

AFL-CIO

STATEMENT FOR THE RECORD

Senate Judiciary Subcommittee on Immigration, Citizenship and Border Safety
HEARING: *Preserving Due Process and the Rule of Law: Examining the Status of Our Nation's
Immigration Courts*
Wednesday, October 18, 2023

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is a federation of 60 unions that represent 12.5 million working people, including immigrants and those who adjudicate their cases in court. We strive to ensure that every person who works in this country receives decent pay, good benefits, safe working conditions, fair treatment, and full due process.

Immigration judges work within the Executive Office of Immigration Review (EOIR) at the Department of Justice (DOJ) and are represented by the National Association of Immigration Judges, an affiliate of the International Federation of Professional and Technical Engineers, AFL-CIO. As individuals, immigration judges are limited from speaking out publicly, lobbying Congress, or providing feedback to DOJ on the performance of the Immigration Court. However, through their union, immigration judges speak independently of DOJ and advocate for NAIJ members' interests.

The union's current priorities include enhancing resources for our severely under-resourced courts in order to support the mission of adjudicating cases fairly and issuing decisions without delay. NAIJ has consistently advocated for hiring immigration judge teams that include adequate support staff for judges, which the agency has failed to do, despite clear directives from Congress. DOJ's neglect and poor execution of meeting courtroom infrastructure needs, from interpretation services to electronic filing technology to inadequate space for courts, has heightened the dysfunction in the immigration court. Insufficient and unequal access to representation for people who appear in the immigration court only increases processing delays, especially when cases involve vulnerable populations. While EOIR did successfully implement remote hearings during the pandemic – which helped facilitate representation for respondents and improved efficiency for EOIR – the agency is now scaling back remote hearings.

The NAIJ has long criticized the structural arrangements that house the immigration court within DOJ, a law enforcement agency. AFL-CIO joins NAIJ, the American Bar Association, the Federal Bar Association, and the American Immigration Lawyers Association in calling for the immigration court to be made independent of DOJ in order to ensure due process, fairness, impartiality, and judicial independence.

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Over recent decades, NAIJ members have endured mismanagement and political interference in the immigration court system by DOJ leadership. Immigration judges have faced the imposition of arbitrary quotas, deadlines, and expedited hearing dockets that run contrary to judicial principles and treat courtrooms like assembly lines. Through successive administrations, EOIR has reassigned immigration judges away from their home dockets and directed them to hear cases at unsustainable rates.

When NAIJ raised concerns about their eroding judicial integrity during the Trump administration, DOJ took the extraordinary step of decertifying their union. This was a direct attack not only on federal employees' bargaining rights, but also on the independence of the immigration court. Attempting to silence the voices of immigration judges by busting their union coincided with broader efforts to remove due process and resources from the immigration court and strip adjudication authority, all of which must now be intentionally and thoughtfully reestablished. Immigration judges' expertise on the inner workings of these high stakes courts is critical to informing much-needed reforms.

NAIJ continues to serve as a critical public voice on behalf of immigration judges and restoring their collective bargaining rights is necessary to promote judicial efficiency and ensure accountability for DOJ. NAIJ seeks to restore productive labor-management relations and union rights for immigration judges so that frontline immigration court employees can better serve EOIR's mission, engage with DOJ to proactively identify and solve problems, and perform their duties in a manner that respects the due process rights of all parties who appear in the immigration court.

The disparate missions of DOJ and the immigration court create an inherent conflict that hobbles the daily functioning of the system and contributes to the ballooning backlog of cases, which now number an astonishing 2.6 million and climbing. Administering a court system is incongruous with DOJ's role as a law enforcement agency. This inherent conflict of interest precludes the judicial independence of immigration judges and ultimately compromises due process for the parties appearing before the court. The solution to this problem is the establishment of an independent immigration court that operates outside the DOJ.

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