



HERE THEY GO AGAIN: DOJ ATTACKS JUDGES UNION!

In an effort to suppress the voices of Immigration Judges, the Department of Justice (DOJ) has taken the first steps toward decertifying the National Association of Immigration Judges (NAIJ), which is the recognized collective bargaining representative of our nation's 440 Immigration Judges. On August 9, 2019 the DOJ filed a petition with the Federal Labor Relations Authority (FLRA) asserting that Immigration Judges (IJ) are management officials who establish Agency policy, which renders them ineligible for union membership. This is the DOJ's blatant attempt to prevent NAIJ from serving as public voice on behalf of IJs and provide a modicum of transparency and accountability for the DOJ. This misguided action, if not stopped, will harm the public by further obscuring its already limited view inside the inner workings of our courts and permit the DOJ to further undermine the independent decision-making authority of IJs.

Similar efforts were thwarted previously when the DOJ attempted and failed to decertify the NAIJ almost twenty years ago. In a well-reasoned decision, the FLRA's Regional Director ruled the DOJ's petition unfounded. The DOJ's subsequent application for review was soundly rejected. See, FLRA Decision at <https://www.flra.gov/decisions/v56/56-097.html>. (FLRA Decision, Sept. 1, 2000).

This rehashing of these same unfounded arguments brings into light the true motivation behind the DOJ action – to keep the operations of the DOJ and these crucial courts shielded from public view, depriving them of the transparency and independence these high stakes courts deserve. The public deserves better.

In response to these specious arguments, NAIJ states the following:

1. **IJs are not management officials and are not a part of the management structure.** IJs do not formulate, review nor comment on the Executive Office of Immigration Review (EOIR) or DOJ policy development or implementation, the fundamental criterion of management under law. IJs are trial level judges who apply developed law and policy to the cases before them and whose actions have no precedential weight. The U.S. Attorney General retains the ultimate authority to intervene and decide any case before the Immigration Court.
2. **IJs do not provide pre-decisional input on policy matters.** Consultation with NAIJ by EOIR management has been virtually non-existent in recent years. EOIR abolished the prior system of advisory committees, which were formulated to obtain input from IJs on subjects relevant to the operation of the immigration courts, and abolished the liaison IJ programs. EOIR has vastly expanded mid-level management and the authority of those managers (ACIJ) over IJs - which belies DOJ's position. DOJ has diminished the role of the IJ and has encroached upon the independence of IJs by micromanaging IJ dockets, by limiting the discretion of IJs in adjudication, and by removing procedural tools that allowed IJs flexibility in managing their dockets.
3. **"The central duties of an IJ have essentially remained unchanged since NAIJ was certified in 1979".** FLRA Decision. This was true in 2000 and remains true today. The role of IJs is to adjudicate the cases before them. When an IJ issues a decision, s/he follows established EOIR/DOJ policy, whether the IJ is in agreement or not. When rendering decisions, IJs apply established immigration laws, regulations and statutes. Regardless of the type of hearing over which they preside, IJ decisions are not published and do not constitute precedent.
4. **IJs have subject matter expertise not policy expertise.** As previously established by the FLRA, IJs are "highly trained professionals who adjudicate cases." However, this high degree of professional expertise in no way impacts the policies of EOIR. Simply put, "IJs "do not have the authority to direct or commit the Agency to any policy or course of action." FLRA Decision.
5. **The DOJ's petition to decertify the IJ's union follows a series of Administration actions that seek to roll back federal employees' union representation rights and weaken civil service protections.** The DOJ's attempt to decertify the NAIJ is the latest attack on federal employee unions. In May 2018, the Administration signed three Executive Orders that set arbitrary limits on federal sector collective bargaining, erode fairness concepts within the civil service, and diminish the ability of unions to represent federal employees. Recently, some federal agencies have employed a bad-faith bargaining strategy in order to implement a contract before the union and agency reach an agreement. The DOJ's move is the latest attack on federal employees' unions and is intended to silence NAIJ as an effective voice for transparency and judicial independence in the Immigration Court.