

SIGN-ON LETTER: One copy of this letter will be sent to Attorney General Ashcroft and another to Charles K. Adkins-Blanch, General Counsel of Executive Office for Immigration Review.

Proposed Changes to the BIA Threaten Due Process

March 20, 2002

The Honorable John Ashcroft
Attorney General
Department of Justice
Tenth Street and Constitution Avenue, N.W.
Washington, D.C. 20530

Charles K. Adkins-Blanch, General Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2400
Falls Church, VA 22041

Dear Attorney General Ashcroft and Mr. Adkins-Blanch:

The undersigned individuals and organizations write to express our grave concerns about the proposed regulatory changes to the Board of Immigration Appeals (BIA) that you issued on February 19. We take issue with both the substance of these reported changes and the comment period of thirty days which is insufficient to address a reform of this magnitude.

The changes to the BIA that you have proposed will amount to a denial of a review. Of special concern are the measures that make single-Member review the norm; eliminate de novo review of factual issues; establish a series of time limits geared toward expediting the adjudication process that could substitute efficiency for fairness; reduce the Board from 23 to 11; and implement a backlog elimination "transition period" of 180-days that sacrifices fairness for efficiency.

While we support your stated goal of ensuring that the BIA achieve timely and efficient adjudications and backlog reduction, we believe that this proposal would not successfully address the backlog and case time concerns, but, instead, would cause due process to suffer. In lieu of moving forward with this proposal, we call on you to bring together interested constituencies to examine and recommend proposals to improve administrative review in a way that will affirm the independence and impartiality of the BIA, facilitate immigrants' access to the BIA, enhance due process, efficiency, accountability, and consistency, and facilitate oversight and review. We oppose the proposed regulation and believe that:

- Existing backlogs are not the result of inefficiency, but reflect a lack of resources.
- A reduction in the number of Board Members does not serve the interests of fairness or efficiency.
- Eliminating the BIA's de novo factual review will increase dramatically both the number of cases remanded and the number of appeals taken to the federal courts.
- Three judge panels should remain the norm, not the exception.

Reforming the BIA is an important activity and should involve increasing the number of Board Members, improving the screening of cases that have limited factual or legal disputes, and instituting programs to provide free legal representation in meritorious matters. It is vitally important that immigration courts be independent, impartial and include meaningful checks and balances. Specifically, any reforms should reflect the following considerations:

- The independence and impartiality of the immigration judges and the immigration court system must be affirmed;
- Proposed changes must facilitate, not erode, immigrants' access to the BIA and federal courts, consistent with due process requirements; and
- Any changes also must enhance efficiency, increase accuracy, acceptability, accountability and consistency, and facilitate oversight and review.

Sincerely,