

AFL-CIO

STATEMENT FOR THE RECORD

House Judiciary Subcommittee on Immigration and Citizenship
HEARING: THE STATE OF JUDICIAL INDEPENDENCE AND DUE PROCESS IN U.S.
IMMIGRATION COURTS
Wednesday, January 29, 2020

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is a federation of 56 unions that represents 12.5 million working men and women, including immigrants and those who adjudicate their cases in court. We strive to ensure that every person who works in this country receives decent pay, good benefits, safe working conditions, fair treatment, and full due process. Our members work in every state in the union, in every sector of the economy, and at all wage and skill levels. We represent working people of all immigration status, including undocumented workers, nonimmigrant visa beneficiaries, asylum seekers, legal permanent residents, refugees, and citizens. It is their needs and realities that inform our statement for this hearing.

Immigration judges work within the Executive Office of Immigration Review (EOIR) at the Department of Justice (DOJ) and are represented by the National Association of Immigration Judges, an affiliate of the International Federation of Professional and Technical Engineers, AFL-CIO. Cases heard in the immigration court system are civil cases, and judges interpret and apply existing laws regarding whether asylum-seekers or immigrant respondents should be ordered removed from the U.S. or granted protection from removal and allowed stay, and what the respondent's proper immigration status should be.

As individuals, immigration judges are limited from speaking out publicly, lobbying Congress, or providing feedback to DOJ on the performance of the Immigration Court. However, through their union, immigration judges speak independently of DOJ and advocate for NAIJ members' interests. The union's current priorities include enhancing resources for our severely under-resourced courts and increasing judicial independence through structural reform.

Throughout 2019, DOJ's implementation of its Migrant Protection Protocol (MPP) actions has resulted in EOIR reassigning immigration judges away from their home dockets, increased reliance on video teleconference hearings, and directing judges to hear MPP cases at an unsustainable rate – all of which serve to heighten the due process and judicial efficiency concerns that NAIJ has previously highlighted.

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In October 2019, the AFL-CIO coordinated a high-level labor delegation to El Paso and Ciudad Juárez to witness firsthand the impact of ‘Remain in Mexico’ and other punitive border policies. Delegates observed proceedings at the Immigration Court that serves an El Paso detention center. They witnessed first-hand the complex legal proceedings that migrants encounter while being detained, challenges to due process for migrants who appear in Immigration Court, and the criminalized nature of our current asylum-seeking process. Delegates were not permitted to observe a session in the court that hears cases from migrants forced to ‘Remain in Mexico’, illustrating a lack of transparency and accountability inherent in that policy.

Just weeks before our delegation, DOJ attacked the union rights of immigration judges by petitioning the Federal Labor Relations Authority (FLRA) to reclassify them as management officials. A similar attempt by DOJ to decertify the union in 2000 failed, when the FLRA decided that immigration judges do not act as managers. In the time since that ruling, immigration judges’ authority has only diminished.

Indeed, DOJ’s current union busting effort coincides with broader efforts to remove due process and resources from the immigration court and strip adjudication and docket scheduling authority from immigration judges. The NAIJ has long criticized the structural arrangements that house the immigration court within DOJ. The NAIJ joins the American Bar Association, the Federal Bar Association, and the American Immigration Lawyers Association in calling for the immigration court to be made independent of DOJ in order to ensure due process, fairness, impartiality, and judicial independence.

DOJ’s mismanagement and politicization of the immigration court system is unacceptable. Immigration judges have faced the imposition of quotas, deadlines and unrealistic hearing dockets that run contrary to judicial principles and treat courtrooms like assembly lines.

Administering a court system is incongruous with DOJ’s role as a law enforcement agency. This inherent conflict of interest precludes the judicial independence of immigration judges and ultimately compromises due process of the parties appearing before the court.

The disparate missions of DOJ and the immigration court create an inherent conflict that hobbles the daily functioning of the system and contributes to the ballooning backlog of cases, which now number over one million. The solution to this problem is the establishment of an independent immigration court that operates outside of DOJ.

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