2a.

[42] Appendix B1, ¶ 12, 13; Appendix F, 113
[43] Appendix B1, ¶ 12.
[44] *Id.*; Appendix F, 112.
[45] Appendix B1, ¶ 12, 13; Appendix F, 113.
[46] Appendix B1, at ¶ 12
[47] Appendix B3, at ¶ 9.
[48] Appendix B1, at ¶ 13; (stating that IJ Abbott declared that that "DHS is not subject to the pre-trial order").
[49] *See* 8 U.S.C. § 1229a(b)(4)(A); 8 U.S.C. § 1362; 8 C.F.R. § 1292.5.
[50] 8 U.S.C. § 1229(B)(2)(a)(iv).
[51] 8 C.F.R. § 1003.25(c).
[52] EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE 66-67, Immigration Court Practice Manual, (Aug. 2, 2018), *available at* https://www.justice.gov/eoir/page/file/1084851/download.
[53] While this complaint only identifies IJ Abbott as using the Telephonic Appearance Standing Order, an older version of the standing order is signed by IJ Abbott and former IJ Ruepke, and is titled an "Order of the Immigration Court." *See* Appendix A1d(ii). It indicates that "[s]ince 2007 the judges at [the El Paso SPC] have not routinely allowed the appearance of attorneys by telephone." *Id.* As a result, it is possible that other IJs in the El Paso SPC have adopted similar standing orders. In 2018, the Board of Immigration Appeals denied an appeal relating to the Telephonic Appearance Standing Order, without identifying the El Paso IJ involved. *See Matter of Ferrera,* 2018 WL 2761463 (BIA March 15, 2018) (upholding denial of motion for telephonic appearance and declaring counsel's argument that she could not travel from New Jersey to El Paso "unavailing in view of the standing order" which indicated that such requests were "not routinely granted"). Court observers witnessed IJ Tuckman denying a motion for telephonic appearance on October 31, 2018, though it was unclear whether it was for failure to follow a standing order. *See* Chilton Tippin, UTEP/Hope Institute Asylum Observatory Master Calendar Hearing. IJ Tuckman. Oct. 31, 2018.
[54] Appendix A1d(i). A copy of an order for telephonic testimony denied by IJ Abbott that cites the rationale in the Telephonic Appearance Standing Order is produced at Appendix A1d(iii).
[55] Appendix A1d(i). The order goes on to note that the Court is "cognizant of the hardship this standing order may place upon a respondent who seeks to hire an attorney or representative from outside the El Paso metro area," and thus allows the submission of written pleadings where "counsel need not be present." *Id.*
[56] Appendix B6, at ¶ 5.
[57] Appendix B6, at ¶ 6.
[58] Appendix B2, at ¶ 2.
[59] *Id*. at ¶ 4.
[60] *Id.* A copy of IJ Abbott's denial of Ms. Bachan's telephonic motion is included in Appendix A1d(iii).
[61] *Id.*
[62] *Id*. at ¶ 10.
[63] *Id.* at ¶ 9.
[64] *Id.*
[65] *See* 8 U.S.C. § 1226(a).
[66] *See* 8 C.F.R. § 1003.19(a); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (a noncitizen eligible for bond "must establish to the satisfaction of the Immigration Judge … that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.").
[67] Appendix E, 45-46.
[68] The excerpted content is also contained in IJ Abbott and IJ Pleters' Bond Hearing Standing Orders. *See* Appendices A1b, A2b.
[69] *See* Appendices A1b, A2b, and A3b.
[70] Appendix B1, ¶ 22.
[71] *Ailing Justice: Texas* 8, Human Rights First (2018), *available at* http://www.humanrightsfirst.org/sites/default/files/Ailing_Justice_Texas.pdf.

