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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CENTRO LEGAL DE LA RAZA; IMMIGRANT LEGAL RESOURCE CENTER; TAHIRIH JUSTICE CENTER; REFUGEE AND IMMIGRANT CENTER FOR EDUCATION AND LEGAL SERVICES,

Plaintiffs,

v.

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; JAMES MCHENRY, Director, Executive Office for Immigration Review; UNITED STATES DEPARTMENT OF JUSTICE; JEFFREY A. ROSEN, Acting United States Attorney General,

Defendants.

Case No. 3:21-cv-00463-CRB

ADMINISTRATIVE MOTION FOR LEAVE TO FILE AN *AMICUS* BRIEF

Amici curiae are more than thirty (30) former Immigration Law Judges and former members of the Board of Immigration Appeals who remain keenly interested in the decision-making coming from the Agency. As set forth more fully in the brief submitted with this administrative motion, *amici curiae* have intimate knowledge of the operation of the immigration courts, and seek an opportunity to develop the factual record and legal arguments presented in this action. *Amici curiae* therefore respectfully submit this administrative motion for leave to file the attached brief addressing proposed changes to brief timing, motions to remand based on new evidence, the scope of remand, judge certification, administrative closure, and *sua sponte* authority in the Procedural and Decisional Finality Rule. Counsel for the parties have consented to the relief requested by this administrative motion.

District courts have broad discretion to allow the participation of amicus curiae, and "there are no strict prerequisites that must be established prior to qualifying for amicus status." *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C 06-1254-SBA, 2007 WL 81911, at *3 (N.D. Cal. Jan. 9, 2007) (internal citations omitted). This Court has held that "an individual seeking to appear as amicus must merely make a showing that his participation is useful to or otherwise desirable to the court." Id. Furthermore, "[d]istrict courts frequently welcome amicus briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved." *Sonoma Falls Developers, LLC v. Nevada Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003). *Amici curiae* here respectfully submit that the attached brief provides useful and valuable insights as to the issues presented in this action, and that consideration of the brief will aid the Court.

For these reasons, *amici curiae* request that the Court grant their unopposed administrative motion and accept for filing the attached brief.

Dated: January 29, 2021

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ *Michael J. Stortz*
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Attorney for Proposed *Amici Curiae*
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EXHIBIT 1

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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CENTRO LEGAL DE LA RAZA; IMMIGRANT LEGAL RESOURCE CENTER; TAHIRIH JUSTICE CENTER; REFUGEE AND IMMIGRANT CENTER FOR EDUCATION AND LEGAL SERVICES,

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Defendants.

Case No. 3:21-cv-00463-CRB

BRIEF OF *AMICI CURIAE* FORMER IMMIGRATION JUDGES AND MEMBERS OF THE BOARD OF IMMIGRATION APPEALS REGARDING CHANGES TO THE PROCEDURAL AND DECISIONAL FINALITY RULE

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IDENTITY AND INTEREST OF AMICI CURIAE[1]

Amici curiae are more than 30 former Immigration Judges ("IJs") and former members of the Board of Immigration Appeals ("BIA" or "Board) who remain keenly interested in the quality of decision-making coming from the agency.[2] *Amici* were appointed to serve at immigration courts around the United States, with the Board, and at senior positions with the Executive Office of Immigration Review ("EOIR"). From their many combined years of service, *amici* have intimate knowledge of the operation of the immigration courts, including the importance of allowing those who appear before us the opportunity to develop the factual record and legal arguments that may support their claims for protection under our immigration laws. As explained below, we are gravely concerned that this Procedural and Decisional Finality Rule, which appears to have been written and approved by officials more interested and experienced in bureaucratic efficiency than the procedures of a functioning system of justice, prioritizes efficiency over effectiveness.

INTRODUCTION

In what the Department of Justice (the "Agency") classified as an effort to streamline the immigration court process, the Agency enacted a series of procedural changes that dramatically affected the ability of applicants and defense counsel to present their case shortly before the administration change. These changes either ignore or give short shrift to the practical concerns of the litigants and judges who must live with these new procedures. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 81588 (Dec. 16, 2020) (the "Procedural and Decisional Finality Rule" or "the Rule"). The Rule makes it more difficult for applicants and defense

[1] No party's counsel authored this brief in whole or in part. No party, or party's counsel, made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made such a monetary contribution. All parties have either consented to this filing of this brief, or have taken no position on the filing of this brief.

[2] *See* Appendix for *amicis* biographies.

counsel to brief relevant issues and present evidence, creates new challenges for immigration judges to consider extraordinary changes in circumstances and to control the timing of their own docket, and severely limits the BIA's authority to make legally sound decisions and remain an apolitical rung in the immigration system. We are deeply concerned that the Agency did not address comments on these issues, ignored evidence counter to its proposals, and stuck to a course to remake asylum law and procedure that will undermine the ability of the immigration courts to provide a full and fair hearing to those who seek protection in the United States.

Overall, the Rule is a series of inter-related changes that fortifies a new and tougher reality for respondents (*i.e.*, aliens litigating in the immigration court system) and their counsel to present their case in the immigration courts and on appeal. *First*, under the guise of efficiency the Agency drastically limited the availability of brief extensions and mandated simultaneous briefing, which forces applicants and defense counsel to rush through a first brief and file additional briefing later.[3] *Second*, the Agency eliminated the availability of remanding a case based on new evidence to solve a supposed "gamesmanship" problem.[4] However, the previous solution was satisfactory—namely, denying the motion to remand when the evidence was originally available. *Third*, the Rule prohibits immigration judges from hearing all relevant evidence on remand when the scope was specifically limited.[5] This requirement forces immigration judges to wear blinders, ignoring the reality that immigration cases occur over a series of years where legal and personal events occur that could change an applicant's eligibility and cause the judge to revisit the wisdom of an earlier decision. *Fourth*, the Rule creates a mechanism that allows immigration judges to challenge appellate decisions, placing them in the posture of litigants

[3] 85 Fed. Reg. 81588.

[4] 85 Fed. Reg. 81589.

[5] 85 Fed. Reg. 81590.

rather than neutral arbiters, under the justification of "quality assurance."[6] *Fifth*, the Agency eliminated immigration judges' tools of administrative closure and *sua sponte* authority that allowed them to have control over their own docket.[7] *Sixth*, the Rule makes a variety of changes to the timing and adjudication of appeals, ignoring the fact that some cases, based on the complexity of the record, take longer to adjudicate than others.[8] We discuss each independently and then explain, in the context of immigration court proceedings, how the Rules will likely limit development of the law and deny due process to those seeking protection in our country. We believe that the Rule contains changes that continue to diminish the role and function of the BIA as an independent adjudicatory body free from political pressure.

