
AMERICAN BAR ASSOCIATION Due Process & Judicial Review

The American Bar Association strongly supports due process for immigrants and asylum seekers. Due process is fundamental to a nation governed by the rule of law. Although immigration matters routinely involve issues of life and liberty, our immigration system lacks some of the most basic due process protections that we take for granted in our American system of justice.

The ABA supports administrative and judicial review in immigration matters, including:

- Hearings for entering immigrants who may not appear to have documentation or a reasonable basis for entry; asylum seekers often flee without documents
- Administrative review when civil penalties are imposed
- Administrative and judicial review of removal decisions
- Judicial review of decisions regarding:
 - reopening and reconsideration of removal determinations
 - applications for asylum because of changed circumstances
 - denials of stays of execution of removal orders
 - writs of habeas corpus

The ABA supports due process protections in removal hearings and appeals

- Hearings should be in person and on the record, with notice and an opportunity to be heard
- Reasonable discovery procedures should be adopted for immigration proceedings
- Decisions should include findings of fact and conclusions of law that are amenable to review
- At least 60 days should be provided to file actions for judicial review of administrative decisions

The ABA supports neutral and independent immigration judges at trial and appellate levels

- Discretion should be restored to immigration judges in removal cases and appeals
- Immigration judges should be appointed pursuant to the Administrative Procedure Act
- Immigration judges should not be subject to the control of any executive branch cabinet officer

The ABA supports the due process right to counsel for all persons in removal proceedings

- Counsel should be available to all non-citizens in immigration-related matters
- Counsel and guardians ad litem should be appointed for unaccompanied minors and for the mentally ill and disabled in all immigration matters. These groups are particularly vulnerable and face a variety of obstacles to accessing counsel.

The ABA opposes expedited removal, which deprives individuals of the right to counsel and judicial review

The ABA supports legal rights (“legal orientation”) presentations for all non-citizens in removal proceedings

The ABA opposes criminalization of civil violations of immigration law

- Criminalization of violations such as undocumented presence or entry subjects asylum seekers to criminal penalties in violation of international law
- Entry of civil violations into the National Crime Information Center database (NCIC) will lead to inappropriate arrests and wasted resources

The ABA opposes retroactive applications of immigration laws

- Laws should not impose burdens or reduce benefits when individuals did not have the ability to take such laws into account in shaping their conduct

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The ABA supports a 10-year statute of limitations to institute proceedings to revoke or cancel citizenship certificates

The ABA recommends that legislation that gives the President powers to act in an immigration emergency preserve judicial review and protect the right to travel

The ABA supports increasing due process in consular visa adjudications and a system for review of certain visa denials

- Visa applicants should have the right to have an attorney present during the application and interview process and during any review proceedings
- An administrative review process should be established for all visa denials other than alien crewmen and aliens seeking to tour or transit through the United States (B, C and D visa applicants), to include independent review for questions of law and fact and a written decision

The ABA supports improved access to our asylum system, including:

- Prompt identification of asylum seekers at the border or in expedited removal proceedings
- Fair procedures for screening and identification of refugees who are intercepted or interdicted
- Creation of a refugee visa and improved screening processes for refugees overseas
- Allowing asylum officers to grant asylum after an initial "credible fear" interview
- Eliminating unduly restrictive limitations, including the one-year deadline to initiate claims

The ABA supports safeguards for detained asylum seekers and others, including:

- Meaningful access to legal representatives and access to accurate lists of legal service providers
- Accurate interpretation of immigration court proceedings, including all testimony
- If unrepresented, the ability to apply for asylum in a language other than English
- Permission for counsel to enter limited appearances for bond and custody proceedings
- Prohibitions on detainee transfers that would impede an attorney-client relationship

The ABA supports prompt hearings before immigration judges for detainees in removal proceedings

- Removal proceedings should include notice, an opportunity to be heard, and a decision with findings of fact and conclusions of law
- Removal decisions should be subject to meaningful administrative and judicial oversight

The ABA opposes the incommunicado detention of foreign nationals in undisclosed locations, and supports protection of constitutional and statutory rights of immigration detainees by:

- Disclosing names, detention facilities, and charges against detainees and ensuring immediate access to attorneys and family members
- Promptly charging detainees and releasing them when charges are not brought or removal orders are not effectuated within a constitutionally permissible period
- Providing prompt custody hearings before immigration judges with meaningful administrative review and judicial oversight
- Holding public removal hearings except when an individual's safety is at risk or when a judge finds that (a) information posing an imminent threat to national security is likely to be disclosed and (b) there is no reasonable alternative to closure that would adequately protect the government's interest

The ABA opposes the use of "secret evidence" and evidence presented in camera or ex parte in immigration proceedings, to:

- Deport non-citizens
- Deny immigration benefits
- Refuse release on bond

- Deny admission to:
 - returning lawful permanent residents;
 - those who have been paroled into the United States; and
 - asylum seekers.
- In extraordinary cases where there are national security concerns, the noncitizen and the adjudicator should, at a minimum, be provided with an unclassified summary of the classified information, prepared in accordance with appropriate judicial standards and supervision, that preserves the individual's ability to confront the evidence and prepare a defense.

The ABA supports protections for non-citizen children in detention

- Children should be entitled to a presumption against detention
- Children should have the right to an attorney in matters affecting their immigration status
- An advocate should be involved in all placement decisions to protect children's best interests