

May 19, 2021

The Honorable Merrick B. Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable Lisa O. Monaco
Deputy Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

RE: The U.S. Department of Justice Must Review EOIR Personnel and Install New Leadership

To Attorney General Garland and Deputy Attorney General Monaco:

We, the undersigned immigration, civil rights, human rights, and democracy protection organizations, are deeply concerned that politically motivated personnel installed under the Trump administration remain in key leadership positions at the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR). The prior administration appointed highly problematic personnel in positions of power throughout the EOIR, from Immigration Judges to the Board of Immigration Appeals (BIA) members to EOIR headquarters staff. After numerous allegations of politicized hiring and mismanagement of the immigration courts, the U.S. Government Accountability Office (GAO) has launched an investigation into EOIR.ⁱ The DOJ plays a critical role in the oversight and management of the immigration court system and we urge you to conduct a review of all EOIR personnel decisions made by the previous administration, immediately install new leadership to all key posts, and diversify the immigration judge corps.

DOJ and EOIR must overhaul the agency's culture

The prior administration turned the immigration courts into a conveyor belt for deportation, systematically hiring personnel to carry out President Trump's anti-immigrant agenda and introducing new hiring, training, and courtroom policies.ⁱⁱ Recent reporting has also exposed widespread sexual harassment and sexism within the agency.ⁱⁱⁱ Following this investigation, the Director of EOIR was transferred to another division but DOJ and EOIR have yet to provide any plans to address the rampant misconduct.^{iv} Critical and urgent personnel changes are needed to rehabilitate the radically transformed immigration court system that continues to cause irreparable harm and suffering for immigrants and their families.

EOIR Headquarters

We are deeply concerned that the Trump administration embedded multiple political appointees into career government leadership positions at EOIR headquarters. As Senator Durbin outlined in his recent letter, "Any such conversions to civil positions at EOIR deserve substantial scrutiny given the Trump Administration's pernicious attempts to implement and enforce an ideological agenda by politicizing the immigration court system."^v Below are examples of Trump administration political appointees that burrowed into career positions in just the last year.

- In May of 2020, David Wetmore was hired to be the Chief Appellate Immigration Judge.^{vi} Prior to this position, he was a political appointee for the Trump Administration, working as the Associate Deputy Attorney General in the Office of the Deputy Attorney General and, in 2017-2018, as an immigration advisor to the White House Domestic Policy Counsel.^{vii} While in these positions, he worked closely with Stephen Miller, the well-known architect of President Trump's anti-immigrant policies.^{viii} David Wetmore did not have prior experience as a judge or a manager, yet he was installed in a position that serves as the general manager of all aspects of the BIA's operation, both legal and operational.

- In June of 2020, Tracy Short was hired to be the Chief Immigration Judge.^{ix} Prior to this position, Tracy Short was a political appointee for the Trump Administration working as the Principal Legal Advisor for the U.S. Immigration and Customs Enforcement (ICE).^x While in this role, Tracy Short issued a memo on immigration enforcement, restricting ICE trial attorneys' ability to exercise prosecutorial discretion, contributing to an immigration court backlog of over 1.3 million cases.^{xi} Tracy Short did not have prior experience as a judge yet the position of Chief Immigration Judge is responsible for running all of the immigration courts and managing more than 500 immigration judges.^{xii}

Appellate Judges, BIA Members, and Immigration Judges

Under the leadership of Trump Administration Attorneys General, the DOJ faced allegations of politicized hiring based on candidates perceived political or ideological views. On April 11, 2017, then-Attorney General Sessions announced that he “implemented a new, streamlined hiring plan” to reduce the time it takes to hire immigration judges.^{xiii} However, the new plan amended the hiring process to provide political appointees with greater influence in the final selection of IJs. In addition to procedural changes, DOJ also made substantive changes to IJ hiring requirements, “over-emphasizing litigation experience to the exclusion of other relevant immigration law experience.” Both Senate and House Democrats requested an investigation with the DOJ Inspector General to examine allegations that DOJ had targeted candidates and withdrew or delayed offers for IJ and BIA positions based on their perceived political or ideological views.^{xiv} Moreover, on March 8, 2019, then-Attorney General Barr approved a redesigned hiring plan for both immigration judges and the BIA which allowed EOIR to pack the courts with judges biased towards enforcement and/or with histories of poor judicial conduct.^{xv}

The effects of such bias are evident in the makeup of the BIA and the immigration courts.

