



REPORT BY THE IMMIGRATION & NATIONALITY LAW COMMITTEE AND THE RULE OF LAW TASK FORCE CONDEMNING THE USE OF MILITARY LAWYERS AS TEMPORARY IMMIGRATION JUDGES

The New York City Bar Association (“City Bar”) expresses deep concern regarding the Administration’s reported authorization to assign up to 600 Judge Advocate General (“JAG”) Corps attorneys to serve as temporary immigration judges within the Department of Justice’s (“DOJ”) Executive Office for Immigration Review (“EOIR”).

On August 27, 2025, Secretary of Defense Pete Hegseth authorized up to 600 JAG Corps attorneys to serve six-month renewable terms as immigration judges at DOJ.¹ The DOJ simultaneously waived long-standing qualification requirements for temporary immigration judges, including the need for at least 10 years of immigration law experience or prior service as an immigration or appellate immigration judge.² This comes after President Trump said in early July 2025 that he would allow Florida National Guard JAG Corps officers to act as immigration judges to expedite deportations.³

This authorization is already having material consequences here in New York. On October 24, 2025, EOIR appointed several new temporary immigration judges, including a JAG attorney, to serve at the New York Federal Plaza Immigration Court.⁴ This appointment underscores profound concerns outlined below, including the erosion of immigrants’ due process rights. Further undermining the immigration law system, on December 1, 2025, EOIR announced

¹ Ximena Bustillo, *Military Lawyers Are Being Asked to Serve as Immigration Judges. Here’s Why That’s a Problem.*, NPR (Sept. 2, 2025), <https://www.npr.org/2025/09/02/g-s1-86691/military-lawyers-immigration-judges-jag>. (All websites last accessed January 14, 2026)

² Designation of Temporary Immigration Judges (August, 2025), <https://www.federalregister.gov/documents/2025/08/28/2025-16573/designation-of-temporary-immigration-judges>

³ N.Y.C. Bar Ass’n, *Report on the Trump Administration’s 2025 Changes to Immigration Law* 91 (Oct. 10, 2025), <https://www.nycbar.org/wp-content/uploads/2025/03/20221419-TrumpAdminChangesImmigrationLaw.pdf>; see also *Trump OKs using National Guard as immigration judges at Florida detention center*, Miami Herald (July 1, 2025), <https://www.miamiherald.com/news/local/immigration/article309792865.html>.; see also Livia Caputo, *Trump, DeSantis Agreed on National Guard as Immigration Judges: Why Hasn’t It Happened Yet?*, Fla. Phoenix (Oct. 3, 2025), <https://floridaphoenix.com/2025/10/03/trump-desantis-agreed-on-national-guard-as-immigration-judges-why-hasnt-it-happened-yet/>.

⁴ Exec. Office for Immigration Review, U.S. Dep’t of Justice, *EOIR Announces 11 Immigration Judges and 25 Temporary Immigration Judges* 8 (Oct. 24, 2025), <https://www.justice.gov/eoir/media/1415981/dl?inline=>.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 20,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

the firing of eight additional immigration judges in New York, including “the assistant chief immigration judge at 26 Federal Plaza, who supervises other judges there.”⁵

One of the current administration’s earlier moves had been to remove senior leadership at EOIR, paving the way to its politicization.⁶ Since then, 139 immigration judges have been fired, taken an early-out offer, or been involuntarily transferred, without any reason given, according to data provided by the National Association of Immigration Judges.⁷ At a time when the backlog of immigration court removal proceedings exceeds 3.4 million cases,⁸ and U.S. Citizenship and Immigration Services has been instructed to refer any person who has their immigration benefit denied to EOIR, these actions are indefensible.⁹

According to Matt Biggs, president of the International Federation of Professional & Technical Engineers, of which the NAIJ is an affiliate:

“The dismissal of more immigration judges is an illogical and costly setback for the nation’s immigration courts. At a time when the backlog has reached historic levels and the administration has made immigration enforcement a central issue, the removal of experienced judges is hypocritical, undermines the law, wastes taxpayer dollars, and further delays justice for citizens and immigrants alike.”¹⁰

Immigration Judges reportedly were emailed with terminations without notice or reason and effective immediately while in the middle of scheduled merits hearings.¹¹

These actions deliberately replace experienced and specialized career administrative judges with short-term military appointees with no immigration training.¹² And although the

⁵⁵ Ana Ley, *Trump Administration Fires 8 Immigration Judges in New York*, NYTimes (Dec. 1, 2025), <https://www.nytimes.com/2025/12/01/nyregion/immigration-judges-fired-trump.html>

⁶ Priscilla Alvarez, *Trump signs sweeping executive actions on immigration, launches fight to end birthright citizenship*, CNN, (Jan. 21, 2025), <https://www.cnn.com/2025/01/20/politics/trump-executive-actions-immigration/index.html>.

