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Streamlining the Alien Removal Process and Lifting an Unnecessary Burden from Federal Appeals Courts

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Abstract

The federal appellate courts hear thousands of immigration appeals every year, and they represent an overwhelming majority of the administrative agency appeals filed in the federal courts. No constitutional mandate requires that illegal aliens have access to Article III federal courts to contest removal and deportation determinations. In fact, the due-process procedures authorized by Congress and provided in the federal administrative immigration court system go much further than is required under the constitutional baseline laid down by the Supreme Court for aliens who are already present in the U.S.

Introduction: The Administrative Immigration Court System

There is probably no area over which federal jurisdiction is as complete as immigration. The Constitution provides Congress with full authority to "establish a uniform rule of Naturalization."[1] The Supreme Court of the United States has affirmed this imperative, holding that "the power of naturalization is exclusively in Congress."[2] This exclusivity is a function of national sovereignty and enables the federal government to prescribe the terms and conditions for citizenship and the means by which it is adjudicated.

Through the Immigration and Nationality Act of 1952, Congress established an administrative immigration court system. It is run by the Executive Office of Immigration Review (EOIR) at the U.S. Department of Justice.[3] Immigration judges who hear such cases are employees of the Justice Department. The Attorney General delegates to them the authority to determine whether aliens "should be allowed to enter or remain in the United States or should

Key Points

- The extensive due-process protections provided for aliens in the administrative immigration court system give them the opportunity to be heard, to be represented by counsel, and to present their case to an immigration judge, with a subsequent right of appeal to an administrative appeal tribunal.
- There is no substantive or procedural reason to provide such aliens with access to the federal court system and no reason to burden the federal appellate courts with thousands of such cases.
- There is no question that removal proceedings initiated by the executive branch against an alien under the immigration authority delegated to it by Congress fall within the "public rights" doctrine as defined by the U.S. Supreme Court and such aliens have no constitutional right to access to Article III courts.

This paper, in its entirety, can be found at **http://report.heritage.org/lm217**

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be removed."[4] The Office of the Chief Immigration Judge has supervisory authority over all immigration judges and the immigration trial courts, which are located in cities across 29 states ranging from Arizona to Washington.[5]

The decisions of the immigration trial courts are final unless appealed to the Board of Immigration Appeals (BIA), an administrative appeals court within the EOIR. The majority of the cases appealed to the BIA involve reviewing orders of removal. But it also hears cases involving the "exclusion of aliens applying for admission to the United States, petitions to classify the status of alien relatives for the issuance of preference immigrant visas, fines imposed...for the violation of immigration laws, and motions for reopening and reconsideration of decisions previously rendered."[6]

The BIA has the authority to designate which of its decisions are "precedent decisions" that apply to immigration cases nationwide. The BIA, which is authorized to have up to 17 members, is the "highest administrative tribunal for interpreting and applying U.S. immigration law."[7] It is an "independent adjudicatory body that is responsible solely to the Attorney General in reviewing and deciding immigration case appeals."[8]

Unlike the federal court system established by Article III of the U.S. Constitution, administrative immigration courts do not have the authority to enforce their own orders as other federal courts do. As a result, enforcement of deportation or removal orders depends entirely on the efforts of the Department of Homeland Security (DHS), whose enforcement priorities are set by the President. This lack of authority profoundly affected immigration enforcement on the watch of Barack Obama and resulted in the disarray the U.S. confronts today.

By May of 2017, the number of unenforced removal orders issued by immigration courts stood at 953,506—a 58 percent increase since 2002.[9] Political appointees at DHS, specifically those at Immigration and Customs Enforcement (ICE), refused to remove all but the worst criminal aliens and seldom enforced deportation orders in the U.S. interior.[10] No less than President Obama provided the clearest confirmation that his Administration's enforcement priorities excluded the nation's interior and non-criminal aliens.

