ROUND TABLE
of Former Immigration Judges

April 28, 2025

We are former Immigration Judges and former Board Members and Appellate Immigration Judges of the Board of Immigration Appeals.[1] Members of our group were appointed to the bench and served under different administrations of both parties over the past 45 years. Drawing on our many years of collective experience, we are intimately familiar with the workings, history, and development of the immigration court from the 1980s up to present.

We are concerned about the impact of H.B. 1554, a bill which would prohibit the use of public state funding for the provision of legal services to non U.S. citizens in immigration court proceedings. The prohibition would extend to law school clinics. As former judges who have heard and decided many thousands of cases at both the trial and appellate level, we offer the following thoughts for your consideration.

First, Immigration Judges presently have a crushing number of cases to hear. And it is far more efficient to hear cases in which the non-citizen is represented. For example, the first hearing before an Immigration Judge is called a Master Calendar hearing; it is the Immigration Court equivalent of an arraignment.

When a represented respondent appears, the hearing generally goes something like this: “Your honor, I’ve explained the purpose of these proceedings to my client. We waive an interpreter for today’s hearing. We admit the factual allegations in the charging document, and concede the charge of removability. My client will apply for the following reliefs, and the applications have been filed with the court. The hearing will take an hour and a half, and we will need an interpreter in my client’s best language.” The above generally takes just a few minutes. This is important, as one Immigration Judge might have as many as 50 or 60 cases to hear in a single morning Master Calendar.

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[1] Judges hearing appeals at the BIA were called Board Members until June 2020, and Appellate Immigration Judges from that time to present.

However, when the respondent is not represented, the judge must usually first get an interpreter, and then spend significant court time explaining the nature of removal proceedings, and the Government's allegations and charges of removability that form the basis of their removal.

Due process requires an Immigration Judge to inform each respondent appearing before them of his or her apparent eligibility to apply for any benefits under the immigration laws. Frankly, that takes time. An Immigration Judge must ask numerous detailed questions of the respondent to make sure that all bases were covered. Overlooking a potential relief will lead to a remand of the case.[2] Removing the possibility of representation through a law school clinic or other state funded program significantly increases the chances of a judge having to hear a case twice.

We also wish to point out that legal representation is not solely focused on respondents seeking to contest their removal. In our experience, it is not uncommon that after such consultation, detained respondents in particular who realize that they have no relief available to them simply accept a final removal order. Without the advice provided by the funded representation programs, Immigration Judges would have to schedule and spend time hearing meritless claims for relief, the Board of Immigration Appeals will have to spend time and resources adjudicating the appeals filed in those cases, and the respondents will remain detained at Government expense throughout this process.

The absence of representation provided by state funded programs will also lead to more continuances in cases of those who lack relief, as those who have not had access to legal consultation will request time to learn about the proceedings they face and what avenues for relief they may have.

We hope that members of the Texas legislature will take the above considerations into account in considering the scope and passage of H.B. 1554.

For additional information, contact Hon. Dana Leigh Marks (Ret.), former Immigration Judge, San Francisco, at danamarks@pobox.com.

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[2] *See* , e.g., *CJLG v. Barr*, 923 F.3d 622, 628 (9th Cir. 2019) (en banc) (stating that "[w]hen the IJ fails to provide the required advice, the appropriate course is to 'grant the petition for review, reverse the BIA's dismissal of [the petitioner's] appeal of the IJ's failure to inform him of this relief, and remand for a new [ ] hearing.'") (quoting *Bui v. INS*, 76 F.3d 268, 271 (9th Cir. 1996)).