

MARC VAN DER HOUT

Candidate Statement for 2019 AILA Board of Governors Election



I have been a long time and active member of the Board of Governors and am seeking reelection to another three-year term. I believe that I play an important and valuable role on the Board and that the positions I push and advocate for on the board are important both for the Association and for the clients of the majority of members of our organization.

But before I go further, a short explanation of why I am running by petition this year rather than through nomination by the nominations committee. Some people have asked me if the nominations committee chose not to re-nominate me even though I had sought their nomination. They did not. My wife and I were on an extended several week trip to Ecuador and the Galapagos in February and I missed the email for submitting my request for re-nomination. When I came back and saw I had missed the deadline, I did not feel it appropriate to ask for any exception to the valid deadline and hence am running by petition. I apologized to the nominations committee for my missing their email. We had a great trip though and highly recommend it to everyone! ☺

I see my role on the Board as trying to advance the cause of immigrants' rights and bring to that effort my long history of activism and involvement in litigation promoting the due process rights of immigrants and challenging repressive government policies and actions. I believe that the day to day litigation work I do in my practice and my emphasis on trying to protect the due process, First Amendment, and other constitutional rights of foreign nationals in this country, continues to help bring to the Board and, through that, to AILA in general, a perspective and voice on these important issues that affect a significant segment of our members' clients and an important sector of the immigrant population that chooses to come to this country by whatever means. I believe that my background and experience in these areas brings an important perspective and voice to the organization.

My type of litigation practice and experience is in the small minority on the Board and so brings important diversity and perspective to the Board. (Ok, yes, my age brings diversity too—I am a proud 70! ☺). In raising the issues I do on the Board, I attempt to keep in mind the needs and issues of clients facing removal or other harsh actions by the government and try to represent the concerns of this important segment of the immigrant population that I and many other AILA members represent. However, I believe also that one of my major strengths is being able to work in a comradely manner with Board members from many different backgrounds and perspectives. I seek to achieve consensus, rather than force confrontations or votes, as I strongly believe that that is far more productive in the long run than “winning” a particular vote or issue. I believe in mentoring people and bringing them along both in their practice and in their leadership skills. I believe it is very important to have a very good relationship with the people one works with and that means on the Board of Governors also. I try to go out of my way to get to know new

members and to try to develop friendly relationships with all members I meet. I believe I have generally been very successful at that.

I believe also that our legislative work is crucial and is an important complement to our litigation strategies. And even in this period when we have an extremely recalcitrant Senate—some may say reactionary—and a thoroughly anti-immigrant President, we need to keep trying. However, I believe we should not support legislation that attacks certain sectors of the immigrant population. I believe it is crucial, even at this time when there is so little talk of positive legislation, that we continue to push for legislation that truly addresses many of the “Fix 96” goals we have not been able to fulfill for so many years and that any legislation we push for tries to address and rectify the suffering so many of our clients have experienced due to the passage of IIRIRA in 1996. It is a marker at least for a time when we can actually hope to succeed in the legislative arena.

I have also been very active with the National Lawyers Guild since I started law school in 1974 and with the Guild’s National Immigration Project since I started practicing immigration law in 1978. I believe that AILA’s work with the Guild and other progressive legal and political organizations is essential to defending against the attacks on immigrants’ rights, especially in this era. I also have served on the Board of Advisors of the IMPACT FUND for the past twenty years, an organization that gives grant money to organizations that do Impact Litigation in progressive areas of the law. Through my involvement with the IMPACT FUND, immigration has been a priority area and AILA has become known to a wide and diverse group of civil rights lawyers.

Lastly, I am a firm believer in “work hard and play hard” so I look forward every year to the Saturday night party at the Annual Conference! We “gotta keep struggling” but we also “gotta keep dancing”!

I ask for your support and encourage you to vote for me for the Board of Governors for another term. Below is my C.V. which includes a list of some of the litigation I have done over the years, awards I have won, etc, for those who care to read all that!

