

# 'Immigration judges will fight Justice Department's attempt to silence us' | Opinion

[By Samuel B. Cole and A. Ashley Tabaddor](#) July 10, 2020 03:00 PM



The U.S. Department of Justice has gagged immigration judges, prohibiting them from speaking out on immigration and other issues. *AP*

The U.S. Department of Justice has targeted the nation's immigration judges in a coordinated campaign to prevent them from contributing to the ongoing and important public dialogue on immigration. Recently, in response, the union representing immigration judges nationwide filed a lawsuit against DOJ to invalidate the policies that have effectively barred individual immigration judges from speaking on immigration and other issues.

In conjunction with attorneys at the Knight First Amendment Institute at Columbia University, we have asked a federal district court to permanently

enjoin the speaking prohibitions as an unconstitutional prior restraint.

Immigration judges have important views to share about the nation's immigration courts. Historically, law schools, bar associations and countless other legal and professional organizations have relied on the perspectives of immigration judges. Judges have been panelists and speakers and authors, educating the public about immigration courts and contributing to the national dialogue. Their insights are especially important now because of the administration's focus on immigration enforcement, including sweeping changes to the immigration court system and governing regulations.

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Judges' views are also critical as the immigration courts grapple with how and to what extent to hold court proceedings in the middle of a pandemic, especially because DOJ has prioritized case completions over public health. For all of these issues, immigration judges are at the front lines of the immigration system and have unique and valuable perspectives to share.

The gag order on immigration judges is new. Their ability to speak publicly came to an abrupt end in 2017 when new immigration court management began to strictly limit the ability of the judges to speak at public events in their personal capacities. The policy tightened in 2020 and now prohibits judges from speaking or writing publicly in their personal capacities about immigration and the immigration courts.

It also requires judges to seek approval before speaking or writing about any other matter of public concern. DOJ has prevented judges from speaking at law schools, bar associations and even seventh-grade social studies classes. Because requests for speaking are now routinely denied, many judges have simply stopped speaking publicly — and the public has stopped asking.

The only voice that can speak on behalf of these judges is the National Association of Immigration Judges, the union that represents the judges as a group. Union speech is explicitly protected by federal labor law. (This protection is the only reason we, as union officials, can write this commentary.) The few union officers who can speak publicly, however, are no substitute for the individual voices and involvement in the community of hundreds of immigration judges across the country.

And even this limited union voice is at serious risk. In 2019, DOJ filed an action to decertify the judges' union. If this succeeds, it will close the last remaining avenue for immigration judges to share their unfiltered views. The decertification petition went to trial in January 2020. We are awaiting a decision.

The policy that gags immigration judges highlights a structural flaw in the immigration court system, which places these courts under law-enforcement control. Immigration judges are not part of an independent court system. Instead, the Justice Department, headed by the attorney general, the nation's chief law-enforcement officer, runs the immigration courts. Their judges are treated as "government attorneys" subject to policies and priorities determined by the political whims of the executive branch, rather than by traditional norms governing judges' roles in the community.

This means that the political pendulum of immigration enforcement priorities swings back and forth as administrations change. Judges presently are subject to potential discipline if they grant too many continuances or if they are overturned even occasionally on appeal by administrative adjudicators appointed by, and loyal, to the current administration. In short, immigration courts have become a tightly managed weapon in the immigration enforcement apparatus, and it's not a pretty picture for those who value independent courts and impartial decision-makers.

In this context of vigorous immigration enforcement, sweeping proposed regulatory changes, a global health crisis, the weaponization of the immigration courts and an existential threat to the continued existence of the judges' union and its free-speech rights, the suit we recently filed to vindicate the First Amendment rights of individual immigration judges is a critical effort to allow them to return to the public debate about immigration and our nation's immigration courts.

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