



Chair Zoe Lofgren
House Committee on the Judiciary
Subcommittee on Immigration and Citizenship
Washington, DC 20515

Ranking Member Tom McClintock
House Committee on the Judiciary
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January 20, 2022

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

Dear Chair Lofgren & Ranking Member McClintock:

On behalf of the Coalition for Humane Immigrant Rights (CHIRLA), the largest statewide immigrant rights organization in California, I submit this statement for the record for today’s hearing entitled “For the Rule of Law, An Independent Immigration Court”. CHIRLA runs a robust legal services program for the immigrant community, including a removal defense unit that regularly appears in front of the immigration courts of the Executive Office for Immigration Review (EOIR). Based on those experiences, the overall case backlog and the clear politicization of the EOIR courts, CHIRLA supports the establishment of independent immigration courts.

This is a longstanding position of the organization, and we submitted a statement to that effect for the record for the related hearing, “Courts in Crisis: The State of Judicial Independence and Due Process in U.S. Immigration Courts” nearly two



years ago on January 29, 2020.¹ Subsequently, we joined 53 other organizations on the American Immigration Lawyers Association (AILA) led letter dated February 18, 2020 stating that independent immigration courts are essential to helping guarantee due process and fair hearings for immigrants.² Further, one of the core demands in CHIRLA’s 2020 Immigration Principles released ahead of the 2020 elections was:

“Reconstituting the Executive Office of Immigration Review (EOIR) and its immigration courts as independent as Article I tribunals akin to the tax courts, including the allocation of significant resources for this transition, as well as the hiring of an adequate number of immigration judges to address immigration cases fairly and expeditiously.”

Currently, the immigration court system undermines the pursuit of due process for immigrants. An immigrant is effectively pitted against *both* trained government attorney and immigration judges. The judges do not have the independence of Article III judges or even of Article I tax court judges. Instead, they are switched out from one administration to the next, and often serve to move the prevailing agenda. This is equally true at the Board of Immigration Appeals (BIA). Moreover, any subsequent judicial review has recently been compromised by the packing of the judicial courts with highly partisan judges who with increasing infrequency refuse to exercise neutrality regarding the interests of immigrants.

These problems are compounded by additional factors, including the role of the Attorney General in setting immigration policy and crucially, the lack of adequate

¹ <https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=2757>;
<https://docs.house.gov/meetings/JU/JU01/20200129/110402/HHRG-116-JU01-20200129-SD008.pdf>.

² <https://www.aila.org/advo-media/aila-correspondence/2020/advocates-call-on-congress-establish-independent>.

access to legal counsel for immigrants appearing in front of EOIR, or any future independent immigration court for that matter. Right now, the Attorney General can refer immigration cases to his or her office and issue a ruling setting new policy on any particular issue. As such, our attorneys could find themselves dealing with one policy on asylum and gender-based violence in late 2016, another in 2018 and a third in 2021.³ This cycle can continue in perpetuity irrespective of any actual changes on the ground, with changes being based less on issues of fact and law and more on political calculations. It should go without saying that this is no way to run a court system that wishes to consider itself a neutral institution. An independent immigration court system would eliminate not just the politicization of immigration court and BIA judges, but also this role of the Attorney General.

Finally, appearing before an immigration court without legal representation is a recipe for failure regardless of the merits of an individual case. The problem is particularly acute for detained immigrants in far flung detention centers, many of whom are up to ten times likelier to win their case with the help of an attorney.⁴ This is not just true for the ultimate outcome of a case, but most importantly for the very liberty of an immigrant who has a bond hearing. A bond request that is rejected or set too high ensures continued detention, thereby exponentially increasing the odds of ultimately being deported regardless of the true likelihood of success.⁵ As such, a future independent immigration court system must be accompanied by a guaranteed right to government-funded counsel – a priority that CHIRLA is currently pursuing with vigor.

³ <https://cgrs.uchastings.edu/our-work/matter-b-0>.

⁴ <https://www.americanimmigrationcouncil.org/research/biden-administration-and-congress-must-guarantee-legal-representation-people-facing-removal>.

⁵ <https://www.russellsage.org/news/role-lawyers-immigration-bond-hearings>.



CHIRLA
Coalition for Humane
Immigrant Rights

Thank you for your consideration of this statement. Please contact me at cbergquist@chirla.org should you have any questions.

A handwritten signature in blue ink that reads "Carl J. Bergquist". The signature is written in a cursive style and is contained within a white rectangular box.

Carl Bergquist, General Counsel
Coalition for Humane Immigrant Rights (CHIRLA)

