ROUND TABLE
of Former Immigration Judges

January 15, 2025

We are former Immigration Judges and former Appellate Immigration Judges of the Board of Immigration Appeals. Members of our group were appointed to the bench and served under different administrations of both parties over the past four decades. 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.

The Laken Riley Act presently before the Senate contains provisions for mandatory detention of non-citizens charged with certain crimes. We have been asked in the past to weigh in as *amici* in federal litigation on the impact of detention on the working of the Immigration Court system. We would like to share our expert views on the topic given its application to the Laken Riley Act.

In 2020, we served as *amici* in a case before the U.S. Court of Appeals for the Second Circuit, *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020). Our full brief is attached, and we summarize some of the points we made regarding detention below.

First, it is important to realize that non-citizen respondents in removal proceedings are not afforded the rights enjoyed by defendants in criminal proceedings. In Immigration Court, there are no limitations on the Government's ability to detain respondents, and no right to a court appointed attorney. For those non-citizens who are eligible for bond hearings, there is no consideration of the respondent's financial circumstances as a factor in setting the bond amount.[1] Furthermore, there is no Sixth Amendment right to a speedy trial, and a very limited right to seek judicial review.

Second, when we discussed in our 2020 brief the strain detention places on an already overburdened Immigration Court system, we cited a backlog of under one million cases. Today,

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[1] An exception exists only within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, which requires consideration of financial ability to pay a bond. *See Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017).

the backlog has grown to 3.6 million, an increase of more than 350 percent.[2] Thus, our previously stated concerns about the impact of more cases in which too few judges hear cases involving highly complex legal issues, and in which most hearings require interpreters, have become far more urgent. We also note an increase in the number of non-citizen respondents in Immigration Court who are unrepresented by counsel. As we stated in our brief, detention creates a significant barrier to obtaining counsel, with detained respondents far more likely to be unrepresented.[3]

Based on our many years of experience on the bench, the increase in the number of cases on detained dockets would greatly hamper any attempt to decrease the presently staggering case backlog. As noted, the need for interpreters can easily double the length of hearings, and increase the chance of translation errors in cases in which nuance can be determinative. Furthermore, the growing number of *pro se* respondents, many of whom have no experience with or understanding of how legal processes work, or of what is required of them to prevail in their claims for relief, creates additional burdens on Immigration Judges charged with ensuring that each respondent receives a fair hearing, including the right to present all applications for relief.

Immigration Judges are therefore required to carefully explain the process, through an interpreter, to unrepresented respondents, whose detention greatly hampers their ability to defend themselves by providing them with very limited ability to seek legal guidance, conduct research, or gather documents or witnesses.

Our many decades of experience has also taught us the benefits of allowing judges to assess on a case-by-case basis the danger posed to society and the likelihood that the individual will appear for future hearings.

As we stated in our attached brief:

> Fifty years ago, the Board of Immigration Appeals ("BIA") stated that "[i]n our system of ordered liberty, the freedom of the individual is considered precious. No deportable [non-citizen] should be deprived of his liberty pending execution of the deportation order unless there are compelling reasons and every effort should be made to keep the period of any necessary detention to a minimum." *Matter of Kwun*, 13 I. & N. Dec. 457, 464 (BIA 1969).

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[2] *See* Congressional Research Service, Immigration Courts: Decline in New Cases at the End of FY2024 (Nov. 26, 2024) (*available at* https://crsreports.congress.gov/product/pdf/IN/IN12463) at 1 (stating that the Immigration Court backlog "exceeded 1 million for the first time in 2019…and was approximately 3.6 million at the end of FY2024.").

[3] This is in part due to the fact that detention centers are often located far from cities with a sufficient number of immigration lawyers; representing a detailed client from hundreds of miles is often untenable.

This goal is best accomplished by allowing experienced Immigration Judges to reach case-by-case determinations regarding the need for detention.

We hope that Senators will take the above considerations into account in their deliberations regarding the Laken Riley Act.

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