

United States Senate

WASHINGTON, DC 20510

September 30, 2025

The Honorable Pam Bondi
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Bondi:

We write to address the Trump Administration's unprecedented decision to authorize up to 600 military attorneys to act as immigration judges.¹ We are deeply concerned about the legality of this action as well as how it will impact our immigration court system and the immigrant families who rely on it. This decision comes on the heels of the Department of Justice (DOJ) firing dozens of immigration judges without cause.² Since the start of the Administration, over 100 immigration judges have either been fired or opted to take a deferred resignation offer (known as a "Fork in the Road" offer), despite the lack of a clear path for managing the existing backlog of 3.5 million cases.³

A White House official stated that assigning military lawyers to adjudicate immigration cases is intended to reduce the existing case backlog.⁴ Nothing the Trump Administration has done, however, suggests a genuine commitment to prioritizing immigration case review. The Administration only has worsened the problem by firing immigration judges and compelling others to resign. The International Federation of Professional and Technical Engineers (IFPTE) estimates the number of immigration judges has fallen to 600,⁵ down from 735 judges at the end of FY2024.⁶ These trained immigration judges include former prosecutors, veterans, and officials who faithfully served through both Republican and Democratic administrations.⁷ Moreover, the

¹ Tara Copp & Dan Lamothe, *Pentagon Plans for 600 Military Lawyers to Backfill Immigration Judges*, WASH. POST. (Sept. 2, 2025), <https://www.washingtonpost.com/national-security/2025/09/02/hegseth-600-jag-immigration-judges/>.

² See Hilda Gutierrez, et al., *'We've All of a Sudden Become Political Pawns': Fired SF Immigration Judge Speaks Out*, NBC BAY AREA (July 23, 2025), <https://www.nbcbayarea.com/investigations/fired-sf-immigration-judge-speaks-out/3921192/>.

³ See *Trump Administration Fires More Immigration Court Judges: Union*, FED AGENT (July 17, 2025), <https://www.fedagent.com/news/trump-administration-fires-more-immigration-court-judges-union>; Rebecca Santana, *Trump Administration Fires Seventeen Immigration Court Judges Across Ten States, Union Says*, AP NEWS (July 15, 2025), <https://apnews.com/article/immigration-court-judges-trump-ice-229830c0779857164a832793c2a8f3e4>.

⁴ See Konstantin Toropin, *Pentagon Authorizes up to 600 Military Lawyers to Serve as Temporary Immigration Judges*, AP (Sept. 2, 2025), <https://apnews.com/article/pentagon-immigration-judges-trump-pete-hegseth-b07950833591270b926ad86ede8b961f>.

⁵ *Id.*

⁶ See Exec. Off. for Imm. Review Statistics, *Immigration Judge (IJ) Hiring* (July 2025), <https://www.justice.gov/eoir/media/1344911/dl?inline>.

⁷ See Letter from Sen. Durbin to Attorney General Bondi (Aug. 21, 2025), <https://www.durbin.senate.gov/imo/media/doc/250821durbinijletter.pdf>.

Administration could increase the backlog to nearly four million cases by seeking to recalendar thousands of cases that had previously been administratively closed—an apparent attempt to overwhelm the courts and make it harder for immigrants to oppose deportation proceedings.⁸ The Administration also has sought to sidestep case review and due process altogether by arresting and detaining immigrants who appear at court in order to expedite their removals without further hearings or legal process.⁹

The use of military attorneys as immigration judges will fundamentally reshape civilian-military relations and also appears to violate the Posse Comitatus Act, which prohibits the use of the U.S. military for domestic law enforcement unless expressly authorized in statute or the Constitution.¹⁰ Immigration judges make final, binding, and life-changing decisions on an immigrant's status, including adjudication of asylum applications and final orders of removal; the effect of these orders involves detention and limitations of personal liberty, sometimes immediately after an order is issued.¹¹ As such, actions taken by military lawyers acting as interim immigration judges appear to cross the line into civilian law enforcement, which cannot be performed by members of the Armed Forces.¹²

The military apparently has begun its search for volunteers to serve as temporary immigration judges, sending recruitment emails to active-duty officers and reservists.¹³ At least one such email explicitly stated immigration experience was not required.¹⁴ Active duty and

⁸ See Cody Copeland, *ICE Push For Deportations Could See Nearly 400,000 Cases Added to Court Dockets*, *Fort Worth Star-Telegram* (June 27, 2025), <https://www.star-telegram.com/news/politics-government/article309502975.html>; Melissa Gomez et al., *Trump Officials are Reopening Old Immigration Cases, Even for Dead People. 'They don't do their homework,' Lawyers Say*, *LA TIMES* (Aug. 6, 2025), <https://www.latimes.com/california/story/2025-08-06/trump-administration-recalendars-decades-old-immigration-cases>.

