

Congress of the United States
Washington, DC 20515

April 17, 2018

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Mr. Attorney General:

We are writing to express our grave concern regarding allegations we have received from whistleblowers indicating that the Department of Justice may be using ideological and political considerations to improperly—and illegally—block the hiring of immigration judges and members of the Board of Immigration Appeals (BIA).

We have confirmed that the Department has delayed multiple offers for these positions for unusually long amounts of time and, in one case, withdrew an offer with an explanation that raises suspicions about the actual motive for the withdrawal.

If these allegations are true, they could violate federal law and Departmental policy, just as they did a decade ago when the Inspector General and the Office of Professional Responsibility concluded that the George W. Bush Administration engaged in similar illegal political discrimination when hiring immigration judges and BIA officials.

These allegations are extremely troubling not only because they may violate federal law and repeat the mistakes of the past, but also because they further aggravate the critical need for more immigration judges and BIA officials to address the massive backlogs in immigration hearings across the country.

We are writing to request information and documents to determine whether the immigration court hiring process once again has become illegally politicized.

Allegations of Politicization in Immigration Judge and BIA Hiring

Our offices recently received information alleging that the Department of Justice has targeted multiple candidates for immigration judge or BIA positions based on their perceived political or ideological views. These candidates reportedly have had their offers suspended or withdrawn due to these improper considerations.

The information we received also indicates that there may be internal communications within the Executive Office for Immigration Review (EOIR) and elsewhere within the

Department discussing the perceived immigration policy views of these individuals not aligning with those of the Trump Administration. We also understand that career Department employees may have counseled against taking action against these individuals because it could be considered illegal discrimination based on political viewpoint, but that advice may have been ignored.

Our staff has confirmed lengthy delays in the immigration judge hiring process in multiple instances, including offers that still have not been finalized several months after the completion of a candidate's background investigation.

In one instance, EOIR reportedly withdrew a BIA offer after it had been pending for more than a year. Less than a week later, EOIR published a final rule increasing the size of the BIA from 17 to 21 board members. The notice explained: "recognizing the challenges the Board faces in light of its current and anticipated increased caseload, the Department has determined that four additional members should be added to the Board."¹ In light of the Department's stated need for additional BIA members, the decision to withdraw a BIA offer a week earlier could not have been based on a lack of need for well-qualified BIA members.

Prior Illegal Practices in Immigration Judge and BIA Hiring

In 2008, an investigation conducted jointly by the Inspector General and the Office of Professional Responsibility found that Monica Goodling and other aides to then-Attorney General Alberto Gonzales "considered political or ideological affiliations" when evaluating immigration judge candidates and candidates for the BIA, both career positions.²

The report found that the "evidence showed that the most systematic use of political or ideological affiliations in screening candidates for career positions occurred in the selection of IJs, who work in the Department's Executive Office for Immigration Review (EOIR)."³

The report stated unequivocally that "both Department policy and federal law prohibit discrimination in hiring for career positions on the basis of political affiliations."⁴

Following the report's release, then-Attorney General Michael B. Mukasey stated that he was "disturbed" by the report's findings and vowed to implement "institutional change" at the Department.⁵

¹ Executive Office for Immigration Review, Department of Justice, *Expanding the Size of the Board of Immigration Appeals*, 69 Fed. Reg. 8321 (Feb. 27, 2018) (final rule).

² Department of Justice, Office of Professional Responsibility and Office of the Inspector General, *An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General* (July 28, 2008) (online at www.justice.gov/sites/default/files/opr/legacy/2008/07/28/goodling072408.pdf).

³ *Id.*

⁴ *Id.*; 5 U.S.C. § 2301(b)(2); 28 C.R. § 42.1.

⁵ Department of Justice, *Statement by Attorney General Michael B. Mukasey on Report Issued by the Office*

Request for Information and Documents

These allegations come at a time when the entire immigration system is being wielded as a political tool to press the Trump Administration's political agenda, including through the suspension of the Legal Orientation Program that provides crucial information to immigrants about their legal and constitutional rights, the imposition of case clearing quotas on immigration judges, and your decision to personally perform multiple certifications of key immigration court decisions.⁶

For the reasons set forth above, we request that you produce, by May 1, 2018, the following documents and information:

1. a list of candidates for immigration judge or BIA positions whose applications have been pending for more than one year since they were given an offer, including the candidate's name, current or most recent employment, and whether the candidate has already passed a background check;
2. a list of all individuals who have been appointed as immigration judges or appointed to the BIA since January 20, 2017, including the candidate's name, the date of the candidate's temporary appointment, the date of the candidate's permanent appointment, and the date of the candidate's training for the position; and
3. for anyone who has passed a background check for an immigration judge or BIA position but has not been given an appointment or had his or her offer withdrawn, all communications regarding the status of that individual's application.

We also request that the Department provide a briefing to our staff, no later than May 1, 2018, on the EOIR hiring process and the issues detailed in this letter. Thank you for your prompt attention to this matter.

of Professional Responsibility and Inspector General on the Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General (Jul. 28 2008) (online at www.justice.gov/archive/opa/pr/2008/July/08-opa-658.html).

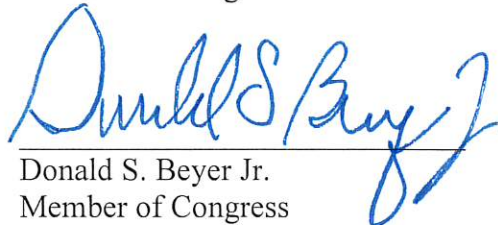
⁶ See, e.g., *Justice Department Will Pause a Legal Advice Program for Detained Immigrants*, NPR (Apr. 21, 2018) (online at www.npr.org/sections/thetwo-way/2018/04/12/601642556/justice-department-will-pause-a-legal-advice-program-for-detained-immigrants); *Trump Administration, Seeking to Speed Deportations, to Impose Quotas on Immigration Judges*, Washington Post (Apr. 2, 2018) (online at www.washingtonpost.com/world/national-security/trump-administration-seeking-to-speed-deportations-to-impose-quotas-on-immigration-judges/2018/04/02/a282d650-36bb-11e8-b57c-9445cc4dfa5e_story.html); *ABA Urges DOJ to Continue Allowing Immigration Judges to Close Appropriate Cases*, ABA Journal (Feb. 20, 2018) (online at www.abajournal.com/news/article/aba_urges_doj_to_continue_allowing_immigration_judges_to_close_appropriate/).

Sincerely,


Elijah E. Cummings
Member of Congress


Lloyd Doggett
Member of Congress


Joaquin Castro
Member of Congress


Donald S. Beyer Jr.
Member of Congress

cc: Mr. James R. McHenry III
Director, Executive Office for Immigration Review