



**CHIRLA**  
Coalition for Humane  
Immigrant Rights

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January 29, 2020

The Honorable Zoe Lofgren  
Chair of the Subcommittee on Immigration and Citizenship  
U.S. House of Representatives  
1401 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Ken Buck  
Ranking Member of the Subcommittee on Immigration and Citizenship  
U.S. House of Representatives  
2455 Rayburn House Office Building  
Washington, D.C. 20515

**RE: “Courts in Crisis: The State of Judicial Independence and Due Process in U.S. Immigration Courts.” Hearing Before the Subcommittee on Immigration & Citizenship on January 30, 2020**

Dear Chair Lofgren, Ranking Member Buck, and Members of the Subcommittee on Immigration and Citizenship,

On behalf of the Coalition for Humane Immigrant Rights (CHIRLA), the largest immigrant rights organization in the state of California, I write to express our concerns related to the current state of the immigration court system. This system is already fundamentally flawed and it has now been infested by various policies that further undermine immigrants’ right to due process and distort immigration law. The courts lack judicial independence, which has enabled the current administration, has politicize them and undermine their virtue.

Currently, the Attorney General oversees the Department of Justice (DOJ), and within the DOJ exists the Executive Office for Immigration Review (EOIR), which is responsible for adjudicating all immigration-related cases in the United States. Additionally, the Board of Immigration Appeals is

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responsible for hearing appeals from immigration courts and is part of EOIR. The sole purpose of EOIR is to conduct quasi-judicial “removal” proceedings to determine whether an individual is deportable. Immigration judges (IJ) are employed through the DOJ and are not part of the judicial branch as defined by Article 3 of the Constitution.

There are currently sixty-four courts throughout the nation and their IJs vary widely in their rulings. This means, more so than in federal court, that the luck of the draw decides whether a person gets to stay in this country or not. CHIRLA is located near the Los Angeles immigration court, whose IJs deny some 71% of asylum claims. This is certainly less than the 91% denial rate in another high volume court like Houston, but it is far higher than in the San Francisco court to our north with a 30% rate.<sup>1</sup> While many factors can explain this variance, particularly the extremely negative impact of not having access to legal counsel, there can be no doubt those directives from the upper echelons at DOJ play a significant role.<sup>2</sup>

Given the current court structure and the Administration’s anti-immigrant agenda, it is deeply concerning that, the system has no firewalls and is being directly influenced by President Trump and his staff who share his bigotry. Trump weaponized the immigration courts by first appointing Jeff Sessions and then William Barr, both of whom have clearly used them to advance Trump’s anti-immigrant agenda. Further, the system is tainted by current hiring practices and the adoption of policies that undermine the ability for judges to perform their roles with neutrality.

Attorneys General Sessions and Barr have been busy packing the immigration courts with former law enforcement officials, a practice which undermines the traditional balance in the immigration judge corps.<sup>3</sup> Building on that, they have also promoted the most hardline IJs to the BIA in order to ensure that anti-immigrant precedents will rule across the country.<sup>4</sup> However, when the many flawed BIA rulings are appealed to the federal courts, it then creates a patchwork of immigration law that the

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<sup>1</sup> <https://trac.syr.edu/whatsnew/email.200113.html>.

<sup>2</sup> <https://www.nytimes.com/2019/08/13/opinion/facing-the-injustice-of-immigration-court.html>.

<sup>3</sup> <https://www.theregreview.org/2019/02/14/powell-how-sessions-reshaped-americas-immigration-court-system/>.

<sup>4</sup> <https://www.sfchronicle.com/politics/article/AG-William-Barr-promotes-immigration-judges-with-14373344.php>.





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Supreme Court is traditionally reluctant to address. This potentially raises serious equal protection and other constitutional issues.

The IJs are then being saddled with various policies such as quotas to complete a certain number of cases or face dismissal. This simply accelerates a flawed process and places it onto the assembly line justice conveyor belt. As of October 1, 2018, the Attorney General has encouraged a biased decision making, going as far as gaining control of judges' immigration court rooms by reassigning case dockets to align with the administration enforcement priorities and in some cases, threatening to punish, or fire, judges for failing to meet enforcement driven case quotes. This then prompts judges to rush through cases to protect their jobs. DOJ even went as far as adding new software to track the completion of judges cases. Most immigrants before the courts are not native English speakers and require translation as well as time to secure an immigration attorney and crucial evidence and other information. A quota places a huge additional hurdle on a deck already stacked against immigrants.

For the IJs who are trying to fulfill their mandate in an impartial manner, they face additional humiliation instigated by this Administration, such the attempted decertification of their union and having their decisions overturned unilaterally by the AG.<sup>5</sup>

The latter power is being used liberally by Trump's AGs, particularly to undermine the right of vulnerable groups to seek asylum.<sup>6</sup> Under the Immigration and Nationality Act, the AG has the authority to refer cases to themselves and reopen them after a decision has been issued for a new decision. During this administration, AG Sessions and Barr have used this tool to certify 12 cases, and issued 10 decisions in three years, including:

- *In Matter of Castro-Tum* (2018), the AG limited the discretion of judges and the BIA to administratively close cases;<sup>7</sup>

<sup>5</sup> <https://www.aila.org/advo-media/issues/all/doj-move-decertify-immigration-judge-union>;

<sup>6</sup> <https://www.law360.com/articles/1237065/murdered-sisters-not-enough-to-win-asylum-11th-circ-says>;

<sup>7</sup> <https://thinkimmigration.org/blog/2018/08/14/the-repercussions-of-how-the-administration-has-handled-matter-of-castro-tum/>.





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- *In Matter A - B* (2018), Sessions then certified the case to himself to overrule a well-established precedent and acted as a dog whistle to his judges to deny asylum to survivors of domestic violence and Central Americans fleeing gang violence;<sup>8</sup>
- *In Matter of L-E-A* (2019), AG Barr effectively denied that family relations can result in persecution, rejecting them as a basis to receive asylum.<sup>9</sup>

The American Bar Association (ABA) issued a report in October 2019 noting that the immigration court system is facing an existential crisis and is on the brink of collapse. The current number of cases pending before the courts has skyrocketed, creating increased wait times for scheduled hearings. When Trump took office in January 2017, the backlog of cases was at 542,411. That number has since increased to 1,089,696 by December 2019.<sup>10</sup> An estimated average wait period for a hearing is 704 days, which used to be (X under Obama). Additionally, there are 322,535 pending cases that have not yet been placed on an active docket, resulting in a de facto backlog of over 1.3 million cases.

In conclusion, immigration courts should operate independently from the Executive similarly to the U.S. Tax Court, which falls under Article I of the Constitution. CHIRLA urges Congress to address the failings of our immigration court system and establish an independent immigration court.

Sincerely,

Angelica Salas  
Executive Director, CHIRLA

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<sup>8</sup> <https://cgrs.uchastings.edu/matter-b/background-and-briefing-matter-b>.

<sup>9</sup> <https://thehill.com/opinion/judiciary/455565-ag-barr-ruling-puts-asylum-seekers-at-deadly-risk>.

<sup>10</sup> [https://trac.syr.edu/phptools/immigration/court\\_backlog/](https://trac.syr.edu/phptools/immigration/court_backlog/)