MARC VAN DER HOUT

PROFESSIONAL EXPERIENCE

April 1980 - Present Immigration Attorney, private practice. Law Offices of Marc Van Der Hout, 1980-1995; Van Der Hout and Brigagliano, 1995-2003; Van Der Hout, Brigagliano and Nightingale, LLP (Now Van Der Hout LLP, same firm same partners, just a shorter name!), 2003-present. Representation of alien clients before U.S. Citizenship and Immigration Services, Executive Office for Immigration Review, Board of Immigration Appeals, U.S. Department of Labor and all levels of federal courts. Expertise in all aspects of immigration law with emphasis on federal court litigation, deportation defense, political asylum and immigration consequences of criminal cases.

State Certified Immigration and Nationality Law Specialist since 1988.

- 1987-1989 Adjunct Assistant Professor, Hastings College of the Law, University of California at San Francisco, teaching immigration law.
- Fall 1986 Lecturer, Boalt Hall School of Law, University of California at Berkeley, co-taught course on immigration law
- May 1978 - March 1980 Staff Attorney, International Institute of San Mateo. Representation in all areas of immigration law with emphasis on deportation defense.

EDUCATIONAL BACKGROUND

Golden Gate University School of Law, San Francisco, California.
J.D., June 1977.

University of Michigan, Ann Arbor, Michigan.
B.A., Sociology, December 1970.

SELECTED PUBLICATIONS

Immigration Law and Crimes, National Lawyers Guild, 1984, Clark Boardman, publisher. Contributing author.

Immigration Law and Defense, Vol. 2, National Lawyers Guild, 1983. Clark Boardman, publisher. Contributing author.

Immigration Law and Defense, National Lawyers Guild, 1980. Clark Boardman, publisher. Contributing author.

"Motions to Suppress After Delgado and Lopez-Mendoza," Immigration Journal, American Immigration Lawyers Association, Vol. VII, No. 2. Reprinted from Immigration Newsletter, National Immigration Project, National Lawyers Guild, Vol. 13, No. 5-6.

"The Politics of Asylum," California Lawyer, March 1985.

SELECTED LITIGATION

Bustamante v. Mukasey, 531 F.3d 1059 (9th Cir. 2008): Successful challenge on behalf of Mexican national and his U.S. Citizen wife to doctrine of non-reviewability of consular officer decisions; The Ninth Circuit held that the denial of immigrant visa was

subject to review, on a facially legitimate and bona fide inquiry, because the U.S. citizen's marriage interest created a due process right.

Arreola-Arreola v. Ashcroft, 383 F.3d 956 (9th Cir. 2004). Case before the U.S. Court of Appeals for the Ninth Circuit challenging the "reinstatement of removal" provision discussed above. In this case, the court found that if an individual is subject to reinstatement of removal, the Constitution requires that he have the opportunity to contest her prior order of removal before he can be deported a second time based on that order.

Castro-Cortez v. INS, 239 F.3d 1037 (9th Cir. 2001). Case before the U.S. Court of Appeals for the Ninth Circuit challenging the "reinstatement of removal" provision implemented by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996). "Reinstatement of removal" applies to non-citizens who have been previously deported, and then seek to reenter or enter the United States unlawfully. When "reinstatement of removal" applies, an individual is not eligible for any relief from removal and is immediately deported. In Castro-Cortez the Ninth Circuit found that the new law imposed by IIRIRA does not apply to individuals who reentered the United States prior to the April 1, 1997 effective of IIRIRA.

Lujan-Armendariz v. INS, 222 F.3d 728 (9th Cir. 2000). Successful constitutional challenge overturning BIA precedent decision and holding that dismissal of criminal case under state rehabilitative statutes analogous to the Federal First Offenders Act eliminates immigration consequence of single simple possession of controlled substance conviction.