On September 28, 2011, Obama explained that his Administration's deportation statistics were misleading and that, in addition to criminal aliens, border crossers were being deported who did not pass through immigration courts: "[T]he statistics are actually a little deceptive," he said, "because what we've been doing is...apprehending folks at the borders and sending them back. That is counted as a deportation, even though they may have only been held for a day or 48 hours."[11]

Criminal aliens and recent illegal border-crossers were removed, but few others. A Migration Policy Institute study agreed: "[N]inety-five percent of the immigrants deported from 2009 to 2013 were criminal aliens..., meaning only about 77,000 of the 1.6 million illegal immigrants removed by U.S. Immigration and Customs Enforcement (ICE) over the last five years were rank-and-file border-crossers with clean records."[12]

Even felony records, as it turns out, were no guarantee of removal.[13] Large numbers of ICE's Level I and II offenders—murderers, drug traffickers, kidnappers, and sex offenders—were released by ICE decision makers,[14] only to jeopardize the safety of people in the communities that had once placed them behind bars. Having the highest removal priority made no difference.[15] In fiscal year 2013, the Obama Administration released over 36,000 convicted criminal aliens and another 30,558 in fiscal year 2014.[16] Since 2010, 124 criminal aliens have been implicated in 135 deaths after ICE declined to remove them.[17]

The backlog of cases in the immigration trial courts also increased dramatically during the Obama Administration and arguably became just as problematic as unenforced removal orders. At the end of 2008, just before Barack Obama became President, federal immigration courts reported a backlog of 186,108 cases. However, by the end of 2016, the number of backlogged cases had increased 300 percent to 542,411 and reached 585,930 in April of 2017, despite the number of immigration judges increasing significantly. In 2006, 233 immigration judges completed 407,487 cases. Yet in 2016, more than 270 judges completed only 273,390 cases, a dramatic slowdown in the handling of cases that having more immigration judges was supposed to fix.[18]

This slowdown was graphically illustrated in a report released by the Government Accountability Office (GAO) in June 2017. According to the GAO, the "median number of days to complete a removal case, which comprised 97 percent of EOIR's

caseload..., increased by 700 percent from 42 days in fiscal year 2006 to 336 days in fiscal year 2015."[19] One of the reasons cited for this by "DHS attorneys, experts, and other stakeholders" was that "immigration judges' frequent use of continuances resulted in delays and increased case lengths that contributed to the backlog."[20]

In order to help alleviate this bottleneck, Attorney General Jeff Sessions announced on April 11, 2017, that the Justice Department would hire an additional 50 immigration judges this year, and 75 next year. He also promised to streamline the normal 18- to 24-month hiring process to get these new judges on the bench as soon as possible, not only to address backlogs, but also to tackle other problems the Obama Administration created.[21]

Ending Catch and Release

The Department of Homeland Security's "catch-and-release" policy aggravated what became known as the Central American "surge" at the Southwest border. Catch and release was DHS's policy of arresting illegal aliens, giving them a date to appear before an immigration court, and then releasing them. Unsurprisingly, many of those released never showed up for court. In 2016, 39 percent of aliens who were free pending trial failed to show up for their immigration hearings. In 2015, 43 percent did the same. Over the past 21 years, 37 percent of all aliens that DHS allowed to remain free before trial were ordered removed for failing to show up for their hearings—some 952,000 aliens altogether.[22] Immigration courts have the highest "failure to appear" rate of any court system in the country, averaging more than 45,000 per year.[23]

Fortunately, one of President Donald Trump's first actions as President was to end the catch-and-release policy, which some employees within DHS had nicknamed the "catch-and-run" policy.[24] On January 25, 2017, the President signed an executive order that instructed DHS to issue new policy guidance to its personnel for the "termination of the practice commonly known as 'catch and release,'" and to take "appropriate actions to ensure the detention of aliens apprehended for violations of immigration law pending the outcome of their removal proceedings."[25]

A separate executive order issued the same day addressed the problem of unenforced removal orders. President Trump stated that it was his Administration's policy to "ensure that aliens ordered removed from the United States are promptly removed."[26] He directed DHS to make removing such aliens a priority.[27]

Aliens have procedural due-process rights in the immigration courts similar to those of citizens in other American courts. That includes the right to be represented by counsel "or other representative."[28] Witnesses must testify "under oath or affirmation" and immigration judges can authorize depositions and subpoenas.[29] Aliens are entitled to an interpreter at the hearing and can ask for postponement of a hearing for "good cause."[30]

Immigration judges are required to inform aliens of their right to representation as well as the right "to examine and object to the evidence against him or her, to present evidence in his or her own behalf and to cross-examine witnesses presented by the government."[31] The hearing must "be recorded verbatim except for statements made off the record with the permission of the immigration judge."[32]

Once the court issues its final decision, both the government and aliens have 30 days to file an appeal with the BIA.[33] The BIA also has extensive procedural due-process rules governing practice before the Board that are outlined in a 222-page practices manual.[34]

One of the deficiencies of the immigration court system is due to the failure of past attorneys general to act. Federal law provides that immigration judges "shall have authority (under regulations prescribed by the Attorney General) to sanction by civil money penalty any action (or inaction) in contempt of the judge's proper exercise of authority."[35] Those regulations have not been promulgated. That needs to be done as soon as possible by Attorney General Jeff Sessions so that immigration judges can enforce the procedural and substantive rules of applicable immigration law in their hearings.

