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## Policy Brief: Militarizing Immigration Courtrooms

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On August 28, 2025, the Department of Justice (DOJ) finalized the [Designation of Temporary Immigration Judges](#) rule, which significantly lowers the standards for the appointment of temporary immigration judges (TIJs). Previous regulations limited eligibility of TIJs to DOJ attorneys with at least ten years of immigration experience, former immigration judges, and former administrative law judges. The new rule authorizes the Attorney General to designate *any* licensed attorney, regardless of their background in immigration law, to serve as a TIJ and preside over cases that carry life-or-death consequences. By lowering these standards, DOJ risks appointing judges without the expertise needed to fairly and accurately adjudicate complex immigration cases. This change threatens to further weaken judicial independence and undermine accuracy and due process.

Notably, military attorneys are included among the expected TIJs, which raises serious legal concerns. The Department of Defense (DoD) [announced](#) plans to make up to 600 military and civilian DoD attorneys, including Judge Advocate General (JAG) Corps members, available for six-month TIJ details, renewable for additional periods.

Congress and the public should demand that DOJ invest in permanent, qualified, and independent immigration judges. Protecting the integrity of our immigration system requires a judiciary that is civilian, expert, and impartial. Anything less threatens the rule of law and the nation's commitment to justice.

### Background

The government's new rule contemplates appointments of TIJs for terms of just six months. That short horizon is insufficient for judges to develop the expertise, consistency, and judgment required for fair adjudication in immigration cases. Immigration law demands familiarity not only with statutory and regulatory provisions, but also with evolving Board of Immigration Appeals (BIA) and federal court precedent, as well as the complex evidentiary and credibility determinations central to asylum and protection claims. Speaking of the new TIJ appointments, former immigration judge Dana Leigh Marks [observed](#), "[i]mmigration law is recognized as being the second-most-complex area of law in the country, second maybe to tax law. . . [c]urrently immigration judges are trained and mentored for a full year." Six months of service

with no immigration background does not provide enough time to master this body of law or to build the continuity needed for consistent decision-making.

For comparison, permanent Immigration Judges (IJs) under [EOIR undergo](#) a comprehensive six-week initial training regimen, followed by ongoing training.

<b>Training and Tenure: Permanent IJs vs. Temporary IJs</b>		
	<i>Permanent Immigration Judges (IJs)</i>	<i>Temporary Immigration Judges (TIJs)</i>
<b>Length of Appointment</b>	Permanent civil service positions	6-month temporary appointments
<b>Selection Process</b>	Competitive civil service hiring; merit-based; designed to insulate from political pressure	Appointed directly by the Attorney General without competitive vetting
<b>Initial Training</b>	<b>6 weeks</b> of structured training: <ul style="list-style-type: none"> <li>• Week 1: home-court mentor (ongoing for 1 year)</li> <li>• Weeks 2-4: intensive classroom instruction in law, procedure, asylum, judicial skills; required law exam and investiture</li> <li>• Weeks 5-6: supervised hearings, resource development, and field court exposure</li> </ul>	No specified training requirement in the rule; at most, abbreviated preparation before being assigned to cases
<b>Ongoing Development</b>	Continuing legal education, annual multi-day refresher trainings, subject-matter expert sessions, individualized mentoring	No guaranteed continuing education or mentorship requirements
<b>Independence Protections</b>	Civil service status provides greater job security and shields from political influence	Serve entirely at the discretion of the Attorney General; appointment and removal at will
<b>Experience Building</b>	Time and continuity to develop expertise, consistency, and reputation for impartiality	Rotating short-term service prevents accumulation of expertise; risks inconsistent rulings

**Temporary Immigration Judges without expertise undermines accuracy, due process, and judicial independence.**

Due process is enshrined in our Constitution and protects all people, including noncitizens, from arbitrary government power by ensuring an opportunity to be heard in a fair trial.<sup>1</sup> This new TIJ

policy will erode access to a fair trial by creating a government system rife with political pressure and the inaccurate application of law – the very opposite of a fair trial.