[72] V. Edwards, UTEP/Hope Institute Asylum Observatory. Bond Hearing. IJ Abbott. Nov. 9, 2017.
[73] V. Edwards, UTEP/Hope Institute Asylum Observatory. Bond Hearing. IJ Abbott. Nov. 15, 2017.
[74] *Id.*
[75] Chilton Tippin, UTEP/Hope Institute Asylum Observatory. Bond Hearing. IJ Abbott. Nov. 11, 2018.
[76] UTEP/Hope Institute Asylum Observatory. Bond Hearing. IJ Ruhle. Nov. 29, 2017.
[77] Appendix B1, ¶ 22.
[78] Ingrid Eagly & Steven Shafer, *Access to Counsel in Immigration Court*, American Immigration Council, Sept. 28, 2016, *available at* https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court.
[79] Appendix B1, ¶ 19.
[80] Appendix B1, ¶ 21.
[81] Appendix B7, ¶ 5.
[82] Appendix B7, ¶ 6.
[83] *See* Executive Office for Immigration Review, *Ethics and Professionalism Guide for Immigration Judges* 1 (2011), https://www.justice.gov/sites/default/files/eoir/legacy/2013/05/23/EthicsandProfessionalismGuideforIJs.pdf
[84] Appendix B1, ¶ 2.
[85] *Matter of Exame*, 18 I.&N. 303, 306 (BIA 1982).
[86] Ethics and Professionalism Guide for Immigration Judges, supra note 83 at 3; *see also* 5 C.F.R. § 2635.101 (provisions under the Standards of Ethical Conduct for Employees of the Executive Branch).
[87] Appendix B1, ¶ 12; Appendix F 112.
[88] Appendix B1, ¶ 14. Appendix F, 113.
[89] V. Edwards, UTEP/Hope Institute Asylum Observatory. Bond Hearing. IJ Abbott. Nov. 15, 2017
[90] Appendix B5, ¶ 4.
[91] V. Edwards, UTEP/Hope Institute Asylum Observatory. Bond Hearing. IJ Abbott. Nov. 15, 2017.
[92] Appendix B1, ¶ 27.
[93] UTEP/Hope Institute Asylum Observatory. MCH. IJ Abbott. Oct. 25, 2017.
[94] Appendix B1, ¶ 29.
[95] Appendix B4, ¶ 2.
[96] *Id*.
[97] Appendix B3, ¶ 3.
[98] Appendix B3, ¶ 4.
[99] Kimberly Antuna, UTEP/Hope Institute Asylum Observatory. Bond Hearing. IJ Ruhle. Oct. 30, 2018.
[100] UTEP/Hope Institute Asylum Observatory. MCH. IJ Ruhle. Nov. 29, 2017.
[101] For more information about the EOIR complaint process, *see* EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, Complaints Regarding EOIR Adjudicators (Nov. 30, 2018), https://www.justice.gov/eoir/complaints-regarding-eoir-adjudicators.
[102] Appendix B1, at ¶ 2.
[103] Appendix B4, at ¶ 1.
[104] Appendix B3, at ¶ 14.
[105] Appendix B1, at ¶ 14; Appendix F, 113.
[106] Appendix B4, at ¶ 3. IJ Abbott then upheld the Asylum Officer's original denial. However, when the supporting evidence was submitted to the Asylum Office along with a Request for Review, the Asylum Office reversed its previous decision and determined that the client *did* have a credible fear of persecution. *Id.*
[107] Appendix B2, at ¶¶ 6-8.
[108] Appendix B2, at ¶ 8.
[109] *Id.* at ¶ 8. CBP officers' practice of preparing boilerplate statements from noncitizens—including at times fabricating statements supposedly made by the immigrant—has been well-documented, both by governmental and non-governmental organizations. *See, e.g.*, U.S. Comm'n on Religious Freedom, *Barriers to Protection*, *The Treatment of Asylum Seekers in Expedited Removal* (2016) ("USCIRF found that [CBP apprehension records] often indicat[ed] that information was conveyed when in fact it was not and sometimes includ[ed] answers to

questions that never were asked"). Infamously, infants and toddlers supposedly told CBP officers that they had come to the United States "To look for work." *See, e.g.* Elise Foley, *Infants And Toddlers Are Coming To The U.S. To Work, According To Border Patrol*, Huff. Post, June 15, 2015, https://www.huffingtonpost.com/2015/06/16/border-patrol-babies_n_7594618.html.

[110] Appendix B1, at ¶¶ 25-27.

[111] Appendix B1, at ¶ 27.

[112] Appendix B1, at ¶ 23.

[113] Appendix B3, at ¶ 3.

[114] *Id.* at ¶ 8.

