

The Real Courts, Rule of Law Act of 2022

A hallmark of our system of democracy and the rule of law is an independent judiciary. Immigration judges issue life-defining decisions—decisions that may result in separation from one’s family and permanent banishment from the United States. In cases involving asylum or other humanitarian protections, the decisions of immigration judges are quite literally, a matter of life or death. Despite this, our nation’s immigration court system, housed under the Department of Justice, lacks procedural and structural safeguards that protect it against political influence and ensure impartiality and independent decision-making.

Immigration judges are not judicial officers—they are lawyers, appointed by the nation’s top prosecutor, the Attorney General. As employees of the Department of Justice, immigration judges are charged with adjudicating cases in accordance with the policies and priorities of the governing administration. Each administration—Democratic and Republican—has used the immigration courts as a mechanism to shape immigration policy. Immigration judges have little say over the management of their individual courtrooms and the administration of their dockets, which undermines the fairness and efficiency of the courts as well as public perception of their neutrality and independence.

To solve these problems, the immigration courts require a structural overhaul. An Article I immigration court system, like the U.S. Tax Court, the U.S. Court of Appeals for Veterans Claims, or the U.S. Bankruptcy Court system would ensure that immigration judges are free from political pressure and can deliver just decisions in accordance with the law. The Real Courts, Rule of Law Act of 2022 will:

- Establish an independent immigration court—known as the United States Immigration Court—consistent with Article I of the United States Constitution and comprised of a trial division, an appellate division, and an administrative division.
- Ensure that qualified, impartial individuals are appointed to serve as immigration judges at both the trial and appellate levels.
- Ensure that the United States Immigration Court has adequate resources and support to operate efficiently while giving the Court authority to appoint temporary immigration judges and establish temporary court facilities to ensure the expeditious administration of justice.
- Improve transparency and accountability in Immigration Court proceedings by requiring publication of all court rules and procedures, as well as precedent decisions and pleadings while protecting confidential information.
- Improve efficiencies by allowing the Immigration Court to establish its own budget without review by the Executive Branch and empowering immigration judges to control their own dockets and compel agency action that is unlawfully withheld or unreasonably delayed.
- Strengthen the integrity of immigration court proceedings by giving immigration judges authority to impose civil money penalties for contempt of court.
- Ensure due process by preserving the privilege of counsel, ensuring quality interpreter services, and mandating legal orientation programs for individuals appearing before the Court.

The Real Courts, Rule of Law Act of 2022 is endorsed by the American Bar Association, the American Immigration Lawyers Association, the Federal Bar Association, and the National Association of Immigration Judges.