



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

September 9, 2014

Jeff Rosenblum  
General Counsel, Executive Office for Immigration Review  
5107 Leesburg Pike, Suite 2600,  
Falls Church, Virginia 20530

Re: **Comments on Interim Rule: Designation of Temporary Immigration Judges**  
**79 Fed. Reg. 39953 (July 11, 2014)**  
**EOIR Docket No. 177, RIN 1125-AA77**

The American Immigration Lawyers Association (AILA) submits the following comments in response to the interim rule published in the Federal Register on July 11, 2014, related to the creation of temporary immigration judge positions within the Office of the Chief Immigration Judge.

AILA is a voluntary bar association of more than 13,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. AILA members also routinely appear before immigration judges and the Board of Immigration Appeals in immigration proceedings. We appreciate the opportunity to comment on the interim rule and believe that our members' collective expertise provides experience that makes us particularly well-qualified to offer views that will benefit the public and the government.

AILA supports the Executive Office for Immigration Review's (EOIR) efforts to fully staff the immigration courts, including designating temporary immigration judges where necessary as a stop-gap measure to help alleviate case backlogs until additional permanent judges can be hired. Courts have been woefully understaffed due to attrition and persistent under-funding, and AILA has long advocated for increased funding for EOIR so that the immigration courts can once and for all eliminate the ever-increasing case backlog.<sup>1</sup> However, we have a number of concerns with the current version of the rule that EOIR should address in the final rule.

### **Training Temporary Immigration Judges**

While 8 CFR §1003.10 says that a temporary judge "shall have the authority of an immigration judge to adjudicate assigned cases," it mandates only that the Chief Immigration Judge provide

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<sup>1</sup> See, e.g., [AILA's Recommendations on 2015 Appropriations](#), AILA Doc. No. 14040342 (posted April 3, 2014).

“a suitable level of training” to temporary immigration judges.<sup>2</sup> The term “immigration judge” is defined by statute at INA §101(b)(4) as “an attorney whom the Attorney General appoints as an administrative judge within the Executive Office of Immigration Review, *qualified to conduct specified classes of proceedings, including a hearing under section 240*” (emphasis added). Because an immigration judge must be qualified to conduct removal proceedings under INA §240, the Chief Immigration Judge has a duty to train all immigration judges, temporary or permanent, to be sure they are qualified to do so.

The existing hiring and training regimen for permanent immigration judges consists of six weeks of in-class training, mentorships for the first year on the bench, and a two-year probationary period.<sup>3</sup> However, we are concerned that the “suitable level of training” language would allow the Chief Immigration Judge to develop a separate and abbreviated training curriculum for temporary immigration judges. Though EOIR anticipates that temporary immigration judges will serve in a limited capacity, i.e., ruling on motions and conducting bond hearings, the newly promulgated regulations at 8 CFR §1003.10(e)(2) do not curtail the authority of temporary immigration judges. Instead, the regulation explicitly states that these judges will have the authority provided to an immigration judge under the immigration laws and regulations.

We are concerned that the temporary immigration judge designation, if not properly managed, will adversely impact the quality and professionalism of the immigration judge corps. We urge EOIR to impose a single training curriculum for both permanent and temporary immigration judges.

### **Administrative Law Judges from Other Executive Branch Agencies**

The interim rule allows for administrative law judges (ALJs) from executive branch agencies other than EOIR to serve as temporary immigration judges.<sup>4</sup> While many of these ALJs will have records that demonstrate excellence in judicial temperance, immigration law is extremely complex and these ALJs will often lack even the most basic knowledge of the relevant statutes

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<sup>2</sup> 8 CFR §1003.10(e)(2)-(3) states “(2) Authority. A temporary immigration judge shall have the authority of an immigration judge to adjudicate assigned cases and administer immigration court matters, as provided in the immigration laws and regulations, subject to paragraph (e)(3) of this section. (3) Assignment of temporary immigration judges. The Chief Immigration Judge is responsible for the overall oversight and management of the utilization of temporary immigration judges and for evaluating the results of the process. The Chief Immigration Judge shall ensure that each temporary immigration judge has received a *suitable level of training* to enable the temporary immigration judge to carry out the duties assigned.” 8 CFR §1003.10(2)-(3); 79 Federal Register at 39956 (July 11, 2014) (emphasis added).

<sup>3</sup> See [EOIR Director Osuna’s Testimony on the Immigration Court System](#), AILA Doc. No. 11051931 (posted May 19, 2014).

<sup>4</sup> 8 CFR §1003.10(e)(1)(i) as promulgated states in relevant part “the Director may designate or select [...] administrative law judges employed within or retired from EOIR, and *administrative law judges from other Executive Branch agencies to serve as temporary immigration judges for renewable terms not to exceed six months.*” (79 Federal Register 39952 at 39956, July 11, 2014) (emphasis added).

and regulations. For the reasons explained above, we are concerned that 8 CFR §1003.10(e)(1)(i) may not give ALJs sufficient time or training to become qualified to handle immigration hearings. Handicapped by inexperience in immigration law at the outset and with little time to learn the job because of the temporary nature of the position, ALJs are not the most suitable candidates for the position of temporary immigration judges. AILA respectfully requests that EOIR amend the current rule to remove allowing ALJs from other executive branch agencies to serve as temporary immigration judges, or implement measures to ensure ALJs, and others who lack experience in immigration law, receive additional training in immigration law prior to assuming a position on the bench.

### **Renewable Six-Month Terms**

AILA also opposes unlimited renewability of the six-month terms for temporary immigration judges. Unchecked renewability may undermine and dilute the quality and professionalism of the existing immigration judge corps if long-term, temporary immigration judges are never given the full trainings that their permanent counterparts receive. Instead, EOIR should promulgate a rule that imposes a fixed maximum period of one year of service for temporary immigration judges. A similar rule is already in place for temporary members of the Board of Immigration Appeals. 8 CFR §1003.1(a)(4) reads “[t]he Director may in his discretion designate immigration judges, retired Board members, retired immigration judges, and administrative law judges employed within, or retired from, EOIR to act as temporary Board members for terms *not to exceed six months*” (emphasis added).

### **Certain DOJ Attorneys with Ten Years of Legal Experience**

The interim regulation allows attorneys who have at least 10 years of legal experience in the field of immigration law and are currently employed by the Department of Justice to act as temporary immigration judges. This regulation appears to allow attorneys within the Office of Immigration Litigation (OIL) to act as temporary immigration judges. Because OIL primarily acts as opposing counsel to noncitizens in immigration case litigation before the federal appellate courts, AILA is extremely concerned that these attorneys will not be able to act as impartial judges when deciding hearings before them.

### **Conclusion**

AILA appreciates the opportunity to comment on this notice, and we look forward to a continued dialogue with EOIR on these important issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION