

Authority Delayed Is Authority Denied: Giving Immigration Judges Contempt Authority

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KEY TAKEAWAYS

Immigration judges needed contempt authority 22 years ago when Congress passed the statute, and they need it *today* more than ever before.

The U.S. Attorney General is tasked with creating and implementing regulations to give immigration courts this authority.

If the Attorney General refuses this task, Congress should step in once and for all to give immigration judges common sense tools to manage their dockets.

Introduction

Twenty-two years ago, the United States Congress passed a law giving immigration judges civil contempt authority—but delegated to the Attorney General of the United States the duty to draft the implementing regulations. Four U.S. Presidents and eight U.S. Attorneys General later, immigration judges still do not have contempt power. Why? Because, in defiance of a congressional statute, the Justice Department has failed to issue an implementing regulation.

Background

Many commentators have criticized the immigration court system and immigration judges in particular.¹ The American Bar Association (ABA), for one, recently wrote in a comprehensive study that the

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“immigration courts are facing an existential crisis” and are “irredeemably dysfunctional.”² Calls for wholesale structural realignment of the immigration court system are not uncommon and include recommendations to place the court under Article I of the Constitution, like the U.S. Tax Court,³ or to eliminate the “trappings” of courts and to replace them with less adversarial bureaucratic processes like those used by the Social Security Administration.⁴ Others question the independence of immigration judges themselves since they are part of the U.S. Department of Justice (DOJ);⁵ are hired by the Executive Office for Immigration Review (which is accountable to the Attorney General);⁶ and do not enjoy the protections afforded to federal judges.⁷ One organization even suggested that the immigration courts are designed to fail.⁸

We believe that some constructive criticism of the immigration court, its structure, and the roles and responsibilities of immigration judges merits further study, debate, congressional scrutiny, and possible reform. But this type of effort would require a concerted effort by congressional leaders from both parties, thoughtful dialogue, and open minds, devoid of political maneuvering—an effort that, for the time being, seems out of reach.

In the meantime, as we have written elsewhere,⁹ immigration judges are swamped by a crushing caseload, burdened by a backlog of almost 1 million cases, and lack the tools to dismiss a case for failure to state a claim and to render a judgment on the pleadings.

Immigration judges also lack contempt authority—even though Congress recognized this deficiency over two decades ago and passed a statute giving them that power. As a result, litigants before the immigration courts, government attorneys and private counsel alike, cannot be held accountable to the judge with respect to matters such as timelines, docketing dates, or even court orders. Counsel, who often carry other cases before other (non-immigration judge) courts, put a priority on cases in which the court has actual power to enforce its own orders with either civil or criminal contempt. Counsel who appear before immigration judges know that those judges can, at most, wag their fingers and raise their voices if counsel defies a court order—but nothing more.

As a result, immigration court judges are treated as second-class judges, taking a back seat to all other judges who have contempt power over parties and lawyers who knowingly violate their orders. Moreover, immigration dockets, which are already overburdened with cases, continue to expand because of the judges’ inability to effectively manage their dockets or even the counsel before them.

Immigration judges needed contempt authority 22 years ago when Congress passed the statute, and they need it *today* more than ever before. The Department of Justice can fix this issue quickly, but if it is unwilling to do so, Congress should step in once and for all to give immigration judges common sense tools to manage their dockets—and the counsel before them—like all other judges.

What is the Contempt Power?

Simply put, contempt power is the power to deter and punish those who show contempt for the court’s authority. Contempt is any act of disobedience or disrespect toward a judicial body.¹⁰ To put it another way, the contempt power is the power of a judicial body to coerce compliance or summarily punish (with monetary fines or imprisonment) noncompliance with the court’s orders or standards of acceptable behavior.¹¹ This power is “inherent in all courts.”¹²

The contempt power is ancient. In fact, the power is “as ancient as the laws themselves.”¹³ Historical examples of courts wielding their inherent contempt powers abound.¹⁴ Sir William Blackstone explained that courts must have the power to punish contempt because “without a competent authority to secure their administration from disobedience and contempt, [laws] would be vain and nugatory.”¹⁵

Mirroring Blackstone, the Supreme Court has held that “[i]f a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls ‘the judicial power of the United States’ would be a mere mockery.”¹⁶ Accordingly, courts have “no more important duty” than to enforce their orders and punish disobedience.¹⁷ Without a contempt power, courts of law devolve into “boards of arbitration whose judgments and decrees would be only advisory.”¹⁸

In 1948, Congress enacted 18 U.S.C. §401, which sets the outer bounds of the federal courts’ contempt power.¹⁹ It provides:

A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—

1. Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
2. Misbehavior of any of its officers in their official transactions;
3. Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

The Federal Rules of Civil Procedure also provide for the use of the contempt power in specific situations. Federal court judges can, for example, use the contempt power to punish a party or attorney for failure to obey a scheduling order,²⁰ a discovery order,²¹ a subpoena,²² or a judgment.²³

Related to, but separate from, the contempt power, federal courts also retain a rule-based authority to sanction misleading, vexatious, harassing, or unsupported factual representations and legal arguments.²⁴ They also retain inherent authority to impose monetary sanctions on lawyers even in the absence of contempt.²⁵

Contempt may be either civil or criminal.²⁶ The same punishments (fines and imprisonment) apply to both.²⁷ Whether contempt is civil or criminal depends on the purpose of the sanction—civil is remedial; criminal is punitive.²⁸ Put another way, a contempt proceeding is civil if its purpose is to coerce compliance, but it is criminal if its purpose is to punish the wrongdoer.²⁹

The contempt power is not, however, unlimited.³⁰ Federal courts are obligated to use “the least possible power adequate to the end proposed.”³¹ Moreover, that power is limited by the First Amendment’s protection of free speech,³² the Fifth Amendment’s due process clause,³³ the protection against double jeopardy,³⁴ the protection against self-incrimination,³⁵ and the Eighth Amendment’s protection against cruel and unusual punishments.³⁶ The Supreme Court has also said, in *dicta*, that the Sixth Amendment’s guarantees of speedy trial and compulsory process apply to the contempt power.³⁷

Whatever its limits, the contempt power is an essential tool for any court. Without it, the courts would be powerless to fulfill their duties of administering public justice and enforcing the rights of litigants.³⁸

Congress Authorized the Contempt Power for Immigration Judges

It is no surprise then that Congress saw fit to give immigration judges the contempt power. At the end of 1996, Congress passed the Omnibus Consolidated Appropriations Act for 1997 by wide bipartisan majorities in both chambers.³⁹ That act included an amendment to the Immigration and Nationality Act of 1952, which reads:

The immigration judge shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses. The immigration judge may issue subpoenas for the attendance of witnesses and presentation

of evidence. The immigration judge 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 under this chapter.⁴⁰ (Emphasis added).

At first glance, this statute appears to give immigration judges the ability to punish contempt. However, the statute is conditional. It gives immigration judges permission to wield whatever contempt power the Attorney General determines they should have, but as written, the statute gives them no authority to punish contempt *until* the Attorney General publishes regulations giving them that authority.

It has been 22 years since Congress enacted §1229a(b)(1), and no Attorney General has ever promulgated implementing regulations. As a result, immigration judges still lack contempt authority, §1229a(b)(1) is toothless, and the DOJ has thwarted Congress' intent to correct a long-standing problem.

Several Attorneys General have at least paid lip-service to drafting a contempt regulation, but none has ever done so. For example, in 2006, Attorney General Alberto Gonzales issued a memorandum instructing the Director of the Executive Office for Immigration Review, and others within the DOJ, to “draft a new proposed rule that creates a strictly defined and clearly delineated authority to sanction by civil money penalty an action (or inaction) in contempt of an immigration judge's proper exercise of authority.”⁴¹ No such rule was implemented.

Every year from 2006 through 2016, the DOJ said in its Semiannual Agendas that it intended, by the following year, to draft a regulation giving immigration judges contempt authority.⁴² No such regulation was implemented, and the proposed contempt rule disappeared from the agenda in 2017.⁴³ Since then, the DOJ has given no indication that it intends to draft an implementing regulation.

The DOJ has never explained why it has refused to promulgate a contempt regulation, but commentators suppose that it is because the DOJ does not want its trial lawyers subject to discipline by its immigration judges;⁴⁴ in short, a sort of regulatory self-capture.

Immigration Judges Need Contempt Authority

The lack of contempt authority hinders the immigration courts' ability to manage their ever-increasing caseloads.⁴⁵ Without it, judges have no ability to cajole or punish attorneys and litigants who refuse to comply with orders, deadlines, or rules of decorum. As a result, immigration courts are

powerless to combat incompetence and gamesmanship that delay speedy resolution of their cases.

As the ABA noted in its 2019 report, “absent such authority, immigration judges are again rendered powerless to control their own courtrooms and enforce compliance with potential time saving programs.”⁴⁶ In 2018, Judge Ashley Tabaddor, an immigration judge and President of the National Association of Immigration Judges, summed up the problem to the Senate Border Security and Immigration Subcommittee:

One of the most egregious and long-standing examples of the structural flaw of the Courts' placement in the DOJ is that Immigration Judges have never been able to exercise the congressionally mandated contempt authority statutorily authorized by Congress in 1996. This is because the DOJ has never issued implementing regulations in an effort to protect DHS attorneys (who[m] it considers to be fellow federal law enforcement employees). However, as Congress recognized in passing contempt authority, misconduct by both DHS and private attorneys has long been one of the great hindrances to adjudicating cases efficiently and fairly. For example, it is not uncommon for cases to be continued due to private counsel's failure to appear or be prepared for a hearing, or DHS' failure to follow the Court's orders, such as to conduct pre-trial conferences to narrow issues or file timely documents and briefs. Just a couple of months ago, when I confronted an attorney for his failure to appear at a previous hearing, he candidly stated that he had a conflict with a state court hearing, and fearing the state court judge's sanction authority, chose to appear at that hearing over the immigration hearing in my court. Similarly, when I asked a DHS attorney why she had failed to engage in the Court mandated pre-trial conference or file the government's position brief in advance of the hearing, she defiantly responded that she felt that she had too many other work obligations to prioritize the Court's order. These examples represent just a small fraction of the problems faced by Immigration Courts, due to the failure of the DOJ, in over 20 years, to implement the Congress approved even-handed contempt authority.⁴⁷

In short, immigration judges are not masters of their own courtrooms. They, their caseloads, and most importantly, the hundreds of thousands of immigrants whose cases they decide, are held captive by the uncheckable behavior of a few misbehaving or incompetent lawyers and litigants.

In the press release accompanying his 2006 memorandum on Immigration Court reforms, Attorney General Gonzales recognized that “[b]y better enabling judges to address frivolous submissions and to maintain an

appropriate atmosphere in their courtrooms, we will reduce the pressures that may have contributed to intemperate conduct in the past.”⁴⁸ It is time to take that statement seriously.

Language of the Regulation

There are two ways to fix this problem and finally give immigration judges the contempt power that Congress authorized 22 years ago: the easy way and the harder way.

The easy way is for the DOJ to finally draft a regulation. The harder way is for Congress to amend §1229a(b)(1) to include an explicit contempt power and thereby deprive the DOJ of any discretion in the matter. Regardless of which approach is taken, immigration judges’ contempt authority should substantially mirror federal judges’ contempt authority.

