

Immigration appeals process lacks consistency, fairness, research shows

April 21 2015, by Clifton B. Parker

The federal immigration appeals process lacks consistency because it reviews a small and skewed sample of cases, according to new Stanford research.

Immigration judges who order [immigrants](#) deported up to three times as often as other colleagues are no more likely to be reversed on appeal, the study showed.

"Being assigned an unfriendly immigration judge is a one-two punch," said David Hausman, a Stanford doctoral student in political science and law. "That judge is not only more likely to order deportation, but also more likely to issue that order quickly, which prevents immigrants from finding a lawyer and eventually appealing the order."

Without an appeal, the federal Board of Immigration Appeals is unable to review and reverse those decisions, he added. Hausman's article, "The Failure of Immigration Appeals," is forthcoming in the University of Pennsylvania Law Review.

Timeframe an issue

In an interview, Hausman said it has been known for a long time that some immigration judges are much more likely to order deportations than others.

"What I've found is that harsher judges are also less patient," he said.

In some courts, according to Hausman, getting an impatient judge means that an immigrant's case will end months or even years sooner, which makes it a lot less likely that he or she will find a lawyer and avoid deportation.

He added, "There's very little accountability for these decisions about time. Those who get deported quickly never find a lawyer and therefore never appeal."

For his research project, Hausman used an internal administrative database, obtained by a Freedom of Information Act request, to track the decisions of immigration judges in over 2 million cases between the early 1990s and 2014. He studied only "non-detained" immigrants, or those who were never taken into custody during their proceedings.

Hausman, a member of the Immigration and Integration Policy Lab at Stanford, noted that immigrants without lawyers rarely appeal.

"The Board of Immigration Appeals therefore rarely reviews the removal orders of immigrants who might have meritorious claims, but who are assigned harsh judges and lack lawyers at the beginning of their proceedings," he said.

For immigrants who are not detained by the government, time is everything in immigration court, Hausman said.

"More time before the judge makes a final decision is the ticket to finding a lawyer and to avoiding deportation. Lawyers cost thousands of dollars, and it can take a long time to pull together that much money, or to find a lawyer willing to offer a lower rate," he said.

Based on the research findings, interviews and his own courtroom observations, Hausman suggested several reforms. Above all, he argues that the government should appoint counsel for immigrants in removal proceedings.

"Providing lawyers to immigrants is a priority for the immigrants' rights movement already," he said.

But short of such dramatic reform, he proposes small, targeted policy changes, such as making relief applications easier to file, changing the standard of review for the denial of a continuances, and providing randomized review of immigration judges' continuance decisions.

"These small changes would begin to fix the immigration appeals process, taking a step toward fairer results in immigration court," Hausman said.

More information: "The Failure of Immigration Appeals (February 18, 2015). University of Pennsylvania Law Review, Forthcoming." Available at SSRN: ssrn.com/abstract=2568960 or dx.doi.org/10.2139/ssrn.2568960

Provided by Stanford University

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