



Chicago Appleseed
FUND FOR JUSTICE

Improving Lives by Improving Courts



Chicago Council
of Lawyers

The public interest bar association

Protecting Immigration Court Due Process:

A Policy Statement from the Immigration Court Reform Program Committee of the Chicago Appleseed Fund for Justice and the Chicago Council of Lawyers

Prepared by PILI Fellow Vinita Singh

On July 26, 2018 the Executive Office of Immigration Review (“EOIR”) chose to remove a respected immigration judge from a case in order to replace them with another judge more likely to issue a ruling favorable to Attorney General Jeff Sessions. This action is an attack on the decisional independence of immigration judges and speaks not only to the Trump administration’s continuing efforts to quash the exercise of independent judgment by immigration judges but also to the systemic failures of the immigration court system in the United States.

Though the latest removal action of the EOIR seems to fall in line with a myriad of systemic factors that inhibit the independence of judges, it must be recognized for what it is—judicial tampering. This removal was a blatant and aggressive attack on the decisional independence of immigration judges in which both the Attorney General and the administration have demonstrated that opposition will not be tolerated, even if their policy preferences are not supported by the law. Such express politicization of the system has rarely occurred in its history and has always ultimately been rebuked as unlawful. These actions serve not only to attack immigration judges, but by preventing the exercise of independent judgment in interpreting the law, they attack the constitutional rights of those immigrants that are involved in the system.

As countless parties have urged, the immigration court system cannot both respect the rights of immigrants and continue in its current state. The structural hurdles that immigration judges face are alone sufficient to hinder their duty to accord due process. However, even more unpalatable than these problems is the significant influence that the Attorney General, a prosecutorial authority, has over the outcome of what should otherwise be independent adjudications of the law and facts. What’s more, the EOIR’s latest actions demonstrate that the Attorney General is more than willing to interfere with the process and use this influence unjustly, creating a biased system by forcing dissenting judges to fall in line.

A system of supposedly independent adjudication—a system that accords due process—cannot countenance such intentional and calculated tampering but instead must render decisions in adherence with the law as it exists. When the decisions of immigration judges can be summarily changed by the unjustified and irrational actions of higher-ups or can simply be replaced through the removal of a judge, such decisions are not predicated on the law but on bare political ideology. These actions once again prove that the immigration system as it currently exists is not equipped to provide the standard of due process that the Constitution mandates must be accorded immigrants.