Daniel Glad
Direct Dial: +1.312.777.7110
daniel.glad@lw.com

LATHAM & WATKINS LLP

Sears Tower, Suite 5800
233 S. Wacker Dr.
Chicago, Illinois 60606
Tel: +1.312.876.7700 Fax: +1.312.993.9767
www.lw.com

FIRM / AFFILIATE OFFICES

Barcelona	New Jersey
Brussels	New York
Chicago	Northern Virginia
Frankfurt	Orange County
Hamburg	Paris
Hong Kong	San Diego
London	San Francisco
Los Angeles	Shanghai
Madrid	Silicon Valley
Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

MEMORANDUM
May 15, 2008

To: Malcolm Rich
From: Daniel Glad
File no: 501813-0005
Copies to: Distribution
Subject: Immigration Court Reform Project: Exploratory Interview Questionnaire

A. Experience and Background

1. What kind of experience do you have practicing before Immigration Courts? What kinds of cases? What kinds of hearings?

2. How frequently are you before an immigration judge ("IJ")?

3. How frequently do you practice before the Board of Immigration Appeals (the "BIA")? Describe your experience.

   a. How many cases? Have you ever had an oral argument before the BIA?

4. Based on your experience, what types of cases succeed in Immigration Court, and why?

B. General Questions

1. How would you describe the general state of the Immigration Courts today?

    a. What is the biggest systemic problem facing the Immigration Courts today, and what is the biggest strength of Immigration Courts today?

    b. Define the attributes of a well-functioning Immigration Court.

2. What would you change about the Immigration Court?

    a. How would you change the policies and procedures used in Immigration Court?

    b. Does the court use technology, including videoconferencing, fairly and well?

        (1) Do you know of any instances where the use of videoconferencing appeared to impact the course of the hearing (and thereby may have altered the outcome of the immigration hearing)?

    c. Does the court provide competent and effective interpreters when necessary?

        (1) In 2007 the Seventh Circuit stated that it has "repeatedly admonished immigration judges to be sensitive to the possibility of misunderstandings caused by the use of translators." *Feng Li v. Keisler*. Do you know of instances where an immigrant's inability to speak or understand English has affected their ability to prevail in a hearing or trial because of issues of misunderstanding?

3. Overall, how would you describe the fairness of the Immigration Court system?

   a. Do you think the current adjudicatory system protects the due process rights of immigrants?

   b. If not, what could be done to better protect those rights?

   c. Some have suggested that rules are currently not consistently applied and that we should take steps toward ensuring consistent application of rules.

      (1) Are there any dangers in moving toward consistent application of rules?

      (2) If the rules are made consistent, to what extent will that reduce judicial discretion? Will that help or hurt the system?

4. Do the high number of pro se litigants in immigration court proceedings affect the operation of the Immigration Court? If yes, in what ways?

5. Overall, how would you describe the effectiveness/efficiency of the Immigration Court system?

C. The 2006 Reforms

In 2006, at the direction of then-Attorney General Gonzalez, the Department of Justice and its subdivisions conducted a series of interviews with staff at all levels of the EOIR. As a result of those interviews, the Attorney General published a twenty-two-point memorandum that highlighted various areas in which improvement was needed, and directed EOIR to begin making those improvements.

1. Are you aware of the Attorney General's 2006-era reforms? If yes:

   a. What is your general impression of the reforms?

   b. How do you think the reforms have changed practice before the Immigration Courts?

      (1) How have they made things better?

      (2) How have they made things worse?

   c. What reforms are missing from the Attorney General's list?

d. What is your opinion of the progress EOIR has made on the 2006-era reforms?

(1) Do you think they are being timely and effectively completed?

(2) What, in your view, is the greatest problem in implementing these reforms?

(3) What should be done to expedite these reforms' implementation?

2. Do you think the reform process itself should be amended?

a. If so, do you think the process should include greater input from on-the-ground practitioners?

b. What (if any) other changes would you like to see with respect to the reform process?

3. Are you aware of the recently-released practice guide? If yes:

a. Have you reviewed it? Is it helpful?

b. How have IJs responded to the changes therein?

(1) Which changes in particular?

(2) Are any of the changes harmful?

D. Immigration Judges

1. What is your general opinion of IJs in the courts in which you practice?

a. Do the judges understand complex issues of law?

b. Complex issues of fact?

c. What areas for improvement do you see?

d. What qualities would the ideal IJ possess? What kind of experience? What provisions do you feel are necessary for a Code of Judicial Conduct for IJs?

