

# The Revolt of the Judges

The Trump administration has ordered immigration court judges to reject more applicants and speed up trials—and it wants to bust the judges' union.

[Stephen Franklin](#) June 23, 2020



J. Scott Applewhite / AP Photo

New immigration judges listen as Attorney General Jeff Sessions outlines Trump administration policies, in Falls Church, Virginia, September 10, 2018.

First you see scenes from classic movies of wizened judges, brave lawyers, and contemplative juries, but then the video lays out its grim theme: This is not what happens in America's immigration courts.

These [courts](#) are subject to political influences, a narrator explains. They are driven by political messages, and bound by rules based on the "whims" of whoever is in power in Washington, D.C., she says. They don't provide the blind justice that Americans expect. What they provide is assembly-line justice.

### The Immigration Courts: Nothing Like What You Have Imagined



Who is making these claims? A hard-line political or fringe legal group? Hardly. The video is from the National Association of Immigration Judges (NAIJ), the union that represents the nation's 460-plus immigration judges—reasonably well-paid lawyers, many of whom come from government and law enforcement backgrounds.

Nor is the video the first such salvo from the judges' group, which has lobbied Congress and spoken out frequently about what's gone exceptionally wrong with the immigration courts under the Trump administration. Such criticisms, the judges say, are the reason that the government sought last August to decertify their union, the only such effort taken by the Trump administration against a federal workers' labor organization.

"They are trying to silence the judges by silencing their union," says Paul Shearon, head of the 90,000-member Professional and Technical [Engineers](#) union, to which the NAIJ has been affiliated for the past 30 years. He worries that busting a federal union may be the "next step" in the Trump administration's [actions](#) meant to weaken all federal unions.

Shearon is confident, however, that the union will win its fight against decertification when the local level of the Federal Labor Relations Authority (FLRA) issues its ruling. He is "not so optimistic," though, that it will prevail at the higher level of the FLRA, where two of three [board](#) members are Trump appointees and "clearly [political](#) players." Though the government has sought to speed up a ruling, the judges do not know when a decision is likely—but they expect one before the November election.

The judges' complaints are many.

[\*More from Stephen Franklin\*](#)

Under the Trump administration, the 69 immigration courts scattered across

the U.S. have been overwhelmed by a massive increase in [arrests](#), especially of persons [without criminal](#) records. Meanwhile, the wait to resolve long-standing cases has increased by months or even years as judges try to meet the demand to prioritize recent arrivals. Since 2016, the backlog of cases has doubled, reaching 1.1 million.

But the judges' fundamental complaint is an existential—or at least, constitutional—one.

They are part of the executive branch of government, and they don't want to be under the rule of the U.S. attorney general. They want instead to be part of the independent federal judiciary established under Article III of the Constitution.

“Imagine going to a court where you've been charged by a prosecutor, and when you come to court you find out that the judge is hired by the prosecutor and can be fired by the prosecutor and then ultimately the prosecutor can come in and overrule the judge if he is not satisfied by the process,” said Ashley Tabaddor, president of the NAIJ, at a March press conference. Tabaddor, an immigration court judge in Los Angeles and a former federal prosecutor, narrated the video that calls for independent immigration courts.

A lawsuit filed last [December](#) in federal District Court in Portland, Oregon, on behalf of the Southern Poverty Law Center and four nonprofit legal organizations, makes a similar but more outspoken case than the judges do. It accuses the Trump administration of violating U.S. laws to create “a Kafkaesque reality where prosecution merges with judging and the ultimate goal is deportation rather than fair adjudication.”

The hope of leaving the embrace of the Justice Department is not new for the judges. From the union's founding in 1979, it has sought to escape its

“structural defect” and gain its independence, as the U.S. Bankruptcy and U.S. Tax Courts did.

The union faced one challenge to its existence when the Clinton administration sought to decertify it. But the FLRA [turned](#) down the effort in 2000, saying the judges are employees, not managers.

Seeking to rid itself of the union, Trump’s administration now contends that the judges have become more managerial in recent years. But the judges’ brief before the FLRA argues convincingly that they don’t have many managerial powers. They do not supervise, hire, or fire staff. They don’t set their own schedules or manage their caseloads. They don’t take part in any management training, nor can they develop policies.

