

ESTABLISHING AN INDEPENDENT IMMIGRATION COURT

FBA has for several years helped develop model legislation that was reflected in H.R. 6577, the Real Courts, Rule of Law Act of 2022, as introduced last year by Rep. Zoe Lofgren (D-CA). The House Judiciary Committee reported out the bill by a party-line 24-12 vote last year but unfortunately the bill never made it to the House floor. All bills die at the end of a Congress, so we expect reintroduction of the bill by Rep. Lofgren and by Sen. Kirsten Gillibrand (D-NY) but both are hoping to find a Republican cosponsor. **Capitol Hill Day is critical to that effort of making the proposal bipartisan.**

The bill would provide a structural overhaul for our nation's immigration court system, which is housed within the Department of Justice. The current system lacks procedural and structural safeguards that protect it against political influence and ensure impartiality and independent decision-making. It is very worrisome that there is a case backlog of 1.6 million immigration cases and it's only getting worse.

Immigration judges must adjudicate cases in accordance with the policies and priorities of the governing administration. They have little discretion over the management of their individual courtrooms and the administration of their dockets, which undermines the fairness and efficiency of the courts as well as public perception of their neutrality and independence.

The Real Courts, Rule of Law Act would establish a new independent Immigration Court comparable to other Article I courts like the U.S. Tax Court and the U.S. Court of Appeals for Veterans Claims. *An independent immigration court would not set immigration policy* – that would continue to be the responsibility of the Executive Branch. The immigration judges would just apply law and regulations to individual cases.

Once enacted, the legislation provides for an interim period in which current immigration judges would continue to serve in the newly established court for a few years while the President nominates and the Senate confirms appellate level immigration judges for 15-year terms. The appellate judges would, in turn, make 15-year appointments for all the immigration judges to serve in the new court. We believe the new court would be more efficient because the judges could manage their dockets better and there would likely be fewer appeals. We do not believe the cost of the new court would exceed current spending levels on the immigration court system within DOJ.

For further background on the bill, here are some excerpts from Rep. Lofgren's summary of the bill she introduced last year:

1. Establishes an independent immigration court—known as the United States Immigration Court—consistent with Article I of the United States Constitution and comprised of a trial division, an appellate division, and an administrative division.
2. Ensures that qualified, impartial individuals are appointed to serve as immigration judges at both the trial and appellate levels.

3. Ensures that the United States Immigration Court has adequate resources and support to operate efficiently while giving the Court authority to appoint temporary immigration judges and establish temporary court facilities to ensure the expeditious administration of justice.
4. Improves transparency and accountability in Immigration Court proceedings by requiring publication of all court rules and procedures, as well as precedent decisions and pleadings, while protecting confidential information.
5. Improves efficiencies by allowing the Immigration Court to establish its own budget without review by the Executive Branch and empowering immigration judges to control their own dockets and compel agency action that is unlawfully withheld or unreasonably delayed.
6. Strengthens the integrity of immigration court proceedings by giving immigration judges authority to impose civil money penalties for contempt of court.