American Arab Anti-Discrimination Committee, et al. v. Reno, 119 S. Ct. 936 (1999), 119 F.3d 1367 (9th Cir. 1997), 70 F.3d 1045 (9th Cir. 1995), 883 F. Supp. 1365 (N.D.CA. 1995). District Court decision declared unconstitutional ideological grounds of deportation under McCarran-Walter Act, 9th Cir. decision enjoined deportation based on selective prosecution, holding aliens have same First Amendment rights as US citizens, and voided on due process grounds use of classified information to deny immigration benefits; Ninth Circuit also rejected government claim that federal court jurisdiction barred by new immigration law; Supreme Court reversed on jurisdictional grounds.

Magana-Pizano v. INS, 200 F.3d 603 (9th Cir. 1999). Successful challenge to 1996 amendments to the Immigration and Nationality Act affirming power of the federal courts' to review final orders of deportation and successfully challenging INS' retroactive application of statutory provision eliminating certain relief from deportation.

Barahona v. Reno, 167 F.3d 1228 (9th Cir. 1999). Class action suit on behalf of applicants for suspension of deportation, challenging unlawful interference of Justice Department officials in decision making process. Ninth Circuit-wide preliminary injunction granted preventing deportation of class members; District Court rejected the

government's motion to dismiss, claiming new Congressional enactment deprived federal courts of jurisdiction over such matters.

Shia Ass'n of Bay Area v. United States, 849 F. Supp. 2d 916 (N.D. Cal. 2012): Action on behalf of Imam and members of a mosque, successfully challenging unconstitutional lack of notice before DHS withdrew plaintiffs' advance parole and declaring revocation of advance parole for an adjustment of status applicant while out of country and without notice, unlawful. Also declared agency regulation requiring religious workers to be in lawful status during two year required experience to be ultra vires to the statute.

Zavala v. Ridge, 310 F. Supp. 2d 1071 (N.D. Cal. 2004). Successful challenge to the Department of Homeland Security's ("DHS") "automatic stay" regulation before the U.S. District Court for the Northern District of California. The "automatic stay" regulation purports to allow the DHS to keep individuals in custody while their immigration cases are pending, even after an immigration judge has ordered their release. The District Court found that the regulation was facially unconstitutional and that it exceeded the authority conferred upon the DHS by Congress.

Araujo v. INS, 301 F. Supp. 2d 1095 (N.D. Cal. 2004). Federal Torts Claim Act case in the U.S. District Court for the Northern District of California. The Court applied the Castro-Cortez decision listed above and concluded that because Castro-Cortez held that it was unlawful to apply the "reinstatement of removal" provision to people who reentered the United States prior to April 1, 1997, the government could not argue in a separate Federal Torts Claim Act suit that the deportation at issue in Castro-Cortez was lawful. The Court applied legal principles of "collateral estoppel" and found the government was liable for the tort of "unlawful imprisonment."

American Baptist Churches, et al. v. Thornburgh, 760 F. Supp. 786 (N.D.CA.1991), 712 F.Supp. 756 (N.D. Calif. 1989) ("ABC"); Nationwide class action on behalf of Salvadoran and Guatemalan refugees successfully challenging discrimination in asylum adjudications by the then INS, the immigration judges and the BIA based on impermissible foreign policy considerations. The landmark suit resulted in a settlement requiring readjudication of all denied asylum claims. It is estimated that over 500,000 Guatemalans and Salvadorans have benefitted from the ABC settlement).

Rafeedie v. INS, 688 F.Supp. 729 (D.D.C. 1988), aff'd in part and rev'd in part, 880 F.2d 506 (D.C. Cir. 1989), on remand, 795 F. Supp. 13 (D.D.C. 1992)(successful due process challenge to use of ex parte in camera hearing procedure to exclude returning lawful permanent resident, court declared unconstitutional ideological grounds of exclusion under McCarran-Walter Act)

Sanchez-Trujillo v. INS, 801 F.2d 1571 (9th Cir. 1986) (test case raising issue of political asylum as a social group for Salvadoran young males)

Escobar-Ruiz v. INS, 787 F.2d 1294 (9th Cir. 1986); 838 F.2d 1020 (9th Cir. 1988) (en banc). Then-precedent ruling that attorney's fees may be obtained under the Equal

Access to Justice Act for work before the Immigration Court and the Board of Immigration Appeals.

