

Immigration Court Hiring Politicization

Documents obtained through a Freedom of Information Act (FOIA) request show changes approved by Attorney General Sessions make immigration court hiring more susceptible to politicization

Human Rights First recently received, via a FOIA request, a copy of the [April 2017 memorandum](#) that outlines changes to the immigration judge hiring process.¹ Approved by Attorney General Jeff Sessions, these changes altered the multi-step [hiring process](#) put in place by former attorney general Alberto Gonzales in March 2007 after it was revealed that the Justice Department hired immigration judges and other staff based on political and ideological considerations.

While some of the revisions appear aimed at reducing delays in the immigration judge hiring process, which is important, others reduce the role of the immigration court's leadership. These revisions grant greater discretion and influence to Department of Justice (DOJ) political appointees in the final selection of judges.

Under the Gonzales process, after initial round interviews, the chief immigration judge and the Executive Office for Immigration Review (EOIR) director or a designee ranked the top judge candidates. These candidates were referred to a final interview panel, which had three members: the EOIR director or a designee, a career member of the Senior Executive Service (SES) designated by the deputy attorney general and a political

appointee with the SES selected by the deputy attorney general. The panel recommended a candidate for the deputy attorney general to put forward.

Under the changes authorized by Sessions, by contrast, the chief immigration judge no longer provides input. In addition, the director of the EOIR or a designee no longer ranks the candidates. This change is described in the memo as a move that “would give more discretion to the panels at the next stage.” The final panel is not required to interview all selected candidates; it can, for example, bypass those considered most qualified by the immigration court professionals who conducted earlier interviews.

The memo shows that Sessions also altered the composition of the final interview panels, giving a greater role to the political appointee. The April 2017 changes remove the EOIR director (or a designee) from the final interview panel. Instead, that panel—the one given “more discretion” in interviewing and recommending a finalist—includes only two members, a political SES employee and the assistant attorney general for administration or a designated career SES employee. The role of the political appointee is increased as the final panel has only two people, including a political appointee, rather than the prior three-person panels, which included two career professionals and a political appointee.

The changes alter a process established by former attorney general Gonzales in 2007 to insulate the immigration judge hiring process from political and ideological influence. Those changes followed the revelation that Monica Goodling and other DOJ political appointees in the Bush Administration went around immigration court

¹ Human Rights First is challenging redactions made to the memorandum in the FOIA response it received.

leadership and improperly selected immigration judges based on political and ideological considerations.

The DOJ Office of Inspector General report investigating the politicized hiring stated that the process adopted by Attorney General Gonzales “returned the responsibility for evaluating and selecting immigration judges to EOIR” and that as a result “political considerations [we]re not being used in the selection of candidates.” The Sessions memo removes the chief immigration judge from the selection and ranking of final candidates and eliminates the EOIR director or a designee from the final hiring panel.

The publicly available profiles of immigration judge hires provided by DOJ do not reveal information about their political affiliations. Review of this background information does raise concerns that DOJ is hiring immigration judges who were predominantly Department of Homeland Security (DHS) attorneys who prosecuted cases in immigration courts and on appeal. In fact, more than half of the judges selected in 2018—40 out of 78—are former DHS employees. An additional 37

percent were previously in other federal or state government positions. All in all, about 88 percent are former DHS or other government attorneys. Very few have backgrounds in public interest or private immigration law. More than one third of the recent hires do not list any prior immigration law experience in their published biographies. A review of the immigration courts commissioned by DOJ found that 41 percent of current immigration judges were previously DHS employees and almost 20 percent had worked for DOJ.

The American Bar Association, the Federal Bar Association, and other legal groups have recommended that the immigration courts be made independent of the DOJ to insulate judges from political decision-making by the attorney general, attract more qualified candidates, and increase the fairness of the courts. This common-sense step would help ensure justice.

But as long as immigration courts remain within the DOJ, the court’s professional leadership should make hiring decisions. To the greatest extent possible, this important process should be free of politics.