ARGUMENT

At base, the totality of the impact of the Rule places purported efficiency over a respondent's due process rights and shows a disregard for the orderly practice of immigration law. Further, although not the subject of this brief, it is important to note that the reduction of time for notice and comment for proposed rules severely undermines the ability for the public to digest and comment on rules. Reducing the time from 60 or 90 days to just 30 days violates the intent of Congress to give full deliberation to regulatory changes. As experienced adjudicators, we are in a unique position to contextualize these changes, but even with our experience, the breadth of these new regulations should allow for additional time to review and comment. Despite this abbreviated window, 1,284 comments were received regarding the Rule.[9] The majority of commenters expressed opposition to the Rule, specifically outlining their concerns that the Rule would negatively implicate due process to applicants.[10] Despite the Agency's response that "nothing in the [R]ule eliminates either an alien's right to notice or an alien's

[6] 85 Fed. Reg. 81590.
[7] 85 Fed. Reg. 81590–91.
[8] 85 Fed. Reg. 81591–92.
[9] 85 Fed. Reg. 81592.
[10] 85 Fed. Reg. 81592.

opportunity to be heard on a case before the Board," there is no doubt that these changes will frustrate justice for both the government and the applicants.[11] Additionally, the Agency's attempt to consider each of the individual changes in isolation diminishes their overall impact on the immigration system.[12] For all of these reasons, we felt compelled to file this brief and share our centuries of combined experience in adjudicating asylum applications and appeals.

A. The New Brief Extension and Simultaneous Briefing Rules Disadvantage Asylum Applicants and in Practice Will Undermine the Goals of Efficiency

Most egregiously, the Rule drastically "reduce[s] the maximum allowable time for an extension of the briefing schedule for good cause shown from 90 days to 14 days"[13] and mandates simultaneous briefing on all cases. Instead of increasing efficiency, these changes will penalize both the government and defense counsel by providing them less time for the drafting and filing of their appellate briefs and practically guarantee the need for at least one party to file a second reply brief to respond to any simultaneously-filed brief. The Agency justified this change by noting the unprecedented increase in the number of appeals received by and pending before the BIA, cutting weeks from the current briefing schedule for parties and mandating simultaneous briefing. While the crushing backlog at the BIA is no doubt a cause for concern, it is a result of the Agency's own policymaking.[14] The Agency concludes that

[11] 85 Fed. Reg. 81595.

[12] 85 Fed. Reg. 81595 (stating that "[e]ach of the Department's rules stands on its own, includes explanations of their basis and purpose, and allows for public comment, as required by the APA" in combination with "the interplay and impact of all of these rules is speculative at the present time due to both ongoing and expected future litigation—which may allow all, some, or none of the rules to ultimately take effect").

[13] 85 Fed. Reg. 81588; new 8 C.F.R. 1003.3(c) (eff. Jan. 16, 2021).

[14] Specifically, immigration judges must adjudicate cases very quickly to conform with agency-imposed completion quotas; there are many new immigration judges, thus leading to more decisions and more appeals; the Attorney General eliminated the judges' ability to administratively close cases and vacated precedent decisions that served as a basis for many stipulated grants of asylum that did not require appeal to the BIA. *See Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018); *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018); *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019).

these changes do not truly affect an applicant's substantive rights,[15] but this demonstrates a lack of understanding or experience with how the appeals process works. Both the changes in the timing and manner of briefing will only cause greater confusion amongst the immigration courts and the BIA.

Prior to the Rule's enactment, parties were automatically granted a 21-day briefing extension upon request (requests for additional extensions were considered on a case-by-case basis). The new Rule specifically indicates that extension requests should ***not*** be automatically granted.[16] Contrary to the Agency's position, this change will not encourage efficiency. Indeed, a policy of automatic extension for the asking would be more in line with the Agency's stated goal of increased efficiency, as it would prevent the need for an already understaffed BIA to assign resources to making case-by-case extension determinations. It would also provide more predictability to litigants.

The Agency's suggestion that briefing extensions are unnecessary is out of touch with reality. In prior practice, the appealing party was granted 21 days to file its brief, starting from the date the BIA mailed the notice and transcripts of the immigration court proceedings (which is available only at that time). Accordingly, litigants receive less time—sometimes *far* less time—to review the transcript and prepare the brief. Under the new Rule, this already tight schedule will become even more onerous, and the Agency failed to consider the impact mail delays caused by cuts to the U.S. Postal Service will have on the parties. The days lost due to mail slowdowns will create a significant shortening of the remaining briefing time for both parties.

In addition, the Agency ignores the fact that parties are not provided with the transcripts of the immigration court hearing—which in some cases contains the oral decision of the immigration judge—until the briefing schedule is set. As a result, the intervening 15-20 months from the time a notice of appeal is filed with the BIA until the agency mails the parties the transcript, IJ decision, and briefing

[15] 85 Fed. Reg. 81596.

[16] 85 Fed. Reg. 81588.

schedule often cannot be spent preparing the briefing. This is particularly true in the many cases where pro bono attorneys agree to represent respondents on appeal after the respondent appeared either *pro se* or with another lawyer before the immigration court. Given that many IJ decisions are issued orally, the respondent is left with only a Memorandum of Decision (a form simply indicating whether relief was granted or denied), and new appellate counsel is left with little to digest before receiving the briefing schedule and transcript less than three weeks before briefing is due. Considering the complexity of asylum and most other IJ determinations, this change will result in rushed briefing, emergency requests for extensions and unfairness to the litigants—all to save the BIA 21 days. We take particular issue with the Agency's conclusion that "a briefing extension request filed just before or on the date a brief is due suggest[s] that many extension requests are merely last-minute delay tactics."[17] Given the 21-day initial briefing period, and the delay from mailing, even an extension request filed *immediately* upon receipt would arrive "just before" the brief is due.

The Agency's decision to require simultaneous briefing on all cases, including those involving non-detained respondents, is likewise inefficient and against the interests of justice.[18] In its desire to save 21 days (a drop in the bucket compared to the years-long immigration process), the Agency now requires that parties simultaneously file their briefs. The Rule ignores the problems identified by commenters inherent in requiring one party to reply to an opponent's arguments *before* it has read them. Among the problems this presents is a potential waiver of arguments not raised on appeal.

[17] 81 Fed. Reg. 81637.

[18] We acknowledge that simultaneous briefing for detained cases is required for detained respondents, justified by the impetus to shorten detention. The Rule does not address whether this is in fact an efficient process. The BIA Practice Manual at 4.7(a)(ii) states the current rule for detained Respondents as: (ii) Detained cases. – When an appeal is filed in the case of a detained alien, the alien and DHS are both given the same 21 calendar days in which to file their initial briefs. The Board will accept reply briefs filed by DHS or by the alien within 14 days after expiration of the briefing schedule. No such provisions exist in the Rule to allow for reply briefs.

