

Bringing Fairness to the Immigration Justice System

Day Three of Senate Mark-Up Will Address Immigration Court Reforms, Detention, and E-Verify

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Washington D.C. - Thursday, the Senate Judiciary Committee continues mark-up of S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act. The Committee will complete work on Title Four and then begin to take up amendments related to Title Three, which addresses interior enforcement programs like E-Verify, as well as immigration court reforms and detention practices. We are encouraged to see the Senate take on the structure and quality of justice accorded immigrants who are caught in the enforcement net. The immigration removal system—from arrest to hearing to deportation and beyond—does not reflect American values of due process and fundamental fairness.

The failure to provide a fair process to those facing expulsion from the United States is all the more disturbing given the increasing criminalization of the immigration enforcement system. Over the last two decades, Congress has dramatically expanded the number and types of offenses that may render an individual deportable, subject to mandatory detention for long periods of time and without any opportunity for a judge to weigh the equities of a particular case. Consequently, even relatively minor offenses can result in a person being detained in immigration custody and deported, often with no hope of ever returning to the United States.

The immigration removal system lacks nearly all of the procedural safeguards we rely on and value in the U.S. justice system. Harsh immigration laws often apply retroactively. Immigrants facing deportation have neither a right to appointed counsel nor a right to a speedy trial. Those who receive an order of removal have limited ability to challenge their deportation in court. Given the potentially severe consequences of removal—which can range from permanent separation from family in the United States to being returned to a country where a person fears for his life—the lack of procedural safeguards deprives countless individuals of a fair judicial process.

In order to create a fair and just immigration system, Senators should keep in mind the following principles when considering the amendments offered under Title Three:

- Immigrants must have the tools necessary to adequately prepare for their day in court.
 - Access to counsel is integral to ensuring that immigrants facing removal receive fair treatment. The government should appoint counsel to all immigrants in removal proceedings who would otherwise be unrepresented when necessary to ensure a fair hearing. As a first step, children, people with serious mental disabilities, and other vulnerable immigrants must be provided with an attorney if they cannot afford one. To ensure that those least able to speak for themselves have the opportunity to be heard, the government must provide funding to make appointed counsel a reality.
 - Immigrants should have automatic access to their immigration records (A-files) and any evidence that the government might use against them in a removal proceeding.
 - Access to meaningful administrative review is also necessary to ensure that erroneous decisions by immigration judges do not stand.
- Immigrants who are detained must have access to prompt custody determinations and bond hearings. Immigrants must not be left to languish in detention, separated from their homes and families, simply because the government has not yet filed the appropriate documents in court. Wherever possible, the Department of Homeland Security (DHS) should avoid detention, using alternative methods of ensuring an immigrant appears in court.

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- Penalties for violations of our immigration laws must be proportionate to the offenses committed. New penalties should not be retroactive, and immigrants should not be subject to removal for minor crimes that occurred decades earlier. In addition, immigration judges and DHS officers must have discretion to take into account a person's individual circumstances – such as the length of residence in the United States, strong family ties, contributions to the community, rehabilitation, and other hardships – when making a decision about an application for legal status or deciding whether the person will be removed from the United States.
- The one-year filing deadline for asylum applications, which has led to the denial, rejection, or delayed adjudication of thousands of requests for asylum protection in the United States, should be eliminated.

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