The regulation could be codified at 8 C.F.R. §1003.112 (presently non-existent) and read:

8 C.F.R. 1003.112 *Contempt proceedings in Immigration Court.*

Contempt. Pursuant to 8 U.S.C. §1229a(b)(1), an immigration judge may punish by fine such contempt of its authority, and none other, as—

- (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
- (2) Misbehavior of any of its officers in their official transactions;
- (3) Disobedience or resistance to its lawful process, order, rule, decree, or command.

(b) *Method of disposition.*

(1) *Summary disposition.* When conduct constituting contempt is directly witnessed by the immigration judge, the conduct may be punished summarily.

(2) *Disposition upon notice and hearing.* When the conduct apparently constituting contempt is not directly witnessed by the immigration judge, the alleged offender shall be brought before the court and informed orally or in writing of the alleged contempt. The alleged offender shall be given a reasonable opportunity to present evidence, including calling witnesses. The alleged

offender shall have the right to be represented by counsel and shall be so advised. The contempt must be proved beyond a reasonable doubt before it may be punished.

(c) *Procedure.* The immigration judge shall in all cases determine whether to punish for contempt and, if so, what the punishment shall be. The immigration judge shall also determine when the contempt proceedings shall be conducted. The immigration judge may punish summarily under subsection (b)(1) only if the immigration judge recites the facts for the record and states that they were directly witnessed by the immigration judge in the actual presence of the court participants. Otherwise, the provisions of subsection (b)(2) shall apply.

(d) *Record; review.* A record of the contempt proceedings shall be part of the record of the proceedings during which it occurred. If the person was held in contempt, then a separate record of the contempt proceedings shall be prepared and filed with the Board of Immigration Appeals for review within seven (7) days of the contempt proceedings. The Board of Immigration Appeals may approve or disapprove all or part of the sentence.

(e) *Punishment.* A fine does not become effective until ordered executed by the Board of Immigration Appeals no more than thirty (30) days after a disposition is entered and filed by the immigration judge. The immigration judge may delay announcing the punishment after a finding of contempt to permit the person involved to continue to participate in the proceedings.

(f) *Informing person held in contempt.* The person held in contempt shall be informed by the Board of Immigration Appeals in writing of the holding and punishment, if any, of the immigration judge and of the final action of the Board of Immigration Appeals after its own review.

If Congress decides that, after 22 years, it is time to take the matter out of the DOJ's hands, then its job is simple. Congress should amend §1229a(b)(1) to give immigration judges the same contempt authority it permits federal courts in 18 U.S.C. § 401. The amended §1229a(b)(1) would read as follows (additions are italicized and removals are stricken through):

The immigration judge shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses. The immigration judge may issue subpoenas for the attendance of witnesses and presentation of evidence. The immigration judge shall have authority ~~(under regulations-~~

~~prescribed by the Attorney General~~) to sanction by civil money penalty *such contempt of its authority as a court of the United States may sanction pursuant to 18 U.S.C. §401.*

If Congress enacted that amendment, the immigration courts would have a functional contempt power even if the DOJ promulgated no further regulations. Regardless of whether the DOJ implements a contempt regulation, or Congress amends §1229a(b)(1) to do so itself, it is high time to add this tool to the immigration courts' toolbox.

Conclusion

There is a multitude of voices calling for a total overhaul, in one way or another, of the immigration courts. Rather than entering that fray, we argue only in favor of a small—but meaningful—change that will improve the system we currently have.

Giving immigration judges the authority to punish contempt is not partisan—Congress overwhelmingly voted to give them that authority 22 years ago. The ABA, today a left-leaning organization, has called for the implementation of contempt authority as well. While not a panacea, it is a small but important tool that immigration judges need to efficiently manage their enormous caseloads.

For 22 years immigration judges have been waiting for this authority. But for 22 years, the DOJ has refused to give it to them. Either the DOJ should immediately implement a regulation like the one proposed here—or Congress should take the question out of the DOJ's hands. As long as we have our current immigration court system, it should work as well as it is able. That means ending regulatory self-capture and giving immigration judges the authority to hold lawyers and litigants in contempt when appropriate.