In practice, simultaneous briefing does not solve any problem it aims to fix, but instead creates inefficiencies for the parties and the Board. Simultaneous briefing virtually guarantees the need for at least one party to file a *second* brief after receiving and reviewing the other party's simultaneously-filed brief. This creates unnecessary additional work for at least one of the parties, and also requires the Board to consider an extra brief (along with the motion for leave to file that brief, as the BIA Practice Manual does not provide an automatic right to file a reply brief).

B. Eliminating the Availability of Remanding a Case Based on New Evidence Unfairly Prejudices Applicants Seeking Relief

It also concerns us that the Rule eliminates the Board's ability to remand a case based on new evidence. This is a prime example of the Rule placing efficiency concerns well ahead of justice and due process. By amending 8 C.F.R. § 1003.1(d)(7)(v), the Rule prohibits the BIA "from receiving new evidence on appeal, remanding a case from the immigration judge to consider new evidence on appeal, remanding a case for the immigration judge to consider new evidence in the course of adjudicating an appeal, or considering a motion to remand based on new evidence."[19] Due to the expansive nature of this regulatory change, new evidence that was not previously available or changes in law that occur over the course of the proceedings could never support a remand. As this Court well knows, immigration law is complex; the case law is constantly changing due to litigation in the federal courts. However, under the Rule, the BIA could not allow a remand based on new grounds of relief available to a noncitizen who benefits from a change in law. This does not comport with due process or the rule of law.

The Agency reasons that these changes will ensure the presentation of all available evidence at the immigration court stage and the efficient resolution of appeals. Instead, the Rule ignores the important and far more prevalent situations where there are valid reasons for reopening to present new evidence, such as changes in the law, evidence that was previously unavailable, and changes in

[19] 85 Fed. Reg. 81589.

circumstances that result in eligibility for a new form of relief. The Agency baldly accuses respondents of withholding evidence in the first instance and "gamesmanship." That has not been our experience. And to the extent gamesmanship does occur, it is properly dealt with by denying the motion to remand in specific cases where the evidence was not previously unavailable.

As former immigration judges, we heard cases that, through no fault of the respondents, took years to resolve, including cases that were pending at the BIA for months or years. In many of those cases, respondents experienced significant life changes, some of which resulted in actions taken by DHS affecting eligibility. Under the Rule, these changes can no longer be considered in determining whether to remand a case or when a case is actually remanded. In real life, over long periods of time, respondents marry, divorce, have children, and change employment status. As a result, noncitizens can become eligible for relief through, for example, immediate relatives in the United States or noncitizens with derivative asylum status through a spouse or parent. All of these relevant changes would be meaningless because the respondents would be foreclosed from reopening their removal orders. Of course, the finality of proceedings is important—but more so is the integrity of the proceedings. If an injustice is committed, we should not strip judges of the ability to resolve that injustice. All of these life events can impact the availability or lack of availability of immigration benefits. Therefore, such changes should be considered in the course of a motion to remand if appropriate, and subsequently, on remand if granted.

Perhaps most troubling is that the language of the Rule unfairly favors the government over asylum applicants. The Rule under 8 C.F.R. § 1003.1(d)(7)(v) reads "[s]ubject to paragraph (d)(7)(v)(B) of this section, the Board shall not receive or review new evidence submitted on appeal, shall not remand a case for consideration of new evidence received on appeal, and shall not consider a motion to remand

based on new evidence. A party seeking to submit new evidence shall file a motion to reopen in accordance with applicable law."[20] The exceptions set forth at subsection (B) are extremely limited and include new evidence about identity and background investigations.[21] Thus, the Agency is creating exceptions for the consideration of new evidence from DHS but not from respondents. It allows DHS to investigate non-citizens without end, and seek remand if an adverse issue is uncovered, but if new relief materializes, new threats to an alien's life are made, a conviction is overturned, or the law changes to the benefit of a respondent, a remand is nevertheless prohibited. Such a rule eviscerates due process in removal proceedings and undermines finality, by allowing DHS to perpetually hold the threat of reopening over respondents.

C. Limiting the Scope of a Board Remand to Disallow Immigration Judges From Considering Issues Beyond Those Specified in the Remand Ignores the Lengthy Timeline and Reality for Many Applications

The Agency also eliminated the ability of immigration judges to consider issues beyond the express scope of the remand.[22] Effectively, this ignores the fact that immigration proceedings often occur for many years, and during those years, various life events worth considering occur. In our experience, immigration judges do not easily reopen a record, but are willing to do so when compelling reasons—such as a material change in circumstances or law—arise. As discussed above, during the pendency of the applicant's immigration proceedings, major life events—such as marriage, divorce, birth of children, or death of relatives—may occur and are often relevant to eligibility for relief. In addition, some respondents have criminal convictions overturned during the course of their proceedings, which affects removability and eligibility for relief as well.

[20] 85 Fed. Reg. 81652.

[21] 85 Fed. Reg. 81652.

[22] 85 Fed. Reg. 81590.

Moreover, immigration law changes with regularity due to federal court litigation. Under the Rule, immigration judges are prohibited from considering changes in the law if the BIA limits the scope of the remand—setting up a lengthy appellate process, perhaps to the very U.S. Court of Appeals that issued the rule change. The Rule ignores the reality of immigration court proceedings and the lives of those who appear in immigration court. It strips any semblance of fairness from proceedings by requiring immigration judges to wear blinders in remanded cases. In cases where the law has changed, an immigration judge should not be prohibited from considering whether the change in law impacts the respondent's case simply because the BIA remanded for a different purpose. The Rule constrains an immigration judge's ability to apply the rule of law and afford due process in remanded removal proceedings.

D. Giving Immigration Judges Authority to Contest BIA Decisions Not Only Disrupts Their Neutral Status as Judges, But Undermines the Integrity of the BIA

Among the changes that concern us, we are particularly worried about the unprecedented role the new Rule gives to immigration judges to contest the appellate review of their own decisions. Granting the authority to immigration judges "to ensure the quality of BIA decision-making," the Rule would allow an immigration judge to "certify" a BIA decision with which she disagreed to the EOIR Director to decide whether the case should be reopened or remanded.[23] This Rule places the immigration judge in the role of a litigant, undermines the authority and integrity of the BIA's codification procedures, and circumvents the regular order of appeals.[24] Included in the regular order of appeals is the notion that the

[23] *See* 85 Fed. Reg. 81590.

