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DOJ hiring changes may help Trump's plan to curb immigration

Newly released documents show shortened hiring timelines and suggest preference for judges with records of rulings against immigrants



Immigration reduction has been a key policy priority for the Trump administration. (Jinitzail Hernández/CQ Roll Call file photo)

By **Tanvi Misra**
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New documents on hiring changes made by the Justice Department to an influential board that oversees appeals to immigration court decisions reveal additional ways the Trump administration may be achieving its goal of reducing immigration.

They also highlight additional fraying of the firewall

between the Justice Department and the neutral arbiters of the immigration court system under its purview.

In October, CQ Roll Call reported on documents showing the Justice Department had [tweaked the hiring process](#) to fill six new vacancies on the Board of Immigration Appeals, an administrative body that reviews the decision of immigration judges and sets long-lasting precedent. The spots were filled by immigration judges with records of high asylum denial rates, many with a history of formal complaints.

But new Justice Department [memos](#) obtained through a Freedom of Information Act lawsuit filed in March by the American Immigration Council and the American Immigration Lawyers Association, and shared with CQ Roll Call, further illuminate the rule changes that enabled those and more recent hires. The latest three, sworn in Friday, include an immigration judge who denied over 96 percent of the asylum requests before him and had a history of formal complaints about “bias and prejudice.”

The hiring plan documents show shortened hiring timelines and suggest preference given to judges with records of rulings against immigrants. The documents also demonstrate the influence held over the board by

the political leadership of the Executive Office for Immigration Review, the Justice Department agency that oversees the nation's immigration court system, particularly its director, James McHenry.

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“The [hiring] processes previously in place were cumbersome and not efficient but what we’re seeing with this hiring plan is that they’ve really eviscerated any protections that were put in place ... to create a flexible process to fit their political priorities,” said Laura Lynch, senior policy counsel at AILA. “It’s very unclear and opaque and provides the leeway to manipulate the process.”

An EOIR official, who would only comment if identified as an agency spokeswoman, said its current process is “open, competitive, merit-based.”

“During the most recent hiring cycle, every interview panelist was a career (i.e. not political) employee, which would not have been possible under the

previous procedures,” said the spokeswoman after CQ Roll Call reached out to EOIR for comment.

“Individuals who assert that such changes make the hiring process less neutral are either ignorant or mendacious.”

New roles

Under the current administration, the Justice Department has rapidly expanded the board. In 2018, it went from 17 members to 21. On March 31, the department announced a new rule, effective the next day, expanding the board to 23 members.

McHenry first advertised for new positions in fall 2018. But instead of referring to them as “board members,” as they had been historically described, he called them “appellate judges,” a reflection of other changes to come. Instead of working out of the board’s office in Falls Church, Va., appellate judges could work from any immigration court in the country.

They also could review cases at both the trial and the appellate level — creating potential conflicts of

interest.

EOIR said its office first proposed that designation in 2000.

“Elevating trial-level judges to appellate-level courts is common in every judicial system in the United States,” the agency spokeswoman said.

True, said Ashley Tabaddor, who heads the union, the National Association of Immigration Judges. But she noted judges in an independent judiciary don’t hear cases at the trial and appellate level at the same time.

“They are taking these concepts and they're mashing them up together to essentially walk away from the traditional court model,” she said, adding that she believes conflating the roles could be a way to dilute union membership.

Tabaddor and others are currently fighting the Justice Department over its move in January to decertify the judges' union.

Faster hiring process

In 2008, a DOJ Inspector General investigation found widespread political hiring at the board. As a result, to curb future practices, the department implemented a multi-layered process that entailed vetting by both political appointees and career professionals.

The current hiring process appears to chip away at the role career employees play in that process, and instead amplifies that of the EOIR director and other political appointees, according to Lynch and some other experts who reviewed the changes.

McHenry refers several times in one memo that he seeks to streamline the hiring process and make it more efficient. For instance, new openings on the board are now public for only 14 days, as opposed to the previous 30 days, to “begin the application review process more quickly,” McHenry writes in the memo.

In another step, current board members have to submit their evaluations of job candidates within three days, as opposed to a week. McHenry notes other tighter deadlines for other parts of the applicant screening process.

The changes raise concerns by immigration judges, lawyers and court observers about political appointees rushing preferred candidates, including those with unresolved complaints in their records, onto the board.

“Looks like another coverup for 'expedited,' predetermined, ideologically-based, 'insider' hiring,” Paul Schmidt, a retired immigration judge who headed the Board of Immigration Appeals under President Bill Clinton, told CQ Roll Call via email.

Schmidt, who tracks every board hire and firing on a well-known immigration blog, described the current hiring process as “a fraud and a joke — but not so funny when we consider the human lives at stake.”

According to a former longtime member of the appeals board who served under McHenry, EOIR's director has manipulated even the newly laid out hiring process. “Everyone knows that he was changing the process along the way to ensure he got the candidates he pre-selected,” said the former board member, who spoke to CQ Roll Call on the condition

of anonymity because of fear of agency retribution.

EOIR leaders did not respond to questions posed to agency leaders specifically regarding this allegation.

Andrew Arthur, a former immigration judge and current resident fellow at the immigration restrictionist organization, Center for Immigration Studies, said the hiring process has always given DOJ appointees a ton of leeway. He also said that it desperately needed to be quickened — and had been opaque before the Trump administration implemented new rules.

Arthur said he applied for an open board member position at the tail end of the Obama administration but was told in February 2017 that, while he qualified, he wasn't selected. "I have literally no idea what the process was," he said.

The new waves of hiring have happened against the backdrop of wider changes. In fall 2019, McHenry, a bureaucrat, issued a rule delegating himself the authority to adjudicate appeals cases not completed by

the board members “within a certain amount of time.”
Soon after, he issued strict deadlines for adjudication of such cases.

According to Tabbador, the hiring plan underscores the need to separate the immigration court and appellate body from the Justice Department.

"What is quite clear is that the vision of the agency for the court is basically 180 degrees from what it has been in ages," she said about the hiring plan. "They are trying to undo 30 years of movement towards an independent court."

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