



CATHOLIC LEGAL  
IMMIGRATION  
NETWORK, INC.

# UNDERMINING THE IMMIGRATION COURT SYSTEM: RECENT ATTACKS ON ACCESS TO JUSTICE AND DUE PROCESS

The Justice Department put in place a new [interim rule](#) on Aug. 26 that dramatically undermines the immigration court system, striking another blow at the independence of the judiciary and access to legal representation. The rule has profound consequences both on our system of laws and on people. It will allow political forces to shape immigration law and will guarantee worse outcomes for those navigating our immigration system.

## HOW THE RULE WORKS

Broadly, the interim rule breaks down the separation between adjudications and policymaking by reorganizing the Executive Office of Immigration Review, or EOIR, the office in the Department of Justice that is responsible for overseeing the immigration court system. **Changes include:**

**Establishing and empowering a politically-controlled policy office:** EOIR created the Office of Policy in 2017, and this rule formalizes its creation and role. The Office of Policy is charged with overseeing the development of rules and policies to advance the administration's regulatory agenda based on its political priorities. The rule then concentrates an undue amount of power in this office to control the way that EOIR adjudicators handle cases through regulation, guidance and training.

**Delegating the power to shape law to a political entity:** The rule gives power to the director of EOIR to cherry-pick immigration cases to review, and through that, set precedent and shape the law. The director of EOIR is an administrator and an inherently political position. Allowing the director to take up Board of Immigration Appeal, or BIA, cases and issue precedent decisions opens the door to political influence in interpreting the law.

**Having the Office of Legal Access Programs, or OLAP, be under the control of the policy office:** OLAP's mission is to improve the efficiency of the immigration courts by increasing access to information and legal representation. The transfer of OLAP to the Office of Policy implicates several important programs that are mandated by court order or funded by specific congressional appropriations — including the National Qualified Representative Program, which provides counsel for people in removal proceedings who are deemed mentally incompetent, and the Legal Orientation Program and the Legal Orientation Program for Custodians of unaccompanied minors. Also, OLAP administers the Recognition & Accreditation program, known as R&A. This important program creates the opportunity for immigrants to access qualified legal advocates, no matter how much money they have in their pockets.

## IMPACT ON OUR SYSTEM OF LAWS

The official establishment of the Office of Policy and delegating power to the Director of EOIR undermines the independence of the judiciary. The administration is granting power to itself as a partisan, political entity so it can shape the law based on its own agenda.

Placing OLAP under the control of the policy office will threaten access to legal information and representation. The Office of Policy will have the power to change OLAP's budget, staffing and even its mission, and the partisan nature of the office would make this essential program vulnerable to political whims. Weakening OLAP's legal information and representation programs would bog down the immigration court system and make it less efficient, as people will be forced to navigate it on their own.

## IMPACT ON HUMAN LIVES

In the world of immigration, the stakes are often unbearably high. A piece of paper or an immigration judge's decision can carry the weight of life or death. The court's decision may determine whether or not a child will finally be safe. The court's decision may mean the difference between family separation and unity.

While the interim rule may appear to be a simple administrative shuffling of duties, the reality is that it will disadvantage low-income immigrants and the most vulnerable by rigging the system against them and limiting their ability to access a legal advocate.

These changes unfairly turn the law against those who seek its protection, impair access to legal counsel and guarantee an increase in negative outcomes on cases.

As always, there are dire human consequences: people in need not being able to access safety, families never being reunited and others being torn apart.

## WHAT YOU CAN DO

**As an individual:** Submit a public comment; call your members of Congress, and let them know this is a priority issue for you as a constituent.

**As a funder:** Fund organizations advocating to protect the integrity of EOIR and access to justice and due process for immigrants.

**As a member of Congress:** Request information, investigate and hold oversight hearings; appropriate and protect funding for programs that provide access to legal representation, such as R&A.