



PRESIDENT
NAN ARON

CHAIR
PAULETTE MEYER

March 30, 2020

The Honorable Zoe Lofgren
Chair
Subcomm. on Immigration and Citizenship
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Ken Buck
Ranking Member
Subcomm. on Immigration and Citizenship
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chair Lofgren and Ranking Member Buck:

On behalf of Alliance for Justice (AFJ), a national association representing 120 groups committed to equal justice and civil rights, I write to add our voice to the organizations that have written or testified at the hearing held on January 29, 2020, before the House Committee on the Judiciary, Subcommittee on Immigration and Citizenship, on “The Courts in Crisis: The State of Judicial Independence and Due Process in U.S. Immigration Courts.”

For more than a generation, AFJ has worked to promote equal justice under law. We have fought to ensure a justice system that upholds the rights of all people. That is why we are so deeply troubled by the Department of Justice’s (the “Department”) exploitation of its position as the superintendent of our nation’s immigration courts to advance its anti-immigrant agenda. The Department’s actions have turned should be a fair adjudicatory system into one designed to dictate outcomes favorable to the anti-immigrant zealots in the Administration. The Department has engaged in a range of efforts designed to deprive individuals who have valid claims of asylum of the opportunity to present those claims. It has sought to influence immigration judges by incentivizing them to summarily deny claims. It has urged judges to adopt its conspiratorial views about the immigration lawyers who appear before the courts. Its pursuit of short-term political objectives has increased backlogs, produced vacancies, contributed to the demoralization of the court system, and resulted in widespread and unnecessary suffering.

AFJ writes this letter, moreover, at a time when the nation, and the world, is facing a pandemic and the Administration has indefinitely closed the southern border to asylum-seekers. Over 200 non-profit legal services organizations, law firms, and immigration legal representatives recently wrote to the

Eleven Dupont Circle NW, Suite 500 | Washington, DC 20036 | www.afj.org | t: 202-822-6070

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Attorney General regarding policies and practices that “during these unprecedented times” will cause immigrants and the providers and advocates who help them to “suffer serious hardships that raise due process concerns.” The concerns raised in the letter, and those mentioned below, only reinforce the need for an independent immigration court system.

The current administration has launched a series of efforts to weaponize the immigration courts. The efforts to control immigration judges include:

- The adoption of enforcement-oriented performance metrics, which require judges to complete 700 cases per year, equivalent to approximately three complete cases each business day. These metrics, which immigration judges must see on their computer screens, require judges to adjudicate claims irrespective of the complexity or merit of the cases and impose categorical restrictions on bond cases;
- The creation of a specialized fast docket, built almost exclusively for Central American families applying for asylum, which includes restrictions on the rights of judges to grant continuances;
- Limitations on judges’ authority to administratively close or terminate cases;
- Training sessions that immigration judges have described as indoctrination. As a former Immigration Judge explained: “There isn’t even any attempt at proper training. The whole indoctrination is you’re not judges, you’re really enforcement”¹;
- Abusing the Attorney General’s power to act as a final arbiter of contested cases, by taking cases not then pending before the Board of Immigration Appeals to issue sweeping rulings limiting asylum protection for individuals victimized by domestic violence or harm as a result of retaliation based upon their family relationships. In the latter of the two cases, Attorney General William Barr attempted to sweep aside decades of precedent, much of it from federal appellate courts whose decisions are binding on the immigration courts;
- Issuing a final interim rule that would allow the Director of the Executive Office of Immigration Review to issue opinions on his own, on any appeal pending for more than 180 days;
- Seeking to decertify the National Association of Immigration Judges (NAIJ), the union that has represented immigration judges since 1979. NAIJ serves as one of the last bulwarks against a complete and total takeover of the Immigration Court system by our Executive Branch. Without union representation, immigration judges will lose their collective voice and be unable to push back against policies that undermine the fairness and transparency of the system.

¹ Innovation Law Lab and the Southern Poverty Law Center, *The Attorney General’s Judges: How the U.S. Immigration Courts Became a Deportation Tool*, at 18 (quoting former Immigration Judge and BIA Chairman Paul Schmidt) <https://innovationlawlab.org/reports/the-attorney-generals/judges/>.

In addition to its efforts to turn immigration judges into partisan actors, the Administration's unceasing efforts to be and appear to be tough on asylum seekers have created disorder, even for those individuals far from the Southern Border. The Administration has repeatedly shuffled Immigration

Judges from jurisdiction to jurisdiction, for example, in a 2017 "surge" of judges to the border, which required the postponement of 23,000 cases. The Attorney General's decision prohibiting administrative closure will eventually add more than 300,000 cases to its docket. The overall backlog of cases has now doubled, to over one million pending cases. In a number of courts, litigants may wait more than four years before their cases are heard. The disparities in outcomes from jurisdiction to jurisdiction are now worse than ever.

There is also disturbing evidence that the Administration's attacks on the system may be enabling a culture of impunity. On January 23 of this year, in an unprecedented opinion, the Court of Appeals for the Seventh Circuit chastised the Board of Immigration Appeals for defying the Circuit's remand order. Relying on what it said was advice from the Attorney General, the Board of Immigration Appeals declared the Seventh Circuit's decision to be incorrect and declined to obey it. The Circuit stated that it had "never before encountered defiance of a remand order," adding that members of the Board of Immigration Appeals should count themselves lucky that the immigrant had not asked the court to hold the Board in contempt.² Only days earlier, a federal district court's order granting a stay of deportation to an Iranian student who possessed a valid student visa, was ignored by officials of the Customs and Border Patrol, who deported the student from Logan Airport back to Iran. The federal judge then stated that he believed the case to be moot, saying of the government officials, "I don't think they're going to listen to me." The student's attorney noted, "I wish I could say we were surprised, but we've seen this kind of flagrant defiance of the law from immigration officials before."³

Many of the most respected participants and observers of the immigration court system have called for reform of the current system. Groups as diverse as the American Bar Association, the Federal Bar Association, the National Association of Immigration Judges and the CATO Foundation have long urged the transfer of the immigration courts to a separate Article I Court. These groups have pointed to the need to professionalize the corps of immigration judges and outlined the threat to judicial independence caused by the placement of the immigration court system under the control of the Department of Justice.

What was previously a threat of political interference is now a reality, and AFJ believes that there can be no lasting solution to this problem without removing the immigration court system from DOJ.

² Debra Cassens Weiss, *7th Circuit is aghast at 'obduracy' of Board of Immigration Appeals, which refused to implement its decision*, ABA Journal, Jan. 27, 2020, <http://www.abajournal.com/authors/4/>.

³ Katie Reilly, *Northeastern University Student Sent Back To Iran Despite Valid Visa, Judge's Order As Immigration Attorneys Warn of "Troubling Pattern"*, Time Magazine, January 22, 2020, <https://time.com/5769-400/northeastern-student-deported-iran>.

Our current system of adjudication is utterly broken. The most effective solution to protecting the neutrality of our Immigration Courts is to create an Article I Immigration Court system that is independent of DOJ. Article I of the U.S. Constitution expressly grants Congress the power to establish “tribunals” in addition to those created by Article III, and Congress has done so on many occasions. The establishment of an Article I Immigration Court would create greater transparency in the system. It would also restore the Due Process rights of those who come before the Court.

While moving the immigration court system from the Department of Justice will not solve the ills of the current system, it is desperately needed as a part of the solution. We therefore urge Congress to support to recommendation of the ABA, immigration judges, and immigration lawyers, among others, to establish an Article I Immigration Court system that is independent of Department of Justice.

Thank you for your consideration.

Sincerely,



Nan Aron
President