

## DOJ Says Job Protections For ALJs Are Unconstitutional

By Hailey Konnath

*Law360 (February 21, 2025, 12:29 AM EST)* -- The U.S. Department of Justice announced Thursday that it no longer backs long-standing job protections for administrative law judges, saying it has determined that the "multiple layers of removal restrictions" shielding ALJs are unconstitutional because they violate the separation of powers doctrine.

"Unelected and constitutionally unaccountable ALJs have exercised immense power for far too long," the Justice Department said in a statement. "In accordance with [U.S.] Supreme Court precedent, the department is restoring constitutional accountability so that executive branch officials answer to the president and to the people."

Acting Solicitor General Sarah M. Harris explained the DOJ's determination in a letter to Sen. Chuck Grassley, R-Iowa, saying that two statutes governing the removal of ALJs "violate Article II by restricting the president's ability to remove principal executive officers, who are in turn restricted in their ability to remove inferior executive officers."

In a separate letter filed in a case before the Third Circuit, Justice Department lawyers told the appellate court that the government "will no longer defend" removal restrictions for ALJs in litigation. That case originated in the Federal Aviation Administration and centers on the U.S. Department of Transportation and FAA's adjudicatory scheme.

Administrative law judges adjudicate cases within dozens of federal agencies. Aside from the FAA, they work for the National Labor Relations Board, U.S. Securities and Exchange Commission, U.S. Environmental Protection Agency, Federal Communications Commission, National Transportation Safety Board and U.S. Patent and Trademark Office, among others.

The majority of ALJs — more than 1,000 — are employed by the Social Security Administration. The SSA's judiciary is the largest adjudicative body in the western world, according to the Association of Administrative Law Judges, the union representing those ALJs.

Under federal law, an agency can remove an ALJ "only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the board." The law also states that a member of that board "may be removed by the president only for inefficiency, neglect of duty or malfeasance in office."

In Thursday's letter, Harris pointed to the U.S. Supreme Court's 2010 decision in *Free Enterprise Fund v.*

Public Company Accounting Oversight Board. In that case, the justices held that a two-tiered removal protection for PCAOB officers was unconstitutional and "contrary to Article II's vesting of the executive power in the president," Harris said.

The statutes cited by Harris — 5 U.S.C. 7521 and 5 U.S.C. 1202 — were first enacted in 1978 and last amended in 1989. The ALJ job function was created by the Administrative Procedure Act back in 1946.

The Association of Administrative Law Judges on Friday said the DOJ was threatening "the independence of ALJs to render decisions without fear of removal or retaliation." The policy shift isn't supported by long-established precedent, statutes or Supreme Court decisions, the union said in a statement.

Judge Som Ramrup, who serves as the president of the AALJ, said ALJs "carry out the law and should be free from political pressures."

"They are not at-will employees," Judge Ramrup said in the statement. "The DOJ can say that removal protections designed to shield ALJs are unconstitutional, but that is not supported by law."

The union said it appears that the DOJ's stance is intended to pressure ALJs who preside over enforcement and regulatory matters at agencies like the NLRB and SEC.

Ramrup added, "Make no mistake, the AALJ will do everything legally possible to make sure that Social Security hearings remain fair and impartial, and that Americans receive the due process to which they are entitled."

Daniel W. Wolff, a partner at Crowell & Moring LLP, told Law360 on Thursday that the DOJ's letter "is consistent with the position that this administration is staking out that all officers of the United States are answerable directly to the president."

"To that end, the administration will not defend contrary positions," Wolff said. "To the extent there are terminations and follow-on lawsuits challenging those terminations for overstepping statutory authority, the courts will presumably resolve these issues."

The National Association of Administrative Law Judiciary, a professional association centered on administrative adjudication within the executive branch, and the American Bar Association's National Conference of the Administrative Law Judiciary didn't immediately respond to requests for comment late Thursday.

The Justice Department's policy shift comes in the wake of more recent court decisions limiting ALJ powers. Last summer, the Supreme Court ruled 6-3 in *U.S. Securities and Exchange Commission v. Jarkesy* that the SEC's use of administrative law judges violates the Seventh Amendment when imposing civil penalties for fraud.

And in December, a Washington, D.C., federal judge sided with a Massachusetts hospital in its challenge to National Labor Relations Board judges' job protections, saying the board's judges must be removable at will, although he stopped short of holding that their protections are a basis for blocking cases they're currently hearing.

Earlier this week, President Donald Trump issued an executive order that aims to give the White House more authority over regulatory agencies. Notably, he also recently fired National Labor Relations Board

member Gwynne Wilcox, who claims her removal violates an National Labor Relations Act provision forbidding members' removal for reasons other than wrongdoing or neglect of duty.

--Additional reporting by Tim Ryan, Braden Campbell and Jessica Corso. Editing by Jay Jackson Jr.

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