

ONE HUNDRED EIGHTEENTH CONGRESS

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906  
judiciary.house.gov

March 18, 2024

Director David Neal  
Executive Office for Immigration Review  
5104 Leesburg Pike, 26th Floor  
Falls Church, VA 22041

Dear Director Neal:

The Committee on the Judiciary continues to conduct oversight of the Biden Administration's enforcement of federal immigration law. We write to request material about the Justice Department's reported gag order that forbids immigration judges from speaking with Congress or the news media about the Administration's unprecedented immigration crisis.

As a result of the open southwest border, federal immigration courts had a backlog of more than three million cases in November 2023, with more than one million new cases within a single year.<sup>1</sup> Meanwhile, the Department of Justice, along with the Department of Homeland Security, has empowered immigration judges to allow illegal aliens to stay in the United States indefinitely. In fact, from the beginning of the Biden Administration through September 2023, immigration judges dismissed, terminated, or administratively closed half a million cases, with 286,236 case dismissals, 120,671 case terminations, and at least 71,465 administrative closures during that time.<sup>2</sup> These actions ensure that illegal aliens remain in the United States indefinitely.

Against this backdrop of unprecedented illegal immigration and immigration court backlog, the Justice Department reportedly ordered certain current immigration judges "to get supervisor approval to speak publicly to anyone outside the Justice Department," which has silenced critics of the "heavily backlogged immigration courts."<sup>3</sup> The directive reportedly came

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<sup>1</sup> See *Immigration Court Backlog Tops 3 Million; Each Judge Assigned 4,500 Cases*, TRAC IMMIGR. (Dec. 18, 2023), <https://trac.syr.edu/reports/734/>.

<sup>2</sup> Letter from Carlos Uriarte, Assistant Att'y Gen., U.S. Dep't of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Nov. 2, 2023); FY 2023 Decision Outcomes, EXEC. OFF. FOR IMMIGR. REV. (last accessed Mar. 13, 2024), [https://www.justice.gov/d9/pages/attachments/2018/10/26/6\\_fy\\_2023\\_decision\\_outcomes.pdf](https://www.justice.gov/d9/pages/attachments/2018/10/26/6_fy_2023_decision_outcomes.pdf). The Biden Administration administratively closed 71,465 cases through July 2023, so the total number of administrative closures through September 2023 is likely much higher.

<sup>3</sup> Elliot Spagat, *Immigration judges union, a frequent critic, is told to get approval before speaking publicly*, ASSOCIATED PRESS (Mar. 4, 2024, 9:03 PM), <https://apnews.com/article/immigration-courts-judges-union-backlog-751f55a0ae60af5c04d6c0ca420d36ae>.

from the Executive Office for Immigration Review's (EOIR) Chief Immigration Judge Sheila McNulty on February 15, 2024, and "prohibits speaking to Congress, news media[,] and professional forums without approval."<sup>4</sup>

It is particularly striking that the Biden Administration seeks to stifle the free speech of immigration judges at a time when Congress, and this Committee in particular, is conducting robust oversight of the border crisis and how the nation's immigration courts are being used to carry out President Biden's open-borders policies. As just one example, since November 2023, the Committee has requested transcribed interviews with EOIR officials, including with Chief Immigration Judge McNulty.<sup>5</sup> Despite numerous follow-ups by the Committee, the Department has scheduled just one of the requested transcribed interviews.<sup>6</sup> The Department's continued delay in scheduling the requested transcribed interviews prevents the Committee from fulfilling its constitutional oversight obligations. The Committee requires these interviews to advance its oversight of federal immigration law and to inform potential legislative reforms.

The Department's reported gag order on immigration judges appears to violate a provision in the annual federal appropriations law that guarantees the right of all federal employees to speak freely with Congress without interference from his or her employer.<sup>7</sup> A federal employee who "prohibits or prevents" another employee from communicating with Congress may have his or her salary withheld.<sup>8</sup> This provision is not an idle threat. In fact, in 2016, the U.S. Government Accountability Office determined the Department of Housing and Urban Development (HUD) must partially withhold the salary of two HUD employees for delaying a line-level HUD employee from appearing before Congress in a transcribed interview setting.<sup>9</sup>

The Committee takes seriously the Department's effort to silence immigration judges. Accordingly, to assist the Committee with its continued oversight of federal immigration policy and procedures, we ask that you provide the following documents and information:

1. All documents and communications referring or relating to the decision(s) to restrict immigration judges' right to speak to Congress, to the news media, and in other capacities absent supervisory approval; and
2. All documents and communications referring or relating to the October 18, 2023, testimony of the Honorable Mimi Tsankov, President, National Association of Immigration Judges, before the Senate Judiciary Committee's Subcommittee on Immigration, Citizenship, and Border Safety.

