

February 18, 2020

United States House of Representatives
Washington, D.C. 20515

United States Senate
Washington, D.C. 20510

RE: CONGRESS MUST ESTABLISH AN INDEPENDENT IMMIGRATION COURT

Dear Member of Congress:

We, the undersigned international, national, state, and local immigration, civil rights, faith-based, government accountability, and labor organizations respectfully call on Congress to establish an immigration court system that is independent of the Department of Justice (DOJ) so that it can guarantee due process and a fair hearing for immigrants.

The Executive Office for Immigration Review (EOIR), which manages the Immigration Court and the Board of Immigration Appeals (BIA), is currently housed under DOJ. While trial-level immigration prosecutors are housed under the U.S. Department of Homeland Security (DHS) within Immigration and Customs Enforcement (ICE), the Attorney General supervises the Office of Immigration Litigation (OIL) which defends immigration cases on behalf of the government in the circuit courts of appeals. This inherent conflict of interest is made worse by the fact that immigration judges are considered merely government attorneys, a classification that fails to recognize the significance of their judicial duties and put them at the whims of the Attorney General.

For years we have seen the detrimental effects of these politicized courts. Administrations have repeatedly made policy decisions not because they're efficient or legally sound, but because they're politically expedient. For example, in an attempt to achieve policy goals, administrations have manipulated and shuffled the court dockets to prioritize certain cases, moving cases to the back of the line and further growing the already enormous case backlog. For a long time, the courts were also drastically under-resourced due to DOJ hiring freezes and competing funding priorities. The immigration courts now face crisis-level backlogs of over one million cases.ⁱ

While the immigration courts have been plagued by systemic problems for a long time, the Trump administration has severely and irreparably undermined due process for the sole purpose of accelerating deportations. For example, DOJ imposed case-completion quotas, tying judges' individual performance reviews to the number of cases they complete.ⁱⁱ A strict timeframe for case completion interferes with a person's right to examine and present evidence, as well as to provide adequate time to find an attorney, secure expert witnesses, and obtain evidence from overseas. This kind of rushed, assembly-line justice is unacceptable to impose on judges who are making important, often life-or-death, decisions.ⁱⁱⁱ

The Trump administration has also weaponized the certification authority, which allows the Attorney General to render precedent-setting immigration decisions.^{iv} Under the previous administration, Attorneys General employed this power only four times over the course of eight years.^v By contrast, the Trump administration has already certified twelve cases, with Attorneys General issuing precedent decisions that strike at the heart of a respondent's ability to have a full and fair hearing.^{vi} Certification decisions have also taken aim at asylum-seekers, attempting to prevent people fleeing domestic violence and gang-based persecution from qualifying for asylum; permitting judges to deny hearings to asylum seekers without conducting a full evidentiary hearing; and limiting bond for asylum seekers.^{vii}

We can no longer afford to have a system that can be so easily manipulated. We respectfully ask that Congress establish an independent court system that would restore due process and judicial independence. If you have any questions, please do not hesitate to contact Laura Lynch (llynch@aila.org, 202-507-7627).

Sincerely,

Advocates for Basic Legal Equality, Inc.

American Immigration Council

American Immigration Lawyers Association (AILA)

Amnesty International USA

Capital Area Immigrants' Rights (CAIR) Coalition

Catholic Legal Immigration Network Inc.

Center for Gender & Refugee Studies

Center for Victims of Torture

Church World Service

Coalition for Humane Immigrant Rights (CHIRLA)

DC - MD Justice For Our Neighbors

Freedom for Immigrants

Freedom Network USA

Government Accountability Project

HIAS

Human Rights First

Human Rights Initiative of North Texas

Human Rights Watch

Ignatian Solidarity Network

Immigration Equality

Innovation Law Lab

International Federation of Professional and Technical Engineers

InterReligious Task Force On Central America and Colombia

Justice for Our Neighbors Michigan

Kids in Need of Defense

Las Americas Immigrant Advocacy Center

Latin America Working Group (LAWG)

