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Playing Politics at the Bench: A White Paper on the Justice Department's Investigation into the Hiring Practices of Immigration Judges

Penn State Law Immigrants' Rights Clinic

National Immigration Project of the National Lawyers Guild

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PLAYING POLITICS

at the **BENCH:** A White Paper on
the Justice Department's Investigation
into the Hiring Practices
of Immigration Judges



Prepared by Penn State Law's Center for Immigrants' Rights
for the National Immigration Project of the National Lawyers Guild

national
IMMIGRATION
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I. Preface

On behalf of the National Lawyers Guild National Immigration Project (NLGNIP), the Center for Immigrants' Rights (Center) at the Pennsylvania State University's Dickinson School of Law prepared a white paper facilitated by a government report on the politicized hiring of immigration judges. This white paper is based findings by the Department of Justice's Office of Professional Responsibility and Office of the Inspector General in their investigation of the illegal hiring of immigration judges during a period in the George W. Bush Administration. The recommendations presented here are a product of this analysis and extensive research on data produced by individuals and organizations committed to due process and justice in immigration law.

The National Lawyers Guild National Immigration Project (NLGNIP) is a national organization comprised of lawyers, legal workers, and law students working to defend and expand the rights of all immigrants in the United States. The National Immigration Project is particularly committed to working on behalf of battered women, people with HIV/AIDS, children, and noncitizen criminal defendants. The NLGNIP provides legal assistance as well as other technical support to immigrant communities, legal practitioners, and advocates who work to advance the rights of noncitizens. The organization seeks to promote justice and equality of treatment in all areas of immigration law, the criminal justice system, and social policies related to immigration.

The Center for Immigrants' Rights is an in-house clinic at the Pennsylvania State University Dickinson School of Law whose mission is to represent immigrants' interests through legal excellence, advocacy, education, and collaboration with key stakeholders and the community. The Center teaches law students the skills necessary to be effective immigration

advocates and attorneys, primarily through organizational representation, where students work on innovative advocacy and policy projects relating to U.S. immigration policy and immigrants' rights. Students build professional relationships with government and nongovernmental policymakers, academics, and individuals. Students acquire essential practical and substantive knowledge of immigration lawyering and advocacy through project specific work, weekly classes, readings reflecting papers, and "case rounds."

This paper was authored by Alham Usman and Christina Heischmidt, law students in the Center for Immigrants' Rights at the Pennsylvania State University Dickinson School of Law, under the supervision of Professor Shoba Sivaprasad Wadhia, Director of the Center for Immigrants' Rights at the Pennsylvania State University Dickinson School of Law. Feedback and edits were also provided by Paromita Shah, Associate Director of the National Immigration Project of the National Lawyer's Guild; and Dan Kesselbrenner, Executive Director of the National Immigration Project of the National Lawyer's Guild. Penn State law student Nicole Comstock assisted with citation checks. The Center and NLGNIP thank Stephen H. Legomsky, Lory D. Rosenberg, and members of the National Immigration Project for their contributions and insights.

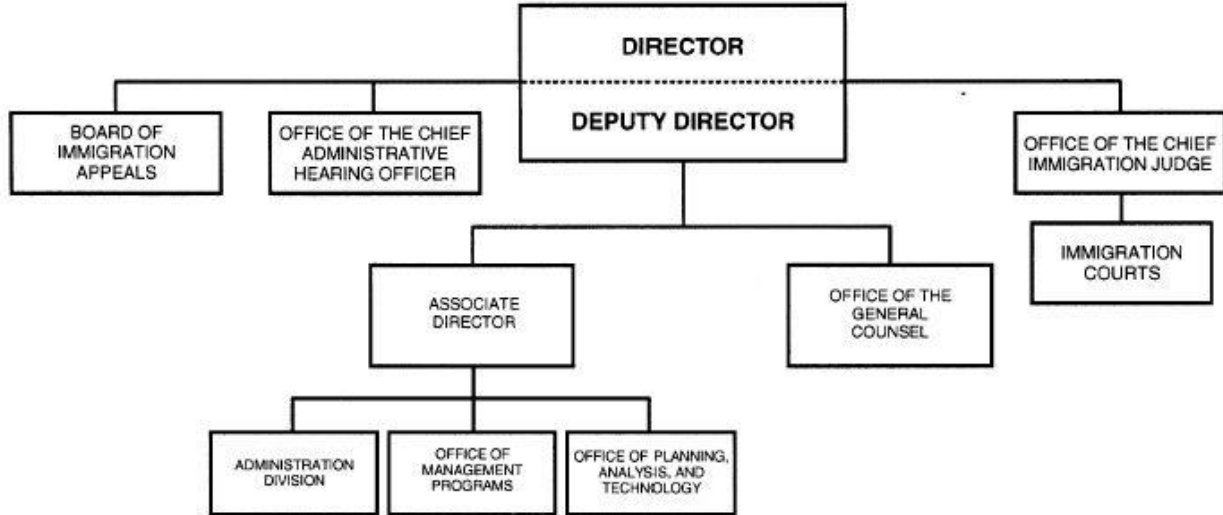
II. Table of Abbreviations

AAG Assistant Attorney General
AG Attorney General
ACIJ Assistant Chief Immigration Judge
ACLU American Civil Liberties Union
AILA American Immigration Lawyers Association
AUSA Assistant United States Attorney
BIA Board of Immigration Appeals
CD Civil Division
CIJ Chief Immigration Judge
DAG Deputy Attorney General
DOJ Department of Justice
EOIR Executive Office of Immigration Review
EOUSA Executive Office United States Attorney
GAO Government Accountability Office
ICE U.S. Immigration and Customs Enforcement
IJ Immigration Judge
INA Immigration & Nationality Act
INS Immigration & Naturalization Service
JMD Justice Management Division
NLGNIP National Lawyers Guild National Immigration Project
OAG Office of the Attorney General
OARM Office of Attorney Recruitment and Management
OCIJ Office of the Chief Immigration Judge
ODAG Office of the Deputy Attorney General
OIG Office of the Inspector General
OLC Office of Legal Counsel
OLP Office of Legal Policy
OPM Office of Personnel Management
OPR Office of Professional Responsibility
PPO Presidential Personnel Office
SES Senior Executive Service

USAO United States Attorney's Office

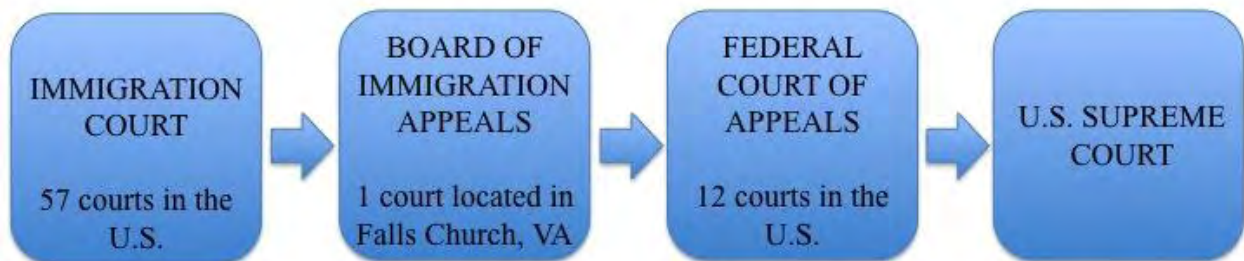
III. Quick Reference to the Immigration Court System

EXECUTIVE OFFICE OF IMMIGRATION REVIEW (EOIR)



www.usdoj.gov/jmd/mps/manual/eoir.htm

THE IMMIGRATION CASE PROCESS



A. Brief Explanation of the U.S. Immigration Courts

IMMIGRATION COURT

In the United States, there are fifty-seven immigration courts. Generally, a noncitizen or the government has the right to appeal an immigration judge's (IJ) decision to the Board of Immigration Appeals (BIA). In limited circumstances, the noncitizen or the government may file a motion to "reopen" and/or "reconsider" a case with the IJ. Government attorneys are not appointed to noncitizens in immigration cases.

THE BOARD OF IMMIGRATION APPEALS

The BIA is not a federal court, but is a part of the EOIR where immigration court appeals are adjudicated. Generally, if the BIA determines a case was wrongly decided, it remands the case to the immigration court. In limited circumstances, the government or a noncitizen may file a motion to reopen and/or a motion to reconsider with the BIA. BIA decisions are binding on all Department of Homeland Security (DHS) officers and immigration judges unless modified or overruled by the Attorney General or a Federal court.¹ The Attorney General may however "certify" a BIA decision to him/herself and thereafter issue a new independent decision.² BIA decisions may be appealed to one of the twelve federal courts of appeals.

THE FEDERAL COURTS OF APPEALS

The federal appeals courts review decisions by the BIA. In recent years, Congress has restricted judicial review for certain noncitizens ordered removed for criminal reasons and denials of discretionary relief, among other decisions. Generally, federal appeals courts can only decide cases based on the administrative record in the immigration court and the BIA. If a federal appeals court reverses a decision of the Board of Immigration Appeals, the case can be remanded to the BIA. The BIA can then remand the case to the immigration court.

THE UNITED STATES SUPREME COURT

If the federal appeals court denies a case, appellants may apply for certiorari to the United States Supreme Court. Such cases are rarely granted.

¹ See BIA Decisions, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=f2c29c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextchannel=f2c29c7755cb9010VgnVCM10000045f3d6a1RCRD> (last visited May 7, 2009).

² For example, in a decision titled *Matter of J-S-*, 24 I. & N. Dec. 520 (AG 2008), the Attorney General held that spouses of individuals subjected to forced sterilization or abortion are not per se entitled to refugee status. Notably, this decision, which the Attorney General "certified" to himself, overrules two precedential cases, *Matter of C-Y-Z-*, 21 I&N Dec. 915 (BIA 1997) and *Matter of S-L-L-*, 24 I&N Dec. 1 (BIA 2006).

B. Brief History of the Executive Office of Immigration Review

The EOIR was created within the Department of Justice (DOJ) on January 9, 1983. This agency constitutes the judicial arm of the government's role in immigration by combining the Immigration Judge division, which had previously been held within the former Immigration and Naturalization Service (INS), with the Board of Immigration Appeals (BIA). The EOIR is headed by a Director who reports directly to the Attorney General.³

The EOIR consists of three sub-agencies: the Office of the Chief Immigration Judge (OCIJ), the BIA, and the Office of the Chief Administrative Hearing Officer.⁴ The OCIJ manages the U.S. immigration courts. The Office of the Chief Administrative Hearing Officer handles employment cases relating to immigration.⁵ The judges in this court system are employees of the Department of Justice, and are not part of the federal courts. They are appointed by the Attorney General and do not have tenure, which is different from federal district court judges who are part of the judicial branch.⁶ These three sub-agencies handle all matters relating to immigration proceedings within the DOJ. Another component of the DOJ, the Office of Immigration Litigation (OIL) is composed of lawyers and staff that coordinate civil immigration matters before the federal courts.⁷

For sometime the EOIR has suffered from several institutional problems, including lack of resources and training. Allegations of bias, immigration judge misconduct, and poor decision

³ See Department of Justice: Executive Office of Immigration Review, Organizational Information and Breakdown, <http://www.usdoj.gov/eoir/orginfo.htm> (last visited Sept. 10, 2009).

⁴ See Department of Justice: Executive Office of Immigration Review, EOIR Responsibilities, <http://www.usdoj.gov/eoir/responsibilities.htm> (last visited Sept. 10, 2009).

⁵ See *id.*

⁶ See TRAC Reports-- Improving the Immigration Courts: Effort to Hire More Judges Falls Short (2008), <http://www.trac.syr.edu/immigration/reports/189>.

⁷ Department of Justice, Office of Immigration Litigation, <http://www.usdoj.gov/civil/oil/index.htm> (last visited Sept. 10, 2009).

making have afflicted the agency for decades. These issues came to the fore in 2002 with the promulgation of former Attorney General Ashcroft's "reform" regulations which established a "streamlining" process that was followed by the deterioration of quality of decision making at the BIA. In an unprecedented move, Ashcroft "reassigned" BIA members based on their jurisprudential views and downsized the BIA from twenty-three members to eleven members, despite the increased BIA caseload. An article that reviewed the voting record and background of the reassigned judges found that "[t]he limited data on the four cases may begin to suggest that conservative Board Members enjoyed some measure of protection when the Board was reduced in size."⁸ Notably, the reassigned BIA members were among the most senior and experienced on the Board.⁹ The new process raised further controversy by requiring most BIA decisions to be made by single-members without a written decision.¹⁰

Despite the arbitrary nature of the Ashcroft re-assignments, in 2006 then Attorney General Gonzales selected four new individuals to serve as BIA members, effectively replacing those who had been reassigned in 2002. The newly selected BIA members did not go through a formal application process, nor was there an effort by the Attorney General to reinstate former BIA members who were reassigned or forced to resign.¹¹ He went further to organize a comprehensive study of the immigration court system and announced a twenty-two point reform plan, which among other things, called for performance evaluations of immigration judges and

⁸ Peter J. Levinson, *The Facade of Quasi-Judicial Independence in Immigration Appellate Adjudications*, 9 BENDER'S IMMIGR. BULL. 1154, 1159 (2004) (available at http://65.36.162.162/files/peter_article.pdf) (last visited Sept. 15, 2009).

