

QUESTIONS FOR THE RECORD FROM SENATOR CHARLES GRASSLEY
TO
JULIE MYERS WOOD
FOLLOWING THE SENATE JUDICIARY COMMITTEE HEARING:
“IMPROVING EFFICIENCY AND ENSURING JUSTICE IN THE
IMMIGRATION COURT SYSTEM.”
HELD ON MAY 18, 2011

1. During your testimony at the hearing, you made the point that stipulated orders of removal could and should be increased.

What can the Department of Homeland Security and the Executive Office for Immigration Review do to increase the use of stipulated orders?

A: First, standardize the process. Currently, the use and extent of stipulated orders vary considerably across the country. In some locations, Immigration Judges (IJs) conduct a streamlined process, while ensuring due process. In other locations, the judge-imposed requirements for stipulated orders are extremely time-intensive. Federal court review of stipulated removal procedures has also affected local practice in some areas.

To remove the inconsistencies and ensure best use of stipulated orders, DHS should conduct a review of nationwide practices for stipulated orders, and identify the best practices for stipulated removals, and the areas where stipulations are utilized most successfully. With this knowledge, DHS should engage in rulemaking as contemplated under the INA to standardize the stipulated order process, and ensure that all IJs follow a consistent procedure. Moreover, if necessary, DHS should submit a request for legislation to ensure stipulated removals can be fully utilized.

In addition to standardizing the process, DHS attorneys should identify categories of cases that are most amenable to stipulated removal and ensure that information about stipulated removal and stipulated removal options are offered promptly in those cases.

2. Currently, the Immigration and Nationality Act ("INA") permits judges to find asylum applications (but no other type of application) frivolous. However, the regulation only allows a judge to find an asylum application to be frivolous if it is based on a knowingly false statement (not if it has no basis in fact or law, as the law generally defines frivolous conduct).

Could regulatory or statutory changes be made to give immigration judges the authority to find more conduct to be frivolous and to thereby prevent meritless litigation and appeals?

If so, describe the regulatory and/or statutory changes that could be implemented.

A: It is certainly possible that regulatory or statutory changes could be made to provide immigration judges with the authority to find more conduct frivolous. However, I have

not reviewed this area extensively, and am not in a position to give a firm recommendation. One area to explore is whether there might be a possibility to model an immigration court rule after Federal Rule of Civil Procedure 11, which provides a mechanism for challenging frivolous civil litigation and allows for sanctions. One countervailing concern that should be considered, however, is whether the expansion of the ability to litigate over sanctions and frivolous conduct would further reduce the time immigration judges spend on their core mission of deciding immigration cases.