

IMMIGRATION

Immigration Judges Sue DOJ for Blocking Their Speech

Apparently, talking to law schools is politicized now.

By LORELEI LAIRD

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Immigration judges do not talk to the media. Trust me, I've tried. Generally speaking, the only ones I can get on the phone are retired judges and officers of the [National Association of Immigration Judges](#), who always take pains to make it clear that they're speaking in their capacity as union leaders. They do this because if they don't, they can get in trouble with the Justice Department (which runs their agency). For many years, immigration judges were also permitted to make public speeches about immigration in their personal capacities.

Of course, that has changed under the Trump administration. In September 2017, DOJ told judges they would have to get clearance to speak in public about anything. But apparently this was not enough to erase the scourge of judges talking to law students and bar associations, so in January of this year, DOJ forbade judges from speaking in their personal

Not surprisingly, the denials started coming thick and fast, including one that said it wasn't clear that the judges' "participation would advance [DOJ's] interests." (So *that's* the purpose of free speech!) The denials also seemed inconsistent; one judge was permitted to participate in a law school moot court competition the month after another was denied permission to do the same thing.

If you remember anything about con law, you can probably predict what happened next: [The judges sued](#) to get their First Amendment rights back. In fact, their lawsuit is trying to cancel both the current never-talk-about-immigration policy and the 2017 ask-first policy. Their lawsuit goes over the numerous things the Trump administration has done to make immigration courts and immigration policy matters of public interest, which the judges (represented by the Knight First Amendment Institute at Columbia University) argue gives them a substantial interest in talking about it, and the public a substantial interest in hearing them.

This is only the latest battle in the cold war between the Trump administration and immigration judges it didn't hire. I've written here about the administration's [expressly politicized hiring](#) of judges, and [elsewhere](#) about rules that pressure judges to rush cases through the system (ideally by denying lawful status). If there's a bright side here, it's that the head of the NAIJ is Judge A. Ashley Tabaddor, who [won a free-speech-related lawsuit](#) against the same agency less than 10 years ago. I don't speak for her, but I don't imagine she's afraid of suing her employer again.

P.S. Because I'm always happy to see evidence that somebody cares about immigrants, I'm thrilled that [ATL writer Elizabeth Dye beat me to the story](#) about the Trump administration trying to deport foreign students whose classes are online-only. If you're following that, you may be interested to know that [Harvard and MIT sued the Trump administration over that rule](#) Wednesday morning, [alleging](#) that this rule violates — you guessed it! — the Administrative Procedure Act. The administration's inability to govern competently will probably earn them a big fat TRO.