

# Trump has attacked federal unions. Now, for the first time, he's trying to bust one.

[Joe Davidson](#)



President Trump and Attorney General William Barr depart after delivering remarks on citizenship and the census in July 2019 at the White House. (Jabin Botsford/The Washington Post)

President Trump is escalating his attacks on federal unions to a new level.

For the first time, the Trump administration is seeking to bust a union, the National Association of Immigration Judges, by declaring that its members are managers ineligible for labor organization membership. It's tantamount

to decertification.

A possible change in the judges' status from staffers to managers raises another issue beyond union membership: Should judges be part of the Justice Department, the law enforcement agency whose cases the judges consider?

Making immigration judges part of the department's management could politicize their role during a period when Trump's aggressive immigration practices are among his more controversial policies.

This case intensifies a series of administration actions designed to undermine federal labor organizations. The most notable of those occurred in May 2018 when Trump issued [three executive orders](#) that hit federal unions by, among other things, making it harder for union leaders to organize, represent employees and use agency facilities.

Arguments from both sides of the attempted union busting are now being considered by the Federal Labor Relations Authority, a small independent agency that resolves federal labor-management disputes. Two of the three authority members are Trump appointees.

Justice Department officials say the judges are essentially management officials "and should be excluded from a bargaining unit" in [papers filed this month](#) with the authority.

The department is fighting history, hoping it does not repeat.

In 2000, when Bill Clinton was president, the authority considered the same issue and, as the administration's brief acknowledges, "determined that immigration judges are not management officials."

So why re-fight a lost battle?

Justice officials now contend that decision "was wrongly decided" and has been undermined by changes in the law that affect immigration judges' decisions.

Administrative decisions and federal court rulings since the authority's 2000 decision, according to the Justice Department, significantly influence "the ability of immigration judges to determine, formulate, or influence policy of the Agency," rendering them more management than labor.

A decision by an immigration judge, the brief added, "commits or binds the Agency to a course of action," a characteristic of management. Currently there are 465 immigration judges, the most ever, according to the department.

The association, however, says not only have the judges' duties not changed since the earlier decision, but they are "less able to influence policy" than they were then.

"Immigration Judges are now subject to mandatory performance reviews and efficiency metrics," [the association said in its brief](#). "The Agency has increased control over the procedures and protocols of the judges' courtrooms. It has implemented a restrictive public speaking policy, blocking judges from many speaking engagements," the union's brief said.

On top of that, agency managers "are frequently in the courthouses, supervising and evaluating the Immigration Judges. These changes give the judges yet less authority than before, showing that the Agency clearly treats them as employees."

The judges have important allies.

When the union hit was proposed last year, a statement by House Judiciary

Committee Chairman Jerrold Nadler (D-N.Y.) and the immigration subcommittee's chairwoman, Rep. Zoe Lofgren (D-Calif.), said the administration "has taken unprecedented steps to strip immigration judges of judicial independence."

The union-busting attempt, they added, "underscores why we need an immigration court system that is separate and independent from the Executive Branch." The committee leaders planned a hearing on creation of an independent immigration court.

During an interview, union president A. Ashley Tabaddor said housing the current immigration court in the Justice Department is a "major structural design defect" whose conflicts of interest, vulnerabilities and weaknesses have been particularly exploited under Trump.

She likened the immigration courts under him to a "widget factory model process [where] the judges have been subjected to quotas and deadlines, which intrudes upon their decision-making authority. The court system has been micromanaged from the top based on law enforcement priority."

Busting the union would be "a dark day not only for every immigrant who appears before the immigration court, but also for the deeply [held] American principle that courts must be balanced and neutral in order to administer justice," according to an email from Gregory Chen, the American Immigration Lawyers Association's government relations director.

If the union is busted, he said, "There will be no voice that speaks for the judges, and the administration will have unchecked power to pressure the courts to serve as a tool of enforcement rather than justice."