



IMMIGRANT
LEGAL
DEFENSE

STATEMENT OF IMMIGRANT LEGAL DEFENSE
SUBMITTED TO THE HOUSE JUDICIARY COMMITTEE
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Immigrant Legal Defense (“ILD”) is a non-profit organization dedicated to the promotion of justice through the provision of legal representation to underserved immigrant communities. Our seasoned attorneys have decades of experience practicing in immigration courts around the country. Our clients are children, families, and adults fleeing persecution, or otherwise seeking to pursue or retain a path to lawful permanent residence in the U.S. and remain with family, or remain in the only country they have ever known. Although they all deserve due process under the immigration statute and the Constitution, these guarantees are woefully lacking in the system as it stands - housed in the Department of Justice (DOJ) and overseen by the chief prosecutor of the United States. Also often lacking are independence, impartiality and professionalism by the judges who hear removal cases. Based on our collective experience, we wholeheartedly support an independent immigration court and urge members of Congress to pass legislation to move the immigration courts out of the DOJ.

Through years of practice, we have observed firsthand how the immigration courts can be unduly influenced by political affiliation and by who happens to occupy the White House and the Attorney General’s office at any given moment. With each change of administration, practitioners, advocates, and noncitizens face a new set of rules, policies, and practice before the immigration courts, fashioned to carry out that administration’s priorities, and which are routinely issued without regard for fundamental fairness or judicial efficiency. These constant changes often adversely impact the lives of our clients and countless noncitizens across the country. We also firmly believe that arbitrary policy and procedural changes undermine democratic principles and the rule of law.

Often, these changes are not tethered to precedent, notions of fairness in individual cases, or efficiency for resource-strapped courts. Rather, they appear targeted to penalize certain populations. For example, we have seen policies that require certain cases to be unduly expedited and forced to move forward before they can be fully prepared, including those of *pro se* individuals unable to find counsel. These fast-track policies have particularly been geared towards the adjudication of asylum claims by the Central American community. This community is often further adversely impacted by substantive changes to U.S. asylum law through the BIA’s and Attorney General precedent decisions. At the other end of the spectrum, we have seen

clients' cases repeatedly rescheduled by the courts far into the future despite our clients' right to have their cases heard and completed in a timely manner. This is in large part due to a backlog of cases before the immigration courts that is immense, growing, and in need of immediate attention.

Rather than adhere to due process in individual cases, the "one-size-fits-all" approach often reflected in policies by the immigration courts and the BIA result in everyday injustice; the human cost is tragic. As an organization, ILD fears that this injustice has been normalized. We ask you to reverse this status quo.

We have also directly confronted the inherent conflict of interest, implicit biases, and lack of accountability and impartiality entrenched in the immigration courts and BIA, which make it difficult for individuals with complex yet meritorious cases to receive a truly fair hearing before an immigration judge or to access fair, impartial review by the BIA.

For example, ILD currently represents Omar Abdulsattar Ameen, an Iraqi refugee who has for years fought false accusations by the United States and Iraqi governments of being involved with terrorist organizations and terrorist activities. After an arrest by the FBI and extradition proceedings litigated by the United States Attorney's Office, a federal district court judge dismissed the government's case in extradition proceedings. The Department of Homeland Security (DHS) has aggressively pursued removal proceedings against Mr. Ameen before the Executive Office for Immigration Review (EOIR) nonetheless. ILD is strongly concerned that DOJ will continue to pursue its objectives, utilizing the immigration court as another tool against Mr. Ameen.

Mr. Ameen's case highlights the inherent conflicts implicated by the current immigration court system, in which the branch of government that continues to investigate Mr. Ameen and already prosecuted him in one proceeding, the DOJ, can subsequently serve as the decision-maker in another proceeding. During Mr. Ameen's contested removal proceedings, DOJ investigators and prosecutors were present in court and on the conference line, listening in and conferring with counsel for DHS, while a DOJ immigration judge presided over the case. Mr. Ameen's case exemplifies how the current non-independent nature of the immigration courts and the BIA can be susceptible to a lack of justice in complex cases which warrant thoughtful, careful, independent review. In the interim, in large part due to the unfounded allegations by DOJ agencies against him, Mr. Ameen - a husband, father, and upstanding member of his community - faces a likelihood of danger, including torture, if returned to Iraq. He also continues to face unjustified detention. As the agency currently adjudicating his fate - the DOJ - is also the agency that continues to investigate him, there is little hope that Mr. Ameen will indeed receive a meaningful right to be heard and protected in the United States.

For noncitizens who have previously encountered the criminal legal system, the promise of a fair and impartial adjudication is greatly reduced. The consequences of criminal convictions can have drastic consequences on a noncitizen's life. However, these individuals often face hostility in the immigration courts and before the BIA without careful regard for whether they can demonstrate rehabilitation for a second chance at remaining in the U.S. This is in part because U.S.

immigration laws are extremely punitive in nature, particularly with respect to individuals with criminal convictions. However, immigration judges and the BIA often play a role in further penalizing these individuals in the adjudication of their cases, whether it is to deny discretionary relief or the right to be free from unlawful or arbitrary detention. This is also applicable to noncitizens battling mental health disabilities, who encounter homelessness and the criminal legal system at higher rates than others, making them particularly vulnerable to arbitrary detention and denial of immigration relief. While we welcome efforts by EOIR to create initiatives that result in the appointment of counsel for this population, the immigration court system as an institution continues to stigmatize this population.

Removal proceedings in immigration court can have life or death consequences. Immigration judges order removal of noncitizens from the United States, often sending them back to persecution, torture, and death. Equally important, immigration judges make decisions that lead to permanent separation of mixed status families, tearing parents from children and often leaving U. S. citizen children the choice between being parentless or living in exile from their country. Given the stakes at issue for noncitizens, immigration courts and the judges who make up these courts must be fair, competent and impartial. We regret that this is not the case for the current U.S. immigration court system. We therefore respectfully urge the House to move forward with legislation to create an immigration court system that meets the ideals of fairness and neutrality.

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