

# Department of Justice Seeks to Silence Immigration Judges' Union

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Immigration courts are not ordinary Article 3 courts. They are part of the DOJ, which makes the judges vulnerable to politicization as part of the executive branch. In the past two years, DOJ has taken steps to limit the autonomy of immigration judges, setting precedent that prevents them from controlling their dockets, curtailing circumstances under which they can terminate cases and limiting their ability to grant continuances. At the same time, DOJ has imposed performance metrics that base immigration judges' evaluations on their ability to meet case quotas, giving them a direct financial interest (keeping their jobs) in finishing cases quickly.

In the face of these increasing limitations on judges' independence, there has been a consistent voice that has spoken out for judicial autonomy: the National Association of Immigration Judges (NAIJ), the judges' union. Unlike Article 3 judges, immigration judges are considered government attorneys who work for the attorney general. Under recently established policies, immigration judges are not allowed to speak, even in an individual capacity, about any government policy, even to a law school class. Only representatives of the NAIJ can speak out about what is happening in immigration court, and even then only in their union capacity. And the NAIJ has indeed been outspoken and persuasive in its critique of performance quotas and the need for a fully independent Article 1

immigration court.

In August, DOJ filed a petition with the Federal Labor Relations Authority seeking to decertify the judges' union. DOJ states in its petition that immigration judges are managers and thus not authorized to unionize. Yet immigration judges do not manage anyone; they are not even assigned their own law clerks despite caseloads that number in the thousands. In fact, DOJ attempted—unsuccessfully—to decertify the judges' union in 2000; the FLRA refused to set aside the regional director's decision that immigration judges are not "management officials" under the relevant statute. DOJ now argues that subsequent factual and legal developments call for a different outcome. Whatever the merits of this argument, taken in context it seems plain that this decertification petition is an attempt to silence a vocal opponent of the administration's efforts to restrict immigration judges' ability to give each case the time and consideration it deserves. DOJ's latest effort only further highlights the need for Congress to establish immigration courts as independent under Article 1.

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