



**Statement for the Record by
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Before the

**House Committee on the Judiciary
Subcommittee on Immigration and Citizenship**

On

“For the Rule of Law, An Independent Immigration Court”

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The Advocates for Human Rights is a nonprofit, nonpartisan, nongovernmental organization dedicated to the implementation of international human rights standards to promote civil society and reinforce the rule of law. By involving volunteers in research, education, and advocacy, we build broad constituencies in the United States and select global communities. We are grateful to the Committee for holding today’s hearing and for the opportunity to provide a statement.

The Advocates for Human Rights provides free legal representation to people in removal proceedings who have experienced or who fear human rights violations including persecution, torture, trafficking, and arbitrary detention. We are one of only three organizations on the Executive Office for Immigration review’s list of pro bono legal service providers who provide legal representation to people appearing at the Fort Snelling Immigration Court in Minnesota and the only provider whose geographic service area includes residents of North Dakota and South Dakota. We have provided pro bono representation in immigration cases for more than 35 years.

The Advocates for Human Rights also regularly monitors hearings conducted by the U.S. Immigration Court at Fort Snelling. For nearly five years, more than 700 individual volunteer court observers have documented all master calendar (preliminary) and custody redetermination (bond) hearings of people detained by Immigration and Customs Enforcement pending removal proceedings. In the past year, we have expanded our monitoring to include hearings on the court’s Institutional Hearing Program docket.

The Advocates for Human Rights is deeply troubled by ongoing, systematic violations of international human rights standards which plague the U.S. immigration courts. We note that some of these violations are the result of broader failures of the U.S. immigration laws – for example, the failure of Congress to provide meaningful defenses to deportation or avenues for people who are not in status to move into lawful immigration status, and the excessive and coercive power given by Congress to ICE to detain people without any individualized custody determination. If unaddressed, these failures would continue to plague an independent immigration court.

But other violations are the result of the failure to house the immigration courts within an independent judiciary, and the creation of an independent immigration court is an essential step toward ensuring that removal proceedings meet basic standards regarding fair hearings. Detention and exile deprive people of their

liberty, separate people from their families and communities, result in loss of homes and careers, and may mean return to torture, persecution, or other serious human rights violations. Congress must ensure that the system making such weighty decisions provides access to justice and due process protections.

As an administrative agency, rather than an independent judicial body, today's immigration court system appears to be subject to political interference that undermines the integrity of proceedings.

In our December 2020 report, [*Bearing Witness in the Moment: Report from the Immigration Court Observation Project*](#), The Advocates for Human Rights noted that "...many observers perceived that, as an executive branch agency, the immigration court does not operate with the independence of other courts established within the judicial branch and that immigration judges, as Department of Justice employees, must follow executive branch policies. For some observers, this resulted in a perception of political interference." Immigration court observers reported perceiving that immigration judges are "more like administrators than judges," they are "subject to political directives, rather than interpreting law," and that "the system is rigged..." As one observer summed up, "How can judges be impartial with this much pressure? As employees of executive branch, they just can't be impartial."

While perceptions of interference are troubling, actual interference happens. Under the current system, precedential agency decisions issued by the Board of Immigration Appeals can be overturned at will by the Attorney General. Seemingly mundane policies such as case completion quotas, timeline requirements, and docket management practices like continuances or administrative closure all impact case outcomes and can – and have been – imposed to achieve politically motivated results.

As an administrative agency, both the immigration court system's budget requests and Congress's appropriations are also part of an inherently political process that has resulted in shocking and shameful underfunding that is far out of balance with the billions of dollars spent each year to charge and prosecute administrative immigration violations. This chronic underfunding has left hardworking immigration judges and court staff facing a backlog of nearly 1.6 million cases at the end of 2021. It has led to serious failures that violate fair trial standards, including failure to provide adequate language access to people facing a complex and high-stakes process, docket management practices that deprive people of a fair day in court, and delays that leave people to languish in detention until they give up without a fight. It has fostered an agency culture that must focus on case completion rates (described by one court observer as a "high paced assembly line") and which must ignore unacceptable problems (such as adjudicating the cases of small children appearing without legal representation). These are not the hallmarks of justice upon which the United States prides itself.

United States' immigration policy must meet international human rights standards by doing justice, operating fairly, being free from discrimination, and supporting human dignity. The United States must ensure the respect, protection, and fulfillment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle, including during removal proceedings. Actors at all levels—from Congress to courtrooms—can and must take steps to prevent and address human rights violations. Creating an independent immigration court is one such step.