⁹ Email from Lory Rosenberg, Director, AILF Action Center, to Shoba Sivaprasad Wadhia, Director of the Center for Immigrants' Rights, Pennsylvania State University Dickinson School of Law (Sept. 8, 2009) (on file with Shoba Sivaprasad Wadhia); see also Ricardo Alonso-Zaldivar, *5 On Immigration Board Asked to Leave: Critics Call it a Purge*, L.A. TIMES, Mar. 12, 2003, at 16 (available at <http://articles.latimes.com/2003/mar/12/nation/na-immig12?pg=1>).

¹⁰ *See id.*

¹¹ Email from Lory Rosenberg, *supra* note 9.

Board members.¹² The plan also included “Codes of Conduct” which allowed for ex parte communication with DOJ officials in pending cases and called for attorneys representing the government in immigration cases in the courts of appeals to report “poor quality” decisions of immigration judges and BIA members.¹³ Some of these reforms were met with criticism by the National Association for Immigration Judges, the union of immigration judges.¹⁴ Moreover, studies conducted by the Transactional Records Access Clearinghouse (TRAC) found that many of these reforms were never implemented or were implemented without enforcement mechanisms.¹⁵ In September 2008, the Director of EOIR testified about changes that were being implemented to address concerns about unprofessionalism, lack of training and oversight.¹⁶ EOIR provided progress reports on Gonzales’ 22-point plan in September 2008 and June 2009.¹⁷ Nevertheless, a June 2009 report by TRAC concludes that nearly three years after the Gonzales’ reforms were announced much remains to be done in the area of training, hiring, and quality assurance measures.¹⁸ In sum, the EOIR has continued to operate in an obscure framework with limited resources and controversial procedures. The nation’s immigration court system, which depends upon the proper functioning of the EOIR, therefore suffers.

¹² See Stephen H. Legomsky, Testimony Before the House Immigration Committee (September 23, 2008) (transcript available at <http://judiciary.house.gov>). See also, Attorney General Alberto R. Gonzales Outlines Reforms for Immigration Courts and Board of Immigration Appeals, http://www.usdoj.gov/opa/pr/2006/August/06_ag_520.html; Stephen H. Legomsky, *Deportation and the War on Independence*, 91 CORNELL L. REV.369 (2005-06).

¹³ See *id.*

¹⁴ See TRAC Reports-- Judicial Oversight v. Judicial Independence (2008), http://trac.syr.edu/immigration/reports/194/include/side_4.html.

¹⁵ See TRAC Reports-- Bush Administration Plan to Improve Immigration Courts Lags (2008), <http://trac.syr.edu/immigration/reports/194/>.

¹⁶ See *Oversight of the Executive Office of Immigration Review: Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Security, and International Law of the H. Comm. On the Judiciary*, 110th Cong. (2008) (statement of Kevin Ohlson, Director, Executive Office for Immigration Review).

¹⁷ See U.S. Department of Justice Fact Sheet, *EOIR’s Improvement Measures Progress Overview* (Sept. 8, 2008) (available at <http://www.usdoj.gov/eoir/press/08/EOIRs22ImprovementsProgressOverview090508v2.pdf>); U.S. Department of Justice Fact Sheet, *EOIR’s Improvement Measures Update*, (June 5, 2009) (available at <http://www.usdoj.gov/eoir/press/09/EOIRs22ImprovementsProgress060509FINAL.pdf>).

¹⁸ TRAC Reports—Immigration Courts: Still a Troubled Institution (2009), <http://trac.syr.edu/immigration/reports/210/>.

IV. Participants in the Illegal Hiring Process

John Ashcroft

Title: Attorney General (*Feb 2001 – Feb 2005*)

Alberto Gonzales

Title: Attorney General (*Feb 2005 – Sept 2007*)

Monica Goodling

Title: Office of the Attorney General (OAG) Counsel to the Attorney General (*Oct 2005 – Apr 2006*)

OAG White House Liaison and Senior Counsel to the Attorney General (*Apr 2006 – Apr 2007*)

- Illegally made political considerations in the hiring for career positions in various Department offices, including the immigration judge and Board of Immigration Appeals positions.
- Continued to process waiver requests by interim U.S. Attorneys, although neither of her predecessors, Susan Richmond and Jan Williams, had done so.

Kevin Ohlson

Title: Deputy Director of EOIR (*2003 – 2007*)

Susan Richmond

Title: OAG Advisor to Attorney General Ashcroft and Deputy White House Liaison (*Feb 2001 – May 2003*)

OAG White House Liaison (*May 2003 – Mar 2005*)

Kevin Rooney

Title: Director of the Executive Office of Immigration Review (EOIR) (*2003 – 2007*)

Kyle Sampson

Title: OAG Counselor to Attorney General Ashcroft (*Aug 2003 – Feb 2005*)

OAG Deputy Chief of Staff to the Attorney General (*Feb 2005 – Sept 2005*)

OAG Chief of Staff to Attorney General Gonzales (*Sept 2005 – Mar 2007*)

- Established the illegal hiring process of immigration judges and Board of Immigration Appeals members upon his arrival at the OAG as Counsel to the Attorney General in 2003.

Jan Williams

Title: OAG White House Liaison (*Mar 2005 – Apr 2006*)

- Passed hiring techniques to Goodling, including a political internet search string used for potential candidates.

Angela Williamson

Title: OAG Deputy White House Liaison (*July 2006 – Apr 2007*)

- Reported to Goodling during most of Goodling's tenure as White House Liaison.
- Attended numerous interviews conducted by Goodling and occasionally conducted portions of interviews or entire interviews on her own based on Goodling's guidelines.

V. Executive Summary

While the United States is known as a nation of immigrants, the U.S. immigration system has faced many challenges and criticisms throughout its history. Today, questions of illegal immigration and immigration reform are in the public eye. Indeed, immigration is a complex and sensitive issue with many considerations and interests. Both Republicans and Democrats face conflicting demands from their constituents. Issues like migration, national security, human rights, foreign relations, and jobs are only part of the calculus. One critical question is how this nation will move forward with a nascent program aimed at improving its immigration court system. The nation's immigration courts are a principal arena in which immigration laws are interpreted and applied, handling over 300,000 cases yearly. Challenging national adjudication goals and nagging institutional problems are only aggravated by the assignment of judges lacking knowledge of immigration law and a politicized hiring process. Since noncitizens are not entitled to appointed counsel, the adverse impact on due process is staggering and often irreversible. The illegal hiring of immigration judges on top of the remarkable resource and due process deficiencies that have plagued the EOIR since at least 2002, have brought the need for immigration court reform to the forefront. This white paper aims to assist in responding to this vital imperative through an analysis of the political hiring of immigration judges during the George W. Bush Administration.

While the EOIR staff members, including then Deputy Director Kevin Ohlson and former Director Kevin Rooney, admittedly were aware of the blatant illegality of the hiring process discussed in this report, they failed to formally or informally raise objections or protest the illegal process to senior Department officials. Rather, despite their knowledge, the EOIR staff members implemented the illegal process. The illegal process was eventually uncovered in

connection with the unprecedented and controversial firing of nine U.S. Attorneys by the Department of Justice in 2006, and the initiation of a discrimination lawsuit by Guadeloupe Gonzalez who applied for immigration judge positions in Texas to which two lesser qualified male candidates (including her direct subordinate) were appointed. Thereafter, the DOJ's Office of Professional Responsibility (OPR) and the Office of the Inspector General (OIG) launched a joint investigation into the matter and uncovered evidence of politicized and discriminatory hiring of civil service positions, including immigration judges and Board of Immigration Appeals members. Immigration judge and Board positions are career immigration positions for which U.S. law and Department of Justice policy prohibit the consideration of political affiliations. The report produced by the OPR and OIG, dubbed the "Goodling Report," found conclusive evidence of political hiring of immigration judges between 2004 and 2007.

This paper analyzes the Goodling Report, considering the impact of those illegal hirings in which numerous judges were appointed based solely on Republican Party affiliations and conservative political views. Irrespective of whether the illegally hired judges are "good" or "bad," this paper is interested in the overall impact of poor decision-making on U.S. immigration law and immigrants' due process rights. While this report recommends that the illegally hired immigration judges be removed and provided an opportunity to reapply, the problem of unqualified decision-making in immigration law presents a problem that extends beyond the employment of those judges. As Judge Richard A. Posner noted, "the adjudication of these [immigration] cases at the administrative level has fallen below the minimum standards of legal justice."¹⁹ When placed in the larger context of an already tainted immigration court system, the illegal hiring of immigration judges not only undermined the integrity of the hiring process, but

¹⁹ *Benslimane v. Gonzales*, 430 F.3d 828, 830 (7th Cir. 2005).

exacerbated an already broken system. This paper considers the necessary reforms to remedy and prevent such incidents and, most importantly, contains recommendations to strengthen the U.S. immigration court system and its guiding principles of law and justice.

We are hopeful that the promises of the new American leadership will guide the nation toward the necessary reforms in the U.S. immigration court system, and offer the following recommendations as a starting point:

Reapplication Process For Illegally Hired Judges and EOIR Assessment

1. The DOJ should require every individual hired through the illegal hiring process to reapply for his or her position through a merit-based hiring process, such as the process outlined in item 3.
2. All immigration judge vacancies should be filled in accordance with the legal hiring process including minimum qualifications in immigration law.
3. Nation-wide postings requiring the following qualifications should be used for vacancies:
 1. U.S. Citizenship;
 2. 7 years of relevant post-bar experience, of which 5 years include experience in immigration practice, teaching, advocacy or litigation;
 3. Knowledge of U.S. immigration laws and procedures; and
 4. The candidate must possess 2 or more of the following:
 - a. Substantial litigation experience, preferably in a high-volume content;
 - b. Experience handling complex legal issues;
 - c. Experience conducting administrative hearings; or
 - d. Knowledge of judicial practices and procedures.
4. The DOJ should create or expand an existing position within EOIR that coordinates closely with the Office for Professional Responsibility and monitors EOIR practices and policies, including but not limited to hiring, retention, and firing. The EOIR should create a mechanism for the public and government officials to file complaints alleging illegal practices and policies.
5. The EOIR should ensure that its hiring policy draws potentially eligible candidates equally from the government and private sectors.

Hiring and Evaluation of Personnel

1. Increase the number of immigration judges through an efficient and non-political vetting process in order to diminish the current backlog of cases.

2. Establish minimum qualifications for immigration judges and BIA members.
3. Prohibit removal or threat of removal of legally hired immigration judges and BIA members, and restore decisional independence of judges.²⁰

Immigration Judge and BIA Member Evaluations

1. Ensure that performance reviews include a metric for professional conduct and gauging independence and impartiality in decisionmaking.
2. Require that immigration judges complete a basic immigration law examination to assess their knowledge of U.S. immigration law.²¹
3. Improve training for immigration judges and BIA members.

Board of Immigration Appeals

1. Repeal the streamlining processes within the EOIR implemented by former AG Ashcroft in 2002.
2. Offer BIA positions to the former BIA judges who were reassigned or who were forced to resign under former AG Ashcroft.
3. Increase the number of judges in the BIA.²²
4. Reinstate the requirement that precedent decisions be decided by the BIA *en banc*.
5. Codify the roles of immigration judge and member of the BIA.²³
6. Restore 3-member panels for BIA reviews, especially for cases involving asylum, withholding of removal, and relief under the Convention Against Torture. Rescind regulations that limit three-panel review of all but a limited number of facially invalid or frivolous cases.²⁴

²⁰ See Stephen H. Legomsky, Testimony Before the House Immigration Committee (September 23, 2008) (available at <http://judiciary.house.gov>).

²¹ U.S. Department of Justice Fact Sheet, *EOIR's Improvement Measures Update*, *supra* note 17 (“EOIR began testing new immigration judges in April 2008, and new BIA members in August 2008.”).

²² See Stephen H. Legomsky, Testimony Before the House Immigration Committee (September 23, 2008) (available at <http://judiciary.house.gov>).

²³ See OBAMA-BIDEN TRANSITION PROJECT, IMMIGRATION POLICY: TRANSITION BLUEPRINT 2 (Nov. 16, 2008), http://otrans.3cdn.net/1414e4fb31bb801ef0_wwm6i6uiks.pdf.

²⁴ See *id.*

Transparency

1. The list of immigration judges included in the survey was incomplete, and was created by corresponding other sources' list of immigration judges to the date on which a particular judge was hired. The DOJ should release the names of former and current immigration judges illegally hired between 2004 and 2007.
2. All decisions, including BIA affirming the lower court, should include a written explanation of the judge's rationale for the decision.
3. Ex-parte authorization should be stricken.²⁵

²⁵ See Stephen H. Legomsky, Testimony Before the House Immigration Committee (September 23, 2008) (available at <http://judiciary.house.gov>).

