

Talking Points—Centralized Article III Appellate Review of Immigration Court Decisions

- Providing for appellate review of Article I Immigration Court decisions in the regional (numbered) circuit courts of appeals rather than a single Article III court of nationwide jurisdiction (*i.e.*, the existing Court of Appeals for the Federal Circuit or a new Court of Immigration Appeals) would:
 - stifle the evolutionary development of immigration jurisprudence that currently “percolates” among the circuits before the Supreme Court grants review to establish nationally uniform precedents.
 - substantially impact dockets in the regional circuits, which could lose up to a quarter of their caseloads and, potentially, a corresponding portion of their judgeships;
 - impair access to justice for private litigants unless oral arguments before the national appellate court are heard outside Washington, D.C. (which the Federal Circuit is now empowered to do, *see* 28 U.S.C. § 48; Fed. Cir. R. 34, Practice Notes); and
 - potentially increase judicial administrative costs by requiring duplication of facilities and personnel to support review of immigration cases by a national appellate court.
- If existing circuit judgeships are shifted to a national appellate court for immigration cases, the senators representing states in the affected regional circuits would lose the ability to exercise “senatorial courtesy” in the selection of judges for those positions. Given that an approximate third of immigration appeals are currently heard by the Second and Ninth Circuits (which also serve higher proportions of “blue” states than most other circuits), the political ramifications of redistributing judicial resources from the regional circuits to a national appellate court might also be significant.
- The Judicial Conference of the United States (the federal judiciary’s national administrative policymaking organ) has taken the position that Article III appellate review should occur primarily in the regional circuits and, specifically, that regional (as opposed to centralized) review should be the rule in immigration cases. *See* JCUS—SEP 82, p. 64; JCUS—SEP 95, p. 45 (*Long Range Plan for the Federal Courts* Recommendation 16).

Transferring Article III Review of BIA Cases from the Regional Circuits to the Federal Circuit:
Potential Caseload and Judicial Resource Impact (based on FY 2013-FY 2017 filings)

	Commenced*				
	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
All regional circuits—Total Cases Filed (all sources)	56,475	54,987	52,698	60,357	50,506
All Administrative Agency Cases	8,287	6,927	7,141	6,469	6,153
BIA Cases	7,225	5,982	5,901	5,215	5,210
BIA cases—% of all agency cases	87.2%	86.4%	82.6%	80.6%	84.7%
% of total cases	12.8%	10.9%	11.2%	8.6%	10.3%
DC Circuit—Total Cases Filed (all sources)	1,105	1,003	1,125	1,197	951
All Administrative Agency Cases	345	375	476	493	343
BIA Cases	1	1	0	1	0
BIA cases—% of all agency cases	0.3%	0.3%	0%	0.2%	0%
% of total cases	0.09%	0.1%	0%	0.08%	0%
1st Circuit—Total Cases Filed (all sources)	1,578	1,421	1,504	1,704	1,296
All Administrative Agency Cases	165	161	139	105	88
BIA Cases	153	144	113	83	68
BIA cases—% of all agency cases	92.7%	89.4%	81.3%	79.0%	77.3%
% of total cases	9.7%	10.1%	7.5%	4.9%	5.2%
2nd Circuit—Total Cases Filed (all sources)	5,093	5,044	4,416	4,640	4,337
All Administrative Agency Cases	1,290	898	822	794	754
BIA Cases	1,226	837	752	743	705
BIA cases—% of all agency cases	95.0%	93.2%	91.5%	93.6%	93.5%
% of total cases	24.1%	16.6%	17.0%	16.0%	16.3%
3rd Circuit—Total Cases Filed (all sources)	3,893	4,029	3,251	3,618	2,941
All Administrative Agency Cases	367	268	287	244	336
BIA Cases	320	224	225	202	284
BIA cases—% of all agency cases	87.2%	83.6%	78.4%	82.8%	84.5%
% of total cases	8.2%	5.6%	6.9%	5.6%	9.7%
4th Circuit—Total Cases Filed (all sources)	5,061	4,765	4,662	6,411	4,497
All Administrative Agency Cases	326	224	272	230	246
BIA Cases	236	161	195	168	183
BIA cases—% of all agency cases	72.4%	71.9%	71.7%	73.0%	74.4%
% of total cases	4.7%	3.4%	4.2%	2.6%	4.1%

