

DOJ Made Immigration Judgeships Political

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Few people in El Paso, Texas, know more about immigration law than Guadalupe Gonzalez, a lawyer who has prosecuted illegal immigration cases along the Texas border for nearly 25 years. In 2002, after seeing an advertisement, she applied -- and was passed over -- for an opening on the local bench of one of the nation's 54 immigration courts. But when two more vacancies arose in 2004, nobody bothered to tell Gonzalez. In fact, the positions were never advertised.

Instead, the Justice Department's leadership, which oversees the immigration courts, used a little-known power to appoint two lower-level attorneys -- both of whom Gonzalez had supervised at the Immigration and Customs Enforcement office in El Paso -- to the \$115,000-a-year positions.

The authority used to bypass the competitive hiring process would be employed again and again during the last year of Attorney General John Ashcroft's tenure and continue when Alberto Gonzales succeeded him in 2005. And according to the immigration court's former administrator, it also allowed top political aides at Justice, including former Gonzales Chief of Staff D. Kyle Sampson and former White House liaison Monica Goodling, to fast-track candidates of their choosing -- including a number of lawyers with no immigration law experience but strong ties to the Republican Party or President George W. Bush's election campaigns.

During her day-long testimony before the House Judiciary Committee last week, Goodling, under a grant of immunity, admitted that she asked inappropriate questions of many applicants for career jobs at the department and evaluated candidates based on her perception of their political loyalties. "I believe I crossed the line, but I didn't mean to," she testified.

Though allegations that Goodling had politicized the hiring of federal criminal prosecutors were known by the time she testified, her admission that she had taken political considerations into account in the hiring of immigration judges -- who are considered civil-service employees -- was not. Nor was it well known that a discrimination suit filed by Guadalupe Gonzalez led to internal debate within Justice over the appointment process and to a hiring freeze of immigration judges that began in December -- a freeze that wasn't lifted until last month. Justice's immigration judge selection process is currently being probed by the department's inspector general and its Office of Professional Responsibility for potential violations of federal civil service laws.

Gonzalez's story illustrates the inconsistent methods used to fill immigration judge positions. As with the replacement of U.S. Attorneys, political appointees at the Justice Department appear to have trod upon department norms -- and may have even broken federal law -- to reward their own people with plum assignments.

Unlike federal court judges, who enjoy lifetime appointments under Article III of the Constitution, immigration judges work directly for the executive branch and are managed

by the Justice Department's Executive Office of Immigration Review. The 226 judges rarely issue written opinions while handling more than 300,000 immigration cases annually. They consider matters ranging from the status of asylum seekers to approving the legal rights of immigrants who marry U.S. citizens.

Historically, those hired for the positions were vetted by the Executive Office of Immigration Review and its recommendations were forwarded to the Office of the Deputy Attorney General -- where they were almost uniformly approved. Sometimes this process took place without public advertisements for the posts and without competing candidates. But in recent years, that process came to be inverted; instead, the attorney general's office exercised "direct-hire" authority in selecting a candidate who was then sent to EOIR. Rarely, if ever, did EOIR object to a candidate -- even if the person lacked any background in immigration law.

Whether the department had the legal right to use the direct-appointing authority to make political hires has been a matter of debate within Justice.

"I think it's safe to say the Department of Justice was taking full advantage of the murkiness of it," says Bill Ong Hing, who teaches immigration law at the University of California-Davis School of Law.

For its part, the Justice Department says recent appointees have been well-qualified and that the department draws on candidates from "diverse legal backgrounds" and "considers applicants based on the totality of their professional records."

POWER GRAB

The shift in the method of hiring immigration judges began late in Ashcroft's tenure. At some point members of his staff realized that EOIR had long been appointing at least some immigration judges without open competition. Hearing of this, Susan Richmond Johnson, one of Ashcroft's closest advisers, remembers thinking, "Why are we not using it? It's an authority of the attorney general."

Ashcroft's deputies, who by this time included Sampson, turned to the Office of Legal Counsel for advice. According to a statement released May 25 by Goodling's attorneys, the then-head of that office, Daniel Levin, advised Sampson that immigration judges "were not subject to civil service rules applicable to other career positions."

From the viewpoint of Kevin Rooney, who had been the top administrator of EOIR since 1999 until his retirement this March, Main Justice had largely ignored the process until Sampson began coordinating directly with Rooney's office to slot candidates in those positions.

Over time, e-mails from Rooney's office alerting Main Justice about vacancies were met with more and more suggested applicants and requests to forgo ads. (The agency always had a general advertisement on the main government job board.)

The effort picked up speed under Gonzales' tenure, when Goodling took over Sampson's hiring responsibilities. If Sampson or Goodling had a suggestion, Rooney's office didn't look for any other candidates. "In the past year, we were just asked to give the city and then we would get a name or two," Rooney says.

Members of the immigration judiciary noticed the shift. "A lot of my colleagues in [the immigration] bar seemed to have applications pending for years without ever being interviewed while people with contacts at the White House were being appointed at warp speed," says Bruce Einhorn, who retired as an immigration judge in Los Angeles in January.

