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January 20, 2022

The Honorable Zoe Lofgren, Chair
Subcommittee on Immigration and Citizenship
Committee on the Judiciary
U.S. House of Representatives

The Honorable Joe Neguse, Vice Chair
Subcommittee on Immigration and Citizenship
Committee on the Judiciary
U.S. House of Representatives

The Honorable Tom McClintock, Ranking Member
Subcommittee on Immigration and Citizenship
Committee on the Judiciary
U.S. House of Representatives

Dear Chair Lofgren, Vice Chair Neguse, and Ranking Member McClintock,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the rights of all persons in the United States, we thank you for the opportunity to submit our views regarding the need for an independent immigration court system, as outlined in our top legislative and executive priorities we issued in late 2020.¹ We ask that this letter be entered into the record of the hearing entitled "For the Rule of Law, An Independent Immigration Court" on January 20, 2022.

Immigration Courts housed under the Department of Justice carry an inherent conflict of interest. The Executive Office for Immigration Review (EOIR) is tasked with administering the nation's Immigration Courts and the Board of Immigration Appeals (BIA). At present, EOIR is housed under the Department of Justice (DOJ). Trial-level immigration prosecutors who appear in Immigration Court are housed under Immigration and Customs Enforcement (ICE) within the Department of Homeland Security (DHS), whereas the Attorney General of the United States supervises the Office of Immigration Litigation (OIL), which defends the U.S. government in immigration cases before the circuit courts of appeals.² The DOJ is the nation's foremost law enforcement agency; this posture precludes the judicial independence of immigration judges and hinders their responsibility to provide

Interim President and CEO
Wade Henderson

¹ The Leadership Conference on Civil and Human Rights. "The Presidential and Congressional Transition." December 2020. <https://civilrights.org/the-presidential-and-congressional-transition/>.

² American Immigration Lawyers Association. "Congress Must Establish An Independent Immigration Court." February 18, 2020. <https://www.aila.org/advo-media/aila-correspondence/2020/advocates-call-on-congress-establish-independent>.

due process to respondents who appear before EOIR.³ Furthermore, immigration judges are considered government attorneys, a categorization that belies their judicial duties and leaves them subject to overreaching influence by the Attorney General.⁴ Immigration judges have no fixed term of office, and can be terminated by the Attorney General, or moved to different courts and locations at the whim of the DOJ's leadership.

Lack of judicial independence has exacerbated systemic issues, like the Immigration Court case backlog. Under the last administration, the DOJ imposed arbitrary and unrealistic case completion quotas for immigration judges, tying performance reviews to the number of cases completed.⁵ Immigration judges restricted by quotas are unable to thoroughly examine evidence in the record, hear from witnesses and experts, and render well-reasoned decisions that comply with the requirements of due process and the immigration laws. Such harmful measures would not be possible were our Immigration Courts independent of the DOJ. Furthermore, immigration judges are represented by the National Association of Immigration Judges (NAIJ), which has for years advocated for the establishment of Immigration Courts as Article I courts independent of the DOJ, despite weathering multiple attacks on its status as a valid union.⁶ The call for independent Immigration Courts has been echoed by the American Bar Association, the American Immigration Lawyers Association, and the Federal Bar Association, among numerous organizations serving immigrants.⁷

The Attorney General's certification authority has been politicized beyond repair. The Attorney General is authorized to certify immigration decisions to his or herself for decision. This power allows an Attorney General to unilaterally render precedential immigration decisions and to strongly influence the exercise of discretion by immigration judges and the members of the BIA. Under the Trump administration, the former Attorneys General certified more than twelve cases, compared to only four cases certified by the Attorneys General under the two terms of the Obama administration.

In conclusion, it is time for Congress to establish an independent Immigration Court system. In its current state, the Immigration Court system is subject to manipulation and politicization at the whims of ever-changing presidential administrations. The Leadership Conference urges Congress to expediently establish an independent, Article I court for the administration of the nation's immigration laws. Immigration judges deserve to enjoy the full breadth of their judicial independence, and the sacred due

³ AFL-CIO. "Statement for the Record, House Judiciary Subcommittee on Immigration and Citizenship." January 29, 2020. <https://docs.house.gov/meetings/JU/JU01/20200129/110402/HHRG-116-JU01-20200129-SD025.pdf>.

⁴ American Immigration Lawyers Association. "AILA Policy Brief: Restoring Integrity and Independence to America's Immigration Courts." January 24, 2020. <https://www.aila.org/dueprocess>.

⁵ American Immigration Lawyers Association. "Congress Must Establish An Independent Immigration Court." February 18, 2020. <https://www.aila.org/advo-media/aila-correspondence/2020/advocates-call-on-congress-establish-independent>.

⁶ National Association of Immigration Judges. "Letter to the Honorable Zoe Lofgren." December 14, 2020. <https://www.naij-usa.org/images/uploads/publications/2020.12.14.00.pdf>.

⁷ National Association of Immigration Judges. "Letter to the Honorable Zoe Lofgren." December 14, 2020. <https://www.naij-usa.org/images/uploads/publications/2020.12.14.00.pdf>. American Immigration Lawyers Association. "Congress Must Establish An Independent Immigration Court." February 18, 2020. <https://www.aila.org/advo-media/aila-correspondence/2020/advocates-call-on-congress-establish-independent>.



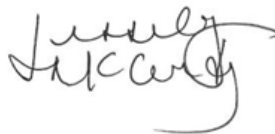
process rights of thousands of immigrant respondents are at stake. Ensuring the proper execution of due process in every court of law is an urgent civil rights priority.

Should you require further information or have any questions regarding this issue, please contact Breanne Palmer, Immigration Policy Counsel, at palmer@civilrights.org.

Sincerely,



Wade J. Henderson
Interim President and CEO



Jesselyn McCurdy
Executive Vice President for Government Affairs