2. What do you think about the hiring process for IJs?

   a. What changes would you like to see in this regard?

   b. Would an appointment-and-confirmation process be useful?

   c. Would such a process unduly delay filling vacancies?

3. Do you believe IJs are adequately trained?

   a. If not, what training would you require of IJs?

4. What is your view, if any, regarding the state of reference materials available to IJs?

   a. Have you noticed any change since 2006?

   b. What further improvements can be made?

   c. How do you suggest these improvements be timely and effectively implemented?

5. Are you aware of an IJ sanctioning a party?

   a. If so, do you think that sanctions helped to protect the adjudicatory system?

   b. Should the Board of Immigration Appeals have sanction powers?

E. IJs and Quality Control

1. Have you seen any changes in quality control since the 2006 reforms were announced?

   a. Are recently-enacted performance evaluations effective measures to identify and correct problems with IJs?

2. What can you do if you feel you and/or your client have not been treated fairly in Immigration Court?

   a. Do you have any experience with reporting an IJ to his or her superiors?

      (1) If so, what were your experiences? When was this?

   b. Are you aware of the newly-enacted procedures for reporting complaints about IJs?

      (1) If so, do you think these procedures are an effective means of quality control?

3. The BIA is now directed, *inter alia*, to detect and identify potential problem IJs. Do you think that the BIA is an appropriate body for detecting problems with the quality of IJs?

   a. Why or why not?

   b. What body is better suited?

   c. In your experience, how well does the BIA perform this oversight function?

F. Newly-Appointed IJs

1. Do you have any experience practicing before newly-appointed (2007 or later) IJs?

   a. If so, do you think there is any difference between those newly-appointed IJs and those appointed before?

One area in which EOIR hoped to make strides was in the level of knowledge of incoming, newly-appointed IJs.

   b. With regard to substantive knowledge of immigration law, have you seen any difference between those newly-appointed IJs and those previously appointed?

2. Is a two-year probationary period, as recently enacted following the 2006 reforms, an adequate means by which to ensure that new IJs are of a certain quality?

   a. Does the probationary period have any effect on the larger judiciary, *i.e.*, tenured IJs?

   b. Do you think an exam on immigration law is an effective method of ensuring the requisite level of substantive knowledge for an IJ?

   c. Do you think that all IJs, in order to remain on the bench, should have to take and pass this examination?

G. Asylum Grant Rates

1. Are you aware the purported disparity in asylum grant rates?

   a. To what do you attribute this disparity? Is it anything more than a statistical observation?

   b. Do you think the disparity is indicative of, or caused by, by any one factor or particular factors? If so, what are they?

2. Do any changes need to be made to address this statistical observation?

   a. What changes would you make?

   b. How would you propose implementing those changes?

H. The 2002 Streamlining Reforms, Affirmances without Opinions

1. What are your thoughts, in general, on Affirmances without Opinions?

2. Is there a way to ensure sufficient review while concurrently ensuring judicial efficiency and timely adjudication?

3. Is the BIA serving as an effective appellate body? Why or why not?

   a. What, if anything, needs to be done to make the BIA a more effective appellate body?

4. What is your view of the 2002-era Streamlining Reforms?

   a. What, if anything, would you do differently?

I. Immigration Courts and Technology

1. Is technology a problem in Immigration Court (e.g., videoconferencing, and transcription service)?

   a. If so, how?

   b. Have you seen any changes in the use of technology in the immigration courts? Specifically, digital recording of hearings?

   c. Have you noticed any change with regard to transcription services?

2. Are interpreter services a problem in Immigration Court?

   a. If so, how?

3. What suggestions do you have for improvement?

J. Recent Criticism

In the past few years, the Courts of Appeals, but most particularly the 7th Circuit, have issued stinging rebukes when reviewing cases originally heard by immigration judges.

1. What is your reaction to the string of recent criticism of IJs by the 7th Circuit?

   a. Judge Posner's recent criticism of IJs and practitioners?

   b. Do you think such criticism is helpful? Do you think it is well-received?

K. Additional Interviewees: Are there any additional persons who you would suggest our interviewing?

L. Additional Comments Here, we give the respondent an opportunity at the end to speak freely/offer additional commentary/insights about which we may not have thought to ask, but might be relevant/important.