CHAPTER 2: OFFICE OF PROFESSIONAL RESPONSIBILITY AND THE OFFICE OF THE INSPECTOR GENERAL REPORT ON THE POLITICIZED HIRING OF IMMIGRATION JUDGES

I. Introduction

“What is it about Bush that makes you want to serve him?”

In March 2007, upon being forwarded a complaint by the former Acting Chief of Staff to the Attorney General, Chuck Rosenberg, the U.S. Department of Justice’s Office of Professional Responsibility and the Office of the Inspector General launched investigations into hiring practices for civil service positions. Rosenberg’s complaint alleged that Monica Goodling, then Senior Counsel to the Attorney General and the Department of Justice’s White House Liaison, refused to hire a candidate for a civil service position because the candidate was too “liberal.”²⁶ Civil service positions are not political appointments and must be made on a nonpartisan basis.²⁷ However, it soon became apparent that Goodling, among others in the DOJ, based hirings solely on a candidate’s political affiliations with the Republican Party.

While Goodling did not respond to inquiries by the OPR/OIG, during their investigations she was forced to testify before Congress on the politicized hirings within the DOJ.²⁸ In her testimony, Goodling admitted to taking political beliefs and affiliations into account despite knowing that the positions she was interviewing for were career positions. She described three categories of positions in which she was an interviewer. First, in a “very small number of cases,”

²⁶ OFFICE OF THE INSPECTOR GEN. & OFFICE OF PROF’L RESPONSIBILITY, AN INVESTIGATION OF ALLEGATIONS OF POLITICIZED HIRING BY MONICA GOODLING AND OTHER STAFF IN THE OFFICE OF THE ATTORNEY GENERAL 25 (2008) (available at <http://www.usdoj.gov/oig/special/s0807/final.pdf>) [hereinafter GOODLING REPORT].

²⁷ Career, or Schedule A positions are “positions which are not of a confidential or policy-determining character.” 5 C.F.R. § 213.3101. Political, or Schedule C positions are “positions which are policy determining or which involve a close and confidential working relationship with the head of the agency or other key appointed officials.” 5 C.F.R. § 213.3301(a).

²⁸ Monica Goodling declined to be interviewed during the investigation and could not be compelled by the OPR/OIG as she was no longer employed by the DOJ. She resigned from the DOJ on April 6, 2007, stating in her three-sentence resignation letter to Mr. Gonzales, “May God bless you richly as you continue your service to America.” Goodling was granted immunity for her congressional testimony of May 23, 2007. See GOODLING REPORT at 1.

the decisions for career positions “may have been influenced in part based on political considerations.”²⁹ Second, she admitted to using political information when assessing career attorneys applying for temporary detail positions.³⁰ Finally, Goodling admitted to taking political considerations into account in reviewing applications for immigration judges and BIA members.³¹ The Goodling Report used her testimony, along with written surveys from candidates who had interviewed with the OAG, to further investigate whether Goodling’s predecessors at the Department’s White House Liaison, Susan Richmond and Jan Williams, and Goodling’s immediate supervisor, then OAG Chief of Staff Kyle Sampson, considered political or ideological affiliations when assessing candidates for career positions. It became evident that the DOJ had in fact discriminated in the hiring of immigration judges, BIA members, and Assistant United States Attorney (AUSA) positions. The extent of the politicization went beyond Monica Goodling who was hired at the OAG in October 2005. Notably, the practice of politically hiring for career positions was revealed to be a systematic hiring policy implemented by Goodling’s then supervisor Kyle Sampson in spring 2004.³² The EOIR then headed by Director Kevin Rooney and Deputy Director Kevin Ohlson, is charged with the hiring of immigration judges and BIA members.³³ Although the Goodling Report found that the EOIR did not take part in the politicized hirings, the EOIR ultimately failed to report what was known of Sampson’s politicized hiring policy to senior leaders at the DOJ.³⁴

²⁹ GOODLING REPORT at 1.

³⁰ *See id.*

³¹ *See id.*

³² *Id.* at 115-16.

³³ *See id.* at 70.

³⁴ *See id.* at 123.

A. Background: DOJ Hiring Standards

Attorney positions in the DOJ fall into two distinct categories: political or career positions. “Positions which are policy-determining or which involve a close or confidential working relationship with the head of an agency or other key appointed officials” are political appointments (known as Schedule C positions) requiring Senate approval.³⁵ They include Staff Assistants to the Attorney General, and such. Most attorney positions in the DOJ are career positions (Schedule A positions) designated under the Office of Personnel Management (OPM) as “positions which are not confidential or policy-determining in character.”³⁶ They include: AUSAs, trial attorneys in litigation divisions, *immigration judges*, and *Board of Immigration Appeals judges*.³⁷ For these positions, DOJ policy and federal law prohibit consideration of political affiliations.³⁸ Additionally, the Department’s policy prohibits discrimination. The Code of Federal Regulations 42.1(a) states: “It is the policy of the [DOJ] to seek to eliminate discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, political affiliation, age or physical or mental handicap in employment within the Department.”³⁹ Although the regulations do not define “political affiliation,” courts have interpreted the regulations to include the “commonality of political purpose, partisan activity, and political support.”⁴⁰

³⁵ 5 C.F.R. §213.3301(a); GOODLING REPORT at 11.

³⁶ 5 C.F.R. §213.3101; 5 C.F.R. §213.3102(d).

³⁷ See GOODLING REPORT at 11.

³⁸ See *id.* at 12. See also 28 CFR §42.1(a).

³⁹ 28 CFR §42.1(a).

⁴⁰ See, e.g., *Curinga v. City of Clairton*, 357 F.3d 305, at 311 (the City of Clairton, PA fired its municipal manager for campaigning against an incumbent city council member who won re-election and against another successful councilman candidate).

II. Illegal Hirings in the Department of Justice

“Let me say his views on immigration are virtually identical to my own. I will get his resume for you, but don’t be dissuaded by his ACLU work on voting matters from years ago. This is a very different man, and particularly on immigration issues, he is a true member of the team.”

Contrary to federal law and DOJ policy, the Goodling Report found that Monica Goodling intentionally used interview questions formulated to gauge how politically conservative a candidate was irrespective of whether s/he was seeking a career or political position.⁴¹ During some interviews for immigration judges Goodling was accompanied by Angela Williamson, then Deputy White House liaison, who took notes during interviews. Williamson noted that Goodling’s interview questions included:

1. “Tell us your political philosophy. There are different groups of conservatives by way of example: Social Conservative, Fiscal Conservative, Law & Order Republican.”
2. “What is it about Bush that makes you want to serve him?”
3. “Aside from the President, give us an example of someone currently or recently in public service who you admire?”⁴²

Candidates interviewed during the investigation said they interpreted these questions by Monica Goodling as attempting to assess their political views.⁴³ Of the 300 surveys received by the OPR/OIG of candidates interviewed by Goodling, 34 candidates said that they discussed abortion, and 21 said that they discussed gay marriage.⁴⁴ At the time, then Senior Deputy Regina Schofield complained about these interview questions to Sampson and suggested that Goodling undergo interview training.⁴⁵ However, no training was provided nor was any other change implemented as a result of Schofield’s complaint.⁴⁶

⁴¹ GOODLING REPORT at 18-19.

⁴² *Id.* at 18.

⁴³ *Id.* at 19.

⁴⁴ *See id.* at 19.

⁴⁵ *Id.*

⁴⁶ GOODLING REPORT at 19.

Instead, Goodling continued to assess candidates' political stances by further inquiring with the candidates' references as to, for example, a candidate's commitment to the Republican party.⁴⁷ OPR/OIG also found evidence that she even conducted independent research by using a Westlaw and Lexis Nexis string search inherited from her predecessor, Jan Williams:

“[First name of candidate]! And pre/2 [last name of candidate] w/7 bush or gore or republican! or democrat! or charg! or accus! or criticiz! or blam! or defend! or iran contra or Clinton or spotted owl or florida recount or sex! or controvers! or racis! or fraud! or investing! or bankrupt! or layoff! or downsize! or PNTR or NAFTA or outsource! or indict! or enron or Kerry or Iraq or wmd! or arrest! or intox! or fired or sex! or racis! or intox! or slur! or arrest! or fired or controvers! or abortion! or gay! or homosexual! or gun! or firearm!”⁴⁸

Goodling modified the string by inserting additional terms when searching candidates for immigration judge positions including: “or immigrat! or immigrant! or asylum or DHS or ICE or border! or alien! or migrant! or criminal! or justice or judg!”⁴⁹ Furthermore, Goodling asked career candidates to fill out Presidential Personal Office Non Career Appointment forms (PPO). PPO forms, (which required applicants to identify their political party affiliation, their voting address for 2000 and 2004, and their involvement in the Bush/Cheney campaigns of 2000 and 2004), are typically only completed by candidates applying for political positions.⁵⁰ The OPR/OIG investigation found that candidates for immigration judge and BIA member positions were asked to complete PPO forms before being interviewed by Goodling.⁵¹ When some candidates objected to filling out the PPO form, Goodling advised that they had been given the form “by mistake.”⁵² The OPR/OIG report concluded this was demonstrative of her knowledge as to the hiring requirements for career positions.

⁴⁷ *See id.* at 18.

⁴⁸ *Id.* at 21.

⁴⁹ GOODLING REPORT at 21.

⁵⁰ *See id.* at 22.

⁵¹ *Id.*

⁵² *Id.*

A. EOIR Hiring Process for Immigration Judges and BIA Members Before 2004

As discussed previously, all immigration judge positions are Schedule A appointments. An immigration judge is an “attorney whom [the] Attorney General appoints as administrative judge within EOIR.”⁵³ BIA members are “attorneys appointed by the Attorney General.”⁵⁴ The BIA Chair is a Career Senior Executive Service (SES) position, which also follows an impartial career hiring process.⁵⁵ The Vice Chairs are career positions as well.⁵⁶ The remaining Board member positions are career Schedule A positions.⁵⁷

While the Attorney General has the authority to appoint immigration judges pursuant to 8 U.S.C. §1101(b)(4) and 8 C.F.R. §1.1, this authority is normally delegated to the Deputy Attorney General or the Associate Attorney General.⁵⁸ Since the 1980s, the DAG has re-delegated the authority to the Office of the Attorney Recruitment and Management to take final action in employment matters for pay grades GS-15 and below, such as immigration judges.⁵⁹ Thus prior to Spring 2004, the hiring of the immigration judges was handled primarily by the EOIR.⁶⁰ New positions were announced through a vacancy posting identifying the location, minimum requirements, and a statement that the Department is an Equal Opportunity Employer.⁶¹

The minimum requirements for the position of immigration judge were as follows:

1. U.S. Citizenship;

⁵³ 8 U.S.C. Section 1101(b)(4).

⁵⁴ 8 C.F.R. § 1003.1(a)(2). *See also* GOODLING REPORT at 70.

⁵⁵ GOODLING REPORT at 70.

⁵⁶ *Id.*

⁵⁷ *See id.*

⁵⁸ *See id.* at 71.

⁵⁹ *See id.*

⁶⁰ *See* GOODLING REPORT at 72.

⁶¹ *See id.*

2. 7 years of relevant post-bar experience;
3. 1 year of previous federal service equivalent to GS-15 level; and
4. The candidate must possess 3 or more of the following:
 - a. Knowledge of immigration laws and procedures;
 - b. Substantial litigation experience, preferably in a high-volume content;
 - c. Experience handling complex legal issues;
 - d. Experience conducting administrative hearings; and
 - e. Knowledge of judicial practices and procedures.⁶²

Under this policy only a few immigration judges were appointed pursuant to the Attorney General's "direct appointment" authority with no personal involvement by the AG.⁶³ Additionally, the Chief Immigration Judge (CIJ) was responsible for the hiring process and Assistant CIJs reviewed, voted, and submitted recommendations to the CIJ on candidates to interview.⁶⁴ Interviews were conducted by 3-member panels, which included the CIJ, and candidate recommendations were made subject to EOIR Director's approval.⁶⁵ All recommendations made by the 3-member panels were accepted by the EOIR Director.⁶⁶ The Director's subsequent recommendations were never rejected by the ODAG and the OARM.⁶⁷ Prior to Spring 2004, immigration judges were largely selected through the process outlined above.

B. The New Hiring Process for Immigration Judges and BIA Members

In June 2003, changes to the process for hiring immigration judges were considered when Laura Baxter, former Senior Counsel to the DAG, informed the EOIR that the "Department is

⁶² *Id.*

⁶³ *See id.*

⁶⁴ *See id.*

⁶⁵ GOODLING REPORT at 72.