⁷ Priscilla Alvarez, *Inside the Trump administration’s Unprecedented Purge of Immigration Judges*, CNN, (Oct. 6, 2025), <https://www.cnn.com/2025/10/06/politics/immigration-judges-fired-trump>.

⁸ Transaction Recs. Access Clearinghouse (TRAC), *Immigration Court Quick Facts*, https://tracreports.org/immigration/quickfacts/eoir.html#eoir_backlog.

⁹ U.S. Citizenship & Immigr. Servs., *Policy Memorandum: Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, (Feb. 28, 2025), https://www.uscis.gov/sites/default/files/document/policy-alerts/NTA_Policy_FINAL_2.28.25_FINAL.pdf.

¹⁰ International Federation of Professional & Technical Engineers (IFPTE), *Immigration Courts Become Increasingly Dysfunctional as More Immigration Judges Are Removed* (Sept. 22, 2025), <https://static1.squarespace.com/static/5dfbdfa81e1a9011a52b2327/t/68d7164f90c37e51bb8344d4/1758926415496/IFPTENAIJSept22relv2+%28002%29.pdf>.

¹¹ Alvarez, *Inside the Trump administration’s Unprecedented Purge of Immigration Judges*, supra note 7.

¹² See, e.g., U.S. Army Judge Advoc. Gen.’s Corps, *Training Overview*, <https://www.jagcnet.army.mil/GoArmyJAG/Training>.

Administration's outreach to JAG attorneys seeks voluntary participation, it also indicated there could be an "involuntary" mobilization of Army reservists.¹³ These measures are further destabilizing the already fragile independence of the immigration courts.

This recent policy is also in line with a troubling trend by the Trump administration to use the military to directly support its widespread deportation efforts. That has included troops patrolling the U.S.-Mexico border, National Guard members sent into U.S. cities during immigration enforcement efforts, holding people awaiting deportation on military bases, and using military aircraft to carry out deportations.¹⁴

One of the purported justifications for authorizing JAG attorneys to serve as temporary immigration judges is to reduce the immigration court backlog. While reducing the backlog is an important goal, authorizing inexperienced and inadequately trained military lawyers to serve short-term rotations is not a meaningful solution. On the contrary, rotating hundreds of temporary adjudicators with no immigration law expertise will predictably lead to inconsistent rulings, fundamental legal errors, and flawed decision-making, which will generate more appeals and motions to reopen, actually increasing the backlog in the immigration courts, as well as increasing the caseload of the Board of Immigration Appeals and even the federal Circuit Courts of Appeal.

For the reasons detailed below, the City Bar believes that replacing experienced and specialized career administrative judges with temporary military lawyers is misguided and potentially unlawful.

I. THE GOVERNMENT HAS AUTHORIZED JAG ATTORNEYS TO SERVE AS IMMIGRATION JUDGES DESPITE THEIR LACK OF RELEVANT EXPERIENCE

Far from simple and not merely intuitive,¹⁵ immigration law is a highly specialized body of ever-evolving administrative and statutory law and is "second only to the Internal Revenue Code in complexity."¹⁶ The Supreme Court has called it "complex" and a "legal speciality of its

¹³ John Ismay, Charlie Savage and Kirsten Grind, *Military Lawyers Wanted as Immigration Judges, No Experience Required*, New York Times (Sept. 4, 2025) noting the possibility of involuntary transfers, <https://www.nytimes.com/2025/09/04/us/politics/military-lawyers-immigration-judges.html>.

¹⁴ N.Y.C. Bar Ass'n, *Report on the Trump Administration's 2025 Changes to Immigration Law*, supra note 3, at 20-21, 83-84; see also *Trump Administration Taps Army Reserve and National Guard for Temporary Immigration Judges*, Wash. Post (Oct. 3, 2025), https://www.washingtonpost.com/national/2025/10/03/immigration-judges-military-lawyers-deportation/99c04a4c-a00e-11f0-af12-ae28224a8694_story.html.

