

Durbin, Whitehouse, Hirono Lead Call For GAO Investigation Of Trump Administration And Immigration Courts

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WASHINGTON – U.S. Senator Dick Durbin (D-IL), Ranking Member of the Senate Judiciary Immigration Subcommittee, joined Senators Sheldon Whitehouse (D-RI) and Mazie Hirono (D-HI) to lead a request from all Senate Judiciary Committee Democrats to the top congressional watchdog to investigate the practices of the Executive Office of Immigration Review (EOIR) under President Trump, including its management of immigration courts during the current COVID-19 pandemic.

In a letter to the Government Accountability Office (GAO), the Senators raise concerns they first [voiced to the Justice Department in February](#) about mismanagement of the EOIR under Attorney General Bill Barr, as well as the Trump Administration's regulatory and procedural changes at the Justice Department that have curtailed the independence of immigration courts. The Administration's mismanagement of the immigration courts is particularly troubling during the COVID-19 pandemic.

“While the Trump administration has justified its incursions into the independence of immigration courts as efficiency measures, legal service providers have explained that EOIR's response to the COVID-19 pandemic demonstrates how the agency can use

seemingly neutral measures to tip the scales of justice against noncitizens,” the Senators wrote. “In order to defend themselves in immigration court, noncitizens must file motions and other papers in person at physical court locations; obtain counsel; meet with their attorneys; present testimony from family members, employers, and/or expert witnesses; and provide medical records, tax records, and other supporting documents. Yet COVID-19 makes these actions potentially dangerous.”

Joining Durbin, Whitehouse, and Hirono in the request to the GAO are Senators Dianne Feinstein (D-CA), Patrick Leahy (D-VT), Amy Klobuchar (D-MN), Chris Coons (D-DE), Richard Blumenthal (D-CT), Cory Booker (D-NJ), and Kamala Harris (D-CA).

The Trump Administration’s management of the immigration system has come under close scrutiny during the COVID-19 crisis. Reports suggest immigrants face a range of unsafe conditions and practices as a result of Trump administration management decisions.

In 2018, Durbin and other top Democrats sent a [letter](#) requesting that the Department of Justice Inspector General investigate whistleblower allegations of politicized hiring practices for immigration judges and Board of Immigration Appeals (BIA) positions. Durbin also asked James McHenry, the Director of EOIR, about these allegations during a hearing before the Senate Immigration Subcommittee.

Full text of the letter is available [here](#) and below:

August 21, 2020

Dear Mr. Dodaro:

We are writing to request that the Government Accountability Office (GAO) analyze and audit the Executive Office of Immigration Review’s (EOIR) practices with respect to the hiring, training, and evaluation of immigration judges and staffing of immigration courts, as well as their management of these courts during the current COVID-19 pandemic. GAO’s insight will help Congress determine if additional legislation is necessary to address these issues, as well as inform appropriations decisions.

In February, we wrote to Attorney General William Barr to express our concern that the Trump administration is undermining the independence of immigration courts. As outlined in that letter, attached, we are concerned about the mismanagement of EOIR and troubled by regulatory and procedural changes within the Department of Justice (DOJ) that have curtailed the independence of immigration courts. Although more than six months have passed, we have not received a response from DOJ or EOIR. Instead, in

that time, EOIR has continued to use its administrative powers to put its thumb on the scale of justice. Most recently, EOIR attempted to buy out all nine career Board of Immigration Appeals judges who had been hired in prior administrations. When the judges refused, they were reassigned to new roles.

While the Trump administration has justified its incursions into the independence of immigration courts as efficiency measures, legal service providers have explained that EOIR's response to the COVID-19 pandemic demonstrates how the agency can use seemingly neutral measures to tip the scales of justice against noncitizens. In order to defend themselves in immigration court, noncitizens must file motions and other papers in person at physical court locations; obtain counsel; meet with their attorneys; present testimony from family members, employers, and/or expert witnesses; and provide medical records, tax records, and other supporting documents. Yet COVID-19 makes these actions potentially dangerous. While EOIR initially postponed all hearings for non-detained individuals, proceedings for detained noncitizens continued to move forward unabated. Immigration courts are now reopening around the country, including in areas that are seeing increases in the number of COVID-19 cases. Because EOIR does not have consistent policies for when attorneys, let alone translators or witnesses, may appear telephonically or by video, participants often must appear in person or not at all. Immigration courts have continued to issue *in absentia* orders of removal for noncitizens who do not appear, even when the likely cause is COVID-19. Nor has EOIR uniformly extended deadlines or continued cases, despite the difficulty noncitizens face in finding and consulting with counsel, obtaining and filing necessary documents and evidence, or securing the appearance of witnesses. These difficulties are particularly acute for detained clients, who have limited access to phone calls and attorney visits. As a result, noncitizens cannot obtain counsel or litigate their cases, and attorneys cannot effectively represent their clients.

EOIR's facially-neutral policies during the COVID-19 pandemic have raised systemic due process concerns. Immigration judges, staff, and litigators have also expressed concerns about the health risks to them and the litigants who appear in immigration courts. Given GAO's prior work on immigration courts, it is uniquely suited to conduct an audit and analysis of EOIR. We ask GAO to look into the following questions:

1. What criteria does EOIR use to hire immigration judges and Board of Immigration Appeals judges? What criteria does EOIR use to determine the number of deputy chief and other management positions for judges, and what criteria does EOIR use to hire for these positions? To what extent does EOIR assess its immigration judge

and Board of Immigration Appeals judge hiring efforts? What, if any, challenges has EOIR encountered in recruiting and retaining immigration judges and Board of Immigration Appeals judges? How, if at all, has it addressed them?

2. How does EOIR determine targets for immigration court and Board of Immigration Appeals case completion time frames and caseloads?
3. To what extent has EOIR assessed its immigration court and Board of Immigration Appeals staffing needs? What have any such assessments shown? How do current immigration court staffing levels compare to staffing needs EOIR has identified?
4. How does EOIR assess immigration and Board of Immigration Appeals judge performance?
5. To what extent has EOIR assessed immigration judge and Board of Immigration Appeals judge training needs? What have any such assessments shown?
6. How has EOIR's use of video teleconferencing changed since GAO last reported on it in 2017? What, if any, data is EOIR collecting on hearings using video teleconferencing and the effects of that technology on hearing outcomes?
7. How do EOIR's practices compare to other administrative courts?
8. How, if at all, is EOIR addressing the backlog of cases that were postponed in response to the COVID-19 pandemic?
9. How, if at all, has EOIR's response to COVID-19 affected noncitizens' ability to locate and meet with counsel, obtain and present evidence in their cases, and appear in court? To what extent have the challenges of COVID-19 impacted the number of *in absentia* orders issued by immigration courts?