

# President's Message

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## We Are a Nation of Immigrants

**A**MERICA IS A welcoming land of the free, where for generations immigrants have come seeking freedom from hunger; better lives for their children; and refuge from genocide, brutality, and intolerance. And we live in land where, for generations, immigrants have been graciously welcomed by so many—yet, at the same time, vilified by others.

Society's attitudes toward immigrants revolve around a complex set of rapidly changing political and economic forces at work on a national and global level. Over the last decade, debates over immigration have erupted to the forefront because of backlash from 9/11 and shifts in the nation's economy. Needless to say, immigration has become highly politicized and publicized.

The mission of the Federal Bar Association is to strengthen the federal legal system and administration of justice by serving the interests and needs of federal practitioners and the public they serve. One of the best ways to accomplish that goal is to educate our members on an issue as important as immigration law. Since all of our immigration laws are rooted in federal law, the topic is of utmost importance to our organization.

Many of us know little about immigration law. Here's a quick review: The Constitution vests the power of "naturalization" in Congress, which passes laws; federal agencies promulgate and administer regulations; administrative law judges within the Executive Office for Immigration Review and the appellate tribunal, the Board of Immigration Appeals, both of which are under the jurisdiction of the Department of Justice, interpret laws; and finally the Article III federal courts weigh in as arbiters of those laws. The activities and decisions of all these entities affect the rights of our foreign-born residents.

What is most relevant to FBA members is the rapid change that immigration law has undergone. Until the recent past, the majority of immigration litigation took place before the Executive Office for Immigration Review and the Board of Immigration Appeals. Over the last decade, the number of immigration cases to reach the federal district and circuit courts has grown exponentially. Even the U.S. Supreme Court has weighed in on the issue with greater regularity.

The beginning of the increase in immigration cases in appellate courts can be tracked to Attorney General John Ashcroft's announcement that the Department of

Justice would enforce immigration laws and clear the Board of Immigration Appeals' backlog of 56,000 cases by April 2003. The board immediately doubled its production and summarily dismissed cases. In response, immigration practitioners filed petitions for review, which, for the most part, stayed the deportation of their clients. By February 2003, monthly filings of these petitions in the Ninth Circuit had swelled by 385 percent, and by 781 percent in the Second Circuit.<sup>1</sup>

The government's emphasis on prosecuting immigration cases resulted in 70,000 prosecutions in federal court in 2008 alone—a 50 percent increase over the previous year's number.<sup>2</sup> In a campaign that started in 2006, officials at Immigration and Customs Enforcement, a branch of the Department of Homeland Security, stepped up raids at factories and in communities. As a result, this agency deported approximately 350,000 immigrants in fiscal year 2008. And even though federal prosecutions of individuals who crossed borders illegally reduced unauthorized entries into some southwestern border sectors, these prosecutions also brought a flood of immigration cases into federal courts.<sup>3</sup> Clearly, there needs to be some change in the system to address the problems of illegal immigration.

America has more immigrants than any country in the world. An estimated 11.9 million immigrants are living in this country illegally—an increase of 42 percent since 2000. During his second term, President George W. Bush pushed for comprehensive immigration reform, but a bipartisan bill dealing with the issue was defeated in 2007—a failure that produced backlash from voters. Advocates, who are in favor of granting legal status to people with no criminal background, contend that bringing the immigrant shadow economy into the light will increase tax rolls, stop the abuse of illegal workers, improve wages for all, and



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spur economic growth.<sup>4</sup> Furthermore, in conformity with the dream of the nation's Founders, granting legal status to qualified immigrants will afford individuals the ability to participate in our political systems fully and will ensure due process to all.