¹⁵ Center for Immigration Studies Presents: Parsing Immigration Policy, Episode 225: *Military Lawyers as Temporary Immigration Judges?* (October 20, 2025). <https://www.youtube.com/watch?v=FMXZ3M2x6mo>

¹⁶ *Castro-O'Ryan v. U.S. Dep't of Immigr. & Naturalization*, 847 F.2d 1307, 1312 (9th Cir. 1987); see also *Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003) (noting the "labyrinthine character of modern immigration law—a maze of hyper-technical statutes and regulations that engender waste, delay, and confusion for the Government and petitioners alike").

own.”¹⁷ Immigration judges must regularly interpret the Immigration and Nationality Act and related regulations, apply complex precedent from the Board of Immigration Appeals and federal courts, and navigate intersecting bodies of law, including areas such as criminal, constitutional, and international law. The DOJ itself has recognized the inherent complexity in the field by historically requiring temporary immigration judges to have at least a decade of relevant immigration law practice or prior service as an immigration judge or appellate immigration judge.¹⁸

In stark contrast, JAG attorneys receive no training in immigration law as part of their standard legal education or military service. Their focus is on courts-martial, military justice, and advising commanders on compliance with the Uniform Code of Military Justice and the law of armed conflict.¹⁹ According to recent reports, the immigration training for JAG attorneys will be curtailed to just two weeks.²⁰ JAG attorneys serving six-month terms will have no time to acquire even minimal competence in the field. Expecting military lawyers to develop expertise while they are presiding over hundreds of cases can lead to predictably harmful results, including errors in rulings resulting in deportations with life-or-death consequences, due process violations, and consequent ballooning of the pending immigration case backlog as erroneous decisions lead to appeals.

Moreover, the authorization of JAG attorneys to serve as immigration judges is inconsistent with the core mission of the U.S. military, which is to fight and win the nation’s wars. Immigration court proceedings are purely civilian, administrative proceedings, have no warfighting function and do not bear any nexus to a legitimate military objective. Coupled with JAG attorneys’ lack of training and experience in immigration law, and the questionable statutory basis for JAG attorneys to preside over immigration court matters, their involvement is far removed from military objectives and is likely to increase contested rulings and appeals from both sides. This may significantly delay adjudications and undermine, rather than advance, the stated purpose of reducing the immigration case backlog.

II. THE GOVERNMENT’S AUTHORIZATION OF MILITARY ATTORNEYS AS IMMIGRATION JUDGES ERODES CONSTITUTIONAL DUE PROCESS FOR NONCITIZENS

The Fifth Amendment guarantees that due process protections extend to all persons within the United States, including noncitizens, requiring immigration courts to uphold fairness

¹⁷ Margy O’Herron, *Using Military Lawyers as Immigration Judges Is Ill-Advised and Potentially Illegal*, Brennan Ctr. for Just. (Sept. 29, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/using-military-lawyers-immigration-judges-ill-advised-and-potentially>.

¹⁸ Designation of Temporary Immigration Judges, 90 Fed. Reg. 65,731 (Aug. 28, 2025), <https://www.federalregister.gov/documents/2025/08/28/2025-16573/designation-of-temporary-immigration-judges>

¹⁹ *See, e.g.*, 10 U.S.C. §§ 806, 837, 946 (2023).

²⁰ Bustillo, *Military Lawyers Called Up to Relieve a Shortfall in Immigration Judges*, *supra* note 1; *see also* O’Herron, *Using Military Lawyers as Immigration Judges*, *supra* note 17.

and impartiality in every proceeding.²¹ There are potential concerns, however, about JAG attorneys being able to guarantee due process protections because they remain subject to the military hierarchy. Even while serving as temporary immigration judges, JAG attorneys are bound to follow the Uniform Military Code,²² placing them in the inherently conflicted role of both soldier and civil law adjudicator. The military justice system itself has long recognized that unlawful command influence is the “mortal enemy of military justice.”²³ A JAG attorney’s “legal and ethical obligations to follow orders make it challenging to provide a truly fair hearing to the immigrants in their courtroom,”²⁴ especially given the unambiguous pro-deportation agenda of President Trump, the Commander-in-Chief.²⁵

The lack of relevant expertise along with the tension between the obligations of military lawyers and immigration judges are troubling given that immigration courts routinely handle cases involving noncitizens in especially vulnerable positions, which demand heightened due process protections. It is critical to bear in mind that many of these vulnerable noncitizens appear *pro se*, leaving them especially dependent on the expertise and fairness of the presiding judge. The following populations are particularly vulnerable:

- **Children:** Children appear in immigration court, often unrepresented. Through the Trafficking Victims Protection Reauthorization Act, Congress recognized children’s particular vulnerability and implemented specialized dockets for unaccompanied minors, including detained minors, requiring judges to apply heightened statutory safeguards.²⁶ Proceedings must be conducted in a manner appropriate to a child’s developmental level, taking trauma and age-related comprehension into account. JAG attorneys’ lack of experience in handling child-centered proceedings, and rotating them into children’s dockets risks retraumatizing children, violating fundamental and statutorily imposed safeguards, and denying relief to children Congress has expressly sought to protect.

