

**Statement of Retired Immigration Judges and former members of the Board of Immigration Appeals**

**Submitted to the Senate Judiciary Subcommittee on Border Security and Immigration  
Hearing on “Strengthening and Reforming America’s Immigration Court System”**

**April 18, 2018**

This statement for the record is submitted by retired immigration judges and former members of the Board of Immigration Appeals (BIA). Drawing upon our many years of combined service, we have an intimate knowledge of the operation of the immigration courts. Immigration judges and Board members are supposed to act as neutral arbiters; however, they are considered to be employees of the nation’s chief law enforcement agency, the U.S. Department of Justice (DOJ), rather than true judges. The DOJ is run by politically appointed law enforcement officials, making EOIR vulnerable to improper political pressures. In order to restore public confidence in the immigration court system and to insulate EOIR from political pressure, the immigration court system must be removed from the DOJ to an independent article I court structure that focuses on due process and efficient court administration.

For over a decade, the immigration courts have been severely underfunded when compared to the budget increases that Congress has provided to immigration enforcement. EOIR has been unable to keep pace with the growing number of removal proceedings. The Trump administration has further contributed to this backlog, [announcing](#) broad new immigration enforcement priorities in January of 2017 that make almost everyone who is undocumented a priority for arrest. With the immigration court case [backlog](#) approaching 700,000 cases, we can all agree that our immigration court system is in crisis.

***Instead of working to improve the immigration court system, DOJ and EOIR have issued policies that will threaten the integrity and independence of the immigration courts.***

*Imposing case completion quotas*

On March 30th, the Director of EOIR [announced](#) that immigration judges will now be subject to case completion quotas. This unprecedented change will be effective October 1, 2018, and starting then, immigration judges will be subject to performance reviews (tied to job security and raises) that focus on meaningless numbers and disregard due process. An immigration judge should be evaluated based on the quality of her decisions, not the quantity. Moreover, quotas will likely produce hastily-made decisions and result in grave errors. Poor decisions will also directly result in more appeals to the BIA and the Courts of Appeal, and more remands, causing more delays and running contrary to the goals of the Attorney General (AG).

*Curbing use of docketing management tools such as use of continuances*

On July 31, 2017, the Chief Immigration Judge issued a [memorandum](#) making it more difficult for judges to grant multiple continuances. This policy along with the imposition of case completion quotas heightens concerns that cases will be rushed through the immigration court system. Continuances are necessary in a

variety of circumstances, such as when an individual is facing deportation in immigration court while awaiting a decision by the U.S. Citizenship Immigration Services (USCIS) on a pending application. Examples of such applications are “U” visas for crime victims, I-601A waivers for unlawful presence, I-130 visa petitions for family members of residents or citizens, or I-751 applications for certain individuals married to U.S. citizens. By law, immigration judges cannot make a decision on these applications; USCIS has sole jurisdiction to make those decisions. But the result of those applications may be outcome determinative in removal proceedings. To date, case law supports judges granting continuances, when it makes sense, in circumstances like these. However, under the new quota system, a judge could be influenced to deny a request for a continuance he or she otherwise would have reasonably granted, solely because of concern about completion numbers and job retention. That is not justice; it seems more like an assembly line. Circuit courts will not excuse due process violations based on immigration judges having to meet arbitrary completion goals.

*The AG is taking dramatic steps to rewrite immigration law.*

The AG recently utilized his authority to [certify](#) two BIA decisions to himself for review to examine a judges’ authority to utilize docket management tools including use of continuances and administrative closure. As described in our *amicus* [brief](#), immigration judges have inherent powers (including the power to control their own dockets, and to administratively close cases as a means of exercising such control) delegated to them by Congress, and not the Attorney General. Such authority of judges to control their dockets has been recognized by the Supreme Court and lower federal courts. Both the issuance of continuances and administrative closure are important docket management tools that allow judges to manage high caseloads. The certification of these cases signals the AG’s intent to massively curtail judicial independence. The solution is to create an independent, Article I immigration court, allowing IJs to continue to decide cases with fairness and neutrality free from such policy-driven interference.