That contempt power should include the ability to sanction Department of Homeland Security officials who fail to implement deportation and removal orders issued by immigration judges. The Obama Administration nearly halted the enforcement of such orders.[36]

Incentivizing Appeals—at Taxpayer Expense

Another dynamic inside the immigration court system that is unfair to the American taxpayer

should also be changed. From 1996 through 2009, aliens appealed 214,404 out of 218,589 removal decisions issued by immigration trial courts—or 98 percent of all removal orders that included an application for relief.[37] What conditions incentivize such an overwhelming appeal rate? Former Judge Michael Heilman of the BIA provides the answer.

At a House Judiciary Committee hearing on February 6, 2002, Judge Heilman testified that low filing fees and non-existent court costs encourage unwarranted appeals, the vast majority of which were "without any substantial basis on any ground." He faulted the use of tax dollars to underwrite transcripts for private litigants, something that does not happen elsewhere in the civil court system. Judge Heilman stated:

> One part of the answer lies in the fact that the appeal filing fee is very low, $110. With that fee being waived by the BIA in about 50 percent of appeals, oftentimes even where an alien is represented by an attorney. The alien is not charged for copies of the record or for the transcript of the hearing, which often exceeds 50 pages. All of these costs are absorbed by EOIR. By contrast, to my knowledge, no-cost appeals on a civil level are a rarity.[38]

It makes no sense for the government to pay the costs of such appeals. As Judge Heilman outlined, these are "significant expenses absorbed by the Department of Justice because it foots the bill for the appeal process." Everywhere else in the civil process in Article III courts, "the appealing party pays the cost of the appeal, including the transcript."[39]

The bottom line is this: Tax dollars are paying some of the costs associated with private litigation—even the litigation of those aliens being deported after being convicted of crimes in the United States and those who entered fraudulent marriages. From 2000 through 2008, the EOIR spent $29 million for the transcripts of alien litigants appealing deportation orders. Factoring in court personnel time, another $4.7 million went to process these records. Altogether just under $34 million was allocated from taxpayer dollars to underwrite (and encourage) private litigation.[40] The immigration court system is mired in a practice that seemingly prompts more litigation and delays the removal of those ordered removed who have no right to be in the U.S.[41]

Appeals from the Administrative Court System to the Federal Courts

The "exclusive means of review" provided by Congress for any order of removal issued by the administrative immigration court system is a "petition for review filed with an appropriate court of appeals."[42] Thus, immigration appeals bypass the federal district courts and go directly to one of the 12 regional circuit courts of appeal in the federal system.

Aliens cannot use the habeas corpus process to get around this limitation since this statute specifically says that "in every provision that limits or eliminates judicial review or jurisdiction to review, the terms 'judicial review' and 'jurisdiction to review' include habeas corpus review pursuant to section 2241 of title 28, or any other habeas corpus provision." 28 U.S. Code § 2241 is the provision of federal law that outlines habeas corpus procedural rules for the Supreme Court and the district and appellate courts. As the Ninth Circuit has said, courts of appeal "defer to the BIA's Interpretation and application of immigration laws unless its interpretation is contrary to the plain and sensible meaning of the law at issue."[43]

In 2016, immigration appeals "accounted for 81 percent of administrative agency appeals and constituted the largest category of administrative agency appeals filed in each circuit except the D.C. Circuit."[44] In June 2016, the appellate courts terminated 7,502 administrative agency appeals on the merits,[45] so over 6,000 of those cases were civil immigration appeals. On top of that, the appellate courts handled an additional 1,342 appeals of convictions for criminal immigration offenses such as alien smuggling, felony re-entry, and marriage fraud.[46]

Two different federal appellate court judges complained to the author about these immigration appeals from the BIA clogging up their dockets and being used by illegal aliens to try to delay their removal from the United States. Two cases from the Seventh Circuit that upheld removal decisions of the BIA illustrate the types of cases the appellate courts get.

