Stop the Corruption of USCIS and EOIR Missions
Ensure Fairness and Consistency in All Immigration Decisions

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Since taking office, the administration has dramatically altered the missions of U.S. Citizenship and Immigration Services (USCIS) and the Executive Office for Immigration Review (EOIR), transforming immigration officers and immigration judges into tools of enforcement rather than fair, impartial adjudicators. Under new USCIS guidance, officers will side-step procedural protections and disqualify far more noncitizens from obtaining immigration benefits, forcing them into removal proceedings before an immigration court system that cannot guarantee due process. These agencies are becoming the conveyor belt into the deportation machine.

**USCIS Converted to Enforcement Arm of DHS**

In July 2018, USCIS announced a new policy greatly expanding the agency’s authority to issue notices to appear (NTAs). Significantly, USCIS will issue an NTA in every case where an applicant or beneficiary is not lawfully present at the time an immigration benefits request is denied. As a result, thousands of people will be referred for removal, including people who entered the U.S. lawfully, followed all the rules to extend or change their status, but whose applications are denied, even if just for a technical deficiency.

Under the new memorandum, even individuals who wish to depart the United States and return to their home country will instead be required to remain in the U.S. and appear before an immigration judge. Ignoring the NTA and returning home is not a viable option, as failure to appear for a scheduled hearing can subject an individual to severe penalties and block them from obtaining immigration benefits in the future. Immigration courts will be flooded with additional cases, making it even harder for people already waiting in the immigration court backlog to receive a timely hearing.

In addition to the NTA policy, new guidance makes it even easier for USCIS to deny requests for immigration benefits without giving the applicant or petitioner the opportunity to correct a deficiency or supplement the record with additional evidence. Other USCIS guidance changes 20 years of consistent policy to subject more nonimmigrant students and exchange visitors to harsh penalties for unlawful presence. Moreover, in February 2018, USCIS went so far as to change its mission statement, deleting references to America as a “nation of immigrants” and to noncitizens who apply and pay for immigration benefits as “customers.” These changes contravene Congress’s intent when it passed the Homeland Security Act in 2002, specifically designating USCIS as the immigration benefits and adjudications agency and ICE and CBP as the enforcement agencies.

**Immigration Courts Stripped of Independence**

On March 30, 2018, EOIR announced that it will impose new case completion quotas on immigration judges on October 1, 2018, tying their performance reviews to the number of cases they complete. These quotas put a premium on quantity over quality and pressure judges to complete complicated cases at the expense of fairness and justice. The National Association of Immigration Judges called the move a “death knell for judicial independence.”
The quotas are just one of many strikes against judicial independence. EOIR has also outlined new case priorities and case benchmarks and issued a memorandum pressuring immigration judges to deny continuances, which are most often requested so that a respondent can find an attorney. Finally, Attorney General Sessions has already certified four Board of Immigration Appeals cases to himself and issued two precedent decisions that will further undermine due process. In Matter of Castro-Tum, he severely limited the ability of immigration judges to administratively close cases – taking away an important docketing tool and ultimately adding hundreds of thousands of cases to the court backlog. In Matter of A-B-, he singlehandedly rewrote asylum law in a way that will deny asylum to most survivors of domestic violence and victims of gang violence.

The administration’s aggressive and unwise policies demonstrate why the Immigration Court must be restructured into an Article I court that is independent of the Department of Justice. To guarantee fundamental fairness and due process in every case, the immigration courts cannot operate under the control of the agency that is responsible for the prosecution and enforcement of immigration cases.

What Congress Can Do to Restore Due Process

- Conduct oversight and hold USCIS and EOIR accountable for harmful policies that fundamentally corrupt the mission of each agency.
- Introduce legislation that rescinds the USCIS NTA memorandum, the USCIS Request for Evidence/Notice of Intent to Deny memorandum, and the USCIS memorandum on unlawful presence for F, J, and M nonimmigrants.
- Introduce legislation creating an Article I immigration court system that is independent of the Department of Justice.
- Introduce legislation that ends the case completion quotas EOIR imposed on immigration judges.
- Introduce legislation that reverses the Attorney General’s decisions, Matter of Castro-Tum, preventing immigration judges from administratively closing court cases before them, and Matter of A-B- which will result in the unjust denial of asylum to the most vulnerable people in violation of U.S. law.

Additional Resources on USCIS

- AILA Policy Brief: New USCIS Notice to Appear Guidance (AILA Doc. 18071739)
- New USCIS Policy Will Needlessly Push Thousands More Cases into the Deportation Machinery (AILA Doc. 18070604)
- AILA/Council Comments on USCIS Changes to Unlawful Presence Guidance for F, M, and J Nonimmigrants (AILA Doc. 1806113)
- USCIS Issues Policy Memorandum on Issuance of Certain RFEs and NOIDs (AILA Doc. 18071377)
- Rewrite of USCIS Mission Statement Cannot Change America’s Identity as a Nation of Immigrants (AILA Doc. 18022333)
- AILA Report: Deconstructing the Invisible Wall (AILA Doc. 18031933)

Additional Resources on Immigration Courts

- AILA Policy Brief: Imposing Numeric Quotas on Judges Threatens the Independence and Integrity of Courts (AILA Doc. 17101234)
- AILA Policy Brief: Recommendations from Independent Study of Immigration Courts Contradict DOJ Policy Changes (AILA Doc. 18042303)
- AILA: Trump Administration Erodes Integrity and Fairness in Immigration Courts (AILA Doc. No. 17101233)
- AILA Report: Cogs in the Deportation Machine (AILA Doc. 18031237)