#### ***Additional Resources from Retired Immigration Judges and Former BIA Members***

- Jeffrey S. Chase, *The Need For an Independent Immigration Court*, Jeffrey S. Chase Opinions/Analysis on Immigration Law, (Aug. 17, 2017), <https://www.jeffreyschase.com/blog/2017/8/17/the-need-for-an-independent-immigration-court>.
- Jeffrey S. Chase, *IJs, Tiered Review and Completion Quotas*, Jeffrey S. Chase Opinions/Analysis on Immigration Law, (Nov. 9, 2017), <https://www.jeffreyschase.com/blog/2017/11/9/ijs-tiered-review-and-completion-quotas>.
- Bruce Einhorn, *Jeff Sessions wants to bribe judges to do his bidding*, *Washington Post*, (Apr. 5, 2018), [https://www.washingtonpost.com/opinions/jeff-sessions-wants-to-bribe-judges-to-do-his-bidding/2018/04/05/fd4bdc48-390a-11e8-acd5-35eac230e514\\_story.html?utm\\_term=.758f0b92e2e6](https://www.washingtonpost.com/opinions/jeff-sessions-wants-to-bribe-judges-to-do-his-bidding/2018/04/05/fd4bdc48-390a-11e8-acd5-35eac230e514_story.html?utm_term=.758f0b92e2e6).
- John F. Gossart, *Time to fix our immigration courts*, *The Hill*, (Feb. 26, 2014), <http://thehill.com/blogs/congress-blog/judicial/199224-time-to-fix-our-immigration-courts>.
- Lory Rosenberg, *Much Sound and Fury: Matter of E-F-H-L*, 27 *I&N Dec.* 226 (A.G. 2018), *ILW*, (Mar. 6, 2018), [http://blogs.ilw.com/entry.php?10427-Much-Sound-and-Fury-Matter-of-E-F-H-L-27-I-amp-N-Dec-226-\(A-G-2018\)](http://blogs.ilw.com/entry.php?10427-Much-Sound-and-Fury-Matter-of-E-F-H-L-27-I-amp-N-Dec-226-(A-G-2018))
- Paul Wickham Schmidt, *Retired Immigration Judge and Former Chairman of the BIA Responds to Implementation of Production Quotas*, *Immigration Courtside*, (Apr. 4, 2018), <http://www.aila.org/infonet/retired-immigration-judge-and-former-chairman>

- Paul Wickham Schmidt, *We Need An Article I United States Immigration Court — NOW — Could The Impetus Come From An Unlikely Source?*, Immigration Courtside, <http://immigrationcourtside.com/we-need-an-article-i-united-states-immigration-court-now/>.
- Robert Vinikoor, *Take it From a Former Immigration Judge: Quotas Are a Bad Idea*, Minsky, McCormick & Hallagan, P.C. Blog, (Apr. 12, 2018), <https://www.mmhpc.com/2018/04/take-it-from-a-former-judge-quotas-for-immigration-judges-are-a-bad-idea/>.

We appreciate the opportunity to provide this statement for the record and look forward to engaging as Congress considers reforming the immigration court system.