[24] It was precisely this type of procedure, which has been highly criticized as irregular, that was involved in the Attorney General's decision in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018). In that case, the BIA had reversed a decision denying asylum to a woman who had survived domestic violence and remanded to the IJ with instructions to order a biometrics check, and to grant the application dependent on the biometrics check. The IJ, who expressed disagreement with precedents authorizing asylum for domestic violence victims, was suspected of using back channels to bring the case to the attention of the Attorney General, who certified it to himself despite no opposition to the grant of asylum by either of the parties. *See*, Center for Gender and Refugee Studies, Backgrounder and Briefing on *Matter of A-B-*, (Aug.

immigration judge's decision must be wholly contained within her written opinion. Permitting an immigration judge to follow and then challenge the Board's review negates this principle, turning the immigration judge into an advocate for her position rather than the author of a reasoned decision.

As former judges, we certainly understand that an adjudicator whose decision is overturned on appeal or who receives a remand may disagree with the decision of the appellate body (sometimes vehemently so). But we also understand that the appellate process, which limits the judge's involvement to the decision she issued, is fundamental to our system of jurisprudence. While the commentary states that the process "is limited only to cases in which the immigration judge articulates a specific error allegedly committed by the Board within a narrow set of criteria,"[26] inviting an immigration judge to make an argument that specifies BIA error places immigration judges in the position of advocate rather than arbiter. Furthermore, it places the EOIR Director, a political appointee, in a role adverse to the Board.

The Rule leaves unanswered many important questions raised by this unprecedented deviation from longstanding appellate procedure. For instance, the Agency does not specify the rights of a respondent who was granted relief by the Board, presumably by defeating arguments by DHS, but is now faced with an adverse immigration judge. Nor does the Rule specify the timeframe in which the Director must render a decision, which could result in prolonged detention as the BIA decision remains un-final. Such a result would be patently unfair and a further example of the ways in which the Agency has created new procedures that fail to afford due process.

E. The Rule Improperly Revokes the Regulatory Authority of Immigration Judges and the Board to Order Administrative Closure

The Rule also removes any "freestanding authority for immigration judges or Board members to administratively close immigration cases absent an express regulatory or judicially approved settlement

2018), https://cgrs.uchastings.edu/matter-b/back-grounder-and-briefing-matter-b. This new regulation appears to be a retroactive device to authorize conduct that was publicly perceived and criticized as improper.

basis to do so"[25] and contravenes adjudicators' ability to manage their own proceedings. The authority of immigration judges and the Board to administratively close cases was not created by the Board's precedent or prior decision by the Attorney General, but rather derives from their regulatory authority as adjudicators to manage their proceedings. This authority, like the inherent powers of federal courts, necessarily results from the creation and regulation of Immigration Courts and the BIA by the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229(a), and implementing regulations. The INA and regulations that govern these institutions authorize administrative closure and, in some cases, specifically require it. Immigration judges, like federal judges, need a broad range of tools, including administrative closure, to efficiently use judicial resources in the orderly disposition of cases. Stripping immigration judges and the BIA of the power to order administrative closure, which they have used judiciously for decades, only impedes efficiency in the adjudication of removal proceedings.

The regulatory authority of immigration judges to manage their calendars mirrors the inherent authority of Article III judges to manage their dockets through the use of administrative closure. Article III judges possess an inherent authority to manage their dockets. In 1936, the U.S. Supreme Court acknowledged this authority, explaining that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "How this can best be done," the Court observed, "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Id.* at 254–55 (citations omitted). Administrative closure is one of the many tools federal judges have used to maintain this balance.

To fully understand the importance of administrative closures—and make the complete analogy to Article III jurisdiction—we must take a look at the old regulation and past case law. Similarly, immigration

[25] 85 Fed. Reg. 81590.

judges previously possessed the authority to take "any action" that is "appropriate and necessary for the disposition" of cases before them. 8 C.F.R. § 1003.10(b). In 2012, consistent with longstanding practice, the BIA acknowledged that this authority includes "the authority to regulate the course of [a] hearing." *Matter of Avetisyan*, 25 I&N Dec. 688, 691 (BIA 2012). To regulate the course of a hearing, the BIA explained, "an Immigration Judge or the [BIA] may find it necessary or, in the interest of justice and fairness to the parties, prudent to defer further action for some period of time." *Id.* How this can best be done, the BIA observed, requires the immigration judge to "exercise his or her independent judgment and discretion" and "assess[ ] factors that are particularly relevant to the efficient management of" resources. *Id.* at 691, 695. Administrative closure is one of the many tools immigration judges have used to achieve this efficient management of administrative resources.

By referring to administrative closure as a "docket-management tool," federal courts have recognized that—like the power to stay proceedings—the power to order administrative closure is "incidental" to a court's inherent authority to control its docket. *Ali v. Quarterman*, 607 F.3d 1046, 1047 n.2 (5th Cir. 2010) (citation omitted); *Penn-America Ins. Co. v. Mapp*, 521 F.3d 290, 295 (4th Cir. 2008) (citation omitted); *see also CitiFinancial Corp. v. Harrison*, 453 F.3d 245, 250 (5th Cir. 2006) (referring to administrative closure as a "case-management tool"). The U.S. Court of Appeals for the First Circuit has explained that administrative closure "is used in various districts throughout the nation in order to shelve pending, but dormant, cases." *Lehman v. Revolution Portfolio L.L.C.*, 166 F.3d 389, 392 (1st Cir. 1999). In *Lehman*, the First Circuit "endorse[d] the judicious use of administrative closings by district courts in circumstances in which a case, though not dead, is likely to remain moribund for an appreciable period of time." *Id.* For decades, immigration adjudicators have similarly used administrative closure as a docket-management tool. *See Matter of Avetisyan*, 25 I&N Dec. at 695; *Matter of Hashmi*, 24 I&N Dec. 785, 791 n.4 (BIA 2009); *Matter of Amico*, 19 I&N Dec. 652, 654 n.1 (BIA 1988); *see also* Memorandum for All Immigration Judges, et al., from Brian M. O'Leary, Chief Immigration Judge, EOIR, Re: Operating

Policies and Procedures Memorandum 13-01: Continuances and Administrative Closure at 3 (Mar. 7, 2013) available at www.justice.gov/sites/default/files/eoir/legacy/2013/03/08/13-01.pdf [hereinafter O'Leary Memo]. Regulations establishing and governing immigration judges ratify their inherent authority to order administrative closure.

