

POLICY

DOJ 'reassigned' career members of Board of Immigration Appeals

The nine BIA members, all appointed before Trump took office, had recently rejected buyout offers from DOJ



The Justice Department oversees the Executive Office of Immigration Review. (Bill Clark/CQ Roll Call file photo)

By **Tanvi Misra**
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Career members at the Board of Immigration Appeals appointed prior to the Trump administration have been “reassigned” to new roles after they rejected [recent buyout offers](#) by the Justice Department.

The step appears to be the latest administrative move that critics say dilutes the independence of an important appeals body by filling it with new hires more willing to carry out the Trump administration’s restrictive immigration policies.

The change was announced in an internal email viewed by CQ Roll Call.

"This is to inform you that effective June 8, 2020, you will be reassigned from your current position as Board Member (Senior Level) to the Appellate Immigration Judge position," said an email that went out last week to nine career members.

The Board of Immigration Appeals, or BIA, is a 23-member body under the Executive Office of Immigration Review, the Justice Department agency overseeing the immigration court system. Three-member BIA panels review immigration court decisions and issue precedent-setting rulings that shape national immigration law.

[\[DOJ memo offered to buy out immigration board members\]](#)

The difference between "board member" and "appellate immigration judge" roles goes beyond title, extending to pay ranges and leave policy. Appellate immigration judges also hear cases at both the trial and appellate levels, creating potential conflicts of interests, critics say. Sources familiar with the agency's personnel matters, who declined to be identified for fear of retaliation, confirmed that all nine career members selected prior to the Trump administration received the email.

CQ Roll Call first reached out to EOIR for confirmation of the reassignments. Agency spokeswoman Kathryn Mattingly said via email that "board member roles and responsibilities are established by regulation and have not changed."

Asked for additional comment this week once CQ Roll Call viewed the email, Mattingly said: "Adjudicator authorities are established by law and have not changed."

The reassignment comes after DOJ offered, in an April 17 memo, "voluntary separation incentive payments" to the nine career board members, "individuals whose positions will help us strategically restructure EOIR in order to accommodate skills, technology, and labor markets."

That memo, authored by EOIR Director James McHenry, noted the window for requesting these incentives closed on May 15. None of the nine career members accepted the offer, according to the sources at EOIR.

Under the Trump administration, the BIA has expanded from 17 members to 23. In addition, a flurry of career members have departed the agency, prompting EOIR to launch successive hiring sprees to fill new openings and vacant positions.

The nine most recent hires to the board include several immigration judges who denied over 90 percent of the asylum requests before them. Some also have a history of formal complaints of bias. The new hires have come on not as "board members" but as "appellate immigration judges."

Ashley Tabaddor, who heads the immigration judges' union, the National Association of Immigration Judges, said the "appellate immigration judge position" appeared to be a conflation of the BIA and the immigration judge roles. Adding more appellate immigration judges — who might review trial- and appellate-level cases at the same time — dilutes labor protections and undermines the independence of the immigration court system as a whole, she said.

"Over and over again, they're just trying to conflate everything into one: 'They're all the same and no one should get protection from the union,'" Tabaddor said in an interview. "It's so transparent that everything that they're doing is to dismantle any semblance of a traditional court model."

EOIR has repeatedly denied that accusation.

"Many board members have viewed themselves as appellate immigration judges for years, and EOIR first proposed such a designation in 2000," the Justice Department said in a May 27 statement. "Elevating trial-level judges to appellate-level

courts is common in every judicial system in the United States.”

Government officials also have said the agency has been trying to streamline a lengthy, inefficient hiring process. Recent changes to EOIR hiring procedures “have made the selection process of board members more formalized and neutral,” the department said in its May statement.

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