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Sincerely,

**Honorable Steven R. Abrams**  
**Honorable Patricia L. Buchanan**  
**Honorable Sarah M. Burr**  
**Honorable Jeffrey S. Chase**  
**Honorable George T. Chew**  
**Honorable Bruce J. Einhorn**  
**Honorable Cecelia M. Espenosa**  
**Honorable Noel Ferris**  
**Honorable John F. Gossart, Jr.**  
**Honorable William P. Joyce**  
**Honorable Carol King**  
**Honorable Elizabeth A. Lamb**  
**Honorable Margaret McManus**  
**Honorable Lory D. Rosenberg**  
**Honorable Susan Roy**  
**Honorable William Van Wyke**  
**Honorable Paul W. Schmidt**  
**Honorable Polly A. Webber**

#### **List of Retired Immigration Judges and Former BIA Members**

The **Honorable Steven R. Abrams** served as an Immigration Judge in New York City from 1997 to 2013 at JFK Airport, Varick Street, and 26 Federal Plaza. From 1979 to 1997, he worked for the former Immigration and Naturalization Service in various capacities, including a general attorney; district counsel; a Special U.S. Attorney in the Eastern District of New York and Alaska. Presently lectures on Immigration law in Raleigh, NC.

The **Honorable Patricia L. Buchanan** served as an Immigration Judge in New York City from June 2015 to July 2017, having responsibility for a detained docket for more than a year and a half. From December 2003 to October 2014, she served in various roles within the Immigration Unit of the Civil Division of the United States Attorney's Office for the Southern District of New York, including

Assistant United States Attorney and Chief of the Immigration Unit. From 2001 to 2003 she served as a trial attorney in the Department of Justice, Civil Division, Office of Immigration Litigation in Washington, DC. From 1996 to 2001, she served as a trial attorney on a detained docket with the former Immigration and Naturalization Service in the New York District. During a significant period of her time as a federal court litigator, she authored a monograph analyzing hundreds of precedent decisions on process and procedural issues (including rights and limitations to continuances) in removal proceedings and presented at numerous DOJ and DHS trainings on due process issues. Prior to joining the Department of Justice, she worked as a Temporary and Volunteer Attorney at Westchester/Putnam Legal Services from 1995 to 1996 and worked at Mid-Hudson Legal Services from 1991 to 1995.

The **Honorable Sarah M. Burr** served as a U.S. Immigration Judge in New York from 1994 and was appointed as Assistant Chief Immigration Judge in charge of the New York, Fishkill, Ulster, Bedford Hills and Varick Street immigration courts in 2006. She served in this capacity until January 2011, when she returned to the bench full-time until she retired in 2012. Prior to her appointment, she worked as a staff attorney for the Criminal Defense Division of the Legal Aid Society in its trial and appeals bureaus and also as the supervising attorney in its immigration unit. She currently serves on the Board of Directors of the Immigrant Justice Corps.

The **Honorable Jeffrey S. Chase** served as an Immigration Judge in New York City from 1995 to 2007 and was an attorney advisor and senior legal advisor at the Board from 2007 to 2017. He is presently in private practice as an independent consultant on immigration law, and is of counsel to the law firm of DiRaimondo & Masi in New York City. Prior to his appointment, he was a sole practitioner and volunteer staff attorney at Human Rights First. He also was the recipient of the American Immigration Lawyers Association's annual pro bono award in 1994 and chaired AILA's Asylum Reform Task Force.

#### **Honorable George T. Chew**

The **Honorable Bruce J. Einhorn** served as a United States Immigration Judge in Los Angeles from 1990 to 2007. He now serves as an Adjunct Professor of Law at Pepperdine University School of Law in Malibu, California, and a Visiting Professor of International, Immigration, and Refugee Law at the University of Oxford, England. He is also a contributing op-ed columnist at D.C.-based The Hill newspaper. He is a member of the Bars of Washington D.C., New York, Pennsylvania, and the Supreme Court of the United States.