In 2000, Anthony Kimani, a citizen of Kenya, entered the U.S. on a visitor's visa but then remained after his visa expired.[47] He registered to vote when he obtained his driver's license in Illinois and voted in the 2004 presidential election, a felony under federal law.[48] After marrying an American citizen, he applied for an adjustment of his status to that of

a lawful permanent resident. An investigation by DHS, however, revealed his illegal voting (it was not detected by Illinois election officials), and he was placed in removal proceedings.

U.S. immigration law declares any alien "who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation" as inadmissible.[49] Thus, Kimani's defensive application to avoid removal was denied by an immigration judge, who ordered his removal, and the BIA upheld the judge's decision. Despite the undisputed facts and the lack of ambiguity of the law, Kimani appealed to the Seventh Circuit. The appellate court affirmed the BIA, holding that Kimani violated the law when he made "his own decision to register, to claim citizenship, and to vote." The BIA, the court rules, "did not abuse its discretion."[50]

Similarly, Margarita Del Pilar Fitzpatrick, a citizen of Peru, claimed U.S. citizenship when she registered to vote while obtaining a driver's license in Illinois, then voted in the 2002 election. Federal law provides that legally present aliens who vote in violation of state or federal law are removable.[51] Her application for citizenship revealed her voting history, which also had not been detected by Illinois election officials. The Seventh Circuit upheld the removal order issued by the immigration trial court and confirmed by the BIA. As the court said, the decision of whether to enforce this statute and remove an alien "is entrusted to executive [branch] officials."[52]

Removing the Federal Appellate Process from Ineligible Aliens

There is no constitutional obligation to provide aliens in removal proceedings with access to Article III federal courts as a matter of right. As previously outlined, aliens who are in this country illegally and the subject of removal proceedings enjoy the full panoply of procedural due process in the administrative immigration court system, including the ability to appeal contrary decisions to an administrative appellate court. There is no substantive or procedural reason to provide such aliens with access to the federal court system and no reason to burden the federal appellate courts with thousands of such cases.

The U.S. Supreme Court first recognized the sufficiency of having claims for *citizens* determined by an administrative agency in *Crowell v. Benson* in 1932. The question in that case was "whether the Congress may substitute for constitutional courts, in which the judicial power of the United States is vested, an administrative agency—in this instance a single deputy commissioner—for the final determination of the existence of the facts upon which the enforcement of the constitutional rights of the citizen depend."[53] The Court held that the administrative procedures established by the U.S. Employees' Compensation Commission for claims related to injuries occurring "on the navigable waters of the United States" met Fifth Amendment due-process requirements because final authority on matters of law was still vested in the federal courts.

But the doctrine established in that case was being applied to citizens, not aliens. Furthermore, as the Supreme Court outlined in *Thomas v. Union Carbide* in 1985, there is a difference between claims arising between private parties and claims made against the government. This difference is relevant to determining whether jurisdiction by federal courts can be entirely eliminated by Congress without violating separation-of-powers principles or the judicial authority of the courts under Article III. As the Court said in *Thomas*, the Constitution does not require "every federal question arising under the federal law...to be tried in an Art. III court before a judge enjoying life tenure."[54]

Instead, the Court "has long recognized that Congress is not barred from acting pursuant to its powers under Article I to vest decisionmaking authority in tribunals that lack the attributes of Article III courts."[55] The essential factor in whether a citizen has a right to an Article III court is whether he is asserting a private or a public right. A "public right" is defined as "matters arising between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments." "Private rights" are "the liability of one individual to another under the law as defined."[56]

The public rights doctrine "reflects simply a pragmatic understanding that when Congress selects a quasi-judicial method of resolving matters that 'could be conclusively determined by the Executive and Legislative Branches,' the danger of encroaching on the judicial powers is reduced."[57]

There is no question that removal proceedings initiated by the executive branch against an alien under the immigration authority delegated to it by Congress fall within the "public rights" doctrine.

