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Trump Administration Seeks to Silence Federal Immigration Judges’ Union

DOJ Files Legal Documents to End the Labor Rights of Judges Retribution for Speaking Out and Exposing Problems in the Courts

Judges Make Bipartisan Appeal Asking Congress to Create an Independent Court Free from Political Influence

WASHINGTON -- On Friday, August 9, the U.S. Department of Justice filed legal documents with the Federal Labor Relations Authority (FLRA) seeking to eliminate the rights of federal Immigration Judges (IJs) to be represented by a union. The petition filed by the administration asserts that IJs are “management officials” who formulate and advance policy.

“This is nothing more than a desperate attempt by the DOJ to evade transparency and accountability and undermine the decisional independence of the nation’s 440 Immigration Judges,” said Judge Ashley Tabaddor, an Immigration Judge who hears cases in Los Angeles, speaking in her capacity as the president of the National Association of Immigration Judges (NAIJ). “We are trial court judges who make decisions on the basis of case specific facts and the nation’s immigration laws. We do not set policies, and we don’t manage staff,” she added.

The nation’s immigration courts are not part of the judicial branch of the government. The courts where immigration cases are heard are managed by

the DOJ, allowing the nation's chief prosecutor, the U.S. Attorney General, oversight authority and the power to hire, fire, and control the judges who preside over immigration hearings.

Over the past two years, NAIJ has been highly critical of the administration's moves to create a quota of 700 cases per year for every IJ and to pressure judges to process cases faster, irrespective of the law and the facts of the case. The NAIJ has also documented and publicly commented on how the government shutdown earlier this year added to the case backlog. Other issues raised by the NAIJ during the Trump years have included challenges to the Attorney General's stripping IJs of needed docket management authority and depriving IJs of adequate support staff and resources such as interpreters, courtrooms, law clerks, and access to current technology. The move to decertify NAIJ is a clear effort to thwart criticism.

"It's absurd that anyone would consider us managers," said Tabaddor. "We don't even have the authority to order pencils."

This is not the first time that the DOJ has floated the theory that Immigration Judges are managers. Two decades ago, the DOJ made a similar attempt at decertifying the judges' union. [In 2000, the FLRA ruled at that time that IJs do not act as managers.](#) Since that decision, the role and responsibilities of IJs has further been reinforced as trial judges rather than as managers. In the last two years, for example, the DOJ has eliminated any opportunity for IJs to serve in an advisory capacity to management officials and has repeatedly refused even to consult NAIJ on decisions affecting daily court operations. Additionally, the docket schedule of each IJ is micromanaged to advance law enforcement priorities rather than priorities or scheduling set by an individual judge.

NAIJ is affiliated with the [International Federation of Professional and Technical Engineers](#), a much larger union that represents thousands of highly-educated federal employees including NASA rocket scientists, engineers employed by the U.S. Navy and the Army Corp of Engineers, and administrative law judges who hear cases involving Social Security claims. According to IFPTE's president Paul Shearon, "This is nothing more than union busting plain and simple, and part of a disturbing pattern. The White House has [signed a series of executive orders](#) that limit the ability of federal unions to raise questions about abuses and inefficiencies, and they have tried to hinder a union's ability to fully represent federal workers who are often stuck in a bureaucratic maze." Added Shearon, "This administration doesn't want to be held accountable, and they especially don't want anyone looking over their shoulder on immigration issues."

"It's in the best interests of the American people for judges to hear cases based solely on the law and the facts presented, free from political considerations," said Judge Tabaddor. "This is not a Democrat or Republican or a left, right issue." NAIJ has long advocated for Immigration Judges to be placed in an independent agency, similar to the nation's bankruptcy and tax courts, rather than under the control of the DOJ. In recent months, this move to create an independent agency to operate the immigration courts has been gaining traction on both sides of the aisle in Congress.

"We think many on Capitol Hill, from both parties, will oppose this effort to mute the nation's Immigration Judges," said Tabaddor. "When Congress returns in September, we will redouble our efforts to maintain judicial independence and due process through the creation of an independent court. The DOJ's actions, designed to silence judges and their union, further demonstrates why judges who hear immigration cases need to be placed in

an independent agency. Our rallying cry as we make the rounds in the halls of Congress will be ‘remember August 9’.”

The National Association of Immigration Judges (NAIJ), founded in 1971, is a voluntary organization formed with the objectives of promoting independence and enhancing the professionalism, dignity, and efficiency of the Immigration Court.

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