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Endnotes

1. See, e.g., Amit Jain, *Bureaucrats in Robes: Immigration “Judges” and the Trappings of “Courts,”* 33 GEO. IMMIGR. L.J. 261 (2019); Kevin R. Johnson, *Possible Reforms of the U.S. Immigration Laws*, 18 CHAP. L. REV. 315, 333–36 (2015); Won Kidane, *The Inquisitorial Advantage in Removal Proceedings*, 45 AKRON L. REV. 647, 706–16 (2012); Scott Rempell, *The Board of Immigration Appeals’ Standard of Review: An Argument for Regulatory Reform*, 63 ADMIN. L. REV. 283, 317–20 (2011); Christen Chapman, *Relief from Deportation: An Unnecessary Battle*, 44 LOY. L.A. L. REV. 1529, 1569–78 (2011); Jill E. Family, *Beyond Decisional Independence: Uncovering Contributors to the Immigration Adjudication Crisis*, 59 U. KAN. L. REV. 541, 546–89 (2011); David L. Koelsch, *Follow the North Star: Canada as a Model to Increase the Independence, Integrity and Efficiency of the U.S. Immigration Adjudication System*, 25 GEO. IMMIGR. L.J. 763, 794–805 (2011); Stephen H. Legomsky, *Restructuring Immigration Adjudication*, 59 DUKE L.J. 1635, 1685–1720 (2010); Stephen H. Legomsky, *Deportation and the War on Independence*, 91 CORNELL L. REV. 369, 403–08 (2006); see also Elizabeth J. Stevens, *Making Our ‘Immigration Courts’ Courts*, in FED. LAWYER 17, 18 (Mar. 2018); Am. Immigration Lawyers Ass’n (AILA) Board of Governors, *Resolution on Immigration Court Reform* 1–2 (Jan. 29, 2018), https://www.naij-usa.org/images/uploads/publications/AILA_Resolution_Passed_2.3_.2018_.pdf.
2. Am. Bar Ass’n, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, at UD 2-3 (2019), https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2019_reforming_the_immigration_system_volume_2.pdf [hereinafter Am. Bar. Proposals].
3. See, e.g., Hon. Dana Leigh Marks, *An Urgent Priority: Why Congress Should Establish an Article I Immigration Court*, 13 BENDER’S IMMIGR. BULL. 3, 15–21 (2008); Stevens, *supra* note 1 at 17–18; Nat’l Ass’n of Immigration Judges, *NAIJ Blueprint for Immigration Court Reform 2013* 2, https://www.naij-usa.org/images/uploads/publications/NAIJ-BLUEPRINT-FOR-REFORM-Revised_4-13-13-1_2.pdf; Am. Bar Proposals, *supra* note 2 at ES 44.
4. See, Jain, *supra* note 1 at 320–22 (not explicitly endorsing the idea but exploring the relative pros and cons).
5. See, e.g., Am. Bar Proposals, *supra* note 2 at 6–34; Am. Immigration Lawyers Ass’n, *Issue Paper: The Importance of Independence and Accountability in Our Immigration Courts* (2006), <http://www.aila.org/content/default.aspx?docid=8382>.
6. Board of Immigration Appeals, 48 Fed. Reg. 8,038 (Feb. 25, 1983) (codified at 8 C.F.R. §§ 1, 3, 100).
7. See Am. Bar. Proposals, *supra* note 2 at 2-24–2-26. When this paper mentions “federal courts” or “federal judges,” it refers exclusively to those courts and judges that derive their authority from Article III of the Constitution. In so doing, it specifically exempts immigration judges and administrative law judges.
