



PRESIDENT
RAKIM BROOKS

CHAIR
PAULETTE MEYER

January 25, 2022

The Honorable Zoe Lofgren
Chair
Subcomm. on Immigration and Citizenship
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Tom McClintock
Ranking Member
Subcomm. on Immigration and Citizenship
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chair Lofgren and Ranking Member McClintock:

On behalf of the Alliance for Justice (AFJ), a national association representing more than 130 public interest and civil rights organizations, I write to add our voice to the organizations that have written or testified at the hearing held on January 20, 2022, before the House Committee on the Judiciary, Subcommittee on Immigration and Citizenship, on “For the Rule of Law, An Independent Immigration Court.”

For more than a generation, AFJ has worked to promote equal justice under law. We have fought to ensure a justice system that upholds the rights of all people. That is why we are so deeply troubled by the Department of Justice’s (the “Department”) historic ineffective and politicized management of our nation’s immigration courts. During the Trump Administration, the Department’s actions turned what should be a fair adjudicatory system into one designed to dictate outcomes favorable to the anti-immigrant zealots in the Administration. The Department engaged in a range of efforts designed to deprive individuals who have valid claims of asylum of the opportunity to present those claims. It sought to influence immigration judges by incentivizing them to summarily deny claims. It urged judges to adopt its conspiratorial views about the immigration lawyers who appear before the courts. Its pursuit of short-term political objectives increased backlogs, produced vacancies, contributed to the demoralization of the court system, and resulted in widespread and unnecessary suffering.

The placement of the immigration courts within the DOJ made these harmful measures possible. Because the Department is a law enforcement agency, it lacks the institutional expertise to manage an independent court and prioritizes its law enforcement functions at the expense of the immigration courts. The politics of immigration enforcement are also interjected into the adjudicatory functions of the immigration court system itself because the Attorney General directly oversees management of the Executive Office for Immigration Review (EOIR). The Attorney General is authorized to certify immigration decisions to himself. 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 Board of Immigration Appeals (BIA).

Eleven Dupont Circle NW, Suite 500 | Washington, DC 20036 | www.afj.org | t:202-822-6070

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AFJ writes this letter, moreover, at a time when the nation, and the world, is facing a pandemic and the immigration courts face a backlog of nearly 1.6 million cases. Today, approximately 580 immigration judges are responsible for adjudicating these cases. That works out to be more than 2,700 cases per judge. On average, individuals wait over 900 days — close to three years — between receiving the initial charging document and the final hearing on the merits of their case. This system is utterly broken.

It is critically important that the federal government deliver timely, effective adjudication for individuals facing potential removal from this country, including those seeking immigration benefits like asylum or permanent residency. There is broad consensus throughout the legal community that the current system for adjudicating immigration claims is dysfunctional and deserves overhaul. The National Association of Immigration Judges (NAIJ) has for years urged the transfer of the immigration courts to a separate Article I court independent of the Department. This call has been echoed by groups as diverse as the American Bar Association (ABA), the Federal Bar Association (FBA), and the CATO Foundation. These organizations have pointed to the need to professionalize the corps of immigration judges and outlined the threat to judicial independence caused by the placement of the immigration court system under the control of the Department of Justice.

AFJ believes that there can be no lasting solution to this problem without removing the immigration court system from DOJ. Our current system of adjudication is subject to manipulation and politicization at the whims of ever-changing presidential administrations. The most effective solution to protecting the neutrality of our immigration courts is to create an Article I Immigration Court that is independent of the DOJ. Article I of the U.S. Constitution expressly grants Congress the power to establish “tribunals” in addition to those created by Article III, and Congress has done so on many occasions. The establishment of an Article I Immigration Court would create greater transparency in the system. It would also restore the due process rights of those who come before the Court.

While moving the immigration court system from the Department of Justice will not solve the ills of the current system, it is desperately needed as a part of the solution. We therefore urge Congress to support the recommendation of the ABA, immigration judges, and immigration lawyers, among others, to establish an Article I Immigration Court that is independent of the Department of Justice.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Rakim Brooks".

Rakim Brooks
President, Alliance for Justice