The legal framework establishing immigration judges indicates that they possess the same authority to manage their dockets as federal judges, including the authority to order administrative closure. In the INA, Congress defined an immigration judge as "an attorney whom the Attorney General appoints as an administrative *judge* . . . qualified to conduct specified classes of proceedings." 8 U.S.C. § 1101(b)(4) (2017) (emphasis added). Specifically, Congress authorized immigration judges to "conduct proceedings for deciding the inadmissibility or deportability of an alien." *Id.* at § 1229a(a)(1). Consistent with its designation of immigration judges as judges authorized to conduct proceedings, Congress granted immigration judges the power to "administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses." *Id.* at § 1229a(b)(1). Furthermore, Congress authorized immigration judges to issue subpoenas and impose civil monetary sanctions for contempt—tools also used by Article III judges to ensure the smooth operation of court proceedings. *Id.*

Building on this statutory authorization, the relevant regulation promulgated under the INA specifically grants immigration judges the authority to "exercise their independent judgment and discretion." 8 C.F.R. § 1003.10(b) (2017). This regulatory provision further provides that, "[i]n deciding the individual cases before them," immigration judges "may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases." *Id.*; *see also id.* at § 1003.1(d)(1)(ii) (granting the same authority to the BIA). By regulatory and statutory design, then, immigration judges are independent adjudicators with the authority to take a broad range of actions to appropriately manage the cases before them. *See Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 893 (2018) (explaining that immigration judges' authority to order administrative closure is

supported by these federal regulations). Such actions include administrative closure. *Matter of Avetisyan*, 25 I&N Dec. 688, 691–92 (BIA 2012); *accord Baez-Sanchez v. Sessions*, 872 F.3d 854 (7th Cir. 2017) (holding that 8 C.F.R. § 1003.10(b) is "a declaration that [immigration judges] may exercise all of the Attorney General's powers 'in the cases that come before them,' unless some other regulation limits that general delegation").

Administrative closure is essentially a stay of proceedings, during which a case is removed from the immigration judge's calendar or the BIA's docket. *See id.* at 692. The duration of such closure is set by the completion of a process separate and apart from removal proceedings, but nonetheless potentially relevant to the outcome of the proceedings. When immigration judges administratively close a case that cannot move forward until an outside process is completed, it allows them to focus on other cases before their court without having to repeatedly recalendar inactive proceedings.

The Agency has recognized the utility and inherent authority of administrative closure by issuing a number of regulations involving the use of administrative closure. In 2001, for example, DOJ directed immigration judges to administratively close cases in which the immigrant "appears eligible to file for relief under [Legal Immigration Family Equity] Legalization." 8 C.F.R. § 245a.12(b)(1) (2017); 66 Fed. Reg. 29,661, 29,674 (June 1, 2001). Similarly, in 2003, DOJ promulgated a regulation instructing immigration judges to administratively close cases in which the immigrant "appears eligible for V nonimmigrant status." 8 C.F.R. § 1214.3 (2017); 68 Fed. Reg. 9,823, 9,836 (Feb. 28, 2003). Another regulatory provision allows victims of severe forms of human trafficking to request administrative closure of removal proceedings "to allow the alien to pursue an application for T nonimmigrant status," relief created by the Victims of Trafficking and Violence Protection Act. 8 C.F.R. § 1214.2(a) (2017); 68 Fed. Reg. 9,823, 9,836 (Feb. 28, 2003).

Likewise, in 2013, DHS amended regulations regarding waivers of certain grounds of inadmissibility to explicitly allow immigrants, after removal proceedings had been administratively closed,

to file an application for a provisional unlawful presence waiver. 78 Fed. Reg. 535, 577 (Jan. 3, 2013) (codified at 8 C.F.R. § 212.7(e)(4)(v) (2017)). If the case has not been administratively closed, it is prohibited from evaluating the immigrant's application for a provisional unlawful presence waiver (titled Form I-601A). Accordingly, in such cases, without the power of administrative closure to pause removal proceedings to allow these waiver applications to be processed, immigration judges would be forced to unnecessarily hear cases in which an immigrant may otherwise be eligible for relief—in other words, immigration judges could expend time and resources adjudicating the case and entering an order of removal, only to have USCIS grant a provisional unlawful presence waiver after the fact.

Underscoring its endorsement of administrative closure, in 2016 DHS explicitly rejected a commenter's suggestion that it eliminate the requirement that removal proceedings be administratively closed before an immigrant can apply for a provisional waiver of inadmissibility. 81 Fed. Reg. 50,243, 50,255 (July 29, 2016). In response to the comment, DHS stated that DOJ "instructs its immigration judges to use available docketing tools to ensure fair and timely resolution of cases." *Id.* DHS further stated that it "believes that current processes provide ample opportunity for eligible applicants to seek a provisional waiver, while improving the allocation of government resources and ensuring national security, public safety, and border security." *Id.* Both in the context of waivers of inadmissibility and in general, the use of administrative closure to manage the immigration court's docket is vital to allocating judicial resources efficiently.

F. The Rule's Creation of Arbitrary Deadlines and Timeframes Strips Immigration Judges of the Power to Control Their Own Dockets

In addition to eliminating administrative closure authority, the Rule also strips appellate immigration judges of other tools to manage their dockets. For example, the Rule "amends 8 C.F.R. 1003.1(e)(8)(i) to harmonize the time limits for adjudicating cases so that both the 90- and 180-day

deadlines are set from the same starting point—when the record is complete."[26] Additionally, the Rule "established specific time frames for review by the screening panel, processing of transcripts, issuance of briefing schedules, and review by a single BIA member to determine whether a single member or a three-member panel should adjudicate the appeal. . . ."[27] While we support creating efficiencies in an overwhelmed system, we strongly oppose arbitrary deadlines that impact appellate immigration judges' ability to accurately and fairly perform their duties.

The Agency cites to the increasing backlog of cases at the immigration courts and the BIA as justification for its creation of deadlines and timeframes.[28] However, as immigration judges and appellate immigration judges who have served under many administrations, we understand that each time the Agency changes priorities and sets new deadlines and timeframes, the backlog increases rather than decreases. Furthermore, setting arbitrary deadlines and timeframes that must be consistent in every case ignores the reality of the BIA docket. While some appeals are simple and can be adjudicated quickly, other cases are exceptionally complex with large convoluted records. As such, appellate immigration judges are professionals and should be trusted to make decisions about how to prioritize vastly different cases. Setting strict deadlines will lead to mistakes and even more federal court appeals, which will ultimately increase the backlog.

G. The Elimination of *Sua Sponte* Authority Puts Too Much Weight on Expediency at the Expense of Asylum Applicants' Due Process Rights

The Rule's elimination of the delegation of *sua sponte* reopening authority under 8 C.F.R. §§ 1003.2(a) and 1003.23(b)(1) would offend notions of justice. Indeed, *sua sponte* reopening authority is a necessary tool for immigration judges and the Board to ensure that due process is the guiding principle of our system, rather than expediency and finality. As former immigration judges, each of us faced

[26] 85 Fed. Reg. 81591.