Lutheran Immigration and Refugee Service

National Advocacy Center of the Sisters of the Good Shepherd
National Council of Jewish Women
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project of the National Lawyers Guild (NIPNLG)
National Justice for Our Neighbors
National Network for Immigrant and Refugee Rights
NETWORK Lobby for Catholic Social Justice
New York City Bar Association
Northern Illinois Justice for Our Neighbors
Ohio Immigrant Alliance
Project On Government Oversight
Refugees International
Round Table of Former Immigration Judges
San Antonio Region Justice For Our Neighbors
Santa Fe Dreamers Project
Service Employees International Union (SEIU)
Sisters of Mercy of the Americas Justice Team
South Texas Human Rights Center
SPLC Action Fund
The Florence Immigrant & Refugee Rights Project
The Legal Clinic
Unitarian Universalist Service Committee
United We Dream
Women's Refugee Commission
Young Center for Immigrant Children's Rights

¹ DOJ's Executive Office for Immigration Review (EOIR), Memorandum from James McHenry, Director, Executive Office for Immigration Review on Immigration Judge Performance Metrics to All Immigration Judges (Mar. 30, 2018), <https://www.aila.org/infonet/eoir-memo-immigration-judge-performance-metrics>; *see also* National Association of Immigration Judges, Imposing Quotas on Immigration Judges will Exacerbate the Case Backlog at Immigration Courts, (Jan. 31, 2018), https://www.naij-usa.org/images/uploads/publications/NAIJ_Imposing_Quotas_on_IJs_will_Exacerbate_the_Court_Backlog_1-31-

[18. pdf](#); EOIR’s Strategic Caseload Reduction Plan (Oct. 23, 2017), <https://www.aila.org/EOIRplan>.

ⁱⁱ EOIR, Memorandum from James McHenry, Director, Executive Office for Immigration Review on Immigration Judge Performance Metrics to All Immigration Judges (Mar. 30, 2018), <https://www.aila.org/infonet/eoir-memo-immigration-judge-performance-metrics>; *see also* National Association of Immigration Judges, Imposing Quotas on Immigration Judges will Exacerbate the Case Backlog at Immigration Courts, (Jan. 31, 2018), https://www.naij-usa.org/images/uploads/publications/NAIJ_Imposing_Quotas_on_IJs_will_Exacerbate_the_Court_Backlog_1-31-18_.pdf; EOIR’s Strategic Caseload Reduction Plan (Oct. 23, 2017), <https://www.aila.org/EOIRplan>.

ⁱⁱⁱ INA §240(b)(4)(B) requires that a respondent be given a “reasonable opportunity” to examine and present evidence. *See* AILA Policy Brief: Imposing Numeric Quotas on Judges Threatens the Independence and Integrity of Courts (Oct. 12, 2017), <https://www.aila.org/ijquotas#PDF>.

^{iv} 8 U.S.C. § 1103(g)(2) (“The Attorney General shall establish such regulations . . . [and] review such administrative determinations in immigration proceedings . . .”).

^v Sophie Murguia and Kanyakrit Vongkiatkajorn, Jeff Sessions Is Executing Trump’s Immigration Plans With a Quiet, Efficient Brutality, MOTHER JONES (Sept. 7, 2018), <https://www.motherjones.com/politics/2018/09/jeff-sessions-is-executing-trumps-immigration-plans-with-a-quiet-efficient-brutality/>.

^{vi} *Matter of CASTRO-TUM*, 27 I&N Dec. 271 (A.G. 2018); *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018); *Matter of L-A-B-R-* et al., 27 I&N Dec. 405 (A.G. 2018); *Matter of E-F-H-L-*, 27 I&N Dec. 226 (A.G. 2018); *Matter of M-G-G-*, 27 I&N Dec. 475 (A.G. 2018); *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018); *Matter of NEGUSIE*, 27 I&N Dec. 481 (A.G. 2018); *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019); *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019); *Matter of REYES*, 27 I&N Dec. 708 (A.G. 2019); *Matter of THOMAS and THOMPSON*, 27 I&N Dec. 674 (A.G. 2019); *Matter of CASTILLO-PEREZ*, 27 I&N Dec. 664 (A.G. 2019).

^{vii} *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018); *Matter of E-F-H-L-*, 27 I&N Dec. 226 (A.G. 2018); and *Matter of M-G-G-*, 27 I&N Dec. 475 (A.G. 2018).