

[Click to print](#) or Select '**Print**' in your browser menu to print this document.

Page printed from: <https://www.law.com/nationallawjournal/2020/07/01/immigration-judges-to-sue-doj-alleging-unconstitutional-gag-on-speech/>

Immigration Judges Sue DOJ, Alleging Unconstitutional Gag on Speech

It's the latest clash between the immigration judges' union and the Justice Department, after DOJ officials pushed to decertify the union.

By Jacqueline Thomsen | July 01, 2020



Immigration Judge Ashley Tabaddor, president of the National Association of Immigration Judges/courtesy photo

A union of immigration judges is suing the Department of Justice over a policy allegedly restricting them from speaking publicly about immigration and other issues in violation of their constitutional rights, the latest escalation of tensions between the union and the federal department where they work.

The lawsuit

(<https://www.courtlistener.com/recap/gov.uscourts.vaed.479416/gov.uscourts.vaed.479416.1.0.pdf>), filed Wednesday on behalf of the National Association of Immigration Judges by attorneys with the Knight First

Amendment Institute and Virginia attorney Victor Glasberg, says DOJ's Executive Office for Immigration Review in 2017 began requiring the judges to seek preapproval to speak in their own capacity, and not on behalf of the office.

That was replaced earlier this year with a "more restrictive policy," which mandates the judges cannot speak publicly about immigration or DOJ policies, and must obtain approval to speak, write or talk with members of the media about any other topic.

The lawsuit notes the policy was implemented during a series of changes in the immigration system and that the immigration judges are "uniquely positioned to inform the public on these issues, but the 2020 policy prevents them from doing so."

The complaint, filed in the Eastern District of Virginia, also charges that the policy blocks immigration judges from discussing the impact of the COVID-19 pandemic on immigration courts and detained immigrants.

"The interests of immigration judges in engaging in the speech restrained by the policy is substantial, and so is the public's interest in hearing it," the court filing reads. "There is an ongoing national debate about the wisdom and fairness of recent changes to immigration laws and policies and about the effect of those changes on the immigration court system. Immigration judges have unique insights to contribute to this discussion."

Attorneys for NAIJ will file a motion for a preliminary injunction alongside the complaint, asking a federal judge to block the policy. "NAIJ is likely to succeed on the merits of its First and Fifth Amendment claims; absent a preliminary injunction, immigration judges will continue to suffer the irreparable injury of being silenced during a time of extraordinary public interest in immigration law and policy; and the balance of equities and the public interest favor an injunction," the draft filing reads.

Immigration judges, unlike Article III judges, are housed in the Department of Justice and are therefore not fully independent from the executive branch.

This is not the first public clash between the immigration judges' union and DOJ's EOIR. The federal office in 2018 filed a petition with the Federal Labor Relations Authority, asking them to decertify the judges' union. The union protested and filed its own petition against EOIR, complaining authorities didn't provide them with information needed to respond to the union petition and of a white nationalist blog post included in a DOJ roundup sent to immigration court staff.

A FLRA regional attorney held two days of hearings (<https://www.law.com/therecorder/2020/01/07/immigration-judges-joined-by-latham-watkins-fight-doj-effort-to-decertify-union/>) earlier this year on whether to decertify the union and has not yet issued a ruling.

Copyright 2020. ALM Media Properties, LLC. All rights reserved.