

SENATOR CORNYN QUESTIONS FOR THE RECORD
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Questions for Karen T. Grisez

Article I Courts

One recommendation from the ABA is that we create an Article I court for immigration proceedings. This view is supported by some immigration judges who think it would give them more autonomy and more time to render decisions in cases.

I have drafted a bill to create an Article I court using the bankruptcy and tax courts as a model.

(1) What do you think of creating an Article I court?

MS. GRISEZ: As you note, the ABA's recent study on the immigration removal adjudication system recommends the creation of an Article I court, with both trial and appellate divisions, to adjudicate immigration cases. The study evaluated several potential models, including the option of an independent agency. An Article I court would be viewed as more independent than an agency because it would be a wholly judicial body; and is likely, as such, to engender the greatest level of confidence in its results; can use its greater prestige to attract the best candidates for judgeships; and offers the best balance between independence and accountability to the political branches of the federal government.

By attracting and selecting the highest quality lawyers as judges, an Article I court is more likely to produce well-reasoned decisions. Such decisions, as well as the handling of the proceedings in a highly professional manner, should improve the perception of the fairness and accuracy of the result. Perceived fairness, in turn, should lead to greater acceptance of the decisions without the need to appeal to a higher tribunal. When appeals *are* taken, more articulate decisions at the trial level should enable reviewing bodies to be more efficient in their review and decision-making and should also decrease remands for additional explanations or fact-finding. Such improvements in efficiency should reduce the total time and cost required to fully adjudicate a removal case and thus help the system keep pace with expanding caseloads. They also should produce savings elsewhere in the system, such as the cost of detaining those who remain in custody during the proceedings.

(2) How long would it take for DOJ to transition its attorneys and board members to such a system?

MS. GRISEZ: Since the selection, tenure and removal of judges under an Article I court would differ significantly from the current system, transitional measures would be needed for the existing judges employed by EOIR. With the over 280 judgeships currently authorized (more if recommendations to increase the number of immigration judges are implemented) this will likely be a multi-year process. In a new Article I immigration court, the ABA recommends that appellate and trial judges should have fixed terms, which should be relatively long as in other Article I courts (e.g., 8 to 10 years for trial judges and

12 to 15 years for appellate judges). To facilitate an efficient transition and minimize short-term disruption, existing judges and BIA members would serve out the remainder of the new fixed terms, which are deemed to have begun at the time of their prior appointment to current positions, and would then be eligible for reappointment thereafter. This would provide a rolling process for the appointment of new Article I judges that would allow the immigration court to effectively handle the existing caseload during the transition.

Legal Orientation Program

It seems like there is agreement that the legal orientation program is one way we could streamline court proceedings. However, there is some opposition to using taxpayer money to fund the program.

- (1) What do you think about using a portion of the fees collected from applications and petitions and using the revenue to fund expansion of the Legal Orientation Program nationwide?

MS. GRISEZ: In general, the ABA opposes requiring applicants for immigration benefits to bear the costs of activities not directly related to application processing. Fee increases in recent years already may place naturalization and other immigration benefits out of reach of many low-income immigrants. Application fees should not be so excessive as to prevent otherwise eligible individuals from accessing benefits, and initiatives that benefit the immigration removal adjudication system as a whole should be funded through federal appropriations rather than through application fees. In addition, diverting fees from application processing and other critical functions would certainly increase the already long waiting periods for certain petitions and applications to be adjudicated by USCIS. This may have the result of adding even more cases into the immigration removal adjudication system.

- (2) How much would it cost to expand the program nationwide?

MS. GRISEZ: During FY 2010, the Legal Orientation Program (LOP) operated in 27 detention facilities with a budget of \$4.7 million and reached 60,000 of the over 380,000 individuals held in immigration detention. In addition, \$2 million was provided for an LOP for legal custodians of unaccompanied children. An expansion of LOP to reach all detained individuals obviously would require additional resources; however, we do not currently have a specific cost estimate for such an expansion. Factors influencing the answer would include the number of detainees, total number of facilities, and the remoteness of the detention facilities to be served. Expanded use of Alternatives to Detention in appropriate cases would enable LOP to be provided in a non-detained setting, further decreasing the costs for reaching those individuals.

It is important to note that in addition to ensuring more fair and just outcomes, the LOP contributes to immigration court efficiency and may result in savings in immigration court

and detention costs. A study by the Vera Institute of Justice in 2008 indicates that cases for LOP participants move an average of 13 days faster through the immigration courts. Immigration judges report that respondents who attend the LOP appear in immigration court better prepared and are more likely to be able to identify the relief for which they may be eligible, and not to pursue relief for which they are ineligible. Because cases for LOP participants move through the immigration courts more quickly, time spent in detention may be reduced and detention costs saved.

The cost savings from an expanded LOP program could be considerable. In recent years, immigration detainees have represented the fastest growing segment of the U.S. incarcerated population. In the last five years, the annual number of immigrants detained and the cost of detaining them has doubled. In 2010 alone, the U.S. spent approximately \$1.7 billion to detain almost 400,000 immigrants. Therefore, increasing funding for the LOP should be considered as a wise investment that has the potential to result in significant cost savings throughout the immigration adjudication and detention system.