Cunanan v. I.N.S., 856 F.2d. 1373 (9th Cir. 1988). Established due process right to have declarations of INS witnesses declared inadmissible without opportunity to cross-examine declarant.

Dellums v. Smith, 577 F. Supp. 1444 (N.D. CA 1983), 577 F. Supp. 1456 (N.D. CA 1983). Action for special prosecutor under Ethics in Government Act, asserting criminal violations by high U.S. government officials of the Neutrality Act in actions against the Nicaraguan government. District court ordered Attorney General to conduct investigation to determine whether special prosecutor should be appointed for criminal prosecution of President Reagan and other high government officials. Ninth Circuit reversed on standing grounds.

Mahdjoubi v. Crosland, 618 F.2d 1356 (9th Cir., May 14, 1980). Due process and APA challenge to INS regulations denying reinstatement of Iranian students.

Yassini v. Crosland, 613 F.2d 219 (9th Cir., Jan. 29, 1980). Estoppel challenge to INS revocation of a temporary sanctuary program that had theretofore been established for Iranian nationals in the United States.

ASSOCIATIONS

Board of Governors, American Immigration Lawyers Association, 1989 to present.

American Bar Association, Coordinating Committee on Immigration, 1995-1998.

Member, Board of Directors, National Immigration Project of National Lawyers Guild, 1982 to present.

Chair, Executive Office for Immigration Review liaison committee of the American Immigration Lawyers Association, 1987-1988.

Chair, National Litigation Project of American Immigration Lawyers' Association, 1988-1990.

Co-Chair, Litigation Training Committee, American Immigration Lawyers Association, 1986-1987.

National President, National Lawyers Guild, 1985-1986.

Chairperson, National Immigration Project of the National Lawyers Guild, 1982-1984.

Member, American Immigration Lawyers Association, 1979 to present.

Member, National Lawyers Guild, National Immigration Project, 1979 to present.

Member, National Lawyers Guild, 1974 to present.

Member, Board of Directors, Criminal Trial Lawyers Association of Northern California, 1995-2005

Member, Board of Advisors, The Impact Fund, 1992 to present

SELECTED AWARDS

San Francisco Chronicle, Immigration Lawyer of the Year 2018

Lawyers' Committee for Civil Rights of the San Francisco Bay Area Robert G. Sproul, Jr. Award, 2009

California Lawyer Attorneys of the Year (CLAY) Award, 2008

Named one of the top 100 lawyers and top immigration lawyers by Northern California Super Lawyers 2008 magazine

Chosen by the Los Angeles Daily Journal as one of California's Top 100 Leading Lawyers, 2007

Lawdragon 500 Leading Lawyers in America, 2005.

Selected by the San Francisco Chronicle in 2003 as one of San Francisco Bay Area's top 25 attorneys

The Board of Governors of the State Bar of California, Wiley W. Manuel Award for Pro-Bono Legal Services, March 2001.

American Immigration Law Foundation Honorary Fellowship Award, June 1999.

Woodward/White's Best Lawyers in America, 1993. Has been re-selected each year.

American Immigration Lawyers Association Jack Wasserman Memorial Award for excellence in the field of litigation, June 1991.

American Immigration Lawyers Association Jack Wasserman Memorial Award for excellence in the field of litigation, June 1989.

San Francisco Bar Association and the Immigrant Legal Resource Center Phillip Burton Immigration Award for "outstanding immigration lawyering", December, 1989.

State Bar of California, Legal Service Achievement Award - 1988 for practice of law in the public interest.

National Immigration Project of National Lawyers' Guild Carol Weiss King Award -
Washington, D.C., 1987 - For outstanding contribution to the field of immigration law.