



February 19, 2022

Congressman Jerrold Nadler  
Chair,  
House Judiciary Committee  
2132 Rayburn House Office Building  
Washington, DC 20515

Congressman Jim Jordan,  
Ranking Member,  
House Judiciary Committee  
2056 Rayburn House Office Building  
Washington, DC 20515

**Re: *For the Rule of Law, an Independent Immigration Court***

Dear Chairman Nadler and Ranking Member Jordan,

Thank you for the opportunity to provide testimony on behalf of the Asian Pacific Institute on Gender-Based Violence (API-GBV). The API-GBV is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander and immigrant communities, and serves a national network of advocates, community-based victim services programs, federal agencies, national and state organizations, legal, health, and mental health professionals, researchers and policy advocates. API-GBV has particular insight into how immigration court proceedings impact the welfare of survivors of violence and crime. API-GBV co-chairs the Alliance for Immigrant Survivors, supporting domestic violence and sexual assault victim advocates and their statewide and national coalitions by providing up-to-date information about immigration policy changes and their particular impacts on the safety-planning that survivor advocates do with immigrant victims to mitigate risks to their well-being. Based on our work supporting victim advocates and in working with immigrant survivors of domestic violence, sexual assault, and human trafficking, we submit the following comments:

The Executive Office for Immigration Review (EOIR), which oversees the Immigration Court and the Board of Immigration Appeals (BIA), is currently housed within the Department of Justice (DOJ). While Immigration and Customs Enforcement (ICE) Trial attorneys (trial-level

immigration prosecutors) are housed within U.S. Department of Homeland Security (DHS), the Office of Immigration Litigation (OIL), which defends immigration cases on behalf of the government in the federal Circuit court appeals, is housed within DOJ. This structure entails inherent conflicts of interest, and regardless of party leadership, IJ's and the BIA are constrained to the winds of DOJ political leadership.

As noted by Ashley Tabador, former President of the National Association of Immigration Judges (NAIJ), IJ's run the risk of becoming "prosecutors in a judge's robe,"<sup>1</sup> if they have not already done so. As recently as January 2022, an advocate in API-GBV's network shared a transcript from an immigration court hearing documenting an IJ, for all intents and purposes, cross-examining a sexual assault survivor who'd been abducted as teenager by an older man, and continuously beaten and raped over a period of years, suggesting that she'd not been seriously harmed, as she'd been provided a place to live, and food and clothing. Not only was the line of questioning leading, it likely served to further unnecessarily traumatize a sexual assault survivor.

The importance of due process in the immigration court process is critical: immigrant survivors having a fair day in court can mean the difference between living in safety in the United States or being returned to a country where they may continue to face the harm of sexual or domestic violence or human trafficking, or possibly killed. Removal can also lead to the loss of critical supports for survivors and their children to recover and prevent future violence, including access to protective legal and social supports, as well as permanent family separation.

We have been concerned that over the years, and particularly during the last 5 years, that the immigration courts have been drastically transformed through administrative policies that significantly undermined immigration judges' (IJ's) impartiality and due process for litigants, particularly immigrant survivors. For example, the Trump Administration proposed several regulations that would have created substantial barriers to litigants' access to immigration court. These proposals included the imposition of unrealistic case quotas,<sup>2</sup> unrealistic deadlines and

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<sup>1</sup> Patt Morrison, How the Trump administration is turning judges into "prosecutors in a judge's robe", LOS ANGELES TIMES (Aug. 29, 2018), <http://www.latimes.com/opinion/op-ed/la-ol-patt-morrison-judgeashley-tabador-20180829-htlstory.html>.

