ROUND TABLE
of Former Immigration Judges

**Statement of the Round Table of Former Immigration Judges**

**Submitted to the House Judiciary Committee**

**January 20, 2022**

This statement for the record is submitted by the Round Table of Former Immigration Judges, a group of 52 former Immigration and Appellate Immigration Judges who were appointed by and served under both Democratic and Republican administrations, and whose periods of service on the bench spanned from 1980 through the end of 2021.

We submitted a statement for the record two years ago when this committee held a hearing on January 29, 2020 on the crisis in the Immigration Courts. Rather than repeat its contents, we attach a copy for the committee's convenience. We also attach a copy of a letter we wrote to former EOIR Director James McHenry protesting the agency's issuance in May 2019 of a purported "Myth vs. Fact" memo, an anti-immigrant propaganda sheet of the type no neutral court system should ever release.

We wish to emphasize that the subsequent change in administration in no way reduces the need for an Article I Immigration Court. Regardless of the administration in power, there remains a serious systemic flaw in housing courts intended to protect due process and reach neutral, learned determinations inside of an Executive Branch department committed to prosecution. The excessive abuses of the Trump Administration as summarized in our attachments demonstrate the depth of the flaw and the degree to which it is capable of being exploited. But the few improvements made over the past year have neither corrected the systemic flaw, nor reduced the likelihood of its repeated exploitation.

As to the problem not being administration-specific, we note that the Clinton Administration also attempted to decertify the Immigration Judges' union, the NAIJ, which was accorded its recognition as a bargaining unit in 1979, over 20 years earlier. Under the Bush Administration, the Board of Immigration Appeals was purged of all judges who were found to be insufficiently aligned with that administration's restrictionist immigration views. And the Obama, Trump, and Biden Administrations have all engaged in politicizing the immigration courts' case completion priorities. Allowing politics to determine which cases should be heard first instead of allowing the courts to hear those cases most ripe for adjudication has proven remarkably inefficient, leading to an increase in the daunting backlog of cases under each of those administrations.

In fact, recent actions under the Biden Administration have further diminished the stature of Immigration Judges by reducing their control over cases on their individual dockets, employing a system suitable for line adjudicators such as asylum officers and immigration examiners. [1] Instead of enhancing independence, undermining a judge's ability to control his or her docket and the individual cases on it impedes the Congressional design of independent review of decisions at the Agency level as a neutral check on DHS and DOJ decision makers. Furthermore, the Biden Administration is continuing its predecessor's union-busting tactic of classifying some new IJ hires as "Unit Chief Immigration Judges." Although their duties are virtually the same as other IJs, EOIR is classifying the title as a "supervisory" position, thereby precluding a substantial segment of the IJ corps from union membership.

As to the risk of future abuse, we are troubled by the fact that all present EOIR leadership served in leadership positions under the prior administration. As none are known to have put up resistance to the abuses then, we can find no reason to think they would do so if faced with similar abuses in the future.

---

[1] This is not just the Round Table's observation. The Court of Appeals for the Third Circuit recently stated, in a published precedential decision, that "as we have had to clarify numerous times before, 'the BIA's analysis does little more than cherry-pick a few pieces of evidence, state why that evidence does not support a well-founded fear of persecution and summarily conclude that [Nsimba's] asylum petition therefore lacks merit. That is selective rather than plenary review.' It is more akin to the argument of an advocate than the impartial analysis of a quasi-judicial agency." *Nsimba v. Att'y Gen.*, No. 20-3565, at * 11 (3d Cir. December 22, 2021): https://law.justia.com/cases/federal/appellate-courts/ca3/20-3565/20-3565-2021-12-22.html

In particular, James McHenry, who served as EOIR's director through most of the Trump Administration, appears to have avoided all accountability for any action that occurred under his leadership. McHenry remains in charge of EOIR's Office of the Chief Administrative Hearing Officer, a senior management position within the agency. We greatly hope that the committee will inquire into the role played by McHenry and the agency's other current leadership while its judges' independence and fairness came under continuous attack. In our view, their record of "just following orders" provides the strongest argument of all for why an independent, Article I Immigration Court is needed.