[115] Appendix B3, at ¶5.

[116] Chilton Tippin, UTEP/Hope Institute Asylum Observatory Master Calendar Hearing. IJ Ruhle. Oct. 31, 2018.

[117] Appendix B5, at ¶ 5.

[118] UTEP/Hope Institute Asylum Observatory. MCH. IJ Abbott. Oct. 25, 2017.

[119] Ingrid Eagly & Steven Shafer, *Access to Counsel in Immigration Court*, American Immigration Council, Sept. 28, 2016, *available at* https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court.

[120] On October 30, 2018, IJ Abbott hinted that bond amount was dependent on country of origin, stating that some countries require a higher bond, but for the respondent's particular country, the "going rate" for bond was $7,500. Elisa Given, UTEP/Hope Institute Asylum Observatory. Bond Hearing. IJ Abbott. Oct. 30, 2018. On November 29, 2017, IJ Ruhle denied bond to a respondent because he believed she was too poor and could not "survive with her current resources in this country." During that same hearing, IJ Ruhle, in defense of a high bond amount, states that it's the same amount the respondent paid the coyote to enter the country in the first place, indicating the respondent's ability to afford bond based on that metric. UTEP/Hope Institute Asylum Observatory. Bond Hearing. IJ Ruhle. Nov. 29, 2017.

[121] Appendix B3, ¶ 6.

[122] UTEP/Hope Institute Asylum Observatory. MCH. IJ Abbott. Oct. 25, 2017.

[123] Appendix B1, ¶ 25.

[124] *Id.*

[125] Appendix B2, ¶¶ 7-9.

[126] *Id.*

[127] Chilton Tippin, UTEP/Hope Institute Asylum Observatory. Bond Hearing. IJ Abbott. Oct. 31, 2018.

[128] Appendix B3, at ¶ 11.

[129] *Id.*

[130] Appendix B1, at ¶ 16.

[131] *Id.*

[132] *Id.*

[133] *See* Immigration Court Practice Manual, *supra* note 52 at 70 ("The Immigration Court will arrange for an interpreter both during the individual calendar hearing and, if necessary, the master calendar hearing").

[134] Appendix C. Some cases appear in multiple categories.

[135] *Id.*

[136] *Id.*

[137] *Id.*

[138] *Id.*

[139] *Id.*

[140] *Id.*

[141] Hope, UTEP/Hope Institute Asylum Observatory. Bond Hearing. IJ Ruhle. Nov. 29, 2017. This court observation was created on Nov. 29, 2017, and likely was for an observation that took place on or around this date.

[142] *See, e.g.*, Joseph Darius Jaafari, *Immigration Courts Getting Lost in Translation*, MARSHALL PROJECT, Mar. 20, 2019, https://www.themarshallproject.org/2019/03/20/immigration-courts-getting-lost-in-translation.

[143] *Judge-by-Judge Asylum Decisions in Immigration Courts FY 2012-2017*, TRAC Immigration (2017), https://trac.syr.edu/immigration/reports/490/include/denialrates.html.
[144] *See* 2017 EOIR Statistics Yearbook, *supra* note 6 at 28; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, S*tatistics Yearbook: Fiscal Year 2016* K2 (2017), *available at* https://www.justice.gov/eoir/page/file/fysb16/download.
[145] *See, e.g.*, 2017 Statistics Yearbook, *supra* note 6 at 28.
[146] *See* American Bar Association Report, *supra* note 10 at UD 2-17 and UD 6-8.
[147] 5 U.S.C. §§ 552(a)(1)(A) and (B) require that an agency proactively disclose how "…the public may obtain information, make submittals or requests, or obtain decisions…," 5 U.S.C. §§ 552(a)(1)(A), or "statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available…." 5 U.S.C. §§ 552(a)(1)(B).
[148] Ethics and Professionalism Guide for Immigration Judges, *supra* note 83 at 3; *see also* 5 C.F.R. § 2635.101 (provisions under the Standards of Ethical Conduct for Employees of the Executive Branch).
[149] *See* EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, *Summary of OCIJ Procedure for Handling Complaints Concerning Immigration Judges* (2018), https://www.justice.gov/eoir/page/file/1039481/download.