⁶⁶ *Id.*

⁶⁷ It is important to note that this process was only applicable to immigration judges since no BIA members were hired between October 2001 and April 2007. *See id.* at 72.

going to take a greater role in IJ hiring.”⁶⁸ Baxter emphasized that the email was coming from Attorney General Ashcroft, which contradicts the OPR/OIG conclusion that former AG Ashcroft was not involved in the politicization process.⁶⁹ Nonetheless, on October 8, 2003, an email from Kyle Sampson to Baxter stated that the “White House may recommend” two candidates for the immigration judge positions and that Sampson wanted to send “folks in the White House” a document detailing a proposed new process for hiring immigration judges. An attached draft document to the email, “Appointment of Immigration Judges,” stated that “coordination” was necessary to ensure that “lawyers known to the White House” would be “informed of the opportunity” to become immigration judges.⁷⁰ The following outlines the new process proposed for hiring implemented by Sampson:

1. EOIR informs the DAG (then, Baxter) of the vacancy;
2. Then, the DAG informs the OAG (then, Sampson) of the vacancy;
3. Then the OAG informs White House OPA, White House PPO, and White House CO to solicit names of possible applicants;
4. The OAG then transmits application package to identified candidates and the DAG transmits this list of possible applicants recommended by the White House to the EOIR;
5. The EOIR then recommends candidates for an Attorney General appointment; and
6. Finally, the AG appoints a candidate from that pool.⁷¹

In 2004 the additional and only change by the OAG was the removal of the Office of the DAG (ODAG) from “meaningful” input in immigration judge hiring.⁷²

In October 2003, a candidate who had learned that Sampson was in charge of hiring immigration judges approached Sampson for a position, and in January 2004, the candidate was asked to be interviewed by the EOIR. However, the candidate had been offered the position

⁶⁸ *Id.* at 73.

⁶⁹ *Id.*

⁷⁰ GOODLING REPORT at 73.

⁷¹ *Id.* at 74.

⁷² *Id.*

prior to interviewing with the EOIR. Nonetheless, the candidate was appointed as an immigration judge on April 4, 2004.⁷³

On April 5, 2004, a memo from the EOIR to the ODAG requested approval of a plan to create a Headquarters Immigration Court and hire four immigration judges for the new positions. The memo provided four candidates identified by the EOIR without involvement from the OAG or the White House.⁷⁴ An email from Sampson to the ODAG criticized the appointments and reminded the ODAG that it was important to “inform the AG and obtain his informal concurrence” before processing the recommended immigration judges.⁷⁵

In early April 2004, EOIR Director Rooney and Deputy Director Ohlson met with the ODAG staff in order to discuss routine matters, and announced an upcoming immigration judge vacancy in Chicago.⁷⁶ Sampson attended this meeting and inquired extensively about the immigration judge appointment process.⁷⁷ Ohlson explained the standard process and referenced the direct appointment avenue without discussing exemptions from civil service laws governing career positions.⁷⁸ Upon Sampson’s request to be notified of the Chicago vacancy post Rooney designated Ohlson as a point-of-contact for Sampson relating to the immigration judge hiring.⁷⁹

On April 19, 2004, Ohlson sent an email to Sampson stating that the ODAG authorized the EOIR to advertise for the Chicago position.⁸⁰ Sampson responded to this email advising that an individual, a childhood friend of Karl Rove’s, in Chicago would apply.⁸¹ He also requested confirmation upon the EOIR’s receipt of the candidate’s application. On June 14, 2004, after

⁷³ See GOODLING REPORT at 74-75.

⁷⁴ *Id.* at 75.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ GOODLING REPORT at 75-76.

⁷⁹ *Id.* at 76.

⁸⁰ *Id.* at 85.

⁸¹ *Id.* at n.64.

receiving another inquiry from Sampson, Ohlson sent an e-mail to Sampson stating that although hundreds of persons applied in response to the Chicago IJ announcement, “[n]eedless to say [the candidate] made the cut.”⁸²

Eventually the EOIR interviews, which bore no importance whatsoever to the hiring of candidates since positions were offered before the interviews, were completely removed from the process of selecting immigration judges.⁸³ August 31, 2004 marked the last time EOIR selected candidates.⁸⁴ Thereafter, all other immigration judges were selected by the OAG with input from the White House and other Republican party members.⁸⁵

C. Kyle Sampson’s Story

Sampson testified to Congress that until December 2006 he believed that the direct appointments of immigration judges were not subject to civil service laws and “political criteria” was appropriate.⁸⁶ He alleged that his understanding was based on “fuzzy” recollections of the April 2004 meeting with Rooney and Ohlson, and advice from AAG Jack Goldsmith or Acting AAG Dan Levin of the Office of Legal Counsel (OLC).⁸⁷ Rooney, however, stated that he knew that civil service laws applied and would have corrected Sampson’s misunderstanding if a contrary suggestion had been made.⁸⁸ The OLC’s former AAGs Goldsmith and Levin stated their normal practice would be to memorialize any such advice, and there was no record of OLC staff providing such advice.⁸⁹

⁸² *Id.* at 85.

⁸³ *See* GOODLING REPORT at 88.

⁸⁴ *Id.* at 76.

⁸⁵ *See id.* at 77.

⁸⁶ *Id.* at 77.

⁸⁷ *See* GOODLING REPORT at 80.

⁸⁸ *Id.* at 77.

⁸⁹ *Id.*

The hiring situation came to the forefront upon the filing of a lawsuit by Guadalupe Gonzalez on September 30, 2005. In *Gonzalez v. Gonzales*, plaintiff Guadalupe Gonzalez alleged that the DOJ discriminated against her based on gender and national origin when she was not selected in November 2004 for an immigration judge position in El Paso, Texas.⁹⁰ Gonzalez was a career government immigration lawyer and Chief Counsel for the U.S. Immigration and Customs Enforcement (ICE) in El Paso.⁹¹ The two male applicants that were hired in her place were ICE attorneys junior to Gonzalez, one of whom was her direct subordinate.⁹² Both of these hires were direct appointments provided to the EOIR by Sampson.⁹³

On December 11, 2006, Civil Division attorneys handling the *Gonzalez* case interviewed Sampson on the hiring process. Sampson informed them that typically Republican candidates were selected because his sources for candidates were the White House and Republican Members of Congress.⁹⁴

Thereafter, on December 26, 2006, OAG Deputy Chief of Staff Courtney Elwood emailed Sampson with a request from the Civil Division that immigration judge hiring be halted pending evaluation as to whether the “current process used” violated “Title VII or any other applicable law.”⁹⁵ Sampson responded to the email: “Query: Are any political appts subject to disparate impact claims? I think not—if I’m right, how can the AG’s direct appt for IJs be?”⁹⁶ In January 2007 a follow up email from Elwood to Sampson advised that immigration judge hiring should be terminated until the OLC and Civil Division resolved whether the current procedure

⁹⁰ *See id.* at 112.

⁹¹ *Id.*

⁹² *See* GOODLING REPORT at 112.

⁹³ *Id.*

⁹⁴ *See id.* at 78.

⁹⁵ *Id.*

⁹⁶ *Id.*

“comports with merit system principles.”⁹⁷ Sampson responded to Elwood stating: “I’m disturbed...I got advice from the OLC back in 2003-2004. I’ve never before thought that the Attorney General’s direct appointment authority was required to comport with the merit system principles (as I understand them).”⁹⁸ Elwood advised Sampson that the OLC had no record of providing such advice and requested that Sampson “narrow the time frame” in which he might have received any such advice. In response, Sampson provided October 2003 to June 2004 as the timeframe.⁹⁹

The OLC unsuccessfully searched for the existence of this advice following up with former AAG Goldsmith and former Acting AAG Levin. Levin stated that he had “no recollection whatever of being asked about IJ or BIA while he was [t]here.”¹⁰⁰ He added that because the issue of immigration judge hiring was beyond his expertise he would have consulted senior career attorneys for an accurate answer.¹⁰¹ Levin further stated that Sampson’s “very political” nature would have alerted his “radar” if such advice were requested.¹⁰² Goldsmith also replied that he had “no recollection whatsoever.”¹⁰³ This account was confirmed by other senior career attorneys at the OLC, as well as confirmation of the usual practice of memorializing advice.

Additionally, the aforementioned October 8, 2003 email from Sampson to Baxter demonstrates that Sampson sought to appoint immigration judges seeking political positions before he could have received the alleged advice.¹⁰⁴ According to his “Appointment of Immigration Judges” document Sampson perceived the direct appointment authority to be a

⁹⁷ GOODLING REPORT at 78.

⁹⁸ *Id.*

⁹⁹ *See id.*

¹⁰⁰ *Id.*

¹⁰¹ *See id.* at 79.

¹⁰² GOODLING REPORT at 79.

¹⁰³ *Id.*

¹⁰⁴ *See id.* at 81.

vehicle for placing attorneys known to the “White House offices of Political Affairs, Presidential Personnel, and Counsel to the President.”¹⁰⁵ Sampson equated immigration judge positions with political positions without adherence to civil service laws governing the hiring of career Department employees.

The immigration judge appointment process implemented by Sampson was blatantly politically charged. Under Sampson’s process OAG exercised exclusive control over immigration judge selections, and EOIR communicated vacancies directly to the OAG without posting vacancy announcements.¹⁰⁶ Sampson solicited names of candidates from the White House, Republican Members of Congress, or previously politically appointed immigration judges.¹⁰⁷ Accepted recommendations were forwarded to EOIR for processing (sometimes without a resume).¹⁰⁸ Sampson’s practice was generally to refer one candidate for each available position.¹⁰⁹ To ensure candidates’ Republican affiliations, candidates submitted a PPO Non-Career Appointment Form to the White House.¹¹⁰ The form which required applicants to submit a “political and personal resume,” identifying their political party affiliation, voting address for 2000 and 2004, involvement in the Bush/Cheney campaigns of 2000 and 2004, and point of contact for verification of campaign involvement.¹¹¹

Then Director Rooney and Deputy Director Ohlson stated that any candidate selected by the OAG was a “presumptive hire”¹¹² They also only objected to the appointment of one candidate under the illegal hiring process, but otherwise obligingly transmitted a selected

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ GOODLING REPORT at 81.

¹⁰⁸ *Id.*

¹⁰⁹ *See id.* at 82.

¹¹⁰ *Id.* at 83.

¹¹¹ *See id.* at 83.

¹¹² GOODLING REPORT at 82.

candidate's paperwork with a recommendation that s/he should be appointed.¹¹³ While the paperwork was routed through Sampson to the ODAG, the candidate was always appointed unless s/he later declined the appointment.¹¹⁴

In April 2005, Sampson delegated responsibility for selecting immigration judge candidates to OAG's White House Liaison, Jan Williams.¹¹⁵ A year later, in April 2006, the responsibility passed to Williams's successor, Monica Goodling.¹¹⁶ Both Williams and Goodling employed the process implemented by Sampson.¹¹⁷ Direct appointments remained the exclusive method for hiring immigration judges. Identification of candidates by Williams and Goodling remained the functional equivalent of a hiring decision. Sampson nonetheless maintained sporadic involvement in the immigration judge selections.¹¹⁸

D. Sampson's Candidates for Immigration Judge Positions

Numerous candidates recommended to the EOIR were provided by Sampson. Some of the candidates recommended were those directly supported by Karl Rove. However, the majority of candidates that Sampson provided were from the White House Office of Political Affairs (WHOPA).¹¹⁹ For example, in September 2004 WHOPA provided Sampson candidates for positions in El Paso, Texas and Lancaster, California.¹²⁰ The Texas candidate was appointed to the immigration judge position, but the California candidate declined the formal offer.¹²¹ On March 17, 2005, Sampson recommended three candidates for two immigration judge positions in

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *See id.*

¹¹⁶ *Id.*

¹¹⁷ GOODLING REPORT at 82.

¹¹⁸ *See id.*

¹¹⁹ *Id.* at 86.

¹²⁰ *Id.*

¹²¹ *Id.*

New York. On May 4, 2005, the two candidates were appointed to the immigration judge positions.¹²²

Sampson also recommended candidates based on referrals by Republican Members of Congress. On September 16, 2004 Sampson discussed with Ohlson a conversation between then Attorney General Ashcroft and Senator Hatch on the subject of an immigration court in Salt Lake City.¹²³ Senator Hatch had a candidate that he wished to place in the new immigration judge position.¹²⁴ This directly contradicts Attorney General Ashcroft's lack of knowledge on the matter of immigration judge hiring, as the Goodling Report concludes. On October 20, 2004, Senator Hatch's candidate submitted his application and was approved, however, the candidate later withdrew himself due to family reasons.¹²⁵ Sampson sought another recommendation from Senator Hatch which resulted in the appointment of a District of Utah federal prosecutor.¹²⁶

On August 5, 2005, a Republican Senator from Virginia sent a letter to former Attorney General Gonzales recommending immigration judge candidates for Arlington, Virginia.¹²⁷ Sampson followed up with EOIR, who had not received the candidate's name --Sampson provided a resume along with a copy of the Senator's letter.¹²⁸ The candidate was a career DOJ Attorney in the Criminal Division. On September 21, 2005, Ohlson sent an email to Williams: "Kyle Sampson told us to appoint [the candidate] to the open position in Arlington." The candidate was duly appointed immigration judge.¹²⁹

Some candidates appointed to immigration judge positions never interviewed with the EOIR. Garry Malphrus, a staff member to a Republican Senator from South Carolina, contacted

¹²² See GOODLING REPORT at 86.