Thus, Congress is fully within its authority to limit the procedural due-process rights of aliens who enter or remain in this country illegally. In *U.S. ex rel. Knauff v. Shaughnessy*, a case involving the right of an alien war bride married to a U.S. citizen to enter the country, the Supreme Court said that "whatever the rule may be concerning deportation of persons who have gained entry into the United States, it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien."[58] More importantly, the Court emphasized that the due-process rights of such aliens are limited to "the procedure authorized by Congress."[59]

An alien who seeks admission "may not do so under any claim of right." Such admission "is a privilege granted by the sovereign United States Government" and will be granted "only upon such terms as the United States shall prescribe."[60] In *Shaughnessy v. U.S. ex rel. Mezei*, the Supreme Court upheld the refusal of the government to allow the reentry of a Hungarian/Romanian alien who had previously lived legally in the U.S. He became stuck at Ellis Island because other countries such as France and Great Britain refused his entry, as did Hungary, which refused his readmission.[61]

The Court said that while "it is true that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law," an "alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'"[62]

However, the Court also made it clear that "traditional standards" of due process, such as for a lawful resident alien, only require a hearing "before an executive or administrative tribunal."[63] Due process does not require "forms of judicial procedure," but only an "opportunity, at some time, to be heard, before such officers" as are given the authority to act on the merits of the alien's claim.[64]

The extensive due-process protections provided for aliens in the administrative immigration system that give them the opportunity to be heard, to be represented by counsel, and to present their case to an immigration judge, with a subsequent right of appeal to an administrative appeal tribunal, more than satisfy this requirement.

Conclusion

The federal appellate courts hear thousands of immigration appeals every year, and they represent an overwhelming majority of the administrative agency appeals filed in the federal courts. No constitutional mandate requires that illegal aliens have access to Article III federal courts to contest removal and deportation determinations. In fact, the due-process procedures authorized by Congress and provided in the federal administrative immigration court system go much further than is required under the constitutional baseline laid down by the Supreme Court for aliens who are already present in the U.S.

As a basic matter of judicial efficiency and productivity, optimum use of government resources, and effective control of our borders and enforcement of our internal security and safety, Congress should eliminate the ability of aliens to contest the decisions made by the immigration court system.

Additionally, the attorney general should require aliens to pay the same types of fees and court costs that all private plaintiffs incur in civil litigation and stop the taxpayer subsidy of these costs. Finally, it is imperative that the attorney general immediately promulgate regulations authorizing immigration judges to sanction the parties involved in these hearings for contempt—as well as Department of Homeland Security officials who fail to enforce deportation and removal orders. Immigration judges must have this authority in order to have an orderly, effective process that removes illegal aliens from the United States.

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Endnotes

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3. 48 Fed. Reg. 8,038 (Feb. 25, 1983).
4. *Evolution of the U.S. Immigration Court System: Pre-1983*, Exec. Office for Immigration Rev., U.S. Dept. of Justice, *available at* https://www.justice.gov/eoir/evolution-pre-1983. The illegal Immigration Reform and Immigration Responsibility Act of 1996 implemented a comprehensive revision of EOIR procedures, including combining deportation and exclusion proceedings into a single proceeding called a "removal proceeding." *Evolution of the U.S. Immigration Court System: Post-1983*, Exec. Office for Immigration Rev., U.S. Dept. of Justice, *available at* https://www.justice.gov/eoir/evolution-post-1983.
5. *See EOIR Immigration Court Listing*, U.S. Dept. of Justice, https://www.justice.gov/eoir/eoir-immigration-court-listing.
6. *Board of Immigration Appeals*, Exec. Office for Immigration Rev., U.S. Dept. of Justice, *available at* https://www.justice.gov/eoir/board-of-immigration-appeals.
7. *Evolution of the U.S. Immigration Court System: Post-1983*, *supra* note 4.
8. *Id.*; 5 Fed. Reg. 3,502 (Sept. 4, 1940).
9. Hans A. von Spakovsky & Mark H. Metcalf, *How to Get Our Immigration Courts Back to Enforcing Federal Law*, Fox News (May 17, 2017), http://www.foxnews.com/opinion/2017/05/17/how-to-get-our-immigration-courts-back-to-enforcing-federal-law.html.
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14. *Id.* ("[Y]ear after year, even after the deaths of Chadwick, Ronnebeck, and dozens of others [killed by criminal aliens]. These cannot be characterized as 'isolated incidents' or 'anecdotal'—not after 86,000 releases [of criminal aliens] and 124 new homicides.").
15. *Supervision of Aliens Commensurate with Risk*, U.S. Dept. of Homeland Security, Office of the Inspector General, OIG–11–81, Dec. 2011, pp. 18–19, *available at* https://www.oig.dhs.gov/assets/Mgmt/OIG_11-81_Dec11.pdf. Offense levels are designated as Levels I, II, and III. The Specially Designated Countries list (formerly Special Interest Countries) was withdrawn by DHS in December 2011. This list, however, is still in use by DHS employees.
16. Hans von Spakovsky, *How Sanctuary Policies Have Directly Led to Thousands of Crimes Against Americans*, Daily Signal (July 9, 2015), http://dailysignal.com/2015/07/09/how-sanctuary-policies-have-directly-led-to-thousands-of-crimes-against-americans/; Vaughan, *supra* note 13.
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22. von Spakovsky & Metcalf, *supra* note 9.
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24. von Spakovsky & Metcalf, *supra* note 9.

