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June 10, 2013

Preserving Resources of the Executive Office for Immigration Review

S. 744, section 3501 provides the EOIR with long-needed additional resources that remain essential regardless of the bill's Registered Provisional Immigrant ("RPI") provisions. These resources are necessary because (i) the RPI provisions will not apply to all people now in removal proceedings, (ii) the bill gives new authority to immigration judges, and (iii) the court is now overloaded, creating extensive unfairness in the system.

While non-citizens qualified for RPI status will be able to end on-going removal proceedings—the work of the EOIR will continue and require substantial resources.

The RPI provisions are generous but there remain classes of people likely to be in removal proceedings who are precluded from this relief. For example, DHS prioritizes the removal of non-citizens with criminal convictions, and these individuals are unlikely to qualify for RPI status. Last year, ICE reported that 55% of the people removed (or more than 225-390 people), had convictions. See <http://www.ice.gov/removal-statistics/>.

Many of these removed individuals were in lawful status, including permanent resident status, and the removal hearing terminated that status. Governing statutes, the constitution and international law require adequate due process for such individuals. Eliminating essential funds from the EOIR will jeopardize the agency's ability to ensure due process.

Furthermore, Section 2314 of the bill rightly provides discretion to IJs to terminate removal proceedings when it is contrary to the public interest, based on hardship to certain qualifying relatives or when the non-citizen is eligible for naturalization. This

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provision could substantially increase the workload of immigration judges in cases where equities would require careful assessment of a motion to terminate. Other provisions of S. 744, such as removing the one-year bar to filing asylum, could increase merits hearings on such cases that were previously denied based solely on statutory bars. These and other important responsibilities of the immigration court strengthen already existing needs for funds, and should justify funding an increase in the number of immigration judges to properly evaluate such claims under the new discretionary authority.

Another group precluded from RPI qualification are those seeking asylum, refugee or nonimmigrant status. Individuals in these categories who violate their status become removable, but will not qualify for RPI.

RPI spouses and children are also not eligible for RPI status if they are not already in the United States. These people may be placed in removal proceedings for violating or overstaying visas should they try to remain or enter the U.S. without authorization.

Not only will EOIR need resources to handle removal proceedings for people who do not qualify for RPI, but because RPI is a long process, even those who are eligible for RPI will be in proceedings for a number of years. For example, many people currently in proceedings are seeking asylum or cancellation of removal, which are some of the most complex immigration cases. In large cities, people may wait two to three years to have a merits hearing on these claims. Due to the benefits conferred by grants of asylum or cancellation of removal, individuals will not want to abandon those applications in order to pursue RPI status. Allowing the immigration court sufficient resources to adjudicate these cases is therefore very important.

Delays frustrate government enforcement goals and deny access to important humanitarian protections for asylees:

In some courts, the time to completion of the existing caseload is approaching two to three years: these include cases where someone is seeking asylum or cancellation of removal. The TRAC data reports an overall average of 554 days to wait for immigration removal adjudication as of May 2013. California has average wait times of 684 days. *See* http://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog_avgdays.php

Adding judges allows a more evenly distributed workload. According to the findings of a study requested by the Administrative Conference of the United States (ACUS), judges currently have staggering caseloads on average of 1494 matters each.¹

The ACUS study found that in April of 2012, there were 264 sitting immigration judges

¹ Lenni Benson and Russell Wheeler, Enhancing Quality and Timeliness in Immigration Removal Adjudication 59 (2012) ("Benson and Wheeler") *available at* <http://www.acus.gov/sites/default/files/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf>

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(IJ's). These judges handled 303,287 proceedings and more bond and motions for a total of 394,307 total matters adjudicated. That is an average of 1,494 matters per judge. See final report Table C page 26. <http://www.acus.gov/sites/default/files/documents/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf>.