¹²³ *Id.* at 87.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ See GOODLING REPORT at 87.

¹²⁸ *Id.* at 88.

¹²⁹ *Id.*

Sampson on November 2004 for information on an immigration judge position. Consequently, Sampson emailed Ohlson: “Malphrus works on immigration policy at the White House. He is interested in speaking with someone about an immigration judge appointment—primarily in the info gathering mode.”¹³⁰ Ohlson stated that Malphrus came to his office and they spoke for about 45 minutes but that the meeting was not an interview.¹³¹ Nonetheless, on December 6, 2004, Ohlson sent an email stating that: “[Sampson] would like us to ‘recommend’ the appointment of Garry Malphrus to be IJ in NYC ...pending this formal ‘request’ from the AG’s office ...you have a ‘greenlight’ to hire him.”¹³² Malphrus was subsequently hired in March 2005.

The Malphrus appointment was not an isolated incident. Williams sent an email to Sampson on August 29, 2005 stating, “Mark Metcalf ...‘immigration judge?’” Sampson responded, “ok.”¹³³ Williams informed Metcalf that the Department wanted him to be an immigration judge in Orlando, Florida. Nearly one month later, Ohlson was informed by the Chief Immigration Judge that “Mark Metcalf called the Immigration Court in Orlando, stating that he had been offered an immigration judge position, [and] needed to decide by December 1st whether he wanted to take the job.”¹³⁴ He wanted the pre-existing judge in Orlando to give him a tour of the court. Neither the immigration judge in Orlando nor Ohlson had heard of Metcalf.¹³⁵ Regardless, Metcalf was appointed as an immigration judge in Orlando in February

¹³⁰ *Id.*

¹³¹ *Id.* at 89.

¹³² GOODLING REPORT at 89.

¹³³ *Id.*

¹³⁴ *Id.* at 90.

¹³⁵ *Id.*

2006 and became a source for recommendations to Goodling for immigration judge candidates.¹³⁶

An email from September 2004 from Sampson to Ohlson identified a potential immigration judge candidate for Houston, Texas. The potential Republican candidate's resume included sections entitled "Political Training" and "Political Activities and Honors." This candidate was appointed as immigration judge in Texas.¹³⁷

During the same month in 2004, Sampson identified an immigration judge candidate for Louisiana.¹³⁸ The candidate's resume featured eleven entries on behalf of the Republican Party.¹³⁹ The candidate was appointed as an immigration judge in Louisiana.¹⁴⁰

On November 1, 2005, Sampson contacted Ohlson about a "very strong candidate that [Sampson] would like [Ohlson] to consider' for immigration judge in Arlington or Falls Church, Virginia, or Baltimore, Maryland."¹⁴¹ This email was followed by the candidate's resume. Ohlson duly emailed immigration judge Michael Creppy with Sampson's email stating, "...[W]e don't have any vacancies in Arlington or Baltimore but we can create a position in the Falls Church headquarters. (We really don't have any choice in the matter)."¹⁴² On January 8, 2006, the candidate was interviewed by EOIR and appointed as an immigration judge in Falls Church, Virginia. The OPR/OIG investigation revealed that the candidate had only emailed Sampson twenty minutes prior to Sampson's email to Ohlson stating, "I would like to be considered for any immigration judge openings."¹⁴³

¹³⁶ *Id.*

¹³⁷ GOODLING REPORT at 90.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 91.

¹⁴² GOODLING REPORT at 91.

¹⁴³ *Id.* at 91.

As a consequence of such hiring practices many problems arose within the immigration system including a significant delay in filling immigration judge vacancies. The EOIR was unable to fill positions until Sampson provided candidates, and these increased vacancies heavily burdening the immigration courts. Consequently, Ohlson continually requested candidate names from DAG. In a May 23, 2005 email from Ohlson to Sampson noted,

The number of immigration judge vacancies continues to grow. The fact that so many slots have remained vacant for so long is beginning to have a measurable impact on the Immigration Courts because the pending case backlog is beginning to grow. ...We would like to be able to fill these immigration judge slots as quickly as possible.¹⁴⁴

E. Jan Williams' Loyalty Pledge

Jan Williams, then DOJ's White House Liaison, was also a source for candidate recommendations. Sampson had instructed Williams to "contact the White House to get any candidate ideas they had for immigration judges."¹⁴⁵ The Presidential Personnel Office was her principal source for candidates.¹⁴⁶ Documentary evidence shows Williams also received candidates from the WHOPA.¹⁴⁷ Scott Jennings, from WHOPA, acknowledged that the White House screened candidates for any positions for their "political qualifications."¹⁴⁸

After contacting the White House, Williams provided candidates to the EOIR who were deemed "priority candidates."¹⁴⁹ On May 17, 2005 an email from the White House OPA was sent to all White House Liaisons urging Liaisons to "get creative" and find positions for more than 100 priority candidates who "have loyally served the President."¹⁵⁰ Williams responded to

¹⁴⁴ *Id.* at 92.

¹⁴⁵ *Id.* at 93.

¹⁴⁶ *Id.*

¹⁴⁷ *See* GOODLING REPORT at 93.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 94.

¹⁵⁰ *Id.*

this email pledging “7 slots within 40 days and 40 nights. Let the games begin!”¹⁵¹ Williams solicited candidates from Civil Division Political Appointees as well. A June 21, 2005 email from Williams to the White House Williams stated, “I am running past my deadline please send me names by this Wednesday afternoon. These are great opportunities for good people.”¹⁵² Jonathan Cohn had contacted Williams and provided seven candidates’ names.¹⁵³ Williams responded asking, “Are they like you and me?” Cohn responded that two of them were “tough on immigration enforcement.”¹⁵⁴ On July 7, Williams transmitted eight names to EOIR.¹⁵⁵ Ohlson responded that one candidate was under investigation by the Department for professional misconduct, another candidate was impossible to contact, and the third was the one EOIR previously objected to.¹⁵⁶ On July 28, Williams submitted an additional candidate. By August 2005 the candidates were interviewed by EOIR and five of the candidates were subsequently appointed.¹⁵⁷

Evidence suggests that EOIR resisted only one OAG candidate recommendation. On June 7, 2005, a Republican Congressman’s staff sent an email to the White House recommending a “great Republican” for an immigration judge position in New York.¹⁵⁸ The EOIR resisted the candidate due to his inappropriate demeanor.¹⁵⁹ The OAG did not insist and an alternative immigration judge was selected.¹⁶⁰ This demonstrates that the EOIR had the power to resist the political hiring process, but chose not to.

¹⁵¹ *Id.*

¹⁵² GOODLING REPORT at 95.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ GOODLING REPORT at 96.

¹⁵⁸ *Id.* at 94.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

Despite the appointments of selected candidates, the immigration judge backlog increased. In a July 7, 2005 email to Williams Ohlson urged, “We really are under tremendous pressure to continue to adjudicate on a timely basis the flood of cases we receive each month, and the only way we can keep up is if we fill immigration judge vacancies in a timely manner.”¹⁶¹ Ohlson followed up with an email on July 22 in which he stated:

Jan—I know you’re busy, but I need to touch base with you to determine the status of the search for immigration judge candidates. DHS enforcement activities are continuing to increase the number of aliens who appear in the immigration courts. The only way that we can adjudicate these cases in a timely manner is if we have a full complement of immigration judges on the bench...as part of the Administration’s effort to ensure that illegal aliens who pose a danger to us are deported in an expeditious manner.¹⁶²

On July 26, 2005, Williams authorized Ohlson’s request to run a nation-wide advertisement.¹⁶³ Ohlson stressed to Williams that she would be able to maintain her “ability to personally decide candidates.”¹⁶⁴ As a result of the advertisement, each vacancy received five to ten resumes which were then forwarded from EOIR to the OAG.¹⁶⁵

Only candidates responding to the July vacancy announcement that were also endorsed by the White House or other Republican appointees were selected by Williams. One candidate was selected after an endorsement by the politically appointed immigration judge, Garry Malphrus.¹⁶⁶ The candidate was appointed as immigration judge in Los Angeles, California. Malphrus also recommended another candidate who responded to the advertisement.¹⁶⁷ The second candidate was also appointed. Another candidate who had also replied to the

¹⁶¹ *Id.* at 96.

¹⁶² GOODLING REPORT at 96-97.

¹⁶³ *Id.* at 97.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 97-98.

¹⁶⁷ GOODLING REPORT at 98.

announcement was selected because Williams had also received his name and resume from the White House.¹⁶⁸

Additional White House candidates were provided to EOIR. The White House OPA sent an email to Williams on March 3, 2006 recommending another candidate.¹⁶⁹ The candidate had served as local counsel for the Republican National Committee.¹⁷⁰ Williams forwarded the candidate's resume to Ohlson for the New Jersey seat, and the candidate was promptly appointed as immigration judge in New Jersey.¹⁷¹ Subsequently, another White House OPA recommended candidate was hired as an immigration judge in May 2006.¹⁷²

The candidates from the nation-wide announcement received no consideration unless they were independently endorsed by the White House or political appointees.¹⁷³ With the small amount of referrals passing through, the shortage of immigration judges and immigration caseload both increased.¹⁷⁴ A September 21, 2005 email from Ohlson to Williams again advised Williams of the numerous immigration judge vacancies.¹⁷⁵ Emails were sent again on November 14, 2005, January 26, 2006, and March 1, 2006.¹⁷⁶ Williams responded to the OPR/OIG investigators that it was "incredibly hard" to find immigration judge candidates, and that she asked Ohlson for candidates "repeatedly."¹⁷⁷ The Goodling Report concluded that the evidence did not support Williams's assertion, nor did she consider resumes forwarded by EOIR. On the contrary, Ohlson recommended one candidate whom Williams ignored.¹⁷⁸

¹⁶⁸ *Id.* at 98.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² GOODLING REPORT at 98.

¹⁷³ *Id.* at 99.

¹⁷⁴ *See id.*

¹⁷⁵ *Id.*

¹⁷⁶ *See id.*

¹⁷⁷ GOODLING REPORT at 99.

¹⁷⁸ *Id.*

Evidence also shows that Williams used search terms in order to screen candidates. At a White House Presidential Personnel Office seminar, Williams received a document entitled “The Thorough Process of Investigation” outlining search strings to conduct Lexis Nexis searches.¹⁷⁹ Williams, however, claimed that she “never used the search string.”¹⁸⁰ In an April 2006 email, Williams forwarded Goodling a search string saying, “This is the lexis nexis search string that I used for AG appointments.”¹⁸¹ At the OPR/OIG interview Williams denied the email and use of the search string.¹⁸² However, the following day Williams sent an email to investigators stating that she received the string from a “researcher in the White House Office of Presidential Personnel” and she edited it to remove “words like homosexual.”¹⁸³ Williams also claimed that she had used the search string for one political vacancy in the Department’s Environmental and Natural Resources Division in December 2005 and “never ever used it to reach Immigration Judges.”¹⁸⁴ She added that the string sent to Goodling did not contain “homosexual.”¹⁸⁵ The investigation, however, revealed that Williams used the unedited string on a few occasions including multiple times in November and December 2005 and January 2006.¹⁸⁶ Williams used the search string to research twenty-five people, twenty-three of whom were candidates for the National Advisory Committee on Violence Against Women.¹⁸⁷ None of the people were candidates for immigration judge or BIA positions.¹⁸⁸

¹⁷⁹ *Id.* at 99.

¹⁸⁰ *Id.* at 100.

¹⁸¹ *Id.*

¹⁸² GOODLING REPORT at 100.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 100-01.

¹⁸⁶ *Id.* at 101.

¹⁸⁷ GOODLING REPORT at 101.

¹⁸⁸ *Id.*

F. Goodling's Politicized Hirings of Immigration Judges

Goodling continued Williams' practice of making recommendations to EOIR. Goodling followed the same selection process for immigration judges as Williams and candidates forwarded to the EOIR remained presumptive hires.¹⁸⁹ Goodling also used the search string provided by Williams to research candidates that she interviewed.¹⁹⁰ She also discussed the immigration judge positions with various individuals she was screening for political positions.¹⁹¹ Goodling's written statement to Congress notes that Sampson told her that the OLC had advised that "[i]mmigration judge appointments were not subject to the civil service rules applicable to other career positions."¹⁹² Goodling also testified that she assumed immigration judge hiring rules "applied to BIA positions as well."¹⁹³

The principal source for immigration judge candidates after Goodling took over from Williams in October 2005 continued to be the White House.¹⁹⁴ Scott Jennings at the WHOPA exchanged numerous emails with Goodling regarding White House candidates for immigration judge.¹⁹⁵ On August 22, 2006, Jennings emailed Goodling recommending an immigration judge candidate whose political credentials the White House had already verified.¹⁹⁶ Candidates recommended by the White House had verified political credentials because they were solicited from the Republican National Lawyers' Association, Republican National Committeemen, Republican Party officials, the Federalist Society, and other prominent Republicans.¹⁹⁷ Goodling

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *See id.* at 102.