²¹ See, e.g., *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903); *Reno v. Flores*, 507 U. S. 292, 306 (1993); see also *Trump v. J.G.G.*, 604 U.S. 670, 145 S. Ct. 1003, 221 L. Ed. 2d 529 (2025).

²² 10 U.S.C. § 802(a) (2023).

²³ *United States v. Thomas*, 22 M.J. 388, 393 (C.M.A. 1986).

²⁴ Margy O’Herron, *Using Military Lawyers as Immigration Judges is Ill-Advised and Potentially Illegal*, Brennan Center, Sept. 29, 2025, <https://www.brennancenter.org/our-work/analysis-opinion/using-military-lawyers-immigration-judges-ill-advised-and-potentially>

²⁵ The Administration’s apparent objective in involving JAG attorneys is to assist with its mass efforts to deport non-citizens. Federal data shows that nine out of 10 non-citizens who were heard by JAG attorneys serving as temporary immigration judges were ordered removed or requested to self-deport. When one JAG attorney granted asylum six times out of the 11 cases he heard in November, he was immediately fired for “granting asylum at a high rate out of step with the Trump’s administration’s mass deportation goals.” See Joshua Goodman, *Military lawyer swiftly fired after defying Trump deportation push* (Dec. 19, 2025) The Associated Press, <https://www.militarytimes.com/news/your-military/2025/12/19/military-lawyer-swiftly-fired-after-defying-trump-deportation-push/>

²⁶ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235, 122 Stat. 5044, 5074–84 (2008) (codified at 8 U.S.C. § 1232 (2023)).

- **Detained Noncitizens:** Noncitizens in immigration detention face substantial barriers, including limited access to counsel and challenges of gathering and presenting evidence while in custody. Bond hearings require careful application of legal standards: the government must prove dangerousness by clear and convincing evidence, or flight risk by either a preponderance of the evidence or by clear and convincing evidence.²⁷ The importance of such standards being carefully applied is high.
- **Individuals with Mental Competency Concerns:** In *Matter of M-A-M-*, the BIA required safeguards for immigration court respondents lacking competency, including appointment of counsel or guardians.²⁸ Implementing safeguards requires nuanced understanding of case law, psychiatric evidence, disability rights, and constitutional due process. JAG attorneys without training in these protections are unlikely to recognize or properly evaluate incompetency, risking unlawful deportations of individuals unable to advocate for themselves.
- **Asylum Seekers:** Asylum seekers are among the most vulnerable individuals in the immigration system, as they are fleeing persecution, torture, or other grave human rights abuses in their home countries. Many asylum seekers bear the psychological effects of trauma, which can manifest in fragmented testimony, difficulty recalling details, or visible distress during hearings.²⁹ Adjudicating asylum claims is one of the most complicated and high-stakes functions of immigration judges, requiring both technical expertise in asylum law as well as training in trauma-informed adjudication approaches. Temporary JAG attorneys, whose legal experience lies outside the immigration law context, lack this important training, and there is no indication that effective training can be provided in this scenario.

III. CONCLUSION

Immigration courts must remain staffed by career trained, independent adjudicators dedicated to safeguarding due process and the rule of law. Authorizing JAG lawyers with no immigration law experience to temporarily preside over these life-or-death cases is incompatible with those principles. Moreover, using such military attorneys as temporary immigration adjudicators represents an unprecedented departure from established practice, and – coupled with the inexplicable firings of career administrative immigration judges – appears as a dangerously flawed “solution” to a manufactured crisis.

²⁷ See generally Immigration and Nationality Act § 236, 8 U.S.C. § 1226 (2023); see also *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020).

²⁸ *Matter of M-A-M-*, 25 I. & N. Dec. 474, 479 (BIA 2011).

²⁹ See, e.g., *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1046–47 (9th Cir. 2007) (noting that trauma can affect memory and consistency of testimony); see also U.N. High Comm’r for Refugees (UNHCR), *Guidelines on International Protection No. 4: Gender-Related Persecution* ¶ 36, U.N. Doc. HCR/GIP/02/01 (May 7, 2002).

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