

POLICY

DOJ memo offered to buy out immigration board members

The buyouts were only offered to Board of Immigration Appeals members hired before Trump took office



The Justice Department memo came from the director of the Executive Office of Immigration Review, a Justice Department agency. (Bill Clark/CQ Roll Call file photo)

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The Justice Department offered buyouts to pre-Trump administration career members on its influential immigration appeals board as part of an ongoing effort to restructure the immigration court system.

Critics view the move as an effort to push out the civil servants on the board and stack it with new hires who would align with the Trump administration's restrictive immigration agenda.

An internal memo viewed by CQ Roll Call shows that James McHenry, the director of the Executive Office of Immigration Review, offered financial incentives to longtime members of the Board of Immigration Appeals to encourage them to retire or resign. The buyouts and “voluntary separation incentive payments” were offered to “individuals whose positions will help us strategically restructure EOIR in order to accommodate skills, technology, and labor markets,” according to the April 17 memo.

EOIR is the Justice Department agency that oversees the Board of Immigration Appeals, a 23-member body that reviews appealed decisions by immigration judges and sets precedent.

According to two knowledgeable sources at EOIR who declined to be identified for fear of retaliation, the memo was sent to the nine board members appointed under previous Republican and Democratic administrations, before Trump took office. No one accepted the buyout offers, according to both sources.

CQ Roll Call reached out for comment on the memo to McHenry, EOIR and the Justice Department and received a statement Wednesday saying that “the Department does not comment on personnel matters.”

“Any insinuation that politicized hiring has become ramped up is inconsistent with the facts,” the statement said.

The memo sheds light on an ongoing debate over BIA hiring. Immigration judges, lawyers and former EOIR employees say the Trump administration has used the board to help meet its goal of reducing immigration, while government officials say they have simply streamlined a lengthy hiring process that was always subject to political judgments.

In October, CQ Roll Call reported on documents showing the Justice Department had [tweaked the hiring process](#) to fill six new vacancies on the board with immigration judges with high asylum denial rates and a track record of complaints. Additional memos that CQ Roll Call wrote about earlier this month [shed further light](#) on these rule changes that enabled fast-tracking of those and more recent hires.

The three most recent hires to the board include an immigration judge who denied 96 percent of the asylum requests before him and had a history of formal complaints about “bias and prejudice.” The vacancies were created after a flurry of career board members left the BIA.

“EOIR does not select board members based on prohibited criteria such as race or politics, and it does not discriminate against applicants based on any prohibited characteristics,” the Justice Department said in its statement. “All board members are selected through an open, competitive, merit-based process that begins with a public advertisement on the Office of Personnel Management’s (OPM) federal employment website.”

Recent changes to EOIR hiring procedures “have made the selection process of board members more formalized and neutral,” the department said.

While buyouts are typically offered to soften the blow of workforce reductions, the two sources at EOIR said the agency’s offers were made so that the BIA could be reconfigured entirely, with the positions of “board members” replaced by those of “appellate immigration judges.” The differences go 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.

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

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

The American Immigration Lawyers Association and other critics said the buyout offer is the latest example in a series of moves that have undermined the neutrality of the immigration court system. They point out that BIA is already housed under a law enforcement agency, the Justice Department, whose leadership may have a stake in the outcome of the court process.

“The administration is trying to further politicize the immigration court system by packing the appellate bench and is seeking to make room for more handpicked judges with this buyout,” Benjamin Johnson, AILA’s executive director, told CQ Roll Call.

“These latest actions reveal the severe impact of our nation’s immigration system being housed under the Attorney General and only underscore the real need to create an independent immigration court,” he said.

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