Attachments

Contact: Jeffrey S. Chase, jeffchase99@gmail.com

**ATTACHMENT 1:**

**Statement of the Round Table of Former Immigration Judges**

**Submitted to the House Judiciary Committee**

**January 29, 2020**

This statement for the record is submitted by former Immigration Judges and former Appellate Immigration Judges of the Board of Immigration Appeals. Members of our group were appointed to the bench and served under different administrations of both parties over the past four decades. Drawing on our many years of collective experience, we are intimately familiar with the workings, history, and development of the immigration court from the 1980s up to present.

The purpose of the immigration courts is to act as a neutral check on executive overreach in the enforcement of our immigration laws. In their detached and learned interpretation of the laws and regulations, immigration judges exist to correct overzealous bureaucrats and policy makers when they overstep the bounds of reasonable interpretation and the requirements of due process.

Unfortunately, the immigration courts have always been hindered in fulfilling their purpose by the fact that they are housed inside of an enforcement agency, the U.S. Department of Justice, and answer to the nation's chief enforcement officer, the Attorney General. Due in large part to the efforts of their union, the immigration judge corps managed to maintain decision making independence even when faced with increased caseloads and political pressures.

We are extremely disturbed by this administration's systemic and unprecedented efforts to undermine immigration judges' independence and neutrality. Such efforts have proceeded seamlessly through three different Attorneys General. Even Matthew Whitaker, acting as a caretaker and with no prior immigration law background, managed in his brief time in charge to certify to himself a decision of the BIA which had denied asylum and created a difficult standard for those seeking asylum based on their family ties, in order to make such standard even more daunting.

The Attorneys General have together abused their certification power to circumvent the intent of Congress by rewriting our nation's immigration laws. In

some of their decisions, the A.G.s have eliminated precedent decision and then imposed requirements that require much more attorney preparation, longer hearings, and more exacting decisions from the immigration judges themselves in order to grant relief where such relief is due. But at the same time, the Department of Justice has greatly expedited the hearings of those who are often most vulnerable, while requiring a growing number of asylum-seekers to either wait in Mexico in a state of homelessness, with little access to counsel or ability to gather evidence; or to alternatively be detained in horrific conditions in remote detention facilities with the same result. The administration has increasingly denied observers access to the hearings in such cases. In particular, a member of our group was asked to leave the courtroom where she was observing the conduct of an MPP case on the spurious claim that her note taking was distracting.

In addition to cutting off access to the agency's more controversial classes of hearings, EOIR has also effectively ended the participation of immigration judges as speakers in legal conferences and at law schools, including as participants in moot court hearings. The judges' own union, the National Association of Immigration Judges, has served as the sole voice of its members, publicly speaking out against policies that undermine its independence and impartiality, and in advocating for independent Article I court status. In response, the Department of Justice has sought to silence the NAIJ through a present effort to decertify a union that has been certified since 1979.

The Attorneys General have also issued decisions stripping Immigration Judges of the judicial tools needed to properly execute their duties. Through precedent decisions by certification, former Attorney General Jeff Sessions issued binding decisions stripping Immigration Judges of their long-standing ability to administratively close or terminate cases where appropriate or necessary, or even to continue hearings where due process requires.

EOIR's director has also instituted completion quotas that undermine judicial independence by requiring immigration judges to choose between justice for those who appear before them and their own job security. Immigration Judges are told in their training that they are not only judges, but also employees of the Attorney General and the Department of Justice, and thus owe loyalty to the objectives of those they serve. Such pressuring of immigration judges to adhere to the views of the enforcement officer and agency that employ them contradicts the Supreme Court's 1954 ruling to the contrary, in which it held that the BIA must decide cases

according to its judges' "own understanding and conscience," and not those of the Attorney General.[2]

Our group includes a significant number of former immigration judges who retired or otherwise left the bench sooner than intended due to the unconscionable policies of the present administration. Two amongst us took the highly unusual step of resigning after only two years on the bench. One of our members made a point of retiring after 28 years on the bench on the day before the oppressive completion quota system went into effect as a statement that he refused to work under such conditions.