⁹ See Suzanne Gamboa, *Immigration Arrests in Courthouses Have Become the New Deportation Tool, Stripping Migrants of a Legal Process*, *NBC NEWS* (May 30, 2025), <https://www.nbcnews.com/news/latino/immigrations-arrests-ice-deportations-courthouse-legal-process-ice-rcna209671>; Joshua Goodman & Gisela Salomonice, *Agents Wait in Hallways of Immigration Court as Trump Seeks to Deliver on Mass Arrest Pledge*, *AP NEWS*, May 22, 2025, <https://apnews.com/article/immigration-courts-arreststrump-ice-deportations-fa96435d4ec021cc8ff636b23d80d848>; Letter from Senator Durbin et al. to Attorney General Bondi et al. (July 11, 2025), <https://www.judiciary.senate.gov/imo/media/doc/DURBIN,%20KELLY,%20PADILLA,%20SENATE%20DEMOCRATS%20PRESS%20TRUMP%20ADMINISTRATION%20ON%20WEAPONIZING%20IMMIGRATION%20COURT%20HEARINGS%20TO%20TRAP,%20ARREST,%20DEPORT%20IMMIGRANTS.pdf>.

¹⁰ Congressional Research Service, *The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law*, Report R42659 (Nov. 6, 2018), <https://www.congress.gov/crs-product/R42659>.

¹¹ Anastasia Obis, *Using Military Lawyers as Immigration Judges Sets Precedent With No Limits*, *FED. NEWS NETWORK* (Sept. 4, 2025), <https://federalnewsnetwork.com/defense-main/2025/09/using-military-lawyers-as-immigration-judges-sets-precedent-with-no-limits/>.

¹² See Adriel Orozco, *Trump Administration Appoints Hundreds of Unqualified Military Lawyers to Serve as Immigration Judges*, *AM. IMMIGRATION COUNCIL* (Sept. 5, 2025), <https://www.americanimmigrationcouncil.org/blog/trump-appoints-military-lawyers-to-serve-as-immigration-judges/>; Congressional Research Service, *The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law*, Report R42659 (Nov. 6, 2018), <https://www.congress.gov/crs-product/R42659>.

¹³ John Ismay, Charlie Savage & Kirsten Grind, *Military Lawyers Wanted as Immigration Judges, No Experience Required*, *N.Y. TIMES* (Sept. 4, 2025), <https://www.nytimes.com/2025/09/04/us/politics/military-lawyers-immigration-judges.html>.

¹⁴ *Id.*

reserve judge advocates who reviewed these recruitment emails reportedly expressed concern that these temporary judges might be pressured to rubber-stamp deportations in line with White House objectives.¹⁵ These objections underscore serious threats to judicial independence and impartiality—particularly as the military attorneys, many without immigration law experience, would be serving in an unfamiliar adjudicatory role.¹⁶

Federal immigration law is a notoriously complex area of law that requires extensive knowledge and experience. The process for hiring immigration judges is a rigorous multi-step endeavor: candidates undergo two rounds of interviews, are appointed by the Attorney General, and initially serve a 24-month temporary term before being considered for conversion to a permanent appointment.¹⁷ Temporary immigration judges have historically been required to have extensive previous immigration or administrative law experience.¹⁸ Following a recent rule change loosening requirements for temporary immigration judges,¹⁹ DOJ can now skirt the normal hiring process. Under the new rule, there is no set training or curriculum for temporary immigration judges,²⁰ who are slated to receive approximately two weeks of training.²¹ Because temporary immigration judges serve renewable terms not to exceed six months,²² they have limited opportunity to acquire proficiency in immigration law or contribute meaningfully to reducing longstanding backlogs. It is also unclear whether they will have adequate support staff to assist them. In March, IFPTE indicated 85 immigration court professionals had resigned or were retiring, likely exacerbating to the historic backlog.²³

Furthermore, military attorneys have specialized skills that enable them to provide counsel in practice areas that impact service members and our armed forces. For example, Judge Advocates General are practiced in representing victims during court-martial processes; support a commander's military decision-making process and conduct; advise commanders and staff on military law; and represent service members, dependents, and retirees in various personnel legal

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ U.S. Dep't of Justice, Immigration Judge and Appellate Immigration Judge Hiring Process (updated June 27, 2025), <https://www.justice.gov/eoir/JudgeHiringPolicy1>.

¹⁸ *Designation of Temporary Immigration Judges*, 90 Fed. Reg. 41883 (Aug. 28, 2025). (“Prior to this final rule, individuals eligible to be designated as [temporary immigration judges] were limited to former IJs and Appellate Immigration Judges, EOIR administrative law judges (‘ALJs’) or ALJs retired from EOIR, ALJs from other Executive Branch agencies with the consent of their agencies, and Department attorneys with at least 10 years of legal experience in the field of immigration law.” (citation omitted)), <https://www.federalregister.gov/documents/2025/08/28/2025-16573/designation-of-temporary-immigration-judges>.