<sup>2</sup> EOIR, Memorandum from James McHenry, Director, Executive Office for Immigration Review on Immigration Judge Performance Metrics to All Immigration Judges (Mar. 30, 2018); See,

performance metrics on IJ's and the BIA,<sup>3</sup> severely curtailing the availability of administrative closure and remand of cases in immigration proceedings,<sup>4</sup> significantly limiting the ability IJ's to administratively close cases,<sup>5</sup> restricting the use of motions to reopen, reconsider, or to stay IJ decisions,<sup>6</sup> as well as radical changes to the processing of asylum and withholding of removal matters.<sup>7</sup>

In addition, DOJ, through the Attorney General (AG), has authority to re-open and refer cases previously decided by the BIA to him/herself for a new decision. This "certification" process allows the AG to render precedent-setting decisions that govern both IJ's and the BIA. During the last Administration the AG's certified over two dozen cases to themselves, that radically altered decades of judicial practice and immigration law precedent. Many of the decisions intended to minimize the role of judges in immigration courts by limiting their authority to manage their dockets or make decisions based on the individual facts of each case.

Of particular harm to immigrant survivors of domestic violence, sexual assault and human trafficking were the AG's decisions in *Matter of A-B*,<sup>8</sup> which limited access to asylum for many survivors by disqualifying most cases where the claim for persecution was based on violent committed by private actors by imposing a requirement that the violence be condoned by the government, and *Matter of L-E-A*,<sup>9</sup> which limited access for many survivors claiming persecution based on membership in a "particular social group" of family for purposes of qualifying for asylum under the Immigration and Nationality Act.

These policies have eroded the fundamental guarantee of our legal system: the right to a full and fair hearing by an impartial arbiter. These changes, along with a 1.6 million immigration court case backlog<sup>10</sup> significantly did, and continue to, undermine immigrant survivors' ability

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<https://www.wsj.com/articles/immigration-judges-face-new-quotas-in-bid-to-speed-deportations-1522696158>

<sup>3</sup> *Executive Office for Immigration Review; Board of Immigration Appeals: Affirmance Without Opinion, Referral for Panel Review, and Publication of Decisions as Precedents*, 84 Fed. Reg. 31463 (Jul. 2, 2019)

<sup>4</sup> *Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure*, 85 F.R. 52491 (August 26, 2020)

<sup>5</sup> *Good Cause for Continuance in Immigration Proceedings*, 85 Fed. Reg. 75925 (Nov. 27, 2020)

<sup>6</sup> *Motions to Reopen and Reconsider; Stay of Removal*; 85 Fed. Reg. 75942 (Nov 27, 2020)

<sup>7</sup> *Executive Office for Immigration Review; Procedures for Asylum and Withholding of Removal*, 85 Fed. Reg. 58692 (Sept. 23, 2020),

<sup>8</sup> 27 I&N Dec. 316 (A.G. 2018)

<sup>9</sup> 27 I&N Dec. 581 (A.G. 2019)

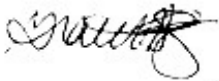
<sup>10</sup> See, Transactional Research Action Clearinghouse, *Immigration Court Backlog Now Growing Faster Than Ever, Burying Judge in Avalanche of Cases*, found at <https://trac.syr.edu/immigration/reports/675/>

to pursue important legal protections afforded them in US law, and make it significantly more likely that they will be unlawfully and improperly removed to a country where they may be subjected to ongoing violence or killed, or remain at heightened risk of ongoing domestic violence, sexual abuse or exploitation, or trafficking. We respectfully ask Congress to act to establish an independent court system that would restore due process and judicial independence, as well as resources to provide appropriate judicial training on the law, including the immigration protections afforded survivors in the Violence Against Women Act,<sup>11</sup> and the Victims of Trafficking and Violence Protection Act,<sup>12</sup> and practical training on working with trauma-impacted litigants.

If you have any questions or concerns, please contact me at [ghuang@api-gbv.org](mailto:ghuang@api-gbv.org). We look forward to working with you on these important issues. Thank you.

Sincerely,

ASIAN PACIFIC INSTITUTE ON  
GENDER-BASED VIOLENCE



GRACE HUANG

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<sup>11</sup> The Violence Against Women Act of 1994, Pub. L. No. 103-222, Title IV, 108 Stat. 1902-55 (codified in scattered sections of 8 U.S.C. and 42 U.S.C.) and subsequent reauthorizations; Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, (2000); Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, ((2006), and the Violence Against Women Reauthorization Act of 2013, P.L.,113-4,127 Stat. 54 (2013)

<sup>12</sup> The Victims of Trafficking Protection Act of 2000, Pub. L. No. 106-386 (2000)