



ROUND TABLE of Former Immigration Judges

The Round Table of Former Immigration Judges Statement on EOIR's Prior Restraint on NAIJ Speech

As former Immigration Judges and BIA Board Members we strongly protest the unconstitutional prior restraint imposed by the Executive Office for Immigration Review (EOIR) which effectively silences the officers of the National Association of Immigration Judges (NAIJ) and prohibits them from providing information or engaging in advocacy involving the complex workings of our nation's Immigration Court system. We call for immediate reversal of this misguided policy.

In late February 2024 EOIR advised NAIJ officers that they could not speak publicly without obtaining advance permission through the agency's "SET" (Speaking Engagement Team) process, a requirement which was never imposed before. This is a cumbersome, multistep process which requires Immigration Judges to seek permission from their supervisors, the SET unit, and sometimes even EOIR's Ethics team and the Office of Policy. It provides no time frames for decisions nor any opportunity for review of adverse determinations. It is a process which is wildly incompatible with the practical realities involved in responding to media or congressional inquiries which often involve extremely short deadlines, sometimes mere hours or days. Mandating union officers use this process is a thinly disguised gag order.

This step is a dramatic departure from a precedent of more than 50 years, since NAIJ was established in 1973 and was never previously mandated to seek prior approval for appearances or speech. It ignores the uncontroverted fact that NAIJ officials scrupulously provide disclaimers indicating that they are not speaking on behalf of EOIR [or its parent, the Department of Justice (DOJ)] or articulating any position except that held by NAIJ members. It unfairly penalizes NAIJ officers who risk personal discipline for insubordination should they fail to comply but are then hampered in the duties owed to their union members when they remain silent.

NAIJ has played a pivotal role fostering the independence and increased professionalism of the Immigration Courts. It brought home to Congress the crucial function that IJs serve in the deportation and removal process, not as prosecutors but rather as neutral arbiters. This resulted in a change in job title from Special Inquiry Officer to Immigration Judge in 1996, with a concomitant enhanced special pay rate intended to broaden and improve the candidate pool for new judges. NAIJ was a crucial player in efforts to protect the independence of the Immigration

Courts in 2002 by leading the successful effort to keep the court independent from the newly created Department of Homeland Security despite strong opposition to that end by the administration and DOJ. At that time, NAIJ argued presciently that the establishment of an Article I Court was the only enduring way to safeguard the sanctity of these courts which hear “death penalty cases in a traffic court setting.” While NAIJ did not succeed in achieving that lofty goal then, legislation to do just that is currently pending in Congress, largely due to NAIJ’s tireless advocacy and coalition building. NAIJ’s voice in the media often stands alone explaining the practical implications of the complex workings of our immigration removal laws since DOJ eschews comments despite the American standard in jurisprudence which emphasizes transparency in its tribunals. NAIJ is the only spokesperson for IJs in the field, who have the first-hand view of court operations. Without NAIJ speech, no views from these benches in the trenches will be heard.

Perhaps worst of all, this policy deprives the American public of the views of an important, informed group which can shed light on the realities of the implementation of immigration laws and policy at a time when public scrutiny is at an all-time high and accurate factual information scarce. Under this new policy, NAIJ officers cannot even speak at educational or professional seminars or other public events without DOJ approval and instruction as to precisely what they can or cannot say.

Government employees do not surrender their First Amendment rights when they take office. To the contrary, their duty to educate the public is heightened and their voice enhanced by their informed opinions and expertise.

We urge EOIR to restore NAIJ’s important voice and revoke this new policy.

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The Round Table of Former Immigration Judges is composed of 56 former Immigration Judges and Appellate Immigration Judges of the Board of Immigration Appeals. We were appointed and served under both Republican and Democratic administrations. Members of our group have served in training and management roles at EOIR. Several of our members were officers and leaders in NAIJ and were instrumental in guiding NAIJ to accomplish the achievements described above. Combined we have decades of experience and unique expertise in the immigration court system and the field of immigration law.

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