



Legislation Text

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Res. No. 761

Resolution urging the U.S. Department of Justice, Executive Office of Immigration Review, to implement a comprehensive hiring plan for immigration judges that includes increasing the number of judges appointed, drawing judges from more diverse backgrounds, requiring judges to have some degree of knowledge of immigration law, instituting training in cultural competence upon hiring, and providing immigration judges with the necessary resources to make competent and just decisions, and for the 112th Congress to allocate the necessary funds to accomplish these goals.

By Council Members Dromm, Barron, Brewer, Cabrera, Chin, James, Lander, Mendez, Palma, Recchia, Williams, Mark-Viverito, Nelson, Vann, Eugene, Gonzalez, Rodriguez and Koo

Whereas, When the federal Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) was signed into law in 1996, immigration enforcement by the Department of Homeland Security grew, which caused a vast increase of immigration cases and a backlog in the immigration courts; and

Whereas, The passage of IIRIRA established new grounds for deportation, eliminated relief from deportation, altered waivers of exclusion, eliminated judicial review for persons convicted of certain crimes, provided for mandatory detention, eliminated the automatic stay pending appeal and redefined aggravated felonies; and

Whereas, IIRIRA resulted in an increase of immigration cases and cut administrative assistance to immigration judges as well as law clerk assistance, which is causing an enormous burden on immigration judges; and

Whereas, According to the Department of Justice, at the end of 2010 there were 270 immigration judges in 59 immigration court locations in 29 states; and

Whereas, A Syracuse University TRAC report found that in 2010, immigration cases were pending for 439 days with a national backlog of 261,083 cases and that there were almost 1,100 cases for every

immigration judge, and in 2011 the TRAC report states that New York has 43,992 pending cases; and

Whereas, According to the U.S. Department of Justice FY 2010 Statistical Year Book, New York City, which is home to over three million immigrants, has only two immigration courts, which are the busiest immigration courts in the country and have received over 23,000 cases in 2010; and

Whereas, As their caseloads increase, immigration judges are being given inadequate resources; and

Whereas, According to the 2010 American Bar Association report, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases* (“The Report”), there is approximately one law clerk for every four immigration judges; and

Whereas, This poor ratio contributes to the heavy caseloads for each immigration judge and the lack of sufficient time for immigration judges to properly consider each case before them; and

Whereas, The Report indicates that the lack of sufficient time is causing immigration judges to fail to properly consider the evidence, formulate well-reasoned opinions in each case, and issue written decisions; and

Whereas, An increase in the hiring of additional qualified immigration judges and sufficient law clerks is the only way to relieve some of the heavy caseloads immigration judges endure; and

Whereas, Additional resources will also allow more time for immigration judges to decide each case and provide formal, clear written decisions that can be understood by non-citizens and their counsel; and

Whereas, The Report noted insufficient resources also contribute to inadequate opportunities for judicial training and professional development; and

Whereas, The United States Congress should provide sufficient funding to permit all judges to participate in regular, in-person trainings on a wide range of topics on immigration law; and

Whereas, The Report recommends that immigration judges participate in training in the assessment of credibility, identification of fraud, and cultural sensitivity and awareness; and

Whereas, According to the Department of Justice, Spanish language cases made up 66% of total cases in 2010, meaning the majority of defendants in immigration courts have either limited English proficiency or do

not speak English at all; and

Whereas, Immigration judges face a difficult language barrier to overcome in these circumstances, and with limited resources, such as interpreters, available to defendants and immigration judges this barrier can greatly affect the outcome of these cases; and

Whereas, The Report acknowledges that immigration judges additionally suffer from a lack of appropriate feedback mechanism such as performance reviews; and

Whereas, According to the Department of Justice, Assistant Chief Immigration Judges provide overall program direction, articulate policy and procedure, establish priorities and supervise the 270 immigration judges spread throughout the United States; and

Whereas, Currently there are only nine Assistant Chief Immigration Judges (ACIJ) to assist all 270 immigration judges; and

Whereas, The Report states that having only nine ACIJ to assist 270 immigration judges is simply not adequate and more need to be hired; and

Whereas, The United States Attorney General appoints all immigration judges, and according to the Report, the standards in hiring immigration judges are vague and open positions are not quickly filled; and

Whereas, The Report notes immigration judges who are appointed often lack adequate experience in immigration law and cultural competence and more needs to be done during the vetting process to ensure that immigration judges have both cultural understanding and a full understanding of immigration law; and

Whereas, The United States Congress and the Department of Justice must increase efforts to alleviate some of the problems immigration judges face, increase the quantity of and qualifications for immigration judges, provide training and increase transparency, functionality and fairness; now, therefore, be it

Resolved, That the Council of the City of New York urges the U.S. Department of Justice, Executive Office of Immigration Review, to implement a comprehensive hiring plan for immigration judges that includes increasing the number of judges appointed, drawing judges from more diverse backgrounds, requiring judges to

have some degree of knowledge of immigration law, instituting training in cultural competence upon hiring, and providing immigration judges with the necessary resources to make competent and just decisions, and for the 112th Congress to allocate the necessary funds to accomplish these goals.

JSM
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