Responses of Jan C. Ting[1]
To Questions from the Committee on the Judiciary
United States Senate
Regarding Testimony of March 20, 2013, on
"Building an Immigration System Worthy of American Values"

1. In response to Senator Grassley's Question 1 for Professor Jan Ting, regarding the proposal for providing aliens in civil removal proceedings with access to counsel paid for by the American taxpayers:

There is a historic distinction in the law between criminal proceedings which propose to punish a defendant, and civil proceedings such as immigration removal which do not propose to punish anyone, but merely seek to resolve civil disputes.

As someone in the business of training young lawyers preparing to enter a challenging employment market, it would be difficult for me to oppose a properly labeled "Lawyers Full Employment Act of 2013." But if I were sitting as a member of Congress (and I tried once to become one), I would be wary of advocating taxpayer-funded lawyers for foreigners in civil immigration proceedings when no such counsel is offered to United States citizens asked to pay for such counsel, even in high stakes civil litigation over foreclosure on their homes, or removal of their child custody, or wrongful loss of their jobs.

A removal order issued by an immigration judge is normally required to remove an alien from the United States. Immigration judges are required to conduct proceedings to determine whether an alien is removable. During those hearings immigration judges have broad authority to determine and insure that justice is done, including power "to interrogate, examine, and cross-examine the alien and any witnesses."[2] "Immigration judges are obligated to fully develop the record in those circumstances where immigrants appear without counsel…"[3]

2. In response to Senator Grassley's Question 2 for Professor Jan Ting, on whether alternatives to detention weaken enforcement of U.S. immigration law:

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[2] 8 U.S.C. Sec. 1229(b), I.N.A. Sec. 240(b).
[3] Jacinto v. INS, 208 F.3d 725 (Court of Appeals, 9th Circuit, 2000).

The 1996 immigration reforms, including mandatory detention for certain aliens prior to hearings and removal[4], were enacted by Congress to insure the appearance of aliens for removal hearings and removal. Congress was dissatisfied with the high rate of no-shows from non-detained aliens, and the resulting low rate of actual removals.

Alternatives to detention that result in increased numbers of no-shows for immigration hearings and removal must be rejected if the integrity of the immigration enforcement system as enacted is to be maintained. The burden must be placed on the proponents of proposed alternatives to detention to prove that those proposed alternatives will not delay the enforcement of U.S. immigration law.

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In conclusion, I again thank Chairman Leahy, Ranking Member Grassley, and the other members of the Committee on the Judiciary of the United States Senate, for the opportunity to offer testimony on the subject of "Building an Immigration System Worthy of American Values."

[4] 8 U.S.C. Sec. 1226(c), I.N.A. Sec. 236(c). The rationale of Congress for enacting this provision was noted by the U.S. Supreme Court in its 2003 opinion rejecting constitutional challenge to it. Demore v. Kim, 503 U.S. 510.