Indeed, even as the government calls the judges managers in its zeal to decertify their union, it has imposed quotas and a speed-up on their labors, narrowed their decision-making, and not heeded their on-the-job complaints. You might expect such hands-on controls in a warehouse.

*In 2019, 69 percent of all asylum requests nationally were denied, reflecting a steady increase during the Trump administration.*

In 2017, Jeffrey Chase, a former immigration court judge, founded an organization of his fellow former immigration judges, which has since grown to 40 members. His group filed a friend-of-the-court brief supporting the lawsuit by the five nonprofits against the Trump administration. “This administration doesn’t want immigration judges to be real judges. It wants them to be rubber stamps,” he says.



As proof of the administration's effort to stamp the courts with like-minded supporters, he pointed to six judges with exceptionally high records of denying immigrants' asylum appeals, who were named in 2019 to the Board of Immigration Appeals (BIA), which reviews the judges' decisions. Two of the six BIA appointees [denied](#) all of the asylum cases that they heard in 2019, and among the other four, the percentage of asylum approvals ranged from 2.6 percent to 3.7 percent of the cases they heard in 2019.

In 2019, [69 percent of all asylum requests](#) nationally were denied, reflecting a steady increase during the Trump administration. That constitutes a 72 percent increase over the denial rate in 2015—an increase due in part to then-Attorney General Jeff Sessions's 2018 order to restrict asylum requests from asylum seekers fearing becoming victims of [domestic](#) abuse and gang violence should they be sent back to where they'd fled. Sessions overturned an [Obama](#) administration ruling that had allowed female immigrants to cite domestic violence as a credible threat to their lives.

When [Sessions](#) rolled out the plan in April 2018 for judges to complete no fewer than 700 cases a year, the judges howled that such a step not only attacked their independence, but harmed justice. Justice Department officials replied that it was "[in line](#)" with what they were already doing.

That hasn't been the way it has worked out.

Two-thirds of the judges completed fewer than the 700 cases during fiscal 2019, according to a study by their union. It also found that 378 out of 380 judges failed to meet either quotas or the other deadlines set by court officials.

When Judge Samuel B. Cole of Chicago's immigration court signs on to his court website, he can call up a dashboard with green, yellow, and red dials that tell how well he is meeting his quotas and deadlines. He considers the

measures “really insulting and inaccurate.” They fail to show courtroom realities, the cases’ complexities and problems that come up when, for instance, the immigrants are sick.

A former U.S. prosecutor and Harvard Law School graduate, [Cole, who](#) is also a spokesman for the judges’ union, typically does not rush through cases. He lets attorneys hash out legal issues, and slowly goes over details so that the immigrants understand what’s happening.

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In a small courtroom in a nondescript building in downtown Chicago earlier this year, Judge Cole called case 849. It was his fifth case of the morning with a steady beat of cases still to come. Some judges in Chicago have seen their dockets of initial cases double, soaring to nearly 100 per day. Most of the immigrants who appeared in front of Cole via a video monitor from detention facilities in Illinois or nearby states did not have attorneys on that day.

On a video monitor, a young Honduran man with unruly curly hair appeared from a regional detention center. He was hoping to file for asylum, but had no attorney, and his family no longer supported his legal struggle. He also had no sense, it seemed, of how to proceed, particularly of how to gather evidence he’d need to show he’d be persecuted if he returned to Honduras.

After a short, confusing conversation with the judge, he tossed around about

whether to continue seeking asylum—then gave up and said he wanted to be deported. Still, he said, he feared for his safety. “If you do send me to the border, I want nobody to know I was there,” he said through a court translator sitting near Cole.

Cole sighed and explained that was not in his power. He ordered him deported, wished him luck as he always does, and moved on to the next case. It was 11:03 a.m. and the files in front of the Department of Homeland Security attorney showed many more cases were waiting.

“I have practiced as a lawyer and as a federal prosecutor,” Cole said recently. “I have a really good sense for what should be and I do my best. People need to be given an opportunity to be heard. Arguments need to be based on the law and decisions need to be well reasoned.”

“Even if I know I might be penalized for doing the right thing, I’m going to do it. That’s my job as a judge.”

“And if that means I can’t be an immigration judge anymore, then so be it.”

## [Stephen Franklin](#)

Stephen Franklin is a former labor reporter for the Chicago Tribune and author of ‘Three Strikes: Labor’s Heartland Losses and What They Mean for Working Americans.’