EOIR has taken additional actions to undermine the appearance of neutrality so necessary to a court system. The agency posted on its website a press release announcing a "return to the rule of law" based solely on an increase in the number of deportation orders issued by the courts. More recently, the agency issued a "Myths vs. Facts" sheet falsely claiming that noncitizen as a rule don't appear for their court hearings; that asylum seekers claims lack merit, and that attorneys don't really impact court outcomes. The members of this honorable committee are asked to try to imagine any other court issuing such a statement concerning those that appear before its judges, and to further imagine what the public response would be. Our Round Table was one of several groups that issued a statement strongly criticizing such action.

We acknowledge our former colleagues still on the bench who continue to afford due process and fairness in their decisions. Their increasing difficulty in doing so was illustrated by the highly-publicized case in which an immigration judge in Philadelphia, upon receiving a case remanded by the Attorney General, continued the hearing of a minor who did not appear for purposes of ensuring that the youth received proper notice of the hearing, as required by law. EOIR management immediately removed the case from the judge's docket, along with more than 80 other similar cases. The judge was most improperly chastised by his supervisor. Instead of assigning the case to another judge in the Philadelphia court, EOIR management sent one of its own to Philadelphia for the sole purpose of issuing an in absentia removal order against the youth. What message did these actions send to the immigration judge corps (in particular, to those recently hired who may be removed without cause within two years of their appointments) about exercising independent judgement? We affirm that such action would have been unthinkable under any prior administration during the four decades in which we served.

---

[2] *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

Immigration Judges also depend on a fair review of their decision on administrative appeal to the BIA. We are sad to report that the appellate judges on the BIA have abdicated the independent understanding and conscience recognized 66 years ago by the Supreme Court. Last month, a judge sitting on the U.S. Court of Appeals for the Third Circuit stated in a concurring opinion of the court: "it is difficult for me to read this record and conclude that the Board was acting as anything other than an agency focused on ensuring Quinteros' removal rather than as the neutral and fair tribunal it is expected to be. That criticism is harsh and I do not make it lightly."[3] And on January 23, the Chief Judge of the U.S. Court of Appeals for the Seventh Circuit suggested holding the BIA's judges in contempt of court, "with all the consequences that possibility entails." What invoked such reaction was the BIA's decision to completely ignore a binding order of an Article III court because Jeff Sessions in a footnote to a certified decision had expressed his disagreement with such decision. The Seventh Circuit stated that the Board's action "beggar's belief," adding that it has "never before encountered defiance of a remand order, and we hope never to see it again." But as long as the A.G. holds the power to remove them and the Circuit Courts don't, the BIA will err on the side of job security.

With the BIA acting as the A.G.'s enforcer, immigration judges are increasingly concerned with whether ICE might appeal a grant of relief. One of the performance quotas IJs are now subject to requires that not more than 15 percent of their decisions can be remanded or reversed on appeal by the BIA.

For all of the above reasons, we hope that Congress will take steps towards removing the immigration courts and BIA from the Department of Justice and establishing an independent Article I Immigration Court. In the meantime, we hope that Congress will use the powers at its disposal to limit undue influence on the immigration judges; to protect their union from decertification; and to call the BIA to account for its recent outrageous behavior.

We appreciate the opportunity to provide this statement for the record and look forward to engaging as Congress considers reforming the immigration court system.

**Contact with questions or concerns:** Jeffrey S. Chase, jeffchase99@gmail.com.
Sincerely,

---

[3] *Quinteros v. Att'y Gen*., No. 18-3750 (3d Cir. Dec. 17, 2019).