¹⁹ *Id.*

²⁰ *Id.* at 41884.

²¹ Ximena Bustillo & Michel Martin, *Pentagon Authorizes up to 600 Military Lawyers to Serve as Immigration Court Judges*, NPR (Sept. 3, 2025), <https://www.kunc.org/2025-09-03/pentagon-authorizes-up-to-600-military-lawyers-to-serve-as-immigration-court-judges>. This stands in contrast to the DOJ's previous position that temporary immigration judges should have “knowledge of immigration laws and procedures; substantial litigation experience, preferably in a high-volume context; experience handling complex legal issues; experience conducting administrative hearings; and knowledge of practices and procedures.” See *Designation of Temporary Immigration Judges*, 79 Fed. Reg. 39953 (July 11, 2014), <https://www.federalregister.gov/d/2014-16279/p-26>.

²² Immigration Judges, 8 C.F.R. § 1003.10(e)(1) (Mar. 5, 2003).

²³ Pedro Camacho, *Nearly 100 Immigration Court Officials Resign as Cases Backlog Continues to Pile Up*, LATIN TIMES (Mar. 10, 2025), <https://www.latintimes.com/nearly-100-immigration-court-officials-resign-cases-backlog-continues-pile-577981>.

matters.²⁴ Civilian military lawyers also are experienced in representing military members under the Uniform Code of Military Justice alongside active duty and reserve Judge Advocates General to “enable Soldiers to focus on their mission.”²⁵ The Administration’s decision to divert these attorneys and their expertise from our Armed Forces could negatively impact our threat readiness, especially if advice and counsel on military operations, law, or procedures are delayed due to their service as interim immigration judges.

Congress recently passed a partisan reconciliation bill that provides DOJ with more than \$3.3 billion, including funding to increase the number of immigration judges and hire additional immigration court staff.²⁶ This scheme does not contemplate military lawyers standing in the place of immigration judges and being taken away from their duties to advise commanders, service members, and their families when they need it the most. Such appointments directly threaten respondents’ due process rights and the credibility of the immigration court system. Immigration judges serve in demanding roles that require expertise and where the stakes could not be higher for respondents, many of whom are seeking protection from life-threatening persecution.

Given the numerous and serious legal, ethical, and process concerns detailed above, we urge the Administration to reconsider the use of military attorneys as temporary immigration judges. We also request that you provide responses, as well as copies of related guidance or memoranda, to the following no later than October 14, 2025:

1. Under what statutory or regulatory authority is the Executive Office for Immigration Review (EOIR) appointing military attorneys to preside over immigration proceedings?
2. Has the Office of Legal Counsel analyzed whether the appointments comply with the Posse Comitatus Act and other statutory limits on military involvement in civilian adjudication? How will DOJ ensure compliance with these statutory limitations?
3. What criteria and processes are being used to select which military attorneys are assigned as immigration judges?
4. What training will military attorneys serving as temporary immigration judges receive prior to hearing cases, and who will provide this training? How long will the training last and how will it differ from standard training for immigration judges? Please provide any curriculum or training materials for military attorneys.
5. Will military attorneys be supervised by civilian DOJ personnel during their service or will they continue to report to their military chain of command?
6. How many support staff will be assigned to assist military attorneys? What plans does DOJ have to ensure an adequate ratio of judge-to-support staff for military attorneys?

²⁴ U.S. Army Judge Advocate General’s Corps, *The U.S. Army Judge Advocate General’s Corps Brochure* (Apr. 2017), https://www.law.edu/_media/ocpd-probono-forms/JAG-Corps-Brochure.pdf.

²⁵ U.S. Army Judge Advocate General’s Corps, *Army Civilians: More Opportunities for Civilians in the Army*, <https://www.jagcnet.army.mil/GoArmyJAG/Civilian>.

²⁶ See One Big Beautiful Bill Act, Pub. L. No. 119-21, H.R. 1, 119th Cong. § 100054(1)(a)-(b) (2025).

7. What categories of cases will military attorneys adjudicate (e.g., detained dockets, bond hearings)?
8. Will respondents and their counsel be notified if their case is assigned to a military attorney?
9. What mechanisms will DOJ employ to evaluate military attorney performance and ensure accountability?
10. What evaluation has DOJ conducted regarding this initiative's impact on the immigration court backlog?
11. If voluntary recruitment of military attorneys is not successful, is DOJ aware of any other methods that will be employed to meet temporary immigration judge recruitment goals?
12. Is DOJ reimbursing DOD for the military attorneys?

Thank you for your attention to this matter.

Sincerely,



Richard J. Durbin
United States Senator



Catherine Cortez Masto
United States Senator



Alex Padilla
United States Senator



Adam B. Schiff
United States Senator

cc: The Honorable Charles E. Grassley
Chairman, Senate Committee on the Judiciary