



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION



**Federal Bar
Association**



July 11, 2019

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

United States Senate
Washington, D.C. 20510

RE: CONGRESS SHOULD ESTABLISH AN INDEPENDENT IMMIGRATION COURT

Dear Member of Congress:

The four undersigned organizations, whose members are closely associated with the practice of immigration law and the administration of justice, respectfully call on Congress to establish an immigration court system that is independent of the U.S. Department of Justice (DOJ).

Our current immigration court system cannot meet the standards which justice demands. Immigration courts are housed under DOJ, the same executive branch agency responsible for prosecuting immigrants in federal court. As a result, the Attorney General is charged with being both lead prosecutor and lead judge in immigration cases. 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 leaves them particularly vulnerable to political pressure and interference in case management. For example, in 2014 through 2016, the Executive Office for Immigration Review (EOIR) shuffled adjudication priorities a number of times, requiring immigration judges to reschedule hundreds of cases. 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.¹

In addition to its structural issues, chronic and systemic problems have resulted in a severe lack of public confidence in the system's capacity to deliver just and fair decisions in a timely manner.² The immigration courts now face crisis-level backlogs nearing almost 900,000 cases,³ yet policies implemented to reduce the backlog have severely undermined the integrity of the immigration court system and revealed the urgent need for Congress to create a court that is independent from the DOJ.⁴ EOIR's dysfunction, as highlighted in the 2017 report from the Government Accountability Office, continues to contribute to monumental immigration judge caseloads and significant backlogs.⁵ Justice delayed is justice denied.

In its current state, the immigration court system requires a structural overhaul to solve its foundational problems. The creation of an independent immigration court system outside the control of 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 that Congress establish an independent immigration court system that can guarantee a fair day in court.

Thank you for your consideration of this request. If you have any questions, please do not hesitate to contact Kate Voigt at (202) 507-7626 or kvoigt@aila.org.

Sincerely,

Robert Carlson
President, American Bar Association

Marketa Lindt
President, American Immigration Lawyers Association

Maria Vathis
President, Federal Bar Association

A. Ashley Tabaddor
President, National Association of Immigration Judges

¹ Maria Sacchetti, *Immigration judges' union calls for immigration court independent from Justice Department*, Washington Post, Sept. 21, 2018, https://www.washingtonpost.com/local/immigration/immigration-judges-union-calls-for-immigration-courts-independent-from-justice-department/2018/09/21/268e06f0-bd1b-11e8-8792-78719177250f_story.html?noredirect=on. This unprecedented move was described by the National Association of Immigration Judges (NAIJ) as a “death knell for judicial independence” and pressures judges to rush through decisions rather than give careful consideration to the law and facts in each case. https://www.naij-usa.org/images/uploads/publications/NAIJ_-_Concerns_Regarding_Implementation_of_Quotas_10-17-17.pdf. Quotas interfere with judicial independence and emphasize the quantity of the cases decided over the quality of the decisions.

² Statement of the American Bar Association Submitted to the Senate Judiciary Subcommittee on Border Security and Immigration Hearing on “Strengthening and Reforming America’s Immigration Court System,” (April 18, 2018), <https://www.judiciary.senate.gov/imo/media/doc/04-18-18%20Bass%20Testimony.pdf>; Statement of the Federal Bar Association Submitted to the Senate Judiciary Subcommittee on Border Security and Immigration Hearing on “Strengthening and Reforming America’s Immigration Court System,” (April 18, 2018), <http://www.fedbar.org/Image-Library/Government-Relations/Letter-from-FBA-President-Kip-T-Bollin-.aspx>; Statement of the American Immigration Lawyers Association Submitted to the Senate Judiciary Subcommittee on Border Security and Immigration Hearing on “Strengthening and Reforming America’s Immigration Court System,” (April 18, 2018), <https://www.aila.org/advo-media/press-releases/2018/aila-statement-on-strengthening-and-reforming>; Statement of Judge A. Ashley Tabaddor, President, National Association of Immigration Judges Before the Senate Judiciary Committee, Border Security and Immigration Subcommittee Hearing on “Strengthening and Reforming America’s Immigration Court System,” (April 18, 2018), <https://www.judiciary.senate.gov/imo/media/doc/04-18-18%20Tabaddor%20Testimony.pdf>.

³ U.S. Department of Justice, EOIR Adjudication Statistics, Pending Cases, (Dec. 31, 2018), <https://www.justice.gov/eoir/page/file/1060836/download>. The over 820,000 cases do not account for the 35-day partial government shutdown that cancelled approximately 60,000 immigration court hearings. Associated Press, Partial shutdown delayed 60,000 immigration court hearings, Feb. 8, 2019, <https://www.apnews.com/d29b751d06b6401e8516ed4d202c8cda>.

⁴ AILA Policy Brief, FOIA Reveals EOIR’s Failed Plan for Fixing the Immigration Court Backlog, (February 21, 2019), <https://www.aila.org/PolicyBriefEOIRPlan>; American Bar Association, [2019 UPDATE REPORT, REFORMING THE IMMIGRATION SYSTEM: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases](#), March 2019.

⁵ GAO-17-438, IMMIGRATION COURTS: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges (June 2017), <https://www.gao.gov/assets/690/685022.pdf>.