



D I S T R I C T O F C O L U M B I A B A R
Courts, Lawyers and the Administration of Justice Section

August 3, 2011

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Elton Gallegly
Chairman, Subcommittee on Immigration
Policy and Enforcement
Committee on the Judiciary
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Zoe Lofgren
Ranking Member, Subcommittee on Immigration
Policy and Enforcement
Committee on the Judiciary
Washington, DC 20515

Dear Chairman Smith, Ranking Member Conyers, Chairman Gallegly and Ranking Member Lofgren:

On behalf of the Courts, Lawyers & the Administration of Justice Section of the D.C. Bar, we write to express concern about provisions of H.R. 1932 that would consolidate all judicial review of immigration detention decisions in the United States District Court for the District of Columbia.¹

Sections of the D.C. Bar are encouraged by Bar rules to comment on matters as to which comments by lawyers would have particular relevance, and this new requirement could have significant effects on the handling of cases in the federal court where many D.C. Bar members practice.

H.R. 1932 expands the detention, for a period longer than allowed in current law, of aliens subject to an order of removal and who meet other criteria in the proposed statute. In addition, sections 2(a)(7), 2(b)(2) and 2(b)(3) in H.R. 1932 amend the Immigration and Nationality Act to make judicial review of a noncitizen's detention available "[w]ithout regard to the place of confinement . . . exclusively in habeas corpus proceedings instituted in the United States District Court for the District of Columbia."

Current law requires that *habeas corpus* petitions be filed in the federal district where the detainee is held. See 28 U.S.C. § 2241.

The rationale for consolidating all petitions from detained immigrants in the District of Columbia is unclear. The Judicial Conference of the United States, the policymaking body of the federal judiciary, has written the Committee expressing concern about these provisions.² Consolidation of cases in a single district court goes against the Judicial Conference's view, and the general rule in United States courts, that disputes should be handled in the district in which they arise. A system of exclusive review in a distant tribunal may serve chiefly

¹ The Steering Committee of the Section voted, without dissent, to adopt this public statement (with 2 recusals by government attorneys). The views expressed herein represent only those of the Courts, Lawyers & the Administration of Justice Section of the D.C. Bar and not those of the D.C. Bar or of its Board of Governors.

² Letter of James C. Duff, Secretary, Judicial Conference of the United States, to the Chairman and Ranking Member of the House Committee on the Judiciary (June 1, 2011).

to make it more difficult for detained immigrants to get judicial review.³ Since prompt court review of petitions challenging detention is a fundamental guarantee of the Constitution, placing all of that work in a single court has great potential to limit justice by adding extra burdens and delay.

But the principal concern of the Courts, Lawyers & the Administration of Justice Section is the effect on the court in the District of Columbia. Chief Judge Royce Lamberth of the United States District Court for the District of Columbia warned in public comments in spring 2011 that several hundred *habeas corpus* petitions filed by Guantanamo detainees have already overburdened the court so much that it will "try very few civil cases this spring and summer."⁴ He said the workload situation was already "as bad as [he had] seen it."

As many as one thousand *habeas corpus* petitions may be filed each year as a result of this bill. According to the Administrative Office of the United States Courts, during FY 2009, 883 alien detainee *habeas* petitions were filed in federal district courts nationwide. In FY 2010 the number was 682.⁵ Provisions in other sections of the bill extend the period of detention and change those eligible, making it likely that even greater numbers of petitions will be filed.

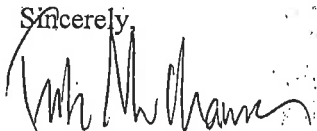
One thousand additional new cases assigned to the District Court for the District of Columbia would be a 33% increase in its caseload.⁶ That added volume has the potential to substantially and negatively affect the ability of this court to handle its other important business.

In addition to criminal cases which are subject to speedy trial requirements, civil litigation in the District Court includes a variety of significant matters including challenges to administrative actions of the federal government, regulatory matters, Freedom of Information Act cases, and civil rights matters arising in the nation's capital. Delay in these proceedings on account of a new nationwide cascade of immigration detention review petitions would be unfortunate.

The Section recommends that *habeas* proceedings for immigration detainees not be consolidated and instead continue to be brought in the judicial district where the detainee is housed.

Thank you for the opportunity to share our views.

Sincerely,



Fritz Mulhauser
Co-Chair



Sean Staples
Co-Chair

³ The majority of Immigration and Customs Enforcement (ICE) detention capacity is located in the areas of the ICE field offices in San Antonio (14%), Phoenix (9%), Atlanta (8%), Houston (7%), Miami (6%), and New Orleans (6%). Dora Schriro, *Immigration Detention Overview and Recommendations* (DHS, 2009) at 6. Available at: <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

⁴ Bill Mears, "Judicial nominee logjam creates 'crisis' in some federal courts." *CNN Politics*, March 4, 2011. Available at: http://articles.cnn.com/2011-03-03/politics/arizona.judicial.logjam_1_chief-judge-john-roll-federal-courts-federal-judges?s=PM:POLITICS. Three judicial vacancies at the time of his remarks have subsequently been filled.

⁵ Administrative Office of the United States Courts, *Judicial Business* (2010), Table C-2, Cases Commenced, By Basis of Jurisdiction and Nature of Suit. Available at: <http://www.uscourts.gov/Statistics/JudicialBusiness/JudicialBusiness2010.aspx>.

⁶ Total filings for 2010 (civil and criminal) totaled 2,920. Administrative Office of the United States Courts, *U.S. District Court Judicial Caseload Profile (D.C.)*. Available at: <http://www.uscourts.gov/cgi-bin/cmsd2010Dec.p1>.