



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

January 24, 2019

The Honorable Jerrold Nadler  
Chairman  
Judiciary Committee of the  
U.S. House of Representatives

The Honorable Doug Collins  
Ranking Member  
Judiciary Committee of the  
U.S. House of Representatives

Dear Mr. Nadler and Mr. Collins:

On behalf of the American Immigration Lawyers Association (AILA), the private bar association of more than 15,000 attorneys and law professors, we write to share with you our oversight priorities for the 116<sup>th</sup> Congress.

Since taking office two years ago, the Trump Administration has implemented sweeping new immigration policies that are undermining the most fundamental principles of due process and contravening U.S. law and the will of Congress. These changes are causing grave harm to people applying for immigration benefits or seeking legal relief or humanitarian protection at our borders and in the interior. Such cavalier abuse of power cannot go unchecked and demands rigorous oversight.

In particular, AILA urges the Committee to: 1) conduct hearings to hold U.S. Citizenship and Immigration Service (USCIS) accountable to its mission; 2) halt the administration's interference with immigration judges' judicial independence and ability to render decisions fairly and efficiently; and 3) stop the violations of due process happening at the border that are jeopardizing the lives of individuals, families, and children seeking asylum and other legal relief.

While these priorities do not reflect the full agenda of the association, they highlight critical issues that should be addressed during the first session of the 116<sup>th</sup> Congress. We are eager to engage with you in addressing these important issues.

### **USCIS Accountability**

When Congress passed the Homeland Security Act in 2002, it designated one agency (which later became USCIS) as the service-oriented immigration benefits agency and charged it with the efficient and fair adjudication of cases. Within two years, the Trump Administration has so dramatically shifted USCIS policies that it is failing this mission and drowning in a case backlog characterized by severe processing delays that have reached crisis levels. Exacerbating the backlog is a new non-deference standard the agency established requiring case adjudicators to unnecessarily re-examine prior determinations. Another change is USCIS' suspension of premium

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processing for H-1Bs, now approaching the one-year mark, that has left hundreds of companies without recourse to address urgent labor needs.

Contrary to Congress' intent, the administration is transforming USCIS into an immigration enforcement agency focused increasingly on initiating removals at the expense of administering immigration benefits. Its new "Notice to Appear" policy will place more people who have their applications and petitions denied in removal proceedings. Another policy will result in the initiation of removal proceedings against foreign students and exchange visitors who inadvertently violate their legal status requirements, including even *de minimus* violations. Meanwhile, USCIS and ICE continue to set "deportation traps," with ICE arresting spouses of U.S. citizens during marriage-based petition interviews at USCIS offices. These are just a sampling of the most egregious policies and practices now in place.

Collectively these policies are harming U.S. businesses and American families across the nation that depend on and deserve timely decisions, fair notice, and reasonable assurances that their loved ones won't be arrested while seeking lawful status. By shifting the direction of USCIS away from service and towards enforcement, the administration is causing both immediate harm and lasting damage to national and local economies and the stability of our workforce. AILA urges Congress to conduct vigorous oversight and bring the agency back into alignment with its statutory mandate.

### **Immigration Court Independence and Integrity**

For years the immigration courts have been plagued by insufficient funding and systemic problems that undermine judges' ability to resolve cases fairly and efficiently and have contributed to the overwhelming case backlog now exceeding 800,000. Housed within the Department of Justice, the Executive Office for Immigration Review (EOIR) has long been vulnerable to executive branch interference, a structural flaw which the current administration has exploited with policies that have stripped judges of their authority and independence, and now threaten to undermine the integrity of the system. These policies, including legal opinions that former Attorney General Jeff Sessions certified to himself, are placing the lives of asylum seekers and others seeking relief in grave jeopardy.