[27] 85 Fed. Reg. 81591.

[28] 85 Fed. Reg. 52507-08.

compelling motions to reopen which failed to meet the regulatory requirements, but also did not present extraordinary circumstances for *sua sponte* reopening, and those motions were denied. Similarly, we have adjudicated motions to reopen that—to provide due process to the unusual respondent in extraordinary circumstances—were appropriately granted under the Court's *sua sponte* authority. *Sua sponte* reopening authority is an especially important power for adjudicators weighing the claims of an unrepresented respondent. In our experience, many cases that are appropriately reopened under a Judge's *sua sponte* authority are the result of unrepresented respondents unknowingly failing to complete a ministerial task, such as timely submitting a change of address form, resulting in cascading immigration consequences, often for years. The purpose of the Immigration Court system is rather due process for those appearing before it. Stripping adjudicators of the ability to reopen the extraordinary case that is otherwise final, and does not otherwise meet the stringent standards for reopening, makes the system less fair.

We reject in the strongest possible terms the rationale for the Rule that *sua sponte* authority should not exist because of its "potential for inconsistent usage and abuse." From our decades of experience, we know that the Department of Justice carefully vets and hires immigration judges and Board members precisely because of their ability to exercise sound judgment and discretion, in accordance with the Constitution and binding laws. Collectively, we have decided many tens of thousands of cases, and are keenly aware that each one represents a person's life, and not simply a completion number on a dashboard. Each of us appreciated that *sua sponte* authority was to be exercised in truly extraordinary circumstances and was not meant as a general cure for filing defects, and we adjudicated motions accordingly.

CONCLUSION

The new Rule purports to address problems of backlogged courts, but ultimately causes more problems than it solves. Under the guise of promoting efficiency, the Rule turns due process on its head; a trade-off not supported by asylum laws passed by Congress or any sense of fairness to vulnerable asylum seekers.

For these reasons, *amici* urge this Court to enjoin the new Rule.

Dated: January 29, 2021

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ *Michael J. Stortz*
Michael J. January 29, 2021Stortz

Attorney for Proposed *Amici Curiae*
Former Immigration Judges and
Members of the Board of Immigration Appeals

APPENDIX A

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BIOGRAPHIES OF AMICI CURIAE

The **Honorable Steven Abrams** served as an Immigration Judge from 1997 to 2013 at the New York, Varick Street, and Queens Wackenhut Immigration Courts in New York City. Prior to his appointment to the bench, he worked as a Special U.S. Attorney in the Eastern District of New York, and before that as District Counsel, Special Counsel for criminal litigation, and general attorney for the former INS. Judge Abrams also previously worked as assistant counsel for the State of New York Commission of Investigation, as assistant counsel for the New York State Department of Social Services Medicaid Fraud and Abuse Unit, and for the Queens County District Attorney's Office, serving first as an assistant district attorney, then as senior assistant in the Homicide Bureau.

The **Honorable Terry A. Bain** served as an Immigration Judge in the New York Immigration Court from 1994 until 2019.

The **Honorable Sarah M. Burr** served as a U.S. Immigration Judge in New York from 1994 and was appointed as Assistant Chief Immigration Judge ("ACIJ") in charge of the New York, Fishkill, Ulster, Bedford Hills and Varick Street immigration courts in 2006. She served as an ACIJ until January 2011, when she returned to the bench full-time until she retired in 2012. Prior to her appointment, she worked as a staff attorney for the Criminal Defense Division of the Legal Aid Society in its trial and appeals bureaus and also as the supervising attorney in its immigration unit. She currently serves on the Board of Directors of the Immigrant Justice Corps.

The **Honorable Esmeralda Cabrera** served as an Immigration Judge from 1994 until 2005 in the New York and Newark and Elizabeth, NJ Immigration Courts.

The **Honorable Teofilo Chapa** served as an Immigration Judge in Miami, Florida from

1995 until 2018.

The **Honorable Jeffrey S. Chase** served as an Immigration Judge in New York City from 1995 to 2007 and was an attorney advisor and senior legal advisor at the Board from 2007 to 2017. He is presently in private practice as an independent consultant on immigration law, and is of counsel to the law firm of DiRaimondo & Masi in New York City. Prior to his appointment, he was a sole practitioner and volunteer staff attorney at Human Rights First. He also was the recipient of the American Immigration Lawyers Association's annual pro bono award in 1994 and chaired AILA's Asylum Reform Task Force.

The **Honorable George T. Chew** served as an IJ in New York from 1995 to 2017. Previously, he served as a trial attorney at the INS.

The **Honorable Joan V. Churchill** served as an Immigration Judge from 1980-2005 in Washington D.C./Arlington VA, including 5 terms as a Temporary Member of the Board of Immigration Appeals.

The **Honorable Bruce J. Einhorn** served as an Immigration Judge in Los Angeles from 1990 to 2007. He now serves as an Adjunct Professor of Law at Pepperdine University School of Law in Malibu, California, and a Visiting Professor of International, Immigration, and Refugee Law at the University of Oxford, England. He is also a contributing op-ed columnist at D.C.-based newspaper, *The Hill*. He is a member of the Bars of Washington D.C., New York, Pennsylvania, and the Supreme Court of the United States.

The **Honorable Cecelia M. Espenoza** served as a Member of the Board of Immigration Appeals from 2000-2003 and in the Office of the General Counsel from 2003-2017 where she served as Senior Associate General Counsel, Privacy Officer, Records Officer and Senior FOIA Counsel. She is presently in private practice as an independent consultant on immigration law, and

a member of the World Bank's Access to Information Appeals Board. Prior to her EOIR appointments, she was a law professor at St. Mary's University (1997-2000) and the University of Denver College of Law (1990-1997) where she taught Immigration Law and Crimes and supervised students in the Immigration and Criminal Law Clinics. She has published several articles on Immigration Law. She is a graduate of the University of Utah and the University of Utah S.J. Quinney College of Law. She was recognized as the University of Utah Law School's Alumna of the Year in 2014 and received the Outstanding Service Award from the Colorado Chapter of the American Immigration Lawyers Association in 1997 and the Distinguished Lawyer in Public Service Award from the Utah State Bar in 1989-1990.

The **Honorable Noel Ferris** served as an Immigration Judge in New York from 1994 to 2013 and an attorney advisor to the Board from 2013 to 2016, until her retirement. Previously, she served as a Special Assistant U.S. Attorney in the Southern District of New York from 1985 to 1990 and as Chief of the Immigration Unit from 1987 to 1990.

