



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION



**Federal Bar  
Association**



March 29, 2022

Dear Member of Congress,

The undersigned organizations, whose members are closely associated with the practice of immigration law and the administration of justice, urge you to cosponsor the *Real Courts, Rule of Law Act* (H.R. 6577), introduced in February by Representatives Zoe Lofgren (D-CA), Jerrold Nadler (D-NY), and Hank Johnson (D-GA), which would establish an independent immigration court system outside of the U.S. Department of Justice (DOJ), where it currently resides. Using the authority granted to Congress by Article I of the Constitution, this legislation would protect fairness and advance efficiency in the U.S. immigration adjudication system. We note that this legislation does not change immigration policy, but rather addresses significant problems associated with the administration of the immigration adjudication system.

In an excellent public hearing on January 20, 2022, the House Judiciary Subcommittee on Immigration and Citizenship thoroughly explored the problems with the current system and assessed various proposed reforms. In short, as the hearing made clear, our current immigration adjudication system cannot meet the standards which justice demands, and an independent Article I court is the best solution.

Currently, immigration courts are housed under the same executive branch agency responsible for prosecuting immigrants in federal court. As a result, the Attorney General is both lead prosecutor and lead judge in immigration cases. This inherent conflict of interest is made worse by the fact that immigration judges are viewed not as independent adjudicators but rather as government attorneys, a classification that fails to recognize the significance of their judicial duties and leaves them particularly vulnerable to political pressure and interference in case management. For example, in 2018, EOIR implemented case completion quotas as part of immigration judges' performance reviews, compelling them to decide cases under strict deadlines or face potential discipline.

EOIR's dysfunction, as highlighted in a 2017 report from the Government Accountability Office, continues to contribute to monumental immigration judge caseloads and significant backlogs. The immigration courts now face crisis-level backlogs nearing almost 1.6 million cases, yet a broad perception that the immigration courts merely rubber-stamp DHS decisions both undermines the finality of immigration court decisions and leads to further delays as litigants pursue impartial review in the circuit courts. Justice delayed is justice denied.

Congress has successfully established independent Article I courts in other settings where executive policy-making and priority-setting also involve impartial adjudication, such as the Tax Court, the Court of Appeals for Veterans Claims, and the Court of Appeals for the Armed Forces. In each instance, Congress transferred the adjudicative functions to independent Article I courts, leaving the agencies' other processes intact.

It is important to emphasize that the *Real Courts, Rule of Law* Act would not make changes to substantive immigration law. This is not partisan legislation. It's a good government solution to an acknowledged problem that is unrelated to substantive immigration laws or broad immigration policy. Setting aside the immigration laws and the policies that inform them, it is past time to convert the bodies that apply those laws from semi-judicial entities to true courts under Article I.

The creation of an independent immigration court system outside DOJ would protect and advance America's core values of fairness and equality by safeguarding the independence and impartiality of the immigration court system, while ensuring the timely adjudication of cases. We respectfully ask your support for H.R. 6577 and an independent immigration court system that can guarantee a fair day in court.

Thank you for your consideration. If you have any questions, please do not hesitate to contact one of us.

Sincerely,  
Allen Orr, Jr.  
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