- **BIA.** Under the Trump administration, EOIR rapidly expanded the BIA from 17 to 23 members and appointed several immigration trial judges with troubling records of bias and/or abusive behavior to serve as appellate judges.^{xvi} EOIR promoted primarily former immigration judges from the harshest immigration court jurisdictions with the lowest asylum grant rates in the nation.^{xvii} According to a Reuters analysis, those appointments had ordered immigrants deported 87% of the time, compared to 58% for all other judges over the last 20 years.^{xviii}
- **Immigration Judges.** The new hiring policies allowed the Trump administration to hire two-thirds of the more than 500 sitting immigration judges and an investigation by Reuters revealed that “judges hired under Trump ordered immigrants deported in 69% of cases, compared to 58% for judges hired as far back as the administration of President Ronald Reagan.”^{xix} In addition to hiring an excess of former prosecutors, EOIR appointed a former employee of the Federation for American Immigration Reform (FAIR) - an organization designated as a hate group by the Southern Poverty Law Center (SPLC) - to be an immigration judge.^{xx}

New EOIR Hires

Despite the Biden-Harris administration's stated commitment to restoring fairness and balance to the immigration courts, the DOJ continues to rely on Trump-era policies and hiring practices that bias the immigration court system towards prosecution.^{xxi} We are deeply concerned that instead of taking immediate steps to diversify the bench, the DOJ just appointed 17 new immigration judges and all but 1 of these judges come from enforcement-oriented backgrounds.^{xxii} In order to begin to restore credibility to the immigration courts, DOJ and EOIR must take immediate steps to hire diverse judges who have worked for non-profits

or in private practice. This recommendation is consistent with a 2017 EOIR-commissioned study that advised DOJ to broaden the hiring pools and outreach programs to increase diversity of experience among judges.^{xxvii}

Sincerely,

Advancing Justice - Asian Law Caucus
Alianza Nacional de Campesinas
American Constitution Society
American Immigration Lawyers Association
American-Arab Anti-Discrimination Committee (ADC)
America's Voice
Arab American Association of New York
Bend the Arc: Jewish Action - Prince George's County, MD
Bridges Faith Initiative
CAIR-SV/CC
Capital Area Immigrants' Rights Coalition
Catholic Charities of the Archdiocese of Washington
Catholic Charities, NY // Immigrant and Refugee Services
Catholic Legal Immigration Network, Inc.
Catholic Legal Services, Archdiocese of Miami
Catholic Migration Services
Center for Gender & Refugee Studies
Chhaya CDC
Cleveland Jobs with Justice
Farmworker Association of Florida
Free the People Roc
Government Accountability Project
Government Information Watch
Human Rights First
Human Rights Initiative of North Texas
Immigrant ARC
Immigrant Legal Advocacy Project
Immigrant Legal Defense
Immigrant Legal Resource Center (ILRC)
Immigration Center for Women and Children
Immigration Hub
Inland Coalition for Immigrant Justice
Interfaith Community for Detained Immigrants
International Refugee Assistance Project (IRAP)
Jewish Activists for Immigration Justice of Western MA
La Resistencia
League of Women Voters of U.S.
Legal Aid Justice Center
Louisiana Advocates for Immigrants in Detention
Lutheran Social Services of New York
Make the Road New York
Maryland Legislative Coalition
Memphis United Methodist Immigrant Relief
National Equality Action Team (NEAT)

National Immigrant Justice Center
National Immigration Law Center
National Immigration Project (NIP-NLG)
National Network for Immigrant & Refugee Rights
Neighbors Link - Community Law Practice
NETWORK Lobby for Social Justice
New Mexico Immigrant Law Center
New Sanctuary Coalition's
Northwest Immigrant Rights Project
People's Parity Project
Public Counsel
RAICES
Refugees International
Revolving Door Project
Rocky Mountain Immigrant Advocacy Network
Safe Horizon
Sikh American Legal Defense and Education Fund (SALDEF)
South Asian Americans Leading Together (SAALT)
Takoma Park Mobilization, Equal Justice Committee
TASSC (Torture Abolition & Survivors' Support Coalition) International
The Legal Aid Society (New York)
UndocuBlack Network
Unitarian Universalist Service Committee
UnLocal
Women Watch Afrika
Young Center for Immigrant Children's Rights