8. See Mark H. Metcalf, *Built to Fail: Deception and Disorder in America’s Immigration Courts*, CENTER FOR IMMIGRATION STUDIES REPORT (Oct. 2011), <https://cis.org/sites/cis.org/files/articles/2011/built-to-fail-full.pdf>.
9. See Charles Stimson & GianCarlo Canaparo, *Expanding the Toolkit: Giving Immigration Judges Authority to Summarily Dispose of Meritless Cases*, HERITAGE FOUNDATION LEGAL MEMO NO. 247, July 18, 2019, <https://www.heritage.org/sites/default/files/2019-07/LM247.pdf>.
10. Ronald Goldfarb, *The History of the Contempt Power*, 1961 WASH. U. L. Q. 1, 1 (1961) [hereinafter *History of Contempt*]; see also Ronald K. Ingoe, *Civil Contempt in Federal Courts*, 24 WASH. & LEE L. REV. 119 (1967).
11. *History of Contempt*, *supra* note 10.
12. *Ex parte Robinson*, 86 U.S. (19 Wall.) 505, 510 (1873).
13. 4 WILLIAM BLACKSTONE, COMMENTARIES *282; see also *History of Contempt*, at 6, *supra* note 10 (“The power of courts to punish contempts is one which wends historically back to the early days of England and the crown.”).
14. For a thorough examination of the history of the contempt power, see *History of Contempt*, at 4–5, *supra* note 10 (citing, *inter alia*, 1 Campbell, *The Lives of the Chief Justices of England* 125–42 (1894)) and Sir John Fox, *The Nature of Contempt of Court*, 37 LQ. REV. 191 (1921) (tracing the contempt power in England back to the 10th century). The earliest example that Goldfarb provides occurred in the late 14th century. Prince Hal of England (who would later become King Henry IV) was held in contempt by Chief Justice Gascoigne when he repeatedly flew into a rage during the criminal trial of one of his servants. The judge reminded the prince that the court kept the king’s peace, and even the prince owed allegiance to the king. When the prince continued to make a scene (some sources say he struck the judge), the judge sentenced him for contempt and ordered him imprisoned. Incidentally, the king was pleased that Justice Gascoigne was bold enough to hold the prince to account. In the United States, in 1814, Major General Andrew Jackson was famously held in contempt and fined \$1,000 after he used his declaration of martial law in New Orleans to have a journalist, a federal district judge, and the United States Attorney thrown in prison. He threw the journalist in prison after he wrote an article critical of Jackson. He threw the judge in prison after he granted the journalist’s petition of habeas corpus. And he threw the U.S. Attorney in prison when he brought habeas corpus proceedings on behalf of the judge.
15. *Id.*
16. *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 450 (1911).
17. *Id.*
18. *Id.*

