Immigration

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Abstract

The adjudication of immigration cases in the United States involves a complex interplay of administrative agencies and federal courts. Primary responsibility lies with the Executive Office for Immigration Review, which is located within the Department of Justice. Operating under authority delegated by the attorney general, the office operates a system of 59 immigration courts located across the country. These courts are staffed by 235 immigration judges who conduct removal proceedings. These proceedings are responsible for deciding in the first instance whether aliens charged by the Department of Homeland Security with immigration violations should be deported or whether they should be granted relief and permitted to remain in the United States. Immigration cases that do not involve removal proceedings are heard not by regular immigration courts but rather by the Office of the Chief Administrative Hearing Officer, which heads a staff of administrative law judges who adjudicate cases involving employer sanctions, document fraud, and other issues.

Removal proceedings begin when a notice to appear is served upon an individual subject to deportation and filed with an immigration court. The notice informs the defendant of the nature of the immigration violation(s) that they have been charged with, the consequences of failing to appear for their hearing, and their right to seek legal representation and orders them to appear before an immigration judge. The federal government is represented in these proceedings by a Department of Homeland Security attorney tasked with proving to the court that the defendant should be removed from the United States. Defendants may, at their own expense, appoint an attorney to represent them. Because these proceedings are civil rather than criminal in nature, there is no right to appointed counsel for indigent defendants. Proceedings begin with a preliminary hearing at which the judge establishes that the defendant understands the charges against them, provides the defendant with information about obtaining free legal representation from local legal aid providers, and schedules a hearing on the merits of the case. This hearing may occur in one or in several parts depending upon the complexity of the case. In most cases, the defendant acknowledges that they are deportable but petitions for one or more forms of discretionary relief, such as voluntary departure, asylum, cancellation of removal, or adjustment of status.

Once a final decision on removal is rendered, any appeals are heard by the Board of Immigration Appeals, which is the supreme administrative tribunal for the interpretation and application of immigration law. Pursuant to this supremacy, the Board of Immigration Appeals may designate decisions as precedents that should guide immigration courts nationwide in future cases. Any appeal of a Board of Immigration Appeals decision is heard by the federal circuit court of appeals with jurisdiction over the case.

Although they occupy a lower rung in the federal judicial hierarchy than federal circuit courts, federal district courts also play an important role in the adjudication of immigration-related cases. These courts have jurisdiction over federal criminal indictments of previously deported aliens for illegal reentry of the United States. They also hear appeals of adverse immigration decisions and unreasonable delays in cases not involving removal or detention. Appeals of adverse immigration decisions are most commonly appeals of denials of applications for immigration benefits such as adjustments of status and visas. These appeals are brought under the auspices of the Administrative Procedure Act, which authorizes judicial review of agency decisions that have inflicted legal wrongs (either because they are unconstitutional, illegal, reached in violation of statutory procedures, or arbitrary and capricious). However, appeals of denials of visa applications are limited by the doctrine of consular non-reviewability, which holds that such denials are generally not reviewable by courts because Congress has vested exclusive authority to grant or deny visas in the executive branch. Nonetheless, courts have held that limited judicial review is available when the American sponsors of an alien's visa petition demonstrate that the denial violates their constitutional rights. Appeals of unreasonable administrative delays are pursued via petitions for writs of mandamus, which are authorized by the federal Mandamus Act. A writ of mandamus compels an agency to take action but cannot compel an agency to grant the requested benefits. Federal district courts also have jurisdiction over habeas corpus actions and other collateral appeals brought by aliens being held in immigration detention while awaiting deportation. These actions may raise legal and/or constitutional challenges to the legality, duration, or conditions of the petitioner's detention.

1 See for example *Saavedra Bruno v. Albright*, 197 F. 3D 1153 (D.C. CIR. 1999)

By virtue of their location, federal district courts in districts along the U.S.-Mexico border must devote more of their docket to immigration cases than any other district courts. Between the beginning of 2013 and the fall of 2014, 123 immigration cases were adjudicated in the five federal districts on the southern border (the Southern District of Texas, the Western District of Texas, the District of New Mexico, the District of Arizona, and the Southern District of California). Cases involving illegal reentry were the most common type of case, with such 47 cases adjudicated by these courts in this time period. These cases usually involved motions by defendants to dismiss indictments or vacate convictions on grounds that their initial deportations had been invalid or that procedural errors had denied them due process. Only 6 of these motions (13%) were successful. Slightly less common, representing 31 cases, were collateral attacks on deportation orders. These appeals included both appeals challenging the facial validity of deportation orders (such as, for example, claims that the criminal conviction upon which deportation was predicated was not an aggravated felony) as well as appeals raising procedural claims (such as, for example, claims that the deportee received ineffective assistance of counsel). Only 1 of these appeals (3%) was successful. Appeals of denials of immigration benefits also represented a significant number of cases (12). These included appeals of denials of naturalization applications, denials of permanent residency applications, denials of immigrant visa applications, and denials of employment authorization applications. Only 1 of these appeals (8%) was successful. A variety of miscellaneous types of cases comprised the remainder of the cases adjudicated. These most notably included indictments of individuals for alien smuggling, lawsuits brought by unaccompanied minor children apprehended at the border alleging inhumane treatment, lawsuits brought by aliens apprehended by the border patrol alleging civil rights violations, and appeals of denaturalization proceedings. In sum, while this subset of cases is limited in its geographic and temporal scope, it provides a window into the challenges faced by our legal system in response to changing patterns of migration.

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