Since taking office, President Barack Obama has repeated a campaign pledge to propose a comprehensive immigration reform bill before the end of 2009. In fact, he has already made efforts in that direction. In broad terms, the Obama administration favors legislation that would bring illegal immigrants into the legal system by recognizing that they had violated the law and imposing fines and other penalties that fit the offense. If passed, the legislation would prevent future illegal immigration by strengthening border enforcement and by cracking down on employers who hire illegal immigrants. At the same time, the proposed initiative would create a national system for verifying the legal immigration status of newly hired workers. Perhaps Congress will pass new legislation that ensures immigration reform.<sup>5</sup>

New laws accompany new legislation, which will undoubtedly be followed by litigation of which our members must be apprised and about which they need to be educated. Fortunately, the Federal Bar Association has a very talented group of attorneys specializing in immigration law who are members of the active Immigration Law Section, as well as highly engaged local chapters nationwide. In May alone, members of the Immigration Law Section held two significant CLE events to educate members about the topic.

The section's annual Immigration Seminar was held on May 15–16 at the University of Memphis School of Law in Tennessee, where speakers and attendees from all over the country congregated. The seminar began with a pre-conference dinner on May 14 and was followed by two full days of CLE programs taught by a wide range of speakers, including local immigration judges and government attorneys from the Department of Justice and the Department of Homeland Security, including Juan Osuna, chairman of the Board of Immigration Appeals, and Judge Julie Gibbons of the Sixth Circuit Court of Appeals. I am grateful to Doug Weigle, section chair, and Barry Frager, vice chair, for spearheading this event.

The second event, an Immigration and Criminal CLE seminar, was presented by the Southern District of New York Chapter at the Daniel Patrick Moynihan Federal Courthouse in Manhattan on the evenings of May 18 and May 20. More than 80 attorneys attended

the seminar, which was taught by four immigration judges, a federal practitioner, and a forensic psychologist. Kudos to Amy Nussbaum Gell, chapter president, and to Roland Gell and Yoram Nachimovsky, co-chairs of the Immigration Law Committee, for arranging this program.

I must also extend my congratulations and thanks to *The Federal Lawyer* Editorial Board and René Harrod, editor in chief, for generating the concept of issues dedicated to a specific theme; this month's theme is—appropriately enough—immigration law. **TFL**

*Juanita Sales Lee*

#### Endnotes

<sup>1</sup>*Immigration Appeals Surge in Courts*, THE THIRD BRANCH, Vol. 35, No. 9, Sept. 2003. Administrative Office of the U.S. Courts Office of Public Affairs, available at [www.uscourts.gov/ttb/sep03ttb/immigration/index.html](http://www.uscourts.gov/ttb/sep03ttb/immigration/index.html).

<sup>2</sup>DiversityInc Staff, *Immigration Prosecution Overloading Federal Courts*, DIVERSITYINC, Jan. 13, 2009, available at [www.diversityinc.com/public/5081.cfm](http://www.diversityinc.com/public/5081.cfm).

<sup>3</sup>*Immigration and Emigration*, NEW YORK TIMES: Times Topics, May 15, 2009, available at [topics.nytimes.com/top/reference/timestopics/subjects/i/immigration\\_and\\_refugees/index.html](http://topics.nytimes.com/top/reference/timestopics/subjects/i/immigration_and_refugees/index.html).

<sup>4</sup>*Immigration Reform: All Together Now*, ECONOMIST, April 16, 2009, available at [www.economist.com/world/unitedstates/PrinterFriendly.cfm?story\\_id=13496202](http://www.economist.com/world/unitedstates/PrinterFriendly.cfm?story_id=13496202).

<sup>5</sup>Preston, Julia. *Obama to Push Immigration Bill as One Priority*, NEW YORK TIMES, April 9, 2009.

#### Editorial Policy

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The views expressed in *The Federal Lawyer* are those of the authors and do not necessarily reflect the views of the association or of the editorial board. Articles and letters to the editor in response are welcome.

**The FBA Immigration Law Section is planning its 2009-2010 calendar and invites immigration attorneys to be part of the section and assist in planning upcoming events. Please e-mail Adrienne Woolley at [awoolley@fedbar.org](mailto:awoolley@fedbar.org) if you are interested in joining the Immigration Law Section or interested in planning upcoming section events.**