**Hon. Steven Abrams**, Immigration Judge, New York, Varick St., and Queens (N.Y.) Wackenhut Immigration Courts, 1997-2013
**Hon. Terry A. Bain**, Immigration Judge, New York, 1994-2019

**Hon. Sarah Burr**, Assistant Chief Immigration Judge and Immigration Judge, New York, 1994-2012
**Hon. Esmerelda Cabrera**, Immigration Judge, New York, Newark, and Elizabeth, NJ, 1994-2005

**Hon. Teofilo Chapa**, Immigration Judge, Miami, 1995-2018
**Hon. Jeffrey S. Chase**, Immigration Judge, New York, 1995-2007
**Hon. George T. Chew**, Immigration Judge, New York, 1995-2017
**Hon. Joan Churchill**, Immigration Judge, Arlington, VA 1980-2005
**Hon. Bruce J. Einhorn**, Immigration Judge, Los Angeles, 1990-2007
**Hon. Cecelia M. Espenoza**, Appellate Immigration Judge, BIA, 2000-2003
**Hon. Noel Ferris**, Immigration Judge, New York, 1994-2013
**Hon. James R. Fujimoto**, Immigration Judge, Chicago, 1990-2019
**Hon. Jennie L. Giambastiani**, Immigration Judge, Chicago, 2002-2019
**Hon. John F. Gossart, Jr.**, Immigration Judge, Baltimore, 1982-2013
**Hon. Paul Grussendorf**, Immigration Judge, Philadelphia and San Francisco, 1997-2004
**Hon. Miriam Hayward**, Immigration Judge, San Francisco, 1997-2018
**Hon. Charles Honeyman**, Immigration Judge, Philadelphia and New York, 1995-2020
**Hon. Rebecca Jamil**, Immigration Judge, San Francisco, 2016-2018
**Hon. William P. Joyce**, Immigration Judge, Boston, 1996-2002
**Hon. Carol King**, Immigration Judge, San Francisco, 1995-2017
**Hon. Elizabeth A. Lamb**, Immigration Judge, New York, 1995-2018
**Hon. Donn L. Livingston**, Immigration Judge, Denver and New York, 1995-2018
**Hon. Margaret McManus**, Immigration Judge, New York, 1991-2018
**Hon. Charles Pazar**, Immigration Judge, Memphis, 1998-2017
**Hon. Laura Ramirez**, Immigration Judge, San Francisco, 1997-2018
**Hon. John W. Richardson**, Immigration Judge, Phoenix, 1990-2018
**Hon. Lory D. Rosenberg**, Appellate Immigration Judge, Board of Immigration Appeals, 1995-2002

**Hon. Susan G. Roy**, Immigration Judge, Newark, NJ 2008-2010

**Hon. Paul W. Schmidt**, Chair and Appellate Immigration Judge, Board of Immigration Appeals, and Immigration Judge, Arlington, VA 1995-2016

**Hon. Ilyce S. Shugall**, Immigration Judge, San Francisco, 2017-2019

**Hon. Denise Slavin**, Immigration Judge, Miami, Krome, and Baltimore, 1995-2019

**Hon. Andrea Hawkins Sloan**, Immigration Judge, Portland, 2010-2017

**Hon. Gustavo D. Villageliu**, Appellate Immigration Judge, BIA, 1995-2003

**Hon. Robert D. Vinikoor**, Immigration Judge, Chicago, 1984-2017

**Hon. Polly A. Webber**, Immigration Judge, San Francisco, 1995-2016

**Hon. Robert D. Weisel**, Assistant Chief Immigration Judge, Immigration Judge, New York 1989-2016

**ATTACHMENT 2**


ROUND TABLE
of Former Immigration Judges

May 13, 2019

James McHenry, Director
Executive Office for Immigration Review 5107 Leesburg Pike, 26th Floor
Falls Church, VA 22041

Re: EOIR “Myth vs. Fact” memo

Mr. McHenry:

As former Immigration Judges and BIA Board Members, we write to state our offense at EOIR’s recently issued memo purporting to present imagined “myths” and wildly inaccurate and mis- leading information labeled as “fact.” The issuance of such a document can only be viewed as political pandering, at the expense of public faith in the immigration courts you oversee.

