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COMMENT BY OF NATIONAL ASSOCIATION OF IMMIGRATION JUDGES

Proposed Regulation Changes

[EOIR Docket No. 18-0301; RIN 1125-AA83]

The National Association of Immigration Judges (NAIJ) is a voluntary organization of United States Immigration Judges and the recognized collective bargaining representative for this group. Our mission is to promote independence and enhance the professionalism, dignity, and efficiency of the Immigration Courts. This comment is drawn from an informal survey and is based upon the opinions of our members.

NAIJ does not support the promulgation of a federal regulation permitting limited representation by attorneys and representatives in immigration removal proceedings. The overwhelming response from Immigration Judges (IJs) who expressed their opinion is that limited representation would be counterproductive and ineffective and create a greater burden on an overly taxed system.

Immigration Judges hearing cases at detention centers were the most vehemently opposed, although IJs hearing both detained as well as non-detained cases were largely opposed to the proposed regulation for the same reasons.

The primary concern expressed by our members is that allowing attorneys to appear for limited representation in removal proceedings (particularly in cases of single hearing appearances) will make it more difficult for IJs to hold attorneys and representatives accountable and will negatively impact the ability of IJs to move their dockets in an orderly fashion. Less docket control by judges will become inevitable, and Respondents' cases will be litigated in a piecemeal fashion as different attorneys can potentially become involved in the same case by

permitting limited representation and appearances. The NAIJ membership can foresee the possibility of IJs having to start hearings anew when a new attorney appears at the individual hearing contesting issues having been concluded at the master or previous hearing. The concessions of allegations and charges by one attorney at the master hearing may be challenged by the new attorney and the issue of re-pleading arises. Appropriate relief previously filed can also be challenged by the new attorney appearing at the individual hearing. New attorneys may not be able, as a matter of professional conduct, to rely on prior applications filed by attorneys appearing solely for a master hearing. Additional time will have to be afforded by the Judge for revised applications and considerations of motions for continuances.

Moreover, attorneys may file relief applications at the master hearing which are incomplete or contain incorrect information, with the understanding that their representation is for the limited purpose of pleading and filing relief applications. This may require additional time at the master hearing for IJs to ensure that all applications and documentation such as receipts and evidence of biometrics are complete and provided. Permitting limited representation will further erode the IJ's authority to have practitioners adhere to filing requirements, call up deadlines and briefing schedules. Contempt authority for IJs has not been implemented to date, and the ability of Judges to enforce their deadlines and briefing schedules will be further eviscerated by allowing attorneys to appear for limited representation in removal proceedings. Additionally an undue and misplaced burden will be placed on respondents who may not have representation at merit hearings, to account for lacking documentation and missed attorney deadlines set at the master hearings.

A natural consequence of permitting limited representation by attorneys will be an increase in motions for continuances by pro se respondents seeking additional time to find other counsel or prepare to represent themselves. The limited representation by attorneys will result in confusion for respondents, create a climate of mistrust of the bar and system as a whole and further erode the confidence of the public in the integrity of the immigration court process. NAIJ is not aware of any other state or federal courts allowing for such limited representation.

Currently limited representation as to bond proceedings, which are separate proceedings from removal proceedings and where it is appropriate to allow for limited appearances, still often leave respondents very confused because respondents are often unaware that they are only hiring attorneys for a limited portion of their case. This situation is due either to miscommunication or no communication between respondents and the attorneys. Allowing attorneys to further limit their representation of respondents in removal proceedings will only lead to additional confusion on the part of the respondents regardless of any required certification as to the limited scope of the Attorney's representation.

In sum, the overwhelming majority of judges, those hearing detained and non-detained cases, oppose allowing attorneys to have limited representation rights and to enter limited appearances before the immigration courts in removal proceedings. NAIJ asserts that

permitting limited representation will impede the IJ's ability to efficiently and fairly move their dockets, and can lead to the creation of delays negatively impacting the ability of IJs to meet the recently imposed quotas and deadlines.

Moreover, under the current regulations, IJs properly retain the authority to permit withdrawal of counsel and substitution of counsel during the pendency of proceedings, which more appropriately allows for a case by case consideration of the relevant factors before the Court. Therefore, to the extent that the respondent and counsel wish to limit representation of the respondent to specific portions of the proceedings, the IJ should retain the discretion to permit or deny that request.