According to the ACUS study, IJ's have a much high number of completed matters than counterparts in other agencies or courts: "Comparisons of the immigration court per-judge 2011 completion rate (on average, 1,494 matters) to those in other high volume adjudication agencies are stark—an average of 544 dispositive hearings per year in 2007 for Social Security Administration [administrative law judges], and 819 decisions per year in 2010 on average for Veterans Law Judges. The comparison with federal district courts is even starker, even granting that cases in federal district court deal with a much wider range of issues. In 2011, each federal district judge terminated an average of 566 cases but very few of those terminations involved trials or other evidentiary hearing.." ACUS Report at page 29 (footnotes omitted). <http://www.acus.gov/sites/default/files/documents/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf>

Immigration Judges are essential if DHS continues the use of civil detention. Detention continues to increase at record rates and EOIR has struggled to keep the workload of the judges in balance so that they can quickly hold hearings for these individuals. These are high priority hearings. The agency must have adequate resources to meet the statutory and constitutional duties of the immigration courts. The portions of the bill that expand the successful Adding Legal Orientation Providers are an efficient expense because these providers and IJ's helps improve the information provided to pro se respondents and allow the IJ's to more efficiently make required inquiries into the respondents eligibility for relief. A well-respected study shows these providers have reduced the overall cost of detention because people are more likely to accept an order of removal or are able to identify and qualify for bond or relief.²

Enforcement with consequences While the law provides for the expedited removal (removal without a judge) of recent entrants, removal with more formality and an administrative hearing before an IJ may be more effective in deterring unlawful reentry. This requires judges on the bench. See ACUS report at page 12 and See also *Does Administrative Amnesty Harm our Efforts to Gain and Maintain Operational Control of the Border? Hearing Before the Subcomm. on Border and Maritime Security of the H. Comm. on Homeland Security*, 112th Cong. (2011) (statement of Michael J. Fisher, Chief, U.S. Border Patrol, U.S. Customs and Border Protection) and Aguilar's Aff. at 7 *United States v. Arizona*, No. 2:10-CV-951 (D. Ariz. July 6, 2010) (*available at* <http://www.justice.gov/opa/documents/declaration-of-david-aguilar.pdf>) (describing the

² Nina Siulc, et al., Vera Institute of Justice, *LOP, Evaluation and Performance and Outcome Measurement Report, Phase II iv* (2008), *available at* <http://www.justice.gov/eoir/reports/LOPEvaluation-final.pdf>

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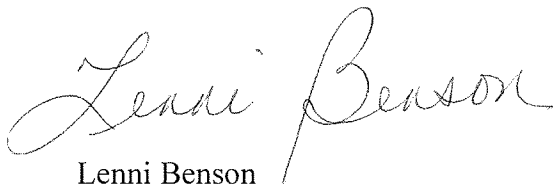
federal government's activity in this region). This program was also the subject of a 2012 Congressional Research Service report available at: <http://fpc.state.gov/documents/organization/180681.pdf>

Improving the quality of the adjudications. Federal courts and the BIA have long struggled with the review of poorly developed trial records of immigration judges. The Office of Immigration Litigation ("OIL") reviews the trial records and must defend them in federal court. Federal litigation is expensive. In many cases, OIL attorneys voluntarily agree to a remand to further develop the record, which further increases costs. By increasing the number of judges on the bench, records will improve because adjudicators will have more time to adequately handle a complex case, such as asylum. This can mean that the government is in a better position to defend the reasoning of the IJ and/or the BIA.

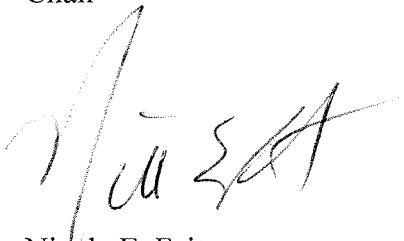
Future Immigration Enforcement is critical to comprehensive reform. S. 744 is a bill that reflects tough enforcement coupled with reform. It is clear that many members of Congress want robust immigration enforcement to continue. Trained, prepared IJs and a functioning efficient court are an essential part of immigration enforcement. Overloaded courts may lead to delay and decrease the effectiveness of removal statutes. At their current overloaded capacity, it is difficult for the court to meet surges or to adjudicate those cases where removal is prioritized. Congress must adequately staff the courts, the administration and the appellate body, the Board of Immigration Appeals to achieve efficiency, coherence, accuracy and fairness.

For the reasons enumerated above, the resources provided in section 3501 of S. 744 should be maintained.

Respectfully submitted,



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