Even if anything contained in the memo is actually correct, it is simply not EOIR’s place to be issuing such a document. EOIR’s function is to protect the independence and integrity of the hundreds of judges who sit in its Immigration Courts, on the BIA, and within OCAHO.

American courts do not issue propaganda implying that those whose cases it rules on for the most part have invalid claims; that the participation of lawyers in its hearings provides no real value and has no impact on outcome; that the government’s own program to assist litigants in obtaining legal representation is a waste of taxpayer money; or that those unable to surmount the government-created obstacles to filing asylum applications are somehow guilty of deceit. Such

statements indicate a bias which is absolutely unacceptable and, frankly, shocking.

We all had the honor of serving as judges within EOIR. Many of us remember when EOIR's stated vision was "through teamwork and innovation, [to] be the world's best administrative tri- bunals guaranteeing fairness and due process for all." We remember a time when EOIR's lead- ership took that mission seriously, and strove to achieve it.

The time for you to renew the agency mission is long overdue. Your job is to insulate the agency from political influences from the Department of Justice and beyond. Nothing short of judicial independence, neutrality, and fairness is acceptable for courts that make life and death determinations such as those which arise in immigration claims.

Hon. Steven Abrams, Immigration Judge, New York, Varick St., and Queens Wackenhut Detention Center, 1997-2013

Hon. Sarah M. Burr, Assistant Chief Immigration Judge and Immigration Judge, New York, 1994-2012

Hon. Esmerelda Cabrera, Immigration Judge, New York, Newark, and Elizabeth, NJ, 1994-2005

Hon. Teofilo Chapa, Immigration Judge, Miami, 1995-2018

Hon. Jeffrey S. Chase, Immigration Judge, New York, 1995-2007

Hon. George T. Chew, Immigration Judge, New York, 1995-2017

Hon. Bruce J. Einhorn, Immigration Judge, Los Angeles, 1990-2007

Hon. Cecelia M. Espenoza, Board Member, BIA, 2000-2003

Hon. Noel Ferris, Immigration Judge, New York, 1994-2013

Hon. John F. Gossart, Jr., Immigration Judge, Baltimore, 1982-2013

Hon. Miriam Hayward, Immigration Judge, San Francisco, 1997-2018

Hon. Rebecca Jamil, Immigration Judge, San Francisco, 2016-2018

Hon. William P. Joyce, Immigration Judge, Boston, 1996-2002

Hon. Carol King, Immigration Judge, San Francisco, 1995-2017

Hon. Elizabeth A. Lamb, Immigration Judge, New York, 1995-2018

Hon. Donn L. Livingston, Immigration Judge, New York and Denver, 1995-2018

Hon. Margaret McManus, Immigration Judge, New York, 1991 - 2018

Hon. Charles Pazar, Immigration Judge, Memphis, 1998-2017

Hon. Laura Ramirez, Immigration Judge, 1997-2018

Hon. John W. Richardson, Immigration Judge, Phoenix, 1990-2018

Hon. Lory D. Rosenberg, Board Member, BIA, 1995 - 2002.

Hon. Susan G. Roy, Immigration Judge, Newark, 2008-2010.

Hon. Paul W. Schmidt, Chairman and Board Member, BIA, 1995 - 2003; Immigration Judge, Arlington, 2003-2016.

Hon. Denise Slavin, Immigration Judge, Miami, Krome, and Baltimore, 1995-2019

Hon. Ilyce Shugall, Immigration Judge, San Francisco, 2017-2019

Hon. Andrea Hawkins Sloan, Immigration Judge, Portland, 2010 - 2017

Hon. Polly A. Webber, Immigration Judge, San Francisco, 1995-2017