The **Honorable Cecelia M. Espenoza** served as a Member of the Executive Office for Immigration Review ("EOIR") Board of Immigration Appeals from 2000-2003 and in the Office of the General Counsel from 2003-2017 where she served as Senior Associate General Counsel, Privacy Officer, Records Officer and Senior FOIA Counsel. She is presently in private practice as an independent consultant on immigration law, and a member of the World Bank's Access to Information Appeals Board. Prior to her EOIR appointments, she was a law professor at St. Mary's University (1997-2000) and the University of Denver College of Law (1990-1997) where she taught Immigration Law and Crimes and supervised students in the Immigration and Criminal Law Clinics. She has published several articles on Immigration Law. She is a graduate of the University of Utah and the University of Utah S.J. Quinney College of Law. She was recognized as the University of Utah Law School's Alumna of the Year in 2014

and received the Outstanding Service Award from the Colorado Chapter of the American Immigration Lawyers Association in 1997 and the Distinguished Lawyer in Public Service Award from the Utah State Bar in 1989-1990.

The **Honorable Noel Ferris** served as an Immigration Judge in New York from 1994 to 2013 and an attorney advisor to the Board from 2013 to 2016, until her retirement. Previously, she served as a Special Assistant U.S. Attorney in the Southern District of New York from 1985 to 1990 and as Chief of the Immigration Unit from 1987 to 1990.

The **Honorable John F. Gossart, Jr.** served as a U.S. Immigration Judge from 1982 until his retirement in 2013 and is the former president of the National Association of Immigration Judges. At the time of his retirement, he was the third most senior immigration judge in the United States. Judge Gossart was awarded the Attorney General Medal by then Attorney General Eric Holder. From 1975 to 1982, he served in various positions with the former Immigration Naturalization Service, including as general attorney, naturalization attorney, trial attorney, and deputy assistant commissioner for naturalization. He is also the co-author of the National Immigration Court Practice Manual, which is used by all practitioners throughout the United States in immigration court proceedings. From 1997 to 2016, Judge Gossart was an adjunct professor of law at the University of Baltimore School of Law teaching immigration law, and more recently was an adjunct professor of law at the University of Maryland School of Law also teaching immigration law. He has been a faculty member of the National Judicial College, and has guest lectured at numerous law schools, the Judicial Institute of Maryland and the former Maryland Institute for the Continuing Education of Lawyers. He is also a past board member of the Immigration Law Section of the Federal Bar Association. Judge Gossart served in the United States Army from 1967 to 1969 and is a veteran of the Vietnam War.

The **Honorable William P. Joyce** served as an Immigration Judge in Boston, Massachusetts. Subsequent to retiring from the bench, he has been the Managing Partner of Joyce and Associates with 1,500 active immigration cases. Prior to his appointment to the bench, he served as legal counsel to the Chief Immigration Judge. Judge Joyce also served as an Assistant U.S. Attorney for the Eastern District of Virginia, and Associate General Counsel for enforcement for INS. He is a graduate of Georgetown School of Foreign Service and Georgetown Law School.

The **Honorable Carol King** served as an Immigration Judge from 1995 to 2017 in San Francisco and was a temporary Board member for six months between 2010 and 2011. She previously practiced immigration law for ten years, both with the Law Offices of Marc Van Der Hout and in her own private practice. She also taught immigration law for five years at Golden Gate University School of Law and is currently on the faculty of the Stanford University Law School Trial Advocacy Program. Judge King now works as a Removal Defense Strategist, advising attorneys and assisting with research and writing related to complex removal defense issues.

The **Honorable Elizabeth A. Lamb** was appointed to the immigration bench in 1992. Previously she served as EEO counsel to the St. Regis paper company and was of counsel to Catholic Charities in New York City for immigration matters. Before law school she served as press secretary for then Congressman Hugh L. Carey and later for commissioner Bess Myerson at the New York City Department of Consumer

Affairs. Her first job after graduation from law school was for the New York State Department of Criminal Justice Services. She retired on January 6, 2018.

