



Statement for the Record

U.S. House, Committee on the Judiciary Subcommittee on Immigration and Citizenship

“For the Rule of Law, An Independent Immigration Court”

January 20, 2022

Human Rights First thanks the House Judiciary Committee for holding a hearing on the “Rule of Law, An Independent Immigration Court.”

Since 1978, Human Rights First has worked to protect and promote fundamental human rights. We have long advocated for fair and timely asylum procedures and U.S. compliance with international refugee and human rights law, in addition to providing *pro bono* legal representation—in partnership with many of the nation’s leading law firms—to asylum seekers in U.S. asylum and immigration court proceedings. Over the years, we have issued a [series of reports](#) and [sets of recommendations](#) on the immigration courts, warning of the systemic due process challenges caused by the lack of independence in the immigration court system, including its negative impact on asylum seekers and calling for fair and timely adjudications.

The Trump Administration’s gross mismanagement and weaponization of the immigration courts to deny asylum to refugees, thwart due process, and influence decision-making in individual cases confirmed the urgent need for an independent immigration court system. Those policies not only rigged immigration court hearings against asylum seekers but added to the court’s backlogs and resulting delays that leave refugees in [limbo](#) often separated from family members who may be stranded in danger abroad.

It is crucial that Congress act to address the longstanding need to remake the immigration court system. Years of flawed and harmful policies have impeded immigration courts from effectively, efficiently, and fairly managing its docket, unlawfully designated refugees as ineligible for asylum, and layered new and confusing legal standards and evidentiary burdens on already complex adjudications, making asylum hearings unnecessarily long and difficult.

Human Rights First joins with the [American Bar Association \(ABA\)](#), [the National Association of Immigration Judges](#), [the Federal Bar Association](#), [the American Immigration Lawyers Association](#) and dozens of other [immigrant and refugee rights organizations](#) to respectfully call on Congress to establish an immigration court system that is independent of the U.S. Department of Justice (DOJ).

In addition to creating an independent immigration court system, Human Rights First recommends, as discussed below, that Congress: adopt a Refugee Protection Act to restore fair access to asylum; launch a major legal representation and legal information initiative; increase funding for immediate immigration court staffing needs; and carry out vigorous oversight of the current immigration court system.

Trump administration abuses confirm need for independent immigration court

The stakes of what takes place in removal hearings that occur in immigration court cannot be overstated for respondents, yet are presided over by administrative officials known as immigration judges (IJs) who, while they are expected to exercise “[independent judgment](#)” are part of the Executive Branch and report to the politically appointed Attorney General, and therefore in turn the President. Multiple studies have shown that IJs are not insulated from changes in administration, putting in question the extent to which they are able to maintain true independence in their adjudications, a core requirement for [due process](#).

The prior administration took a particularly harsh approach to reshaping the immigration courts, often with the [barely veiled](#) objective of deporting as many immigrants, including those seeking asylum, as possible. The Department of Justice (DOJ) eliminated the basic safeguards in the immigration court system against [politicized hiring](#), repeatedly [encouraged](#) immigration judges to deny asylum by [falsely](#) painting asylum cases as meritless and fraudulent, pushed immigration judges to rush through cases through the use of [case quotas](#) and other [changes](#), and launched secretive hearings at “[immigration adjudication centers](#)” where judges conduct hearings closed to the public by remote video-conferencing. Further, former Attorneys General (AG) Jeff Sessions and William Barr used—and abused—the Attorney General’s “[certification](#)” power—which allows attorneys general to issue their own precedent-setting rulings in individual cases—to issue a barrage of decisions that attempted to deny asylum to many refugees and undermine due process in the immigration courts. For example, through a highly flawed ruling in [Matter of A-B-](#), former AG Sessions attempted to change U.S. asylum law to deny asylum to many victims of persecution perpetrated by violent criminal organizations or domestic violence abusers. In [Matter of L-E-A-](#), AG Barr attempted to block members of persecuted family groups from receiving asylum protection. Through a decision in [Matter of E-F-H-L-](#), former AG Sessions opened the door for immigration judges to potentially deny asylum without full evidentiary hearings and in [Matter of M-S-](#) former AG Barr limited bond for many asylum seekers, lengthening their needless detention.

Immigration judges have also been compelled, as DOJ employees, to preside over farcical “Remain in Mexico” that subvert the meaning of due process. Under this program, DHS turns asylum seekers back to some of the most notoriously dangerous parts of Mexico and forces them to “wait” in Mexico for immigration court hearings, including those held in secretive “[tent courts](#).” Predictably, Remain in Mexico creates nearly insurmountable barriers to legal representation with the overwhelming majority of returnees unable to find a U.S. lawyer to represent them in their immigration court hearings. Despite widespread and blatant procedural and due process deficiencies, immigration judges have been [pressured](#) by DOJ to decide these cases rapidly, resulting in many asylum seekers ordered [removed in absentia](#) including those who miss court because they were [kidnapped or otherwise attacked](#) on their way to, and from, U.S. immigration courts, as Human Rights First’s research has repeatedly confirmed.

It should be no surprise, in light of these and other Trump administration actions, that the rate at which immigration judges grant asylum [plummeted](#) during the Trump administration.

Action Needed by Congress to Ensure Due Process, Judicial Independence, and Fair and Timely Immigration Court Hearings

The immigration courts must be overhauled, transformed, and upgraded in order to ensure due process, judicial independence, and fair and timely hearings. Congress has a critical role to play in this transformation including by:

- **Make the immigration courts independent Article I courts.** The [ABA](#) and other legal groups have recommended that the courts be made independent of the Department of Justice and

transformed into Article I courts, a recommendation that the ABA has explained in detail in its March 2019 report. This reform would secure due process and judicial independence and prevent political appointees from continuing to improperly influence the courts' decisions in asylum and other cases. It would also eliminate an Attorney General's ability to issue his or her own decisions to essentially re-write asylum law and overturn court decisions.

- **Pass a Refugee Protection Act to restore access to asylum.** Congress should pass a Refugee Protection Act that restores access to asylum and refugee protection and ensures that U.S. refugee law is fairly interpreted in accordance with U.S. treaty obligations, as Congress intended when it adopted the 1980 Refugee Act.
- **Launch a major legal representation and legal information initiative.** Congress should launch a major legal representation initiative that provides support for legal counsel for all asylum seekers and immigrants in immigration court proceedings—including children and those with mental health issues. Legal representation will make the courts more efficient, helping to ensure that eligible refugees receive protection at the earliest stages of the process. Moreover, statistical studies have repeatedly [confirmed](#) that asylum seekers represented by counsel [overwhelmingly](#) appear for their immigration court hearings. Legal representation is also a more [fiscally prudent expenditure](#) than detention. Congress should also expand funding for legal orientation programs and institute universal legal orientation presentations—including for families and individuals released from DHS/Customs and Border Protection custody—to explain appearance obligations, the U.S. legal system, and how to secure counsel.
- **Increase immigration court interpreters, staff, and judges.** Congress should provide funds to support an increase in immigration court interpreters (including those who speak Indigenous languages to assure accurate hearings and prevent continued adjournments), court support staff and—with reforms to eliminate politicized hiring—immigration judges selected through fair and objective hiring. Along with the other reforms outlined above, Congress must ensure funding to support necessary staff levels in order to reduce backlogs and ensure fairness and timely asylum and immigration court adjudications.
- **Carry out vigorous oversight of current immigration court operations.** Congress should ensure due process protections for asylum seekers and other immigrants are respected and that the immigration courts [enable fair and timely asylum hearings](#), as Human Rights First has [recommended](#) to the Biden administration.