Relying on short-term appointments without underlying expertise will likely result in the inaccurate application of immigration law, leading to more appeals and inefficiency. The lack of permanence further prevents TIJs from developing the expertise and continuity necessary for consistent decision-making. Between inaccurate rulings, rescheduling hearings to accommodate changing TIJs, this policy can easily exacerbate the very systematic backlogs they are intended to prevent.

The judicial independence of immigration judges is further eroded by the Administration’s reliance on TIJs. Unlike permanent immigration judges, who are selected through a competitive civil service process and who enjoy job protections designed to insulate them from political pressure, TIJs serve solely at the discretion of the Attorney General. This structural difference creates a heightened risk that TIJs may feel pressured to align their decisions with the priorities of the appointing authority rather than the rule of law. This is particularly concerning given the widespread firing of permanent immigration judges facing [reported](#) “political pressure to side with government attorneys or discount due process for immigrants.”

Finally, bypassing the competitive hiring process for permanent immigration judges undermines transparency and accountability. The civil service process exists to ensure merit-based, politically insulated hiring. A parallel track of temporary appointments sidesteps these safeguards, weakening the integrity of the courts.

**Using military attorneys as temporary immigration judges is unlawful and erodes important democratic protections between the military and civil law.**

The use of military lawyers as TIJs raises serious legal concerns under the Posse Comitatus Act (PCA), 18 U.S.C. § 1385. Enacted in 1878 in response to the use of federal troops to enforce civilian law in the South during Reconstruction, the PCA protects democratic institutions from militarization and preserves civilian supremacy by preventing the military from intruding into civilian governance. The PCA prohibits using the armed forces to execute the laws absent express constitutional or statutory authorization, Congress reinforced these restrictions through 10 U.S.C. § 275, which directs the Secretary of Defense to ensure that “[t]he direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity” is prohibited unless expressly authorized by statute. Importantly, Courts have repeatedly emphasized that the statute must be read broadly to preserve its underlying purpose.<sup>2</sup> Together, these provisions reflect a bright-line rule: absent explicit congressional authorization, members of the armed forces may not be used to execute domestic law.

Serving as an immigration judge is not a passive or advisory function but a direct execution of federal law. Immigration judges adjudicate removability, apply statutory eligibility bars, and issue binding orders of deportation. These are quintessential enforcement activities that directly

affect the rights and liberties of individuals. Inserting military personnel into this role risks violating not only the plain text of the PCA, but also its animating principle: preserving the line between military power and civilian law enforcement.

The PCA's safeguards are not mere technicalities but a cornerstone of democratic governance. Allowing military attorneys to serve as immigration judges collapses this essential separation, undermines the integrity of immigration adjudication, and raises serious questions about the legality of removal orders issued under such arrangements.

## Conclusion

The August 2025 rule on TIJs marks a dangerous shift in how DOJ staff immigration courts and undermines due process. By expanding eligibility to any licensed attorney and opening the door to active-duty military personnel, DOJ risks eroding the independence, fairness, and civilian character of these proceedings while offering only a superficial response to systemic backlogs. It functions as a band-aid that papers over systemic deficiencies such as chronic underfunding, too few permanent judges, and inadequate staff support. Genuine reform requires investment in civilian judges, personnel, and modern case-management systems.

Congress has the opportunity to invest in permanent, qualified, and independent immigration judges to protect the integrity of our civilian immigration courts and rule of law by preventing the use of both unqualified and military temporary immigration judges.

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<sup>1</sup> See Erica Bryant, "What Does "Due Process" Mean for Immigrants and Why Is It Important?," *Vera*, Jun 4, 2025, <https://www.vera.org/news/what-does-due-process-mean-for-immigrants-and-why-is-it-important>; see also *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'")

<sup>2</sup> See *United States v. Red Feather*, 392 F. Supp. 916, 922–23 (D.S.D. 1975) (holding that direct participation of the military in law enforcement activities falls within the PCA's prohibition).