

# Immigration Judges, Joined by Latham & Watkins, Fight DOJ Effort to Decertify Union

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By [Jacqueline Thomsen](#) January 07, 2020 at 02:33 PM



*Immigration Judge Ashley Tabaddor, president of the National Association of Immigration Judges .*

Attorneys for the U.S. Department of Justice and an immigration judges union, bolstered by a team from Latham & Watkins, have officially begun wrestling over the DOJ's attempt to decertify the union.

Tensions have been high between the National Association of Immigration Judges and DOJ's Executive Office of Immigration Review for months, as they clashed over the standing of the union. The immigration judges claim that the effort is politically motivated, an allegation federal officials have refuted.

On Tuesday, Federal Labor Relations Authority regional attorney William Kirsner began hearing testimony over a DOJ petition filed last year that claims immigration judges are managers and therefore cannot be part of a union.

The judges have cried foul, saying they have little authority. The union [filed](#) its own petitions with the FLRA in September, claiming that EOIR hadn't provided them with the information needed to respond to the union petition. It also complained about a "white nationalist" blog post that the DOJ included in a roundup of links sent to immigration court employees.

During Tuesday's hearing, the union's attorney Richard Bialczak, joined by a pair of lawyers from Latham & Watkins, argued that the roles and responsibilities of immigration judges have not changed since the last time the FLRA reviewed their status in 2000.

"Nothing is new about the agency's arguments. They're raising the same arguments and hoping for a different outcome," Bialczak said. He later knocked DOJ for the "bad faith nature in which this petition was filed."

The Trump administration has sought to implement more hard-line immigration policies, an effort conducted largely through the Department of

Justice. NAIJ president Judge Ashley Tabaddor, a California-based immigration judge, [warned](#) in 2018 that efforts by then-Attorney General Jeff Session to implement quotas and other measures was putting political pressure on the immigration courts.

But EOIR attorney Adam Brill argued that “substantial legal change has occurred” in recent years, and the importance and influence of immigration judges has risen as a result. And he described the judges’ actions as “final agency action,” further building the case for their role as managers.

Testimony from James McHenry, the director of EOIR, took up the entirety of Tuesday’s hearing. He discussed the general responsibilities of immigration judges and how the courts function and described new case law that DOJ says has caused the judges to take on the role of managers.

Latham & Watkins partner Margaret Tough in San Francisco sought to feature prior statements made by DOJ officials in past Freedom of Information Act litigation in the proceedings that showed the agency did not consider the immigration judges to be managers.

But Brill objected, saying that under the current rulings from FLRA the immigration judges still have nonmanagerial status. And he said that McHenry did not write those statements and wasn’t the right person to face questions about them, an argument Kirsner sided with.

Tough also pushed for DOJ to search for and turn over a handbook that may outline the roles of assistant chief immigration judges that is referenced in other agency documents, as those officials supervise the immigration judges. McHenry said he did not know of a handbook; Brill said the agency had searched for it and could not find it, an effort Kirsner asked be continued.

While Brill's line of questioning focused on regulations and court rulings that impacted immigration judges, Tough attempted to prove that little has changed for the judges employed by DOJ over the past two decades, and therefore the FLRA's past findings that they are not managers should stand.

Tabaddor said after Tuesday's hearing that the Latham & Watkins team was hired about two and a half months ago, a relatively short period of time before the hearing was held.

The hearing over the DOJ petition may now stretch over three days, as expected snowfall in Washington, D.C., triggered an order from the Office of Personnel Management to close all federal buildings at 1 p.m.

That means McHenry will be back to answer additional questions from Kirsner on Wednesday—if, as Kirsner noted, the federal government decides to open on time after Tuesday's weather.