

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<http://oversight.house.gov>

May 16, 2018

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to request that you issue a subpoena to compel the Department of Justice to produce documents it has been withholding from Congress regarding allegations that the Department officials 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).

On April 17, 2018, I joined Reps. Lloyd Doggett, Joaquin Castro, and Don Beyer in writing a letter to Attorney General Jeff Sessions requesting documents relating to whistleblower allegations of illegal politicized hiring practices at the Department of Justice.¹

More whistleblowers have come forward since we sent this letter, and these individuals have corroborated much of the original whistleblower allegations: the Department may be improperly withholding or rescinding offers for these positions based on the perception that candidates hold political or ideological views that do not align with those of the Trump Administration. In multiple cases, the Department appears to have withdrawn offers of employment with explanations that suggest a pretext for improper political motives.

In one instance, the Executive Office for Immigration Review (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.”²

¹ Letter from Reps. Elijah E. Cummings, Lloyd Doggett, Joaquin Castro, and Donald S. Beyer Jr., to Attorney General Jeff Sessions, Department of Justice (Apr. 17, 2018) (online at cumplings.house.gov/sites/cumplings.house.gov/files/Dems%20to%20DOJ%20re.%20EOIR%20Politicization.pdf).

² 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).

These allegations are extremely troubling not only because they may violate federal law, 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.

These allegations are also disturbing because they recall politically-motivated discrimination that the Department engaged in a decade ago in the hiring of immigration judges and the firing of U.S. Attorneys.

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.³

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).” 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

Request for Subpoena

The Department has refused to respond to our request on April 17, 2018, and it has not produced any of the documents we requested. For these reasons, I request that you issue a subpoena to compel the Department of Justice to produce, by May 30, 2018, unredacted copies of the following documents:

1. documents sufficient to show all 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. documents sufficient to show all individuals who have been appointed as immigration judges or appointed to the BIA since January 20, 2017, including the

³ 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).

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

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

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.

If you choose not to issue this subpoena yourself, then I ask that you place this matter on the agenda for our next regularly scheduled business meeting so all Committee Members will have the opportunity to vote on a motion to issue this subpoena.

Thank you for your consideration of this request.

Sincerely,



Elijah E. Cummings
Ranking Member