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<sup>4</sup> *Id.*

<sup>5</sup> Letters from Jim Jordan, Chairman, H. Comm. on the Judiciary, to EOIR Officials (Nov. 6, 2023).

<sup>6</sup> Emails from Dep't of Just. to Comm. staff, H. Comm. on the Judiciary (on file with Comm.).

<sup>7</sup> See Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. E, title VII, § 713, 136 Stat. 4459, 4707 (2022).

<sup>8</sup> *Id.*

<sup>9</sup> Letter from Susan A. Poling, General Counsel, GAO, to Charles E. Grassley, Chair, Senate Judiciary Committee et al. (Apr. 5, 2016).

Director David Neal

March 18, 2024


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In addition, we reiterate our outstanding requests for transcribed interviews with EOIR officials. We have enclosed our prior requests for your convenience. Please provide the material requested and contact Committee staff to schedule the outstanding transcribed interviews as soon as possible but no later than 5:00 p.m. on April 1, 2024. Pursuant to the Rules of the House of Representatives, the Committee on the Judiciary is authorized to conduct oversight of federal immigration policy and procedures. If you have any questions, please contact Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan  
Chairman



Tom McClintock  
Chairman  
Subcommittee on Immigration  
Integrity, Security, and Enforcement

cc: The Honorable Jerrold L. Nadler, Ranking Member

The Honorable Pramila Jayapal, Ranking Member, Subcommittee on Immigration  
Integrity, Security, and Enforcement

Enclosures

ONE HUNDRED EIGHTEENTH CONGRESS

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November 6, 2023

Ms. Mary Cheng  
Deputy Director  
Executive Office for Immigration Review  
5104 Leesburg Pike, 26th Floor  
Falls Church, VA 22041

Dear Deputy Director Cheng:

The Committee on the Judiciary is conducting oversight of the Biden Administration's enforcement of federal immigration law. Our oversight includes examining the actions of the Executive Office for Immigration Review (EOIR) during the worst illegal immigration crisis in our nation's history. As EOIR's Deputy Director, we believe you are uniquely situated to inform our oversight, and we ask for your cooperation with our request.

According to EOIR's own data, the immigration court backlog skyrocketed to nearly 2.2 million pending cases at the end of the third quarter of fiscal year 2023.<sup>1</sup> Meanwhile, from the beginning of the Biden Administration through July 2023, immigration judges dismissed, terminated, or administratively closed nearly half a million cases, with 260,390 case dismissals, 112,854 case terminations, and 71,465 administrative closures during that time.<sup>2</sup> This raises serious questions about whether EOIR is truly "adjudicat[ing] immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws."<sup>3</sup>

As Deputy Director of EOIR, you oversee the nation's immigration courts and other EOIR components, supervise EOIR officials, and are responsible for implementing the Administration's immigration policies. Accordingly, we request that you make yourself available for a transcribed interview with the Committee as soon as possible. Please contact Committee staff by November 20, 2023, to schedule your transcribed interview.

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<sup>1</sup> Executive Office for Immigration Review, *Pending Cases, New Cases, and Total Completions*, U.S. DEP'T OF JUSTICE (last accessed Oct. 23, 2023), <https://www.justice.gov/eoir/page/file/1242166/download>.

<sup>2</sup> Letter from Carlos Uriarte, Assistant Att'y Gen., U.S. Dep't of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Nov. 2, 2023).

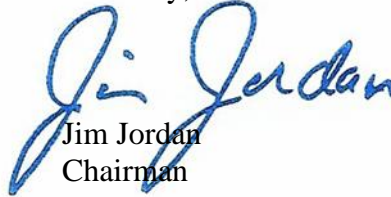
<sup>3</sup> Executive Office for Immigration Review, *About the Office*, U.S. DEP'T OF JUSTICE (last accessed Oct. 23, 2023), <https://www.justice.gov/eoir/about-office>.

Ms. Mary Cheng  
November 6, 2023  
Page 2

The Judiciary Committee is authorized to conduct oversight of federal immigration law pursuant to the Rules of the House of Representatives.<sup>4</sup> If you have any questions, please contact Committee staff at (202) 225-6906. If you are represented by private counsel, please ask your attorney to contact Committee staff on your behalf.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is stylized with a large "J" and a long, sweeping underline.

Jim Jordan  
Chairman

cc The Honorable Jerrold Nadler, Ranking Member

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<sup>4</sup> Rules of the U.S. House of Representatives, R. X (2023).

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Mr. David Neal  
Director  
Executive Office for Immigration Review  
5104 Leesburg Pike, 26th Floor  
Falls Church, VA 22041

Dear Director Neal:

The Committee on the Judiciary is conducting oversight of the Biden Administration's enforcement of federal immigration law. Our oversight includes examining the actions of the Executive Office for Immigration Review (EOIR) during the worst illegal immigration crisis in our nation's history. As EOIR's Director, we believe you are uniquely situated to inform our oversight, and we ask for your cooperation with our request.