The **Honorable Margaret McManus** was appointed as an Immigration Judge in 1991 and retired from the bench after twenty-seven years in January 2018. She received a Bachelor of Arts degree from the Catholic University of America in 1973, and a Juris Doctorate from Brooklyn Law School in 1983. Judge McManus was an attorney for Marion Ginsberg, Esquire from 1989 to 1990 in New York. She was in private practice in 1987 and 1990, also in New York. Judge McManus worked as a consultant to various nonprofit organizations on immigration matters including Catholic Charities and Volunteers of Legal Services from 1987 to 1988 in New York. She was an adjunct clinical law professor for City University of New York Law School from 1988 to 1989. Judge McManus served as a staff attorney for the Legal Aid Society, Immigration Unit, in New York, from 1983 to 1987. She is a member of the New York Bar.

The **Honorable Lory D. Rosenberg** served on the Board from 1995 to 2002. She then served as Director of the Defending Immigrants Partnership of the National Legal Aid & Defender Association from 2002 until 2004. Prior to her appointment, she worked with the American Immigration Law Foundation from 1991 to 1995. She was also an adjunct Immigration Professor at American University Washington College of Law from 1997 to 2004. She is the founder of IDEAS Consulting and Coaching, LLC., a consulting service for immigration lawyers, and is the author of Immigration Law and Crimes. She currently works as Senior Advisor for the Immigrant Defenders Law Group.

The **Honorable Susan Roy** started her legal career as a Staff Attorney at the Board of Immigration Appeals, a position she received through the Attorney General Honors Program. She served as Assistant Chief Counsel, National Security Attorney, and Senior Attorney for the DHS Office of Chief Counsel in Newark, NJ, and then became an Immigration Judge, also in Newark. Sue has been in private practice for nearly 5 years, and two years ago, opened her own immigration law firm. Sue is the NJ AILA Chapter Liaison to EOIR, is the Vice Chair of the Immigration Law Section of the NJ State Bar Association, and in 2016 was awarded the Outstanding Pro Bono Attorney of the Year by the NJ Chapter of the Federal Bar Association.

#### The **Honorable William Van Wyke**

The **Honorable Paul W. Schmidt** served as an Immigration Judge from 2003 to 2016 in Arlington, Virginia. He previously served as Chairman of the Board of Immigration Appeals from 1995 to 2001, and as a Board Member from 2001 to 2003. He authored the landmark decision Matter of Kasinga, 21 I&N Dec. 357 (BIA 1995) extending asylum protection to victims of female genital mutilation. He served as Deputy General Counsel of the former INS from 1978 to 1987, serving as Acting General Counsel from 1986-87 and 1979-81. He was the managing partner of the Washington, D.C. office of Fragomen, Del Rey & Bernsen from 1993 to 1995, and practiced business immigration law with the Washington, D.C. office of Jones, Day, Reavis and Pogue from 1987 to 1992, where he was a partner from 1990 to 1992. He served as an adjunct professor of law at George Mason University School of Law in 1989, and at Georgetown University Law Center from 2012 to 2014 and 2017 to present. He was a founding member of the International Association of Refugee Law Judges (IARLJ), which he presently serves as Americas Vice President. He also serves on the Advisory Board of AYUDA, and assists the National Immigrant

Justice Center/Heartland Alliance on various projects; and speaks, writes and lectures at various forums throughout the country on immigration law topics. He also created the immigration law blog [immigrationcourtside.com](http://immigrationcourtside.com).

The **Honorable Polly A. Webber** served as an Immigration Judge from 1995 to 2016 in San Francisco, with details in Tacoma, Port Isabel, Boise, Houston, Atlanta, Philadelphia, and Orlando Immigration Courts. Previously, she practiced immigration law from 1980 to 1995 in her own private practice in San Jose, California, initially in partnership with the Honorable Member of Congress, Zoe Lofgren. She served as National President of AILA from 1989 to 1990 and was a national officer in AILA from 1985 to 1991. She has also taught Immigration and Nationality Law for five years at Santa Clara University School of Law. She has spoken at seminars and has published extensively in this field, and is a graduate of Hastings College of the Law (University of California), J.D., and the University of California, Berkeley, A.B., Abstract Mathematics.