¹⁹² GOODLING REPORT at 102.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 102.

¹⁹⁷ GOODLING REPORT at 102-03.

herself considered several candidates recommended by Republican Congressmen from Ohio, Pennsylvania, and Texas.¹⁹⁸

Goodling, like Williams, continued to politically screen the candidates for immigration judge positions. The screenings included the Internet research on candidates' political contributions, voter registration records, variations on the Williams Lexis Nexis string search, and questions regarding political affiliation during interviews and in reference checks.¹⁹⁹

Many candidates that Goodling screened were candidates considered for both career and political positions.²⁰⁰ The first such candidate was recommended by Senator Hatch, and he filled a PPO form indicating that he was Republican and voted for President Bush.²⁰¹ Only after the candidate stated that he was uninterested in the immigration judge positions did Goodling discuss possible political appointments with him.²⁰² Another candidate was referred to Goodling by Attorney General Gonzales's speechwriter.²⁰³ Upon interviewing the candidate Goodling inquired into his political affiliations, party contributions, and thereafter indicated that filling immigration judge positions was a priority.²⁰⁴ The candidate withdrew his interest in the immigration judge position.²⁰⁵ Another candidate indicated to OPR/OIG that Goodling seemed to have had a "checklist" during the interview.²⁰⁶ During the interview, Goodling had inquired as to what kind of conservative he was, his favorite Supreme Court justice, and his views on the death penalty. Her notes indicated the candidate was "Cons. On 'god, guns + gays'."²⁰⁷

¹⁹⁸ *See id.* at 103.

¹⁹⁹ *See id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² GOODLING REPORT at 104.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 104.

²⁰⁶ *Id.*

²⁰⁷ GOODLING REPORT at 104.

Goodling testified before Congress that she “recommended seven people to be interviewed for immigration judges and four to be appointed to the BIA” admitting that she took “political considerations into account” for those positions.²⁰⁸ She forwarded candidates to EOIR including five to Ohlson for consideration on July 31, 2006.²⁰⁹ Ohlson responded stating that three candidates had interviews to be scheduled, the EOIR had no information on the fourth candidate, and the fifth was known.²¹⁰ Four of the six candidates recommended by Goodling had letters of recommendation from Republican Members of Congress, and a fifth was recommended by the White House.²¹¹ Goodling also forwarded candidates recommended by Bradley Schlozman, a political appointee in the Department.²¹² In fact, a December 4, 2006 recommendation email from Bradley Schlozman to Goodling stated:

Let me say his views on immigration are virtually identical to my own. ...I will get his resume for you, but don't be dissuaded by his ACLU work on voting matters from years ago. This is a very different man, and particularly on immigration issues, he is a true member of the team.²¹³

Goodling sent an email to EOIR to “consider” the recommended candidate for an immigration judge at EOIR Headquarters.²¹⁴ However, the candidate’s hiring was halted due to Civil Division concerns.²¹⁵

As the political screenings progressed, the immigration judge vacancy backlog increased. In fact, vacancies and workload worsened during Goodling’s tenure due to her additional

²⁰⁸ *Id.* at 104-05.

²⁰⁹ *See id.*

²¹⁰ *See id.*

²¹¹ *Id.*

²¹² GOODLING REPORT at 105.

²¹³ *Id.* at 105-06.

²¹⁴ *Id.* at 106.

²¹⁵ *Id.*

screening process.²¹⁶ In August 2006, Goodling contacted Ohlson saying that she would be “happy to see what names [Ohlson had] for some of these her openings.”²¹⁷ Ohlson responded:

[We] have compiled a binder that contains resumes of the ten best candidates who applied for the immigration judge and specifically asked to be assigned to these designated cities. This binder is being sent to you this afternoon. ...Once you have identified candidates for these positions, we will interview them immediately.²¹⁸

Upon following up on the recommended candidates, Ohlson was informed that Goodling was conducting “background research on the candidates.”²¹⁹ On September 20, 2006, Ohlson sent additional vacancies to Goodling and faxed resumes of potential candidates.²²⁰ The evidence shows that Goodling did not select any of the dozens of candidates submitted to her by the EOIR in the binder or subsequent faxes.²²¹ In November 2006, Ohlson sent an urgent email to the ODAG stating, “The bottom line is that we have TWENTY-FIVE immigration judge vacancies that need to be filled.”²²² Nonetheless, Goodling selected only two candidates in December 2006.²²³

G. Republican Immigration Judges Recommend Candidates

Perhaps among the most egregious findings in the Goodling Report were revelations that Garry Malphrus and Mark Metcalf provided immigration judge recommendations to Goodling along with another immigration judge in Florida, Rex Ford.²²⁴ In April 2006, Malphrus emailed

²¹⁶ *Id.*

²¹⁷ GOODLING REPORT at 106.

²¹⁸ *Id.* at 107.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² GOODLING REPORT at 107.

²²³ *Id.*

²²⁴ *See id.* at 108.

Sampson recommending that Ford be considered for Chief Immigration Judge based on “experience, leadership, and loyalty to the Bush Administration.”²²⁵

Metcalf also recommended numerous candidates. The first candidate was recommended by Ford to Metcalf.²²⁶ Goodling instructed the EOIR to “consider” the candidate, and he was promptly appointed as an immigration judge.²²⁷ In November 2006 Metcalf sent Goodling another recommendation for a candidate supported by both Malphrus and Ford.²²⁸ A month later, Metcalf recommended an additional six persons that “have been vetted here in Miami by Judge Ford.”²²⁹ The first candidate was a former elected official on the Republican Executive Committee of Palm Beach Country who was recommended highly by Rex Ford.²³⁰ The second candidate was an immigration lawyer and wife of Metcalf’s immigration judge mentor.²³¹ The third candidate was an immigration judge that Ford was familiar with.²³² The fourth candidate was a long-time friend of Metcalf and member of the Federalist Society.²³³ The fifth candidate was a DHS attorney with only four years of experience.²³⁴ And the sixth candidate was supported by a “Former Associate White House Counsel under Reagan.”²³⁵ Goodling’s resume comment on the six candidate noted “conservative.”²³⁶ Metcalf recommended at least three

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ GOODLING REPORT at 108.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.* at 109.

²³¹ *See id.*

²³² GOODLING REPORT at 109.

²³³ *See id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

additional candidates to Goodling in January 2007.²³⁷ Two of the candidates were sponsored by the Chairman Emeritus of the Republican Party of Orange County as “good Republicans.”²³⁸

H. Goodling Extends Sampson’s Hiring Process to BIA Members

Goodling also used the vetting process for positions on the BIA. On August 30, 2006, Goodling asked an OLC attorney about the legal framework for hiring the Chair and Vice Chair on the BIA.²³⁹ The OLC attorney sent an “informal” memo noting that an OLC would create a “formal version for future reference that will include hiring ordinary immigration judges and Board Members.”²⁴⁰ The informal memo explained that the Chair of BIA was a career SES position, and one or two Vice Chair positions were career SES positions. The others were Schedule A career positions.²⁴¹ The formal memo regarding immigration judge hiring was completed on March 29, 2007, and the formal memo regarding BIA member hiring was completed on August 8, 2007.²⁴²

Nevertheless, Goodling continued to select BIA candidates based on political and ideological considerations for four vacancies.²⁴³ The first candidate she selected for the BIA was aforementioned Immigration Judge Garry Malphrus.²⁴⁴ The second candidate had support from DOJ political appointees.²⁴⁵ The third candidate was a career government attorney who contacted Sampson through church contacts to express an interest in an immigration judge

²³⁷ GOODLING REPORT at 109.

²³⁸ *Id.* at 110.

²³⁹ *See id.*

²⁴⁰ *Id.*

²⁴¹ *See id.*

²⁴² GOODLING REPORT at 110.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

position.²⁴⁶ Sampson endorsed this candidate as a “very good guy.”²⁴⁷ Since the candidate was unable to take the immigration judge seat, Goodling considered him for a BIA spot. The candidate stated to the OPR/OIG that the interview questions indicated that Goodling was trying to “get at [his] political views.”²⁴⁸ The fourth candidate was a career Department attorney in the Civil Division’s Office of Immigration Litigation.²⁴⁹ The candidate expressed interests to Jonathan Cohn, a Department political appointee and other appointees, and gave his resume to Rachel Brand, the AAG for the Office of Legal Policy.²⁵⁰ Brand contacted Goodling describing the candidate as “completely on the team.”²⁵¹ On January 5, 2007, Goodling emailed the OAG Deputy Chief of Staff and others that Attorney General Gonzales had “approved” Malphrus and three other candidates for appointments to the BIA.²⁵² However, the Civil Division halted Goodling’s BIA appointments stating that the “OLC and [the Civil Division] need to confer regarding whether the current procedures for selecting/appointing Board [of Immigration Appeals] members and/or IJs comport with merit system principles (and are otherwise lawful.)”²⁵³

Around this period, a hiring freeze was implemented. This hiring freeze was in response to issues arising in the aforementioned *Gonzalez* case.²⁵⁴ The Civil Division attorneys representing the DOJ interviewed both Sampson and Goodling. On December 11, 2006, Sampson explained to the Civil Division attorneys that the OAG was exercising its direct

²⁴⁶ *Id.*

²⁴⁷ GOODLING REPORT at 110.

²⁴⁸ *Id.* at 111.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² GOODLING REPORT at 111.

²⁵³ *Id.* at 112.

²⁵⁴ *Gonzales v. Gonzales* was filed by an unsuccessful candidate for an IJ position.

appointment authority, and how that differed from past practices involving EOIR selections.²⁵⁵ On January 5, 2007, Goodling stated to the Civil Division attorneys that she and Angela Williamson were responsible for screening candidates before sending them to EOIR for interviews.²⁵⁶ In an email two days later a Civil Division attorney stated, “Monica made it clear that she does not inquire about or consider political affiliation in generating candidates.”²⁵⁷ The Civil Division attorney further told investigators, “I did specifically ask her whether political affiliation was taken into account. She told me no.”²⁵⁸ As a result of the Civil Division and OLC’s legal analysis of execution of the direct appointment authority, the DOJ suspended all hirings of BIA and immigration judges in January 2007.²⁵⁹

²⁵⁵ See GOODLING REPORT at 112-13.

²⁵⁶ *Id.* at 113.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ See *id.* at 114.

III. Report Conclusion and Recommendations

“The Department is going to take a greater role in IJ hiring.”

Subsequent to this investigation and hiring freeze, former Attorney General Gonzales approved a new process for immigration judges on April 2, 2007, after consultation with OAG, ODAG, EOIR, and approval by OLC, JMD, and OARM.²⁶⁰ The Gonzales procedure overturned the Sampson-Williams-Goodling process and returned most of the screening, evaluation, and selection of candidates to EOIR.

The new process entails a review of the applications submitted to public vacancy announcements by the EOIR’s immigration judge, who rates each candidate.²⁶¹ The immigration judge then obtains writing samples and references of the highest rated candidates and a three-member EOIR panels interview all top-tier candidates.²⁶² The three-member panels consist of two Deputy Chief Immigration Judges or Assistant Chief Immigration Judges, and a senior EOIR manager.²⁶³ The panels create packets for each candidate including a resume, interview summaries, and other information for review by the EOIR Director and the Chief Immigration Judge, who together select at least three candidates for a vacancy to recommend for final consideration.²⁶⁴ A second three-member panel then interviews as many of the three candidates as appropriate or as needed, and recommends one candidate for the DAG to recommend to the Attorney General for final approval.²⁶⁵ Both the DAG and Attorney General retain the authority to request additional candidates.²⁶⁶

²⁶⁰ See GOODLING REPORT at 114.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ GOODLING REPORT at 114.

²⁶⁶ *See id.*

Ohlson, who was appointed Director of EOIR in September 2007 despite his complicity in the former illegal hiring process, stated that the new hiring process has been working efficiently absent any evidence of politicized hiring.²⁶⁷ Thirteen immigration judges have been hired since the process was initiated, and others have been selected.²⁶⁸ Nonetheless, appointments are delayed due to a new requirement that calls for the completion of a background investigation prior to an appointment.²⁶⁹

The revised appointment process also applies to BIA appointments. This revised process requires public advertisement for vacancies.²⁷⁰ The minimum requirements for applicants are: 1) citizenship, 2) a law degree, and 3) seven years of relevant post-bar experience.²⁷¹ The applicants are also reviewed by a three-member panel which rates them, conducts reference checks, interviews top-tier candidates, and then recommends at least one candidate for each vacancy to DAG.²⁷² The panel includes the EOIR Director (or designee), a career SES employee designated by DAG, and a non-career SES designated by DAG. At least one candidate for each vacancy is forwarded by DAG to the Attorney General.²⁷³ Ohlson reported that the BIA hiring process is also working efficiently without evidence of politicized hiring.²⁷⁴ Five of seven BIA vacancies have been filled under the new process, after undergoing background investigations.²⁷⁵

The Goodling Report concludes with an assessment of staff conduct. The Report found that Sampson systematically violated DOJ policy and federal law by considering political or

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *See id.* at 115.

