

United States Senate  
WASHINGTON, DC 20510

March 8, 2024

**VIA ELECTRONIC TRANSMISSION**

The Honorable Merrick B. Garland  
Attorney General  
Department of Justice

Dear Attorney General Garland:

I write to you regarding concerning allegations that the Biden Justice Department is unlawfully attempting to prohibit its employees from making legally protected disclosures to Congress. It's been reported that the Justice Department Executive Office for Immigration Review (EOIR) Chief Immigration Judge Sheila McNulty issued an order on February 15, 2024, prohibiting immigration judges from speaking publicly without prior agency approval.<sup>1</sup> The news report claims that the issuance of this order comes as some immigration judges have spoken out publicly on significant case backlogs at the immigration court, testified before Congress, participated in panel discussions, and made themselves available to the media.<sup>2</sup> It's been reported that the order prohibits immigration judges from speaking with Congress without prior agency approval, and it's speculated that Chief Immigration Judge McNulty issued this directive in response to the testimony Immigration Judge Mimi Tsankov gave before Congress last fall.<sup>3</sup> In that October 18, 2023, testimony before the Senate Judiciary Committee, Judge Tsankov said that the Justice Department lacked leadership and was ineffective in its management of the immigration courts.<sup>4</sup> It's critically important that immigration judges communicate with Congress particularly when the Biden administration's leadership and policy failures have created an unprecedented immigration crisis at our Southern Border. If the allegations that the Justice Department has sought to silence immigration judges from communicating with and testifying before Congress are true and accurate, the Biden Justice Department's conduct is absolutely unacceptable.

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<sup>1</sup> Government Executive. Erik Katz. *DOJ issues 'gag order' on immigration judges* Biden administration says the union representing the judges can no longer speak publicly without agency sign off. (March 5, 2024). [https://www.govexec.com/workforce/2024/03/doj-issues-gag-order-immigration-judges/394694/#:~:text=The%20issue%20stems%20from%20the,agreement%20are%20no%20longer%20valid; Elliot Spagat, Immigration judges union, a frequent critic, is told to get approval before speaking publicly, ABC News \(Mar. 4, 2024\) https://abcnews.go.com/US/wireStory/immigration-judges-union-frequent-critic-told-approval-speaking-107794100](https://www.govexec.com/workforce/2024/03/doj-issues-gag-order-immigration-judges/394694/#:~:text=The%20issue%20stems%20from%20the,agreement%20are%20no%20longer%20valid; Elliot Spagat, Immigration judges union, a frequent critic, is told to get approval before speaking publicly, ABC News (Mar. 4, 2024) https://abcnews.go.com/US/wireStory/immigration-judges-union-frequent-critic-told-approval-speaking-107794100).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Written Testimony of The Honorable Mimi Tsankov, *Preserving Due Process and the Rule of Law: Examining the Status of Our Nation's Immigration Courts*, Senate Judiciary Committee Hearing (Oct. 18, 2023) [https://www.judiciary.senate.gov/imo/media/doc/2023-10-18\\_-\\_testimony\\_-\\_tsankov.pdf](https://www.judiciary.senate.gov/imo/media/doc/2023-10-18_-_testimony_-_tsankov.pdf).

From what has been reported, the order issued by Chief Immigration Judge McNulty appears to completely disregard immigration judges' Constitutional and statutory right to make protected disclosures to Congress and failed to include the anti-gag provision as required by law. 5 U.S.C. § 7211 provides that the "right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied."<sup>5</sup> Further, the Whistleblower Protection Act clearly and unequivocally states no adverse personnel action can be taken against a federal employee for "any disclosure to Congress."<sup>6</sup> The anti-gag law prohibits federal agencies from implementing or enforcing any non-disclosure policy, form, or agreement unless it contains specific language notifying the employee of their right to make protected disclosures to Congress, Inspectors General, and the Office of Special Counsel.<sup>7</sup> The "anti-gag" provision has been included in almost every appropriations bill since 1988 and was codified in the Whistleblower Protection Enhancement Act.<sup>8</sup>

Based on what has been reported, the order from Chief Immigration Judge McNulty appears to be another blatant attempt by leadership within the Justice Department to discourage and obstruct their employees from communicating with Congress. The importance of federal employees knowing their rights under the law cannot be stated enough, and federal agencies should encourage their employees to disclose allegations of waste, fraud, and abuse. Federal agencies cannot conceal their misconduct behind illegal nondisclosure policies and related actions. Accordingly, I request that you fully review EOIR's alleged attempt to prevent their employees from communicating with Congress and failure to inform their employees of their Constitutional and statutory rights to make legally protected disclosures to Congress. Further, I request that you require EOIR to transmit updated guidance consistent with all whistleblower rights to their employees and provide me with a copy of the message no later than March 25, 2024.

Thank you for your prompt review and responses. If you have any questions, please contact Brian Randolph on my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Budget

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<sup>5</sup> 5 U.S.C. § 7211

<sup>6</sup> 5 U.S.C § 2302(b)(8)(C).

<sup>7</sup> 5 U.S.C § 2302(b)(13).

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