The **Honorable James R. Fujimoto** served as an Immigration Judge in Chicago from 1990 until 2019.

The **Honorable Gilbert Gembacz** served as an Immigration Judge in Los Angeles from 1996 to 2008. He also served a detail to Guam in 1998. Judge Gembacz taught incoming immigration judges as part of their training at the National Judicial College for two years. He also served for six years on the Executive Committee of the National Association for Immigration Judges, helping to negotiate the union's first contract.

The **Honorable John F. Gossart, Jr.** served as a U.S. Immigration Judge from 1982 until his retirement in 2013 and is the former president of the National Association of Immigration Judges. At the time of his retirement, he was the third most senior immigration judge in the United

States. Judge Gossart was awarded the Attorney General Medal by then Attorney General Eric Holder. From 1975 to 1982, he served in various positions with the former Immigration Naturalization Service, including as general attorney, naturalization attorney, trial attorney, and deputy assistant commissioner for naturalization. He is also the co-author of the National Immigration Court Practice Manual, which is used by all practitioners throughout the United States in immigration court proceedings. From 1997 to 2016, Judge Gossart was an adjunct professor of law at the University of Baltimore School of Law teaching immigration law, and more recently was an adjunct professor of law at the University of Maryland School of Law also teaching immigration law. He has been a faculty member of the National Judicial College, and has guest lectured at numerous law schools, the Judicial Institute of Maryland and the former Maryland Institute for the Continuing Education of Lawyers. He is also a past board member of the Immigration Law Section of the Federal Bar Association. Judge Gossart served in the United States Army from 1967 to 1969 and is a veteran of the Vietnam War.

The **Honorable Paul Grussendorf** served as an Immigration Judge in Philadelphia and San Francisco from 1997 to 2004.

The **Honorable Miriam Hayward** is a retired Immigration Judge. She served on the San Francisco Immigration Court from 1997 until 2018.

The **Honorable Charles M. Honeyman** served as an Immigration Judge in the Philadelphia and New York Immigration Courts from 1995 until 2020.

The **Honorable Rebecca Jamil** was appointed as an Immigration Judge by Attorney General Loretta Lynch in February 2016 and heard cases at the San Francisco Immigration Court until July 2018. From 2011 to February 2016, Judge Jamil served as assistant chief counsel for U.S. Immigration and Customs Enforcement in San Francisco. From 2006 to 2011, she served as

staff attorney in the Research Unit, Ninth Circuit Court of Appeals, in San Francisco, focusing exclusively on immigration cases. Judge Jamil earned a Bachelor of Arts degree in 1998 from Stanford University and a Juris Doctor in 2006 from the University of Washington Law School. Judge Jamil is a member of the Washington State Bar, and is currently in private practice in San Francisco.

The Honorable William P. Joyce served as an Immigration Judge in Boston, Massachusetts. Subsequent to retiring from the bench, he has been the Managing Partner of Joyce and Associates with 1,500 active immigration cases. Prior to his appointment to the bench, he served as legal counsel to the Chief Immigration Judge. Judge Joyce also served as an Assistant U.S. Attorney for the Eastern District of Virginia, and Associate General Counsel for enforcement for INS. He is a graduate of Georgetown School of Foreign Service and Georgetown Law School.

The **Honorable Edward Kandler** was appointed as an Immigration Judge in October 1998. Prior to his appointment to the Immigration Court in Seattle in June 2004, he served as an Immigration Judge at the Immigration Court in San Francisco from August 2000 to June 2004 and at the Immigration Court in New York City from October 1998 to August 2000. Judge Kandler received a Bachelor of Arts degree in 1971 from California State University at San Francisco, a Master of Arts degree in 1974 from California State University at Hayward, and a Juris Doctorate in 1981 from the University of California at Davis. Judge Kandler served as an Assistant U.S. Trustee for the Western District of Washington from 1988 to 1998. He worked as an attorney for the law firm of Chinello, Chinello, Shelton & Auchard in Fresno, California, in 1988. From 1983 to 1988, Judge Kandler served as an Assistant U.S. Attorney in the Eastern District of California. He was also with the San Francisco law firm of Breon, Galgani, Godino from 1981 to 1983. Judge Kandler is a member of the California Bar.

The **Honorable Carol King** served as an Immigration Judge from 1995 to 2017 in San Francisco and was a temporary Board member for six months between 2010 and 2011. She previously practiced immigration law for ten years, both with the Law Offices of Marc Van Der Hout and in her own private practice. She also taught immigration law for five years at Golden Gate University School of Law and is currently on the faculty of the Stanford University Law School Trial Advocacy Program. Judge King now works as a Removal Defense Strategist, advising attorneys and assisting with research and writing related to complex removal defense issues.

The **Honorable Elizabeth A. Lamb** was appointed as an Immigration Judge in September 1995. She received a Bachelor of Arts degree from the College of Mt. St. Vincent in 1968, and a Juris Doctorate in 1975 from St. John's University. From 1983 to 1995, she was in private practice in New York. Judge Lamb also served as an adjunct professor at Manhattan Community College from 1990 to 1992. From 1987 to 1995, Judge Lamb served as an attorney for the Archdiocese of New York as an immigration consultant. From 1980 to 1983, she worked as senior equal employment attorney for the St. Regis Paper Company in West Mark, New York. From 1978 to 1980, Judge Lamb served as a lawyer for the New York State Division of Criminal Justice Services in New York. She is a member of the New York Bar.

The **Honorable Donn L. Livingston** served as an Immigration Judge in New York City and Denver, Colorado from 1995 until his retirement in 2018.

The **Honorable Margaret McManus** was appointed as an Immigration Judge in 1991 and retired from the bench after twenty-seven years in January 2018. She received a Bachelor of Arts degree from the Catholic University of America in 1973, and a Juris Doctorate from Brooklyn Law School in 1983. Judge McManus was an attorney for Marion Ginsberg, Esquire from 1989 to 1990 in New York. She was in private practice in 1987 and 1990, also in New York. Judge

McManus worked as a consultant to various nonprofit organizations on immigration matters including Catholic Charities and Volunteers of Legal Services from 1987 to 1988 in New York. She was an adjunct clinical law professor for City University of New York Law School from 1988 to 1989. Judge McManus served as a staff attorney for the Legal Aid Society, Immigration Unit, in New York, from 1983 to 1987. She is a member of the New York Bar.