²⁷⁰ GOODLING REPORT at 115.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ GOODLING REPORT at 115.

ideological affiliations in soliciting and evaluating candidates for immigration judges.²⁷⁶ The process implemented by Sampson was contrary to the federal law with regard to civil service employees, and historical practice of EOIR in filling immigration judge vacancies.²⁷⁷ His claims alleging a conversation with Ohlson and advice from the OLC led him to believe that immigration judge hiring was not subject to civil service requirements were unsubstantiated.²⁷⁸ The record indicates that he contemplated using political considerations at least six months prior to his alleged conversation with Ohlson.²⁷⁹ Even if Sampson was confused or mistaken in his interpretation of the rules, the Goodling Report concludes his actions constituted misconduct because he systematically violated federal law and DOJ policy.²⁸⁰

Jan Williams also systematically violated DOJ policy and federal law by considering political or ideological affiliations in the appointment of immigration judges.²⁸¹ Most of her duties entailed finding candidates for political appointments.²⁸² Williams stated that she did not know that immigration judges were not political positions, and that Sampson directed her to contact the White House to obtain immigration judge candidates.²⁸³ Evidence shows that Williams turned to White House Office of Political Affairs and the White House Presidential Personnel Office, as well as to other political appointees and the Federalist Society, to solicit candidates while ignoring EOIR supplied candidates.²⁸⁴ However, according to the OPR/OIG,

²⁷⁶ *See id.* at 117.

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *See id.*

²⁸⁰ GOODLING REPORT at 118.

²⁸¹ *See id.*

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.* at 118-19.

because Williams was not an attorney and followed her supervisor's guidance in selecting immigration judges she did not commit misconduct.²⁸⁵

Monica Goodling also systematically violated DOJ policy and federal law by considering political and ideological affiliations in soliciting and evaluating candidates for immigration judges and BIA members.²⁸⁶ Goodling admitted to considering political and ideological affiliations in the appointment of immigration judges and BIA members stating that Sampson told her that such hiring was not subject to civil service laws.²⁸⁷ She stated that she assumed the same was true for BIA members.²⁸⁸ Evidence shows that Goodling used the aforementioned Williams' search string to research candidates, including those that applied in response to public vacancy announcements forwarded to her by EOIR.²⁸⁹ Several instances exist where she asked immigration judge or BIA candidates to fill out White House PPO forms.²⁹⁰ Evidence also indicates that Goodling was aware that political factors could not be considered in hiring for career immigration judge positions, yet she continued to research political affiliations of candidates.²⁹¹ She also told several immigration judge and BIA candidates who protested to filling PPO forms that they should not have been asked to complete the forms.²⁹² Further, she initially informed Civil Division attorneys that she did not use political criteria in evaluating immigration judges and BIA members.²⁹³ These actions indicated to the OPR/OIG that Goodling was in fact aware that it was illegal to use political criteria for civil service positions. Additionally, Goodling acknowledged that Sampson never told her that civil service laws did not

²⁸⁵ GOODLING REPORT at 119.

²⁸⁶ *Id.* at 121.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ GOODLING REPORT at 121.

²⁹¹ *Id.*

²⁹² *Id.* at 121-22.

²⁹³ *Id.* at 122.

apply to BIA member hiring, and she ignored advice from the OLC regarding her inquiry as to the legal framework for hiring Chair and Vice Chair of the BIA.²⁹⁴ Therefore, the OPR/OIG found that Goodling engaged in misconduct specifically for making misrepresentations to the Civil Division attorneys defending the *Gonzalez* litigation.²⁹⁵

According to the OPR/OIG, neither former Director Rooney nor then Deputy Director Ohlson violated federal law or DOJ policy, or engaged in misconduct with respect to hiring immigration judges or BIA members.²⁹⁶ Despite evidence to the contrary, the report credited their assertion of ignorance as to OAG's consideration of political or ideological affiliations in selecting candidates.²⁹⁷ However, the investigators concluded that sufficient evidence existed for Rooney and Ohlson to have realized political or ideological affiliations played a role in the selection process.²⁹⁸ The investigators noted that a high number of candidates whose resumes reflected Republican credentials, the sponsorship of candidates by Republican Members of Congress, and EOIR's inability to get OAG to consider any applications identified through public announcements should have put Rooney and Ohlson on notice.²⁹⁹ While Rooney and Ohlson made repeated efforts to persuade OAG to allow them to post advertisements and raised attention to the growing immigration judge vacancies, they had enough information about issues concerning the selection process that they should have brought it to the attention of other senior Department offices, such as the ODAG or to the Office of the Inspector General or the Office of Professional Responsibility.³⁰⁰

²⁹⁴ *See id.* at 122.

²⁹⁵ GOODLING REPORT at 122.

²⁹⁶ *Id.* at 122-23.

²⁹⁷ *Id.* at 123.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ GOODLING REPORT at 124.

The Goodling Report came to numerous conclusions after the investigation and posited various recommendations. It found that the aforementioned staff illegally subjected career position candidates to political evaluations. These staff members considered political or ideological affiliations when recommending and selecting candidates for other permanent career positions, which resulted in the rejection of high-quality candidates in favor of less-qualified candidates. The Goodling Report supports the conclusion that the actions of the staff members involved in the politicized hiring process, including Rooney and Ohlson in their complacency, damaged the Department and the immigration court system. The Goodling Report suggests that policies needed to be clarified regarding the use of political and ideological affiliations to select career attorney candidates for temporary details within the Department.³⁰¹

³⁰¹ *Id.* at 139.

CHAPTER 3: SURVEYS

I. Introduction and Analysis

In order to assess qualitative information about the decisions made by immigration judges illegally hired by the Department of Justice, the National Immigration Project members formed a committee. The committee submitted surveys to attorneys who were aware of having practiced before the known illegally hired immigration judges appointed during 2004 and 2007 to determine whether these judges were familiar with legal standards in immigration law. The list of immigration judges included in the survey was incomplete, and created by comparing other sources' lists of immigration judges to the date on which a particular judge was hired. For example, one source was a list of judges attached to a New York Times article about disparities in asylum decisions by immigration judges hired during the period that the illegal procedures were in effect.³⁰² The surveys additionally sought to investigate whether the judges' written or oral decisions adhered to legal standards. The objective was to compare the decisions of these judges to current case law in order to assess the quality of decision-making.

The surveys required the name of the immigration judge and general information about that judge, along with a description of the judge's ruling on applications for relief from removal, including asylum, withholding of removal, non-Legal Permanent Resident and Legal Permanent Resident Cancellation of Removal. The surveys sought to ascertain a judge's reliance on, or departure from, relevant case law and statutes.

The committee received approximately fifteen responses. These surveys yielded some unexpected results. First, some of the surveys received about the immigration judges hired had neutral, or even positive, comments about the judge's demeanor and openness to learn

³⁰² Charlie Savage, *Vetted Judges More Likely to Reject Asylum Bids, By the Numbers*, N.Y. TIMES, Aug. 23, 2008 (<http://www.nytimes.com/imagepages/2008/08/24/washington/24judges-graphic.html>).

immigration law. But none of these surveys elucidated much beyond a couple of neutral or positive sentences about the referenced judge. Furthermore, the respondents did not fully utilize the survey forms. These short responses may be a result of various factors. The single most obvious factor is the responding attorney's hesitancy to comment about a judge s/he regularly appears before. For example, some practitioners were apprehensive to complete the survey or describe their experiences before judges hired between 2004 and 2007 because they feared retaliation by the judges or the Board of Immigration Appeals. Many believed that a description of the case could lead the judge or the BIA to identify the case, and that their clients would sustain adverse outcomes. Also, perhaps, despite their illegal hiring, some of these judges may have made concerted efforts to educate themselves in the field of immigration law and adjudicate cases in an impartial matter. Unfortunately, the ambiguity remains.

Although most judges received neutral comments, some surveys pointed negatively towards some of the illegally hired judges. Another unexpected result was that some of the surveys signaled problems with judges outside of those within the scope of the Goodling Report's analysis. This finding may be an indicator of bias permeating the entire immigration system beyond just those judges appointed during this specific time period. Simply removing the judges appointed during the time period investigated by the OPR/OIG will not be enough to remove political bias from the system. Changes should be made at all levels of the immigration system to ensure that due process is served.

CHAPTER 4: RECOMMENDATIONS

I. Summary and Recommendations

Based on extensive research and examinations of DOJ hiring practices and in light of the above referenced OPR/OIG Goodling Report we have compiled a series of recommendations intended to remedy the consequences of the Sampson-Williams-Goodling hiring process. Moreover, following a review of testimonies and research by academics, policymakers, and government officials about structural defects in the broader immigration court system, we have taken the liberty to include recommendations that address these defects.

Although the DOJ has halted the Sampson-Williams-Goodling hirings, no action has been taken with regard to the appointments that occurred during this period. For this reason, our basic and most fundamental recommendation is for the removal of judicial appointees processed and hired during the period between 2004 and 2007. Those who were appointed through political considerations should be given the opportunity to reapply for their positions on a merit-based hiring standard as outlined in our recommendations. Additionally, we recommend that the three immigration judges who participated in the illegal hiring process, Garry Malphrus, Mark Metcalf, and Rex Ford be removed from their current positions. We also recommend offering BIA positions to former BIA judges who were reassigned or forced to resign as a consequence of former Attorney General Ashcroft's 2002 streamlining rule. Finally, we believe the current hiring process continues to be deficient, not only because the criteria for hiring immigration judges continues to lack a requirement for experience in immigration law, but also because there does not appear to be comprehensive immigration law training or oversight once a judge is

appointed.³⁰³ With these fundamental necessities in mind, this white paper outlines the following recommendations indispensable to effective court reform:

Reapplication Process For Illegally Hired Judges and EOIR Assessment

1. The DOJ should require every identified hiree to reapply for his or her position through a merit-based hiring process, such as the process outlined in item 3.³⁰⁴
2. All immigration judge vacancies should be filled in accordance with the legal hiring process including minimum qualifications in immigration law.
3. Nation-wide postings requiring the following qualifications should be used for vacancies:
 1. U.S. Citizenship;
 2. 7 years of relevant post-bar experience, of which 5 years include experience in immigration practice, teaching, advocacy or litigation;
 3. Knowledge of U.S. immigration laws and procedures; and
 4. The candidate must possess 2 or more of the following:
 - a. Substantial litigation experience, preferably in a high-volume content;
 - b. Experience handling complex legal issues;
 - c. Experience conducting administrative hearings; or
 - d. Knowledge of judicial practices and procedures.
4. The DOJ should create or expand an existing position within EOIR that coordinates closely with the Office for Professional Responsibility and monitors EOIR practices and policies, including but not limited to hiring, retention, and firing. The EOIR should create a mechanism for the public and government officials to file complaints alleging illegal practices and policies.
5. The EOIR should ensure that its hiring policy draws potentially eligible candidates equally from the government and private sectors.

Engraved above the main entrance to the Supreme Court is "Equal Justice Under the Law," however, analysis of the illegally hired judges has found that most have little to no knowledge in immigration law, and on average, they were more likely to rule against asylum

³⁰³ Of note, the Executive Office for Immigration Review held an annual training conference for immigration judges and BIA members in August 2009. See U.S. Department of Justice Fact Sheet, *EOIR's Improvement Measures Update*, *supra* note 17.

³⁰⁴ While specifying a process for removal and reapplication of illegally hired immigration judges is beyond the scope of this paper, of note is the law governing general recusal, which states that "an immigration judges assigned to conduct the hearing shall at any time withdraw if he or she deems himself or herself disqualified." 8 C.F.R. 1240.1(b). Arguably, this regulation and the subsequent case law create a legal foundation for illegally hired judges to recuse themselves.

seekers than their colleagues on the same court.³⁰⁵ Justice can hardly be served, much less equally, under such circumstances. These immigration judges must be removed irrespective of the quality of their decision-making, and given the opportunity to reapply for their position under a legal hiring process. Frankly no other institution, from country clubs to law schools, allows fraudulently hired or acquired members to retain their membership. The continued service of any illegally hired judge violates the neutrality and fundamental principles of justice and due process in U.S. immigration courts. New judges should be legally hired in accordance with the hiring recommendations outlined, including minimum qualifications and training in immigration law. A potential candidates' knowledge of immigration law should be assessed by an examination in basic immigration law, and followed up with ongoing training.

Additionally, the fact that both EOIR former Deputy Director Kevin Ohlson and former Director Kevin Rooney had knowledge of, and were directly involved in, the illegal process merits serious evaluation of the institutional mechanisms within the EOIR to address violations. It also highlights a fundamental problem within the EOIR's structure. The illegal hiring process discussed here continued for nearly four years and resulted in the hiring of immigration judges with the direct approval of, and accommodation by, EOIR leadership. While these staff members were not involved in creating the illegal hiring process, they dutifully implemented and supported the process despite acknowledging and even jesting about its illegality. The EOIR must therefore incorporate an institutional process by which members are required to formally complain to objectionable processes and practices. Finally, sanctions for violations of DOJ policy should be extended to all participants in illegal practices, as is consistent with other areas of U.S. law and policy.