According to EOIR's own data, the immigration court backlog skyrocketed to nearly 2.2 million pending cases at the end of the third quarter of fiscal year 2023.<sup>1</sup> Meanwhile, from the beginning of the Biden Administration through July 2023, immigration judges dismissed, terminated, or administratively closed nearly half a million cases, with 260,390 case dismissals, 112,854 case terminations, and 71,465 administrative closures during that time.<sup>2</sup> This raises serious questions about whether EOIR is truly "adjudicat[ing] immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws."<sup>3</sup>

As Director of EOIR, you oversee the nation's immigration courts and the Board of Immigration Appeals, supervise senior EOIR officials, and are responsible for implementing the Administration's immigration policies. Accordingly, we request that you make yourself available for a transcribed interview with the Committee as soon as possible. Please contact Committee staff by November 20, 2023, to schedule your transcribed interview.

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Mr. David Neal  
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Jim Jordan  
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November 6, 2023

Mr. Daniel J. Daugherty  
Regional Deputy Chief Immigration Judge  
Office of the Chief Immigration Judge  
4825 Mark Center Drive  
Alexandria, VA 22311

Dear Judge Daugherty:

The Committee on the Judiciary is conducting oversight of the Biden Administration's enforcement of federal immigration law. Our oversight includes examining the actions of the Executive Office for Immigration Review (EOIR) during the worst illegal immigration crisis in our nation's history. As a Regional Deputy Chief Immigration Judge, we believe you are uniquely situated to inform our oversight, and we ask for your cooperation with our request.

According to EOIR's own data, the immigration court backlog skyrocketed to nearly 2.2 million pending cases at the end of the third quarter of fiscal year 2023.<sup>1</sup> Meanwhile, from the beginning of the Biden Administration through July 2023, immigration judges dismissed, terminated, or administratively closed nearly half a million cases, with 260,390 case dismissals, 112,854 case terminations, and 71,465 administrative closures during that time.<sup>2</sup> This raises serious questions about whether EOIR is truly "adjudicat[ing] immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws."<sup>3</sup>

As a Regional Deputy Chief Immigration Judge, you oversee the nation's immigration courts, supervise Assistant Chief Immigration Judges, and are responsible for implementing the Administration's immigration policies. Accordingly, we request that you make yourself available for a transcribed interview with the Committee as soon as possible. Please contact Committee staff by November 20, 2023, to schedule your transcribed interview.

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Mr. Daniel J. Daugherty

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Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is stylized with a large "J" and a cursive "Jordan".

Jim Jordan  
Chairman

cc The Honorable Jerrold Nadler, Ranking Member

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November 6, 2023

Ms. Sheila McNulty  
Chief Immigration Judge  
Office of the Chief Immigration Judge  
4825 Mark Center Drive  
Alexandria, VA 22311

Dear Judge McNulty:

The Committee on the Judiciary is conducting oversight of the Biden Administration's enforcement of federal immigration law. Our oversight includes examining the actions of the Executive Office for Immigration Review (EOIR) during the worst illegal immigration crisis in our nation's history. As the Chief Immigration Judge, we believe you are uniquely situated to inform our oversight, and we ask for your cooperation with our request.

According to EOIR's own data, the immigration court backlog skyrocketed to nearly 2.2 million pending cases at the end of the third quarter of fiscal year 2023.<sup>1</sup> Meanwhile, from the beginning of the Biden Administration through July 2023, immigration judges dismissed, terminated, or administratively closed nearly half a million cases, with 260,390 case dismissals, 112,854 case terminations, and 71,465 administrative closures during that time.<sup>2</sup> This raises serious questions about whether EOIR is truly "adjudicat[ing] immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws."<sup>3</sup>

As the Chief Immigration Judge, you oversee the nation's immigration courts and are responsible for implementing the Administration's immigration policies. Accordingly, we request that you make yourself available for a transcribed interview with the Committee as soon as possible. Please contact Committee staff by November 20, 2023, to schedule your transcribed interview.

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Ms. Sheila McNulty

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November 6, 2023

Mr. Daniel H. Weiss  
Regional Deputy Chief Immigration Judge  
Office of the Chief Immigration Judge  
4825 Mark Center Drive  
Alexandria, VA 22311

Dear Judge Weiss:

The Committee on the Judiciary is conducting oversight of the Biden Administration's enforcement of federal immigration law. Our oversight includes examining the actions of the Executive Office for Immigration Review (EOIR) during the worst illegal immigration crisis in our nation's history. As a Regional Deputy Chief Immigration Judge, we believe you are uniquely situated to inform our oversight, and we ask for your cooperation with our request.

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Sincerely,



Jim Jordan  
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