CC:

Jean King, Acting Director of the Executive Office of Immigration Review
Margy O'Herron, Senior Counsel, Office of the Deputy Attorney General, Department of Justice
Susan Rice, Assistant to the President for Domestic Policy
Tyler Moran, Special Assistant to the President for Immigration, Domestic Policy Council
Esther Olavarria, Deputy Director of the Domestic Policy Council for Immigration

ⁱ Senators Announce GAO Investigation of Trump Politicization of Immigration Courts as COVID-19 Crisis Rages, (Sept. 14, 2020), <https://www.whitehouse.senate.gov/news/release/senators-announce-gao-investigation-of-trump-politicization-of-immigration-courts-as-covid-19-crisis-rages>.

ⁱⁱ AILA Policy Brief: Why President Biden Needs to Make Immediate Changes to Rehabilitate the Immigration Courts, (Feb. 12, 2021), <https://www.aila.org/advo-media/aila-policy-briefs/policy-brief-why-president-biden-needs-to-make>.

ⁱⁱⁱ Tal Kopan, Bad Conduct, Leering 'Jokes' — Immigration Judges Stay on Bench, *San Francisco Chronicle* (Jan. 22, 2021), <https://www.sfchronicle.com/politics/article/Sexually-inappropriate-behavior-runs-rife-in-15889003.php>.

^{iv} Tal Kopan, Immigration courts director transferred – oversaw judges on bench despite misconduct, *San Francisco Chronicle*, (Jan. 27, 2021), <https://www.sfchronicle.com/politics/article/Immigration-courts-director-transferred-15902142.php>.

^v Letter from Senator Durbin to Attorney General Garland, (Apr. 20, 2021), <https://www.judiciary.senate.gov/imo/media/doc/Letter%20to%20DOJ%20-%20RFI%20Trump%20Appointees%20EOIR.pdf>.

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- ^{vi} Executive Office for Immigration Review Announces New Board of Immigration Appeals Chairman, (May 29, 2020), <https://www.justice.gov/eoir/page/file/1281596/download>.
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- ^{viii} Tanvi Misra, *Roll Call*, Tweet on July 21, 2020, <https://twitter.com/Tanvim/status/1285738577087934465>.
- ^{ix} EOIR Announces New Chief Immigration Judge, (Jul. 2, 2020), <https://www.justice.gov/eoir/page/file/1291891/download>.
- ^x Hamed Aleaziz, A Top Immigration Court Official Called For Impartiality In A Memo He Sent As He Resigned, *Buzzfeed News*, (Jul. 3, 2020), <https://www.buzzfeednews.com/article/hamedaleaziz/immigration-court-official-called-impartiality-memo>.
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- ^{xvi} EOIR Interim Final Rule, Expanding the Size of the Board of Immigration Appeals, 85 Fed. Reg. 18105 (Apr. 1, 2020), <https://www.federalregister.gov/documents/2020/04/01/2020-06846/expanding-the-size-of-the-board-of-immigration-appeals>; EOIR Interim Final Rule, Expanding the Size of the Board of Immigration Appeals, 83 Fed. Reg. 8321, (Feb. 27, 2018), <https://www.federalregister.gov/documents/2018/02/27/2018-03980/expanding-the-size-of-the-board-of-immigration-appeals>.
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- ^{xviii} Reade Levinson, Kristina Cooke, Mica Rosenberg, Special Report: How Trump administration left indelible mark on U.S. immigration courts, *Reuters*, (Mar. 8, 2021), <https://www.reuters.com/article/us-usa-immigration-trump-court-special-r/special-report-how-trump-administration-left-indelible-mark-on-u-s-immigration-courts-idUSKBN2B0179>.
- ^{xix} *Id.*
- ^{xx} Colin Kalmbacher, Barr Appoints Former Research Director of SPLC-Alleged ‘Hate Group’ as Immigration Judge, *Law & Crime*, (Jul. 18, 2020), <https://lawandcrime.com/immigration/barr-appoints-former-research-director-of-splc-alleged-hate-group-as-immigration-judge/>.
- ^{xxi} The White House has issued several Executive Orders and proposed legislation, the U.S. Citizenship Act of 2021, conveying the Administration’s transformative vision and vision and commitment to building a 21st century immigration system that welcomes immigrants and refugees and keeps families together.
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