



NATIONAL ASSOCIATION OF WOMEN JUDGES

1001 Connecticut Avenue, N.W., Suite 1138, Washington, D.C. 20036

T: (202) 393-0222 W: www.nawj.org

February 28, 2020

President

Hon. Bernadette G. D'Souza
Orleans Civil District Court
New Orleans, Louisiana

President-Elect

Hon. Karen Matson Donohue
King County Superior Court
Kent, Washington

Immediate Past President

Hon. Tamila E. Ipema
San Diego County Superior Court
Carlsbad, California

Vice-President Districts

Hon. Elizabeth Allen White
Los Angeles Superior Court
Los Angeles, California

Vice-President Publications

Hon. Heidi M. Pasichow
Superior Court of the District
of Columbia
Washington, D. C.

Treasurer

Hon. Elizabeth K. Lee
San Mateo County
South San Francisco, California

Secretary

Hon. Orlanda Naranjo
Retired
Spicewood, Texas

Finance Committee Chair

Hon. Marcella Holland
Circuit Court for Baltimore City
Baltimore, Maryland

Projects Committee Chair

Hon. Pennie Kathleen McLaughlin
Commissioner
San Diego Superior Court
San Diego, California

ABA Delegate

Hon. Vivian Medinilla
Superior Court of Delaware
Wilmington, Delaware

International Director

Hon. Lisette Shirdan-Harris
Philadelphia Court of Common Pleas
Philadelphia, Pennsylvania

ABA Liaison

Hon. Toni E. Clarke
Circuit Court Courthouse
Adelphi, Maryland

Committee Liaison

Hon. Karen Sage
299th District Court of Texas
Austin, Texas

Executive Director

Priya Purandare
Washington, D. C.

The Honorable Zoe Lofgren
1401 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Lofgren:

In your role as Chair of the House Committee on the Judiciary's Subcommittee on Immigration and Citizenship, the National Association of Women Judges [NAWJ] writes in support of the creation of an independent Immigration Court. We respectfully call on Congress to establish an Article I Immigration Court system that is independent of the Department of Justice, or any other prosecutorial agency, in order to guarantee due process and a fair hearing with justice for all.

Currently, the Immigration Courts are housed in the U.S. Department of Justice's Executive Office for Immigration Review [EOIR], which manages the Immigration Courts at both the trial and appellate levels.¹ This structure presents an inherent conflict of interest. The Immigration Courts are adjudicatory bodies tasked with providing due process hearings to respondents in removal proceedings. It is essential that its judges be neutral adjudicators who are not subject to the policy making chain of command of an executive agency, or to direction by a party to the cases before them.

NAWJ has been the leading voice of women jurists across the country for over forty years. Founded in 1979, our non-partisan membership includes over 1,000 judges, women and men, serving at all levels of the state and federal judiciary. Our membership includes judges on administrative, military, tribal, and other specialized courts, in addition to the regular state and federal courts. NAWJ has, since our founding, championed the advancement of women and minorities in the legal profession, the independence of the judiciary, and equal access to justice.

NAWJ's support for an independent Immigration Court outside the Department of Justice is long standing. We adopted a resolution in support on April 16, 2002 stating that:

¹ The appellate level of the Immigration Court system is known as the Board of Immigration Appeals or BIA.

“The NAWJ supports an independent structure for the Immigration Courts (at both the trial and appellate levels) outside the Department of Justice, to assure fairness and equal access to justice, and to assure both the appearance and reality of impartiality.”

We followed up with another resolution adopted on October 18, 2008 stating:

“The National Association of Women Judges supports the enactment of federal immigration legislation that provides for full and fair administrative adjudication and review of deportation orders.”

We are pleased to hear that Congress is currently considering introduction of legislation on this important topic.

Due process by adjudicatory tribunals requires case by case adjudication in which a neutral decision maker, using his/her independent judgment, renders a decision based entirely on the record before him/her, the facts of the case, the submissions of the parties, and the governing law and regulations, without direction from above or consideration of outside (ex parte) influences. The current structure of the Immigration Courts, however, presents a systemic problem to neutral adjudication, as the structure allows:

- (1) a supervisory role regarding the content of Immigration Judges’ rulings and decisions, as a factor in their performance evaluations, and
- (2) participation in the adjudicatory process by policy makers who are, in turn, answerable to one of the parties, an executive agency of the Government.

We respectfully urge Congress to establish an independent Immigration Court system, under Article I of the United States Constitution, that would assure due process and judicial independence.

Thank you for consideration of our views.

Sincerely,



The Honorable Bernadette D’Souza
President
National Association of Women Judges