The **Honorable Charles Pazar** was born in the Bronx, New York, and grew up in suburban New Jersey. He earned a B.A., *magna cum laude* from Boston University and a J.D. from Rutgers University School of Law in Newark, New Jersey. Judge Pazar served in the Drug Enforcement Administration Office of Chief Counsel and the Immigration and Naturalization Service Office of General Counsel. He was a Senior Litigation Counsel in the Office of Immigration Litigation (OIL) immediately preceding his appointment as an Immigration Judge in 1998. He served as an Immigration Judge in Memphis, Tennessee, from 1998 until his retirement in 2017. During his tenure as an Immigration Judge, he was a panelist in conferences sponsored by the Memphis Bar Association, the Tennessee Bar Association, the Federal Bar Association Immigration Law Section, the University of Mississippi, and the Arkansas Association of Criminal Defense Attorneys. The FBA has recognized him for his efforts to encourage pro bono representation. The graduating students at the University of Memphis Cecil C. Humphreys School of Law voted him as graduation speaker in the May, 2017, commencement. Judge Pazar serves as an adjunct professor of law at the University of Memphis. He has also served as an adjunct at the University of Mississippi School of Law. Since retirement, he has continued to teach at the University of Memphis. He has spoken at houses of worship in Memphis and at the Bench Bar Conference of the Memphis Bar Association, and the Immigration Law Section of the Federal Bar Association. In addition to speaking, he has written articles for the *Memphis Bar Journal*, *Tennessee Bar*

Journal, and *The Green Card* (FBA Immigration Law Section journal), advocating for increased pro bono participation by attorneys in the Immigration Courts.

The **Honorable Laura Ramirez** has been a member of the California Bar since 1985. She was appointed an Immigration Judge in San Francisco in 1997, where she served until her retirement from the bench on December 31, 2018.

The **Honorable John W. Richardson** served as an Immigration Judge in Phoenix, Arizona from 1990 until 2018. From 1968 to 1990, he served in the United States Army, Judge Advocate General's Corps, as a trial attorney, trial judge, regional defense counsel, legislative counsel to the Secretary of the Army, and director, Senate Affairs for the Secretary of Defense.

The **Honorable Lory D. Rosenberg** served on the Board from 1995 to 2002. She then served as Director of the Defending Immigrants Partnership of the National Legal Aid & Defender Association from 2002 until 2004. Prior to her appointment, she worked with the American Immigration Law Foundation from 1991 to 1995. She was also an adjunct Immigration Professor at American University Washington College of Law from 1997 to 2004. She is the founder of IDEAS Consulting and Coaching, LLC., a consulting service for immigration lawyers, and is the author of Immigration Law and Crimes. She currently works as Senior Advisor for the Immigrant Defenders Law Group.

The **Honorable Susan Roy** started her legal career as a Staff Attorney at the Board of Immigration Appeals, a position she received through the Attorney General Honors Program. She served as Assistant Chief Counsel, National Security Attorney, and Senior Attorney for the DHS Office of Chief Counsel in Newark, NJ, and then became an Immigration Judge, also in Newark. Judge Roy has been in private practice for nearly five years; two years ago, she opened her own immigration law firm. Judge Roy is the NJ AILA Chapter Liaison to EOIR, is the Vice Chair of

the Immigration Law Section of the NJ State Bar Association, and in 2016 was awarded the Outstanding Pro Bono Attorney of the Year by the NJ Chapter of the Federal Bar Association.

The **Honorable Paul W. Schmidt** served as an Immigration Judge from 2003 to 2016 in Arlington, Virginia. He previously served as Chairman of the Board of Immigration Appeals from 1995 to 2001, and as a Board Member from 2001 to 2003. He authored the landmark decision *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1995) extending asylum protection to victims of female genital mutilation. He served as Deputy General Counsel of the former INS from 1978 to 1987, serving as Acting General Counsel from 1986-87 and 1979-81. He was the managing partner of the Washington, D.C. office of Fragomen, Del Rey & Bernsen from 1993 to 1995, and practiced business immigration law with the Washington, D.C. office of Jones, Day, Reavis and Pogue from 1987 to 1992, where he was a partner from 1990 to 1992. He served as an adjunct professor of law at George Mason University School of Law in 1989, and at Georgetown University Law Center from 2012 to 2014 and 2017 to present. He was a founding member of the International Association of Refugee Law Judges (IARLJ), which he presently serves as Americas Vice President. He also serves on the Advisory Board of AYUDA, and assists the National Immigrant Justice Center/Heartland Alliance on various projects; and writes and lectures at various forums throughout the country on immigration law topics. He also created the immigration law blog immigrationcourtside.com.

The **Honorable Ilyce S. Shugall** served as an Immigration Judge from 2017 until 2019 in the San Francisco Immigration Court.

The **Honorable Helen Sichel** served as an Immigration Judge from 1997 until 2020 in the New York Immigration Court.

The **Honorable Denise Slavin** served as an Immigration Judge from 1995 until 2019 in

the Miami, Krome Processing Center, and Baltimore Immigration Courts.

The **Honorable Andrea Hawkins Sloan** was appointed an Immigration Judge in 2010 following a career in administrative law. She served on the bench of the Portland Immigration Court until 2017.

The **Honorable Gustavo D. Villageliu** served as a Board of Immigration Appeals Member from July 1995 to April 2003. He then served as Senior Associate General Counsel for EOIR until he retired in 2011, helping manage FOIA, privacy and security as EOIR Records Manager. Before becoming a Board Member, Judge Villageliu was an Immigration Judge in Miami, with both detained and non-detained dockets, as well as the Florida Northern Region Institutional Criminal Alien Hearing Docket 1990-95. Judge Villageliu was a member of the Iowa, Florida and District of Columbia Bars. He graduated from the University of Iowa College of Law in 1977. After working as a Johnson County Attorney prosecutor intern in Iowa City, Iowa he joined the Board as a staff attorney in January 1978, specializing in war criminal, investor, and criminal alien cases.

The **Honorable Polly A. Webber** served as an Immigration Judge from 1995 to 2016 in San Francisco, with details in facilities in Tacoma, Port Isabel, Boise, Houston, Atlanta, Philadelphia, and Orlando. Previously, she practiced immigration law from 1980 to 1995 in her own private practice in San Jose. She was a national officer in AILA from 1985 to 1991 and served as National President of AILA from 1989 to 1990. She has also taught immigration and nationality law at both Santa Clara University School of Law and Lincoln Law School.

The **Honorable Robert D. Weisel** served as an Immigration Judge in the New York Immigration Court from 1989 until his retirement at the end of 2016. Judge Weisel was an Assistant Chief Immigration Judge, supervising court operations both in New York City and New Jersey. He was also in charge of the nationwide Immigration Court mentoring program for both

Immigration Judges and Judicial Law Clerks. During his tenure as Assistant Chief Immigration Judge, the New York court initiated the first assigned counsel system within the Immigration Court's nationwide Institutional Hearing Program.