Congress should conduct rigorous oversight into the executive branch's improper interference with judicial operations and due process. EOIR has imposed unprecedented case completion quotas as part of immigration judges' performance reviews, compelling them to decide cases under strict deadlines that undermine quality and fairness.<sup>i</sup> Congress should also investigate administration policies that compel judges to deny continuances and requests for change of venue—practices that enable judges to efficiently manage their dockets and that are often essential to ensure respondents have adequate time to prepare their case or find representation. No less concerning is the administration's recent use of ideological and political tests in the hiring of judges, an issue that has already been raised by Congress.<sup>ii</sup> Furthermore, EOIR interceded in a case in which former Attorney General Jeff Sessions had a particular interest, stripping the case (and dozens of others) from the assigned judge and allocating it to a judge more likely to deny relief.<sup>iii</sup>

While oversight may stop the policies at-hand, it will not remedy the conflict of interest inherent in an immigration court system that is firmly under the control of the Attorney General. AILA

urges Congress to introduce bipartisan legislation that establishes an independent immigration court system, outside the Department of Justice, under Article I of the Constitution. Only by giving the courts independence can Congress ensure that each person appearing before an immigration judge will receive a just, fair, and impartial hearing consistent with our law.

### **Fair and Humane Treatment at the Border**

Finally, nothing demonstrates more vividly the injustice of the President's immigration policies than his treatment of individuals, families, and children arriving at the southern border. In two years, the administration has escalated criminal prosecutions of asylum seekers who enter between ports of entry, announced an asylum ban for those entering between ports of entry, and separated parents from children in detention. At the ports of entry, Customs and Border Protection is increasing the practice of turning away asylum seekers for weeks or months, further delaying resolution of their cases, and in December DHS Secretary Nielsen announced that asylum seekers will be forced to wait for their hearings in dangerous conditions in Mexico. At the same time the administration has resorted to a cruel policy of detaining families and children when most people arriving at our southern border are simply in need of aid and pose no danger to our country.

In partnership with the American Immigration Council, AILA works with hundreds of volunteer lawyers through the Immigration Justice Campaign to assist families and individuals subjected to these unconscionable practices. Our volunteers have interviewed dozens of mothers who were not only detained and separated from their children but also subjected to coercion and threats by government officials urging them to relinquish their rights. Many families have been subjected to inhumane conditions of confinement that no child, mother, asylum seeker—or any human being—should ever have to endure. We stand ready to share their stories with Congress and the public, and we urge the Judiciary Committee to shine light on the dark underbelly of this administration's violations of law and human rights at the border.

We call on you as elected officials to provide leadership that holds the government accountable to the law and the Constitution, which this administration has abandoned in its unbridled effort to block, ban, and expel immigrants from the United States. AILA looks forward to continuing to work with you in the 116<sup>th</sup> Congress.

Sincerely,

Ben Johnson  
Executive Director

Greg Chen  
Director of Government Relations

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<sup>i</sup> Memorandum from James McHenry, Director, Executive Office for Immigration Review on Immigration Judge Performance Metrics to All Immigration Judges (Mar. 30, 2018), available at <https://www.aila.org/infonet/eoir-memo-immigration-judge-performance-metrics>; Imposing Quotas on Immigration Judges will Exacerbate the Case Backlog at Immigration Courts, National Association of Immigration Judges (Jan. 31, 2018), available at [https://www.naij-usa.org/images/uploads/publications/NAIJ\\_Imposing\\_Quotas\\_on\\_IJs\\_will\\_Exacerbate\\_the\\_Court\\_Backlog\\_1-31-18\\_.pdf](https://www.naij-usa.org/images/uploads/publications/NAIJ_Imposing_Quotas_on_IJs_will_Exacerbate_the_Court_Backlog_1-31-18_.pdf).

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<sup>ii</sup> Memorandum for the Attorney General, Immigration Judge Hiring Process (Apr. 4, 2017), available at <https://www.humanrightsfirst.org/sites/default/files/DOJ-FOIA-Results-%20Memoranda.pdf>; <https://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/senate-and-house-democrats-request-ig-investig>.

<sup>iii</sup> NAIJ, Judges' Union Grievance Seeking Redress for the Unwarranted Removal of Cases from IJ (Aug. 8, 2018), available at <https://www.aila.org/infonet/naij-grievance-redress-removal>.