

TALKING POINTS

THE IMPORTANCE OF INDEPENDENCE AND ACCOUNTABILITY IN OUR IMMIGRATION COURTS

FUNDAMENTAL PROBLEMS WITH IMMIGRATION COURTS MUST BE ADDRESSED

In its current state the immigration court system is suffering from deeply imbedded structural and resource problems that are compromising the fairness, efficiency, and overall integrity of the system. The immigration courts and BIA require major reforms to address well-documented concerns about the lack professionalism and independence; lack of efficiency; lack of fairness and insufficient due process and judicial review; and a chronic lack of adequate funding.

Stakeholders uniformly complain of breakdowns in case processing and efficient handling, resulting from the dramatic and exponential increase in cases referred to the immigration court system. Grant rates for cases are highly disparate and appear to depend on which immigration judge decides the case or in which jurisdiction a case is heard. “Streamlining” reforms implemented at the Board of Immigration Appeals, were designed to increase the efficiency of the system, but instead sacrificed the quality of decisions for speed, triggering a skyrocketing appeal rate at the U.S. Courts of Appeal. Thus, rather than eliminating the huge backlog of immigration cases before the Board, the streamlining measures merely shifted the backlog to another branch of government.

The urgency of court reform is even more striking when evaluated in the context of DHS’s dramatic increases in enforcement, detention and removal operations that have further eroded due process and have also greatly increased the number of people into immigration court proceedings. With nearly 400,000 persons anticipated to be held in jails this year, the immigration courts are inundated with detention cases. Eighty percent (80%) of individuals detained do not have counsel and must represent themselves in immigration court proceedings. The current system is so fundamentally flawed that failure to implement serious reform has created a growing loss of public confidence in the system.

OVERWHELMED COURTS MARGINALIZE DUE PROCESS

- **The quality and fairness of decision-making by the immigration courts has been called into question.** Highly respected Court of Appeals judges have issued opinions that excoriated the quality of justice meted out by immigration judges. In the Immigration Courts, judges on average handle more than 1,200 cases per year, a staggering figure that is about twice the caseload of judges in other administrative courts.
- **The system is failing in its central mission to ensure justice and fairness in the immigration adjudication process.** With such workload pressures, judges cannot provide thorough and balanced review in every case. Indeed, reports by independent non-partisan organizations have found highly disparate and inconsistent grant rates in asylum adjudications. The American Bar Association and Applesseed have issued reports finding that key components of the immigration court system are not functioning in a neutral, independent or efficient manner.
- **The absence of due process has resulted in thousands of non-citizens being subject to unnecessary and often inhumane detention.** The \$2 billion detention system is a behemoth network of several hundred federal, state and local prisons and privately contracted facilities that is not regulated by legally enforceable standards. Immigrants have died in detention due to poor medical care, and thousands are subject daily to substandard conditions or abusive treatment.

AMERICA NEEDS AN INDEPENDENT IMMIGRATION COURT

AILA supports the creation of an independent court system, either in the form of an Article I court or a separate Executive Branch agency that would include trial-level immigration courts and an appellate review body like the BIA.

- **Such a court would enhance administrative efficiency, increase accountability, and facilitate Congressional oversight of our immigration functions.** Because the immigration courts handle more than 260,000 matters annually and employ 221 immigration judges in more than 52 locations across the country, administrative efficiency is a practical necessity.
- **Our immigration system needs to have one full-time, high-level person in charge of administering our immigration courts.** Such authority would improve accountability by fully integrating policy making with policy implementation; ensure direct access to high-level officials within the executive branch; and attract top-flight managerial talent.

Until systemic reforms can be implemented, AILA believes the following immediate changes are necessary to improve the level of due process available to non-citizens appearing before our immigration courts:

- **The BIA must have adequate review authority.** To ensure that decisions are fair and meet minimum standards of justice, the BIA should have *de novo* review over an immigration judge's findings of law and mixed questions of law and fact and should review factual determinations on a "substantial evidence" standard.
- **The three-judge deliberative panel must be reinstated.** The 2002 regulations dramatically reversed long-standing BIA practice and have threatened the due process rights of immigrants who find themselves at the mercy of the courts. The three-judge panel is the appropriate and effective means of ensuring adequate deliberation and the diverse interplay of legal opinions in cases that could ultimately involve life and death determinations.
- **The BIA should refrain from issuing one- to two-sentence summary opinions in most cases.** The BIA must have the time and resources to fully explain the reasoning behind the decisions that it makes. Efficiency can and must be achieved without destroying the integrity of the process. The increase in one-line summary dismissals has precipitated a flight to the federal courts of appeals for those individuals fortunate enough to have legal representation; affirmances without opinion should be permitted only in rare circumstances.
- **Immigration Courts and the BIA must have a sufficient number of judges.** To prevent future backlogs and to ensure thoughtful and thorough deliberation, the immigration court system must have enough judges to get the job done. Annually, the Board adjudicates about 30,000 cases, and the Immigration Courts handle nearly 300,000 cases. At least 100 new immigration judges and support staff should be hired to reduce the extremely high caseloads.
- **The Immigration Courts should be given appropriate resources.** Unquestionably, some of the immigration court's challenges stem from chronic underfunding, resulting in staff shortages, antiquated equipment, and insufficient training. Funding should be increased to support staff, training, interpretation, transcription services, and other needs.