25. Exec. Order No. 13767, *Border Security and Immigration Enforcement Improvements* (Jan. 25, 2017), Sec. 6; 82 Fed. Reg. 8793, *available at* https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements.
26. Exec. Order No. 13768, *Enhancing Public Safety in the Interior of the United States* (Jan. 25, 2017), Sec. 2(d); 82 Fed. Reg. 8799, *available at* https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united.
27. *Id.* at Sec. 5 (f).
28. 8 C.F.R. § 1240.3. *See generally* 8 U.S.C. § 1229a.
29. 8 C.F.R. § 1240.7.
30. *See* 8 C.F.R. § 1240.5 and § 1240.6.
31. 8 C.F.R. § 1240.10.
32. 8 C.F.R. § 1240.9.
33. 8 C.F.R. § 1240.15.
34. *Board of Immigration Appeals Practice Manual*, Exec. Office for Immigration Rev., U.S Dept. of Justice (last revised Feb. 3, 2017), *available at* https://www.justice.gov/eoir/board-immigration-appeals-2.
35. 8 U.S.C. § 1229a (b)(1).
36. von Spakovsky & Metcalf, *supra* note 9.
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41. For other good recommendations on improving the immigration court system, *see* Andrew R. Arthur, *The Massive Increase in the Immigration Court Backlog, Its Causes, and Solutions*, Ctr for Immigration Studies (July 2017).
42. 8 U.S.C. 1252 (a)(5). *See* Martinez-Rosas v. Gonzales, 424 F.3d 926, 928-29 (9th Cir. 2005); Mamigonian v. Biggs, 710 F.3d 936, 941 (9th Cir. 2013) ("Habeas relief for final orders of removal is only available through a petition to the court of appeals.").
43. Garfias-Rodriguez v. Holder, 702 F.3d 504 (9th Cir. 2012), note 6. Aliens appealing BIA decisions also have "no due process right to discretionary relief." The appellate courts only "review the legal sufficiency of the removal proceeding." Zyapkov v. Lynch, 817 f.3d 556, 560 (7th Cir. 2016) (citations omitted).
44. *Federal Judicial Caseload Statistics 2016*, Admin. Office of the U.S. Courts, *available at* http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2016.
45. *Table B-5. U.S. Courts of Appeals—Decisions in Cases Terminated on the Merits, by Circuit and Nature of Proceeding, During the 12-Month Period Ending June 30, 2016*, Admin. Office of the U.S. Courts, *available at* http://www.uscourts.gov/sites/default/files/data_tables/stfj_b5_630.2016.pdf.
46. *Table B-7. U.S. Courts of Appeals – Civil and Criminal Cases commenced, by Circuit and Nature of Suit or Offense During the 12-Month Period Ending June 30, 2016*, Admin. Office of the U.S. Courts, *available at* http://www.uscourts.gov/sites/default/files/data_tables/stfj_b7_630.2016.pdf.
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50. *Kimani*, 695 F.3d at 672.
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52. Fitzpatrick v. Sessions, 847 F.3d 913, 915 (7th Cir. 2017).
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54. Thomas v. Union Carbide Agr. Products Co., 473 U.S. 568, 583 (1985) (citations omitted).
55. *Thomas*, 473 U.S. at 583.
56. *Thomas*, 473 U.S. at 585 (citations omitted).
57. *Thomas*, 473 U.S. at 589 (citations omitted).
58. U.S. ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 543 (1950).
59. *Knauff*, 338 U.S. at 544.
60. *Knauff*, 338 U.S. at 542.
61. Shaughnessy v. U.S. ex rel. Mezei, 345 U.S. 206 (1953).

62. *Mezei*, 345 U.S. at 212.
63. *Mezei*, 345 U.S. at 214 (citing Kwong Hai Chew v. Colding, 344 U.S. 590 (1953)).
64. Kwong Hai Chew v. Colding, 344 U.S. 590 (1953), footnote 6.