	Commenced*				
	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
5th Circuit—Total Cases Filed (all sources)	7,439	7,886	7,443	8,664	7,099
All Administrative Agency Cases	491	461	466	438	411
BIA Cases	420	416	372	311	352
BIA cases—% of all agency cases	85.5%	90.2%	79.8%	71.0%	85.6%
% of total cases	5.6%	5.3%	5.0%	3.6%	5.0%
6th Circuit—Total Cases Filed (all sources)	5,137	4,698	4,478	5,242	4,591
All Administrative Agency Cases	396	283	316	261	247
BIA Cases	317	237	232	194	196
BIA cases—% of all agency cases	80.1%	83.7%	73.4%	74.3%	79.4%
% of total cases	6.2%	5.0%	5.2%	3.7%	4.3%
7th Circuit—Total Cases Filed (all sources)	2,949	3,016	2,926	3,382	2,787
All Administrative Agency Cases	167	143	164	114	107
BIA Cases	113	100	118	64	69
BIA cases—% of all agency cases	67.7%	69.9%	72.0%	56.1%	64.5%
% of total cases	3.8%	3.3%	4.0%	1.9%	2.5%
8th Circuit—Total Cases Filed (all sources)	2,937	2,927	2,952	3,665	2,957
All Administrative Agency Cases	169	144	142	168	155
BIA Cases	137	101	101	113	104
BIA cases—% of all agency cases	81.1%	70.1%	71.1%	67.3%	67.1%
% of total cases	4.7%	3.5%	3.4%	3.1%	3.5%
9th Circuit—Total Cases Filed (all sources)	12,826	12,060	11,870	11,473	11,096
All Administrative Agency Cases	4,054	3,555	3,615	3,236	3,117
BIA Cases	3,881	3,419	3,441	3,063	2,980
BIA cases—% of all agency cases	95.7%	96.2%	95.2%	94.7%	95.6%
% of total cases	30.3%	28.3%	29.0%	26.7%	26.9%
10th Circuit—Total Cases Filed (all sources)	2,091	1,986	1,956	2,338	1,856
All Administrative Agency Cases	117	113	109	82	67
BIA Cases	80	89	79	47	40
BIA cases—% of all agency cases	68.4%	78.8%	72.5%	57.3%	59.7%
% of total cases	3.8%	4.5%	4.1%	2.0%	2.2%

	Commenced*				
	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
11th Circuit—Total Cases Filed (all sources)	6,366	6,152	6,115	8,023	6,098
All Administrative Agency Cases	400	302	333	304	282
BIA Cases	341	253	273	226	229
BIA cases—% of all agency cases	85.3%	83.8%	82.0%	74.3%	81.2%
% of total cases	5.4%	4.1%	4.5%	2.8%	3.8%

*Derived from Table B-3 (U.S. Courts of Appeals—Sources of Appeals, Original Proceedings, and Miscellaneous Applications Commenced, by Circuit, During the 12-Month Periods Ending September 30, 2013 through 2017)

NOTE: Cases commenced include reopened and remanded appeals as well as original appeals.

	Commenced**				
	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Federal Circuit—Total Cases Filed	1,259	1,491	1,710	1,840	1,731
Ratio of total BIA cases in regional circuits to Federal Circuit filings	5.74:1	4.01:1	3.45:1	2.83:1	3.01:1

**Derived from Table B-8 (U.S. Court of Appeals for the Federal Circuit—Appeals Filed, Terminated, and Pending) for the Twelve-Month Periods Ended September 30, 2013, September 30, 2014, September 30, 2015, September 30, 2016, and September 30, 2017, respectively

U.S. Courts of Appeals	DC Circuit	1st Circuit	2nd Circuit	3rd Circuit	4th Circuit	5th Circuit	6th Circuit	7th Circuit	8th Circuit	9th Circuit	10th Circuit	11th Circuit	Federal Circuit
Authorized Judgeships (not including senior judges)	11	6	13	14	15	17	16	11	11	29***	12	12	12

*** In March 2017, the Judicial Conference of the United States recommended that 5 additional judgeships be authorized for the Ninth Circuit.

In analyzing the need for circuit judgeships, the U.S. Judicial Conference uses as a starting point a threshold standard of 500 adjusted filings per panel based on authorized judgeships. To calculate the number of adjusted filings per panel the total number of case filings in a court is adjusted by eliminating reinstated (i.e., reopened and remanded) appeals and counting pro se appeals as one-third of a case, and then dividing the adjusted number of filings by the number of authorized three-judge panels (i.e., the court's number of authorized judgeships divided by 3).