

An unprecedented crisis in the U.S. immigration courts

Helen Hill

Americans have been inundated with images and stories of migrant children separated from families and held indefinitely, surprise deportations that have left families upended and ongoing clashes surrounding the construction of a vast border wall.

What is often overlooked in this complex picture is an immigration court system that falls not under the government's judicial branch but under its executive branch and whose judges are held accountable to a prosecutor – the attorney general.

Street Roots spoke with immigration Judge Ashley Tabaddor for an inside perspective on the immigration courts and their inherent conflicts of interest.

Tabaddor hears cases in Los Angeles, one of the busiest hubs in the nation for immigrants seeking a hearing. She is also in the hot seat as the president of the National Association for Immigration Judges, a union representing the more than 400 immigration judges across the country today. Tabaddor has the distinction of leading the NAIJ during a time of unprecedented pressure on immigration judges by the Trump administration. In her capacity as president of the NAIJ, Tabaddor is the only sitting judge with leeway to speak openly on the crucial issues affecting immigration courts today.

Tabaddor is no stranger to political challenges. As an Iranian-American judge, she made national headlines in 2015 after successfully winning a

landmark case challenging a U.S. Department of Justice order that she recuse herself from all court cases involving Iranian nationals. Tabaddor successfully argued that the order was racially discriminatory and a violation of her constitutional rights, claiming case law victory not only for judges of Iranian heritage but for future judges who might be stripped of their right to decide cases based on their ethnicity and nationality.

Tabaddor made it clear she was speaking to Street Roots exclusively in her capacity as the president of the NAIJ.

Helen Hill: *The concept of judges and unions don't seem to go together. Why is there a labor union for immigration judges?*

Ashley Tabaddor: The very need for a union in fact highlights the foundational issues we have with our nation's immigration court system. Our court system and our judges who are assigned to deal with immigration cases are not what you would imagine when you think about the word "court" and the word "judge," and that is where our problems lie.

We have a court system situated in the Justice Department, which is a law enforcement agency. As a law enforcement agency, we are accountable to the attorney general. We are hired, reviewed and fired by the A.G., which means we are constantly dealing with the conflict of interest that exists with having a court system in a law enforcement agency and judges that are accountable to a prosecutor.

This paradigm is important to understand. Our immigration court system and our judges are not truly independent, and because of that, so many of the problems we are seeing today and have seen throughout the life of the immigration court system have plagued us because of this fundamental structural flaw.

Every administration that comes in has its own law enforcement policy and uses that to its own end. So we have this constant manipulation of the court to try to bend it to the will of law enforcement policymakers wanting to send a message to one group of people, wreaking havoc in the judge's ability to hear cases in the proper fashion. Right now we have almost a million pending cases for about 400 judges in about 64 courts of adjudication.

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***Hill:** In your opinion, can the DOJ, as the nation's top law enforcement agency and part of the executive branch of government, function effectively as an adjudicatory body?*

Tabaddor: I think it has proven itself completely unable to do so. After 9/11, a huge amount of attention was redirected to the immigration courts. It then became more about active use of the court as a law enforcement tool.

Now we are seeing every conflict of interest that existed pushed beyond the envelope in the last few years. We are seeing unbelievable increases in our case backlog, unbelievable interference in our judges' ability to manage their docket. Every portion of the court is being monitored and interfered with, and there is really nothing left of a semblance of independence.

Judges now have quotas and deadlines. If they want to keep their job, they are told they have to finish a certain amount of cases in a certain amount of time, essentially introducing a personal stake. Some judges have been told to hear 80 cases in a three-hour period. It is unsustainable and indefensible.

***Hill:** Do you believe this administration is weaponizing the immigration courts against asylum seekers and people of color and of certain religions?*

Tabaddor: I'm not going to speculate. What I can talk about is what the court has had to deal with. We've certainly seen that the administration of the court has become lopsided, that there is this top-down approach, and a growing number of supervisory judges who don't really hear cases but are there to micromanage implementation of the law enforcement policies of the administration. They are hiring judges, but we don't have enough support staff – law clerks, file clerks, space. We don't have the technology we need. So that has hampered our ability to be effective.

The focus is on handling sheer volume of cases, doing it faster, paying lip service to the true oath of office we take as judges.

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***Hill:** Are some of the judges that you know experiencing a moral crisis and conflicting loyalties? Are good judges being pushed out?*

Tabaddor: Absolutely. We now have judges who are retiring in droves for that reason. We just had one who retired on Friday who had been with us for decades. I said, "Wait, why are you leaving?" She said, "I can't take it anymore. The pressure is unbearable." Particularly, the pressure is on those judges who have more institutional knowledge and history to know that what is being asked of them now is truly unprecedented.

We are also seeing an unprecedented number of newly hired judges quitting within a year or two. We've never had that before. When I talk to them, every one of them says, "This is not being a judge. This is not what I expected. I'm not being treated with respect. I am being put between a rock and a hard place, and I can't do what's right." Not to mention the sheer

volume of cases.

Hill: *Are there specific ways the NAIJ is supporting these judges who are becoming discouraged and pushed out?*

Tabaddor: Our role as a union is to be able to provide support to our judges in their working conditions and to meet our mission, which is to have a professional and independent core of judges. We reach out and try to explain to our judges that the structure of the law requires that if they put their oath of office first, there will be mechanisms in place to protect them.

Unfortunately, we are facing yet another battle now. The Justice Department has filed to try to decertify us and take away our union status and stop us from being able to advocate.

Hill: *There's been a lot of talk about restructuring the immigration court and removing it from under the arm of the DOJ and the executive branch and creating a truly independent, traditional court structure similar to traffic and civil courts. What would it take to accomplish this? Is there any momentum?*

Tabaddor: Obviously the only lasting solution is to remove the immigration court from the DOJ and give it the true independence it should have in a democracy. It is absolutely un-American what we are seeing with immigration courts now.

In terms of likelihood of accomplishing this, we are seeing something we've never seen before. We are seeing an absolute grassroots uplifting, a rising from prominent nationwide legal organizations who before were on the sidelines or ambivalent. They are now coming out forcefully in support of an independent court. What is required is a congressional legislative act, and there are a number of representatives in both the Senate and House who have expressed an interest in doing this. It will not be an overnight

achievement, but I am hopeful that it will be eventual one. There is a lot of support out there for this.

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