³⁰⁵ See TRAC Reports-- Bush Administration Plan to Improve Immigration Courts Lags (2008), <http://trac.syr.edu/immigration/reports/194/>.

Hiring and Evaluation of Personnel

1. Increase the number of immigration judges through an efficient and non-political vetting process in order to diminish the current backlog of cases.
2. Establish minimum qualifications for immigration judges and BIA members.
3. Prohibit removal or threat of removal of legally hired immigration judges and BIA members, and restore decisional independence of judges.³⁰⁶

In order to ensure that political hiring does not affect the judicial process, it is imperative that political ideology is absent from both hiring and firing decisions while on the bench. While it is important to fill the vacancies and ease the case backlog, appointed judges must be qualified to handle immigration proceedings. Minimum qualifications *must* be established in order to eradicate the appointment of unqualified candidates, and to ensure that the best possible candidates are being instated. In addition to vetting judges prior to appointment, continued review of a judge's potential political bias is necessary to ensure due process. Evidence suggests that some judges who were not political appointees nonetheless have alarmingly high percentages of immigration denials; some have denial rates higher than the judges politically appointed during the Sampson-Williams-Goodling period.³⁰⁷

Immigration Judge and BIA Member Evaluations

1. Ensure that performance reviews include a metric for professional conduct for gauging independence and impartiality in decisionmaking.
2. Require that immigration judges complete a basic immigration law examination to assess their knowledge of U.S. immigration law.³⁰⁸

³⁰⁶ See Stephen H. Legomsky, Testimony Before the House Immigration Committee (September 23, 2008) (available at <http://judiciary.house.gov>).

³⁰⁷ See TRAC Reports-- Immigration Judges (2006), <http://www.trac.syr.edu/immigration/reports/160>. See also TRAC Reports-- Asylum Disparities Persist, Regardless of Court Location and Nationality (2007), <http://trac.syr.edu/immigration/reports/183/>.

³⁰⁸ U.S. Department of Justice Fact Sheet, *EOIR's Improvement Measures Update*, *supra* note 17. ("EOIR began testing new immigration judges in April 2008, and new BIA members in August 2008.")

3. Improve training for immigration judges and BIA members.

Beyond the non-partisan hiring changes, decisions by all immigration judges should be reviewed to gauge their professional conduct and the impartiality of their decisions. Although changes in the hiring process itself should remove blatant political hires, bias may still be a factor even with non-political hires. If judges know that their decisions will be reviewed for evidence of bias, they may make a more concerted effort to ensure the discretionary aspects of immigration law are decided fairly, and applicable law is followed. Although knowledge of immigration law should be a part of the hiring criteria, comprehensive training in the field of immigration law will help further ensure that immigration judges are making informed decisions based on the law and not on political values. Impartiality of immigration judges is vital due to the deference given to the judge's discretion on appeal.

Board of Immigration Appeals

1. Repeal the streamlining processes within the EOIR implemented by former AG Ashcroft in 2002.
2. Offer BIA positions to the former BIA judges who were reassigned or who were forced to resign under former AG Ashcroft.
3. Increase the number of judges in the BIA.³⁰⁹
4. Reinstate the requirement that precedent decisions be decided by the BIA *en banc*.
5. Codify the roles of immigration judge and member of the BIA.³¹⁰
6. Restore three-member panels for Board of Immigration Appeals reviews, especially for cases involving asylum, withholding of removal, and relief under the Convention Against Torture. Rescind regulations that limit three-member panel review of all but a limited number of facially invalid or frivolous cases.³¹¹

³⁰⁹ See Stephen H. Legomsky, Testimony Before the House Immigration Committee (September 23, 2008) (available at <http://judiciary.house.gov>).

³¹⁰ See OBAMA-BIDEN TRANSITION PROJECT, *supra* note 23.

³¹¹ See OBAMA-BIDEN TRANSITION PROJECT, *supra* note 23.

First and foremost, the streamlining processes implemented by the former Attorney Generals should be abandoned. The reduction of the number BIA judges should be reversed and increased, or at a minimum restored to the original number of twenty-three judges. The minimal increase from eleven to fifteen is unacceptable. The hiring process for BIA judges should also be merit-based. Minimum qualifications including knowledge of immigration law and impartiality must be endorsed throughout the immigration system. In order to ensure that this hiring process is implemented, the roles of immigration judges and BIA members should be codified into the INA.

Furthermore, the makeup of a BIA panel should also be reorganized. Three-member panels for BIA reviews should be restored, and single member opinions should be limited to ministerial and truly non-controversial matters, such as an unopposed motion to reopen. The BIA should decide all precedent cases *en banc*. Due process is more likely to be served, and biases diminished, if appeals are brought before an impartial multi-member panel instead of a potentially biased BIA member.

Transparency

1. The public list of immigration judges appointed through the illegal hiring process is incomplete, and created by comparing other sources' lists of immigration judges to the date on which a particular judge was hired. The DOJ should release the names of former and current immigration judges illegally hired between 2004 and 2007.
2. All decisions, including BIA affirming the lower court, should include a written explanation of the judge's rationale for the decision.
3. Ex-parte authorization should be stricken.³¹²

All decisions should have a written rationale so that decisions can be assessed for accurate application of laws, and appeals to the Federal Court of Appeals can be processed

³¹² See Stephen H. Legomsky, Testimony Before the House Immigration Committee (September 23, 2008) (available at <http://judiciary.house.gov>).

without a rehearing of the case as it passed before the BIA. Even cases decided by judicial discretion should have a written decision or memorandum attached for the purposes of reviewing a judge's bias.

These aforementioned recommendations are fundamental steps to ensure that established immigration law is uniformly applied and adhered to by judges. Merely implementing a removal and reapplication process for judges appointed during the time period addressed in the Goodling Report is not enough, although it is a vital step. The entire immigration process must be analyzed and revised to remedy weaknesses and flaws that allow for transgressions of U.S. immigration law and violations of due process in the immigration system.

Table of Appendices

- A. *Copy of the Office of Professional Responsibility and Inspector General's Report* (available at <http://www.usdoj.gov/oig/special/s0807/final.pdf>).
- B. *List of Known Illegally Hired Immigration Judges and Dates of Appointment* (attached).
- C. *Surveys: Issued to Attorneys Arguing Before Known Illegally Hired Immigration Judges* (attached).
- D. *Transactional Records Access Clearinghouse (TRAC), associated with Syracuse University, Reports:*
1. TRAC Reports-- Asylum Seekers and Refugees: A Primer, <http://www.trac.syr.edu/immigration/reports/161>
 2. TRAC Reports-- The Asylum Process, <http://www.trac.syr.edu/immigration/reports/159>
 3. TRAC Reports-- Immigration Judges, <http://www.trac.syr.edu/immigration/reports/160>
 4. TRAC Reports-- Asylum Disparities Persist, Regardless of Court Location and Nationality, <http://www.trac.syr.edu/immigration/reports/183>
 5. TRAC Reports-- Improving the Immigration Courts: Effort to Hire More Judges Falls Short, <http://www.trac.syr.edu/immigration/reports/189>
 6. TRAC Reports-- Bush Administration Plan to Improve Immigration Courts Lags, <http://www.trac.syr.edu/immigration/reports/194>
 7. TRAC Reports-- Judge-by-Judge Asylum Decisions by Immigration Court Fiscal Years 2001 – 2006, http://trac.syr.edu/immigration/reports/183/include/1_judgelist.html
 8. TRAC Reports—Immigration Courts: Still a Troubled Institution (2009), <http://trac.syr.edu/immigration/reports/210/>
- E. Stephen H. Legomsky, *Testimony Before the House Immigration Committee* (September 23, 2008) (available at <http://judiciary.house.gov>).
- F. Jaya Ramji-Nogales, Andrew Schoenholtz & Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295 (2007).

FROM: [REDACTED]

RE: Survey to obtain information about quality of decisions made by immigration judges illegally hired by the Department of Justice

DATE: 12/18/2008

Background: The questionnaire seeks to obtain qualitative information about decisions made by immigration judges (IJ) improperly hired by the Department of Justice.¹ The Office of the Inspector General (OIG), in a detailed report, stated that at least 30 judges were hired between June 2004 through June 2007 using an illegal vetting and hiring process. During the vetting process, the Department of Justice solicited and offered positions to individuals closely associated with the Bush-Cheney campaign or the White House. Candidates were asked questions about their political opinions, including abortion, gay marriage, and NAFTA – a violation of federal law as IJs and BIA judges are considered career employees, not political employees of the Department of Justice.

In August 2008, National Immigration Project members formed a committee to respond to the report.

Purpose of the survey: We want to examine whether immigration judges hired through this illegal process are familiar with legal standards in immigration law and whether their oral or written decisions adhere to those standards. We underscore that we do not seek to analyze the number of grants or denials, but will compare their decisions, based on the survey results, to current caselaw to assess quality of decision-making. We plan to use responses to the survey results to write a report and/or develop legal arguments to bring against these judges in removal proceedings.

If you believe you practice before immigration judges who were appointed during the improper hiring procedure, please note that in your response. The table below contains names of judges who were likely hired during that period, but it is not a complete list.² We may use this information in a report, but will respect any requests for confidentiality or anonymity. We will contact you for further details, if necessary.

Submit results to: [REDACTED]

¹ See OIG, An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General, July 30, 2008; available at: <http://www.usdoj.gov/opr/goodling072408.pdf>.

² See "Immigration Judge Reports – Asylum", Transaction Records Access Clearinghouse Reports: <<http://trac.syr.edu/immigration/reports/judgereports/>>.

Immigration Judges Appointed between September 2004 and December 2006

(Statistics cover the fiscal years 2002 – 2007, and include data on 267 judges who rendered at least 100 decisions in a city's immigration court – National Average Rate of Denial during this period was 59.8%)

Name	Date of Appointment	City	# of Asylum Claims Decided	% of claims denied	Rate of Denial in Court where IJ was based
Javier E. Balasquide	July 2006	New York	276	40.9	38.3
Glen L. Bower	Oct 2005	Chicago	169	16	61.4
Chris A. Brisack	May 2005	Houston	214	90.7	80
Alison E. Daw	May 2006	Los Angeles	109	60.6	62.5
William Evans Jr.	Oct 2006	Cleveland	107	66.4	66.4
Robin E. Feder	Nov 2006	Boston	104	63.5	62.2
Stephen S. Griswold	Jan 2005	San Francisco	230	60.4	54
Carey R. Holliday	May 2006	Miami	465	83	78.5
Elizabeth A. Kessler	Jan 2006	Baltimore	316	50.9	59.4
Frederic G. Leeds	March 2006	Newark	146	71.9	62.6

Garry D. Malphrus (now at BIA)	March 2005	Arlington	417	66.9	33.1
Mark H. Metcalf	Dec 2005	Miami	379	89.7	78.5
Thomas J. Mulligan	Oct 2005	New York	539	28.8	38.3
Marsha K. Nettles	Feb 2005	Detroit	346	86.4	74.5
William L. Nixon	May 2005	Salt Lake City	140	48.6	48.3
Jonathan D. Pelletier	Sept 2006	Atlanta	104	92.3	84.2
Gary W. Smith	Oct 2005	San Francisco	123	74.8	54
Thomas G. Snow	Oct 2005	Arlington	396	66.7	59
William W. Stogner	Jan 2005	New Orleans	179	68.7	74.3
A. Ashley Tabaddor	Nov 2005	Los Angeles	222	75.7	62.5
Earle B. Wilson	Oct 2005	Miami and Orlando	612	88.1 (Miami) and 80.3 (Orlando)	78.5

DATE:

NAME OF ORGANIZATION AND STAFF PERSON:

CONTACT INFO:

1. Information about the immigration judge (if known), such as the date of appointment, years of immigration law practice, and/or previous job experience?
2. Please provide a description of how the immigration judge(s) ruled on the following applications:
 - a. Asylum, withholding of removal, and Convention Against Torture relief?
 - b. Non-LPR cancellation of removal (including VAWA)
 - c. LPR Cancellation of Removal or 212(c)
 - d. Bond
 - e. Evidentiary or Suppression Hearings?
 - f. Legal findings on aggravated felonies, crimes of moral turpitude, good moral character, etc?

We want to know if your immigration judge relied on relevant case law and the extent to which their decision departed from caselaw, if any. *To clarify, was your immigration judge familiar with legal standards required for relief? Were the facts of your case dissimilar/similar to BIA precedent? Does the immigration judge demonstrate a lack of knowledge of the law or consistently misinterprets or confuses basic tenets of immigration law?*

3. Please provide a description of any comments or behavior that show:
 - a. Political Bias e.g. bias against Democrats
 - b. Bias against abortion,
 - c. Prejudicial comments against gays, lesbians, transgender groups or individuals? or
 - d. Any bias, pervasive unfairness, or unprofessional behavior
4. What did you do when you encountered any of the situations above? (e.g. motions to recuse, objections, etc.) What was the result?