19. See 3A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 702 (3d ed. 2019) [hereinafter FEDERAL PRACTICE AND PROCEDURE]. To be clear, this statute is not the source of the federal courts' contempt power. As Blackstone and the Supreme Court have both recognized, the contempt power is inherent to the courts. See *Ex parte* Robinson, 86 U.S. at 510. One court has even held that any statute that seeks to limit the courts' inherent contempt power is not binding. See *Bradley v. State*, 36 S.E. 630 (Ga. 1900).
20. Fed. R. Civ. P. 16(f).
21. Fed. R. Civ. P. 37(b).
22. Fed. R. Civ. P. 45(g).
23. Fed. R. Civ. P. 70(e).
24. Fed. R. Civ. P. 11(c).
25. See, e.g., *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 764 (1980) (recognizing the "well-acknowledged inherent power of a court to levy sanctions in response to abusive litigation practices.") (internal quotations omitted); *Carlucci v. Piper Aircraft Corp.*, 775 F.2d 1440, 1447 (11th Cir. 1985); *Eash v. Riggins Trucking Inc.*, 757 F.2d 557 (3d Cir. 1985); *In re Cordova Gonzalez*, 726 F.2d 16 (1st Cir. 1984); *Matter of Baker*, 744 F.2d 1438 (10th Cir. 1984); *Barnd v. City of Tacoma*, 664 F.2d 1339 (9th Cir. 1982); *Flaksa v. Little River Marine Const. Co.*, 389 F.2d 885 (5th Cir. 1968).
26. FEDERAL PRACTICE AND PROCEDURE § 703, *supra* note 19; see also *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303, 67 S. Ct. 677, 701, 91 L. Ed. 884 (1947).
27. *Id.*
28. *United Mine Workers of Am.*, 330 U.S. at 303; *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949).
29. FEDERAL PRACTICE AND PROCEDURE § 703, *supra* note 19.
30. The precise contours of the limits addressed here are beyond the scope of this paper.
31. *Spallone v. U.S.*, 493 U.S. 265, 276 (1990) (quoting *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204, 231 (1821)).
32. See, e.g., *Craig v. Harney*, 331 U.S. 367 (1947); *Pennekamp v. Florida*, 328 U.S. 331 (1946); *Bridges v. California*, 314 U.S. 252 (1941).
33. See, e.g., *Roadway Express*, 447 U.S. at 767; *Blackmer v. United States*, 284 U.S. 421 (1932); *Hovey v. Elliott*, 167 U.S. 409 (1898).
34. See *In re Bradley*, 318 U.S. 50 (1943).
35. See *Gompers*, 221 U.S. at 444.
36. See *United Mine Workers of Am.*, 330 U.S. at 364 n. 30.
37. *Id.*
38. See, e.g., *Gompers*, 221 U.S. at 451; *Bessette v. W. B. Conkey Co.*, 194 U.S. 324 (1904).
39. Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009 (codified as amended in scattered sections of the U.S.C.).
40. 8 U.S.C. §1229a(b)(1).
41. Memorandum from the Attorney General to the Deputy Attorney General, Assistant Attorney General for Legal Policy, Director of the Executive Office for Immigration Review, and Acting Chief Immigration Judge (Aug. 9, 2006), <https://www.justice.gov/sites/default/files/ag/legacy/2009/02/10/ag-080906.pdf>.
42. 83 NO. 48 Interpreter Releases 2716 (Dec. 18, 2006); 84 NO. 26 Interpreter Releases 1552 (July 9, 2007); 85 NO. 20 Interpreter Releases 1382 (May 12, 2008); 86 NO. 21 Interpreter Releases 1509 (May 22, 2009); 87 NO. 19 Interpreter Releases 975 (May 10, 2010); 88 NO. 3 Interpreter Releases 231 (Jan. 17, 2011); 89 NO. 5 Interpreter Releases 274 (Jan. 30, 2012); 90 NO. 28 Interpreter Releases 1555 (July 29, 2013); 91 NO. 22 Interpreter Releases 971 (June 9, 2014); 92 NO. 48 Interpreter Releases 2281 (Dec. 21, 2015); 93 No. 24 Interpreter Releases Art. 16 (June 20, 2016).
43. 94 No. 30 Interpreter Releases Art. 19 (Aug. 7, 2017).
44. See, Stephen H. Legomsky, *Restructuring Immigration Adjudication*, 59 DUKE L.J. 1635, 1674 (2010); Marks, *supra* note 3 at 10.
45. See *Stimson & Canaparo*, *supra* note 9.
46. See Am. Bar Proposals, *supra* note 2, at UD 2-17.
47. *Strengthening and Reforming America's Immigration Court System: Hearing Before the Subcomm. on Border Security and Immigration of the S. Judiciary Comm.*, 115 Cong. (2018) (statement of Judge A. Ashley Tabaddor, President, National Association of Immigration Judges) [hereinafter Statement of Judge Tabaddor].
48. See, e.g., Press Release, Dep't of Justice, Attorney General Alberto R. Gonzales Outlines Reforms for Immigration Courts and Board of Immigration Reviews (Aug. 9, 2006), https://www.justice.gov/archive/opa/pr/2006/August/06_ag_520.html.