Rooney says that despite the new way of doing things, qualified candidates still made it to the immigration bench (though Rooney's office was still able to occasionally suggest its own candidates without public notice). "I can't quarrel with you that some of these people may not have had immigration experience," Rooney says. "But I don't see that being anything negative for their selection."

CRAMER'S PALS

Francis Cramer's legal background exemplifies the transformation of the type of candidates that began winning well-paid positions as immigration judges. His key to the job: political ties.

Cramer was one of at least eight judges directly hired by the attorney general's office in 2004 -- the year Gonzalez was overlooked, according her suit.

For more than 25 years, Cramer had worked as a commercial and personal injury litigator at the New Hampshire law firm of Sullivan & Gregg, which takes its name from the state's former Republican Gov. Hugh Gregg. There, Cramer also worked for a time with the former governor's son, Republican Sen. Judd Gregg.

While there, Cramer became something of a fixture in the state's Republican politics and a close ally of the younger Gregg. In 1992, he served as Gregg's campaign treasurer in his successful run for the Senate, and he later helped the senator beat back a probe of his campaign finances by the Federal Election Commission. When Gregg became embroiled in an embarrassing legal dispute with a cancer-stricken woman who was seeking the return of a \$92,000 deposit she had made to purchase Gregg's house in southern New Hampshire, Cramer served as his lawyer and helped settle the case for an undisclosed sum in 1993.

In 2001, after President Bush took office, Cramer's name was put forward for a spot on the U.S. Tax Court. But the nomination foundered after an American Bar Association panel questioned his qualifications. In 2002, he was given a political appointment to the Justice Department's Tax Division. In 2004, shortly after completing a six-month detail to the Justice Department's Office of Immigration Litigation, Cramer was made an immigration judge in Boston.

But the hiring didn't escape scrutiny. Last year, Cramer was singled out in a report by the Government Accountability Office. The report, on the subject of political appointees "burrowing in" to government civil service jobs, noted that the position of immigration judge required "a thorough knowledge of immigration and nationality laws, both past and present, and the regulations and rules of the Immigration and Naturalization Service." The report noted that Cramer's résumé listed no immigration law experience other than the six-month detail, and found that Cramer's move "raises questions about the fairness" of the hiring process.

Cramer did not return a call seeking comment for this article. But among recent appointees, he's hardly alone in having political connections that far outstrip his immigration expertise. Since Cramer's investiture as a judge in 2004, roughly three dozen immigration judges have been hired. They include: James Nugent, a former vice chairman of the Louisiana Republican Party; Garry Malphrus, a former White House aide and veteran of Bush's 2000 campaign; Chris Brisack, a county Republican Party chairman in Texas during Bush's tenure as governor; and Bruce Taylor, a former Justice Department lawyer who had been president and chief counsel of the right-leaning National Law Center for Children and Families and general counsel to Citizens for Decency Through Law, an anti-pornography group.

THE OTHER GONZALEZ

And then there was Gonzalez. As chief counsel for ICE in El Paso, Gonzalez, 56, couldn't understand how she had been overlooked. For nearly 20 years, she had overseen all immigration litigation involving deportations or removal of aliens in her district and worked as a special assistant U.S. attorney on immigration cases. And she had uniformly received an outstanding rating for her performance, Gonzalez's complaint states.

What's more, the two men who were chosen, Robert Hough and Thomas Roepke, had less immigration experience, the complaint states. Both had prosecutorial experience at ICE, but neither had reached the level of Gonzalez. In fact, Gonzalez had once supervised both men at ICE. Neither Roepke nor Hough could be reached for comment.

Frustrated, Gonzalez filed suit in the U.S. District Court for the District of Columbia in September 2005. Represented by Charles Day and Joseph Gebhardt of Gebhardt & Associates, Gonzalez claims the Justice Department discriminated against her on the basis of her race and gender when it chose two white men for the vacancy. (The person selected for the 2002 opening is also a white male.)

She argued that the direct hiring exercised by the attorney general reversed long-standing practices. In responding to her complaint, the Justice Department never denied its direct appointment authority, arguing that the very fact that it was so widespread made Gonzalez's claim meritless. Indeed, the government noted in a January 2006 court filing that since October 2004, the Justice Department had filled "the overwhelming majority" of immigration judge vacancies without public competition.

Judge Emmet Sullivan didn't think the question was so simple. In a ruling last September he denied the government's motion to dismiss, finding that Gonzalez had "identified a particular policy that has a discriminatory effect on a particular group."

Back at the Justice Department, an internal dispute arose over "whether a competitive, merit selection process was required," Sampson's attorney, Bradford Berenson wrote in response to inquiries. "The issue was highly uncertain and legally complex." The Civil Division objected to using political considerations to hire immigration judges and, by December, Attorney General Gonzales' office, with Sampson's full support, had agreed to suspend hiring while the process was reviewed.

A Justice Department spokeswoman says she's not aware that there had ever been an internal dispute over hiring. Nevertheless, she acknowledged that the department had recently revised its policy. As of April, all openings are now publicly posted, and the new

process "places the initial vetting, evaluation, and interviewing function for all candidates in the Office of the Chief Immigration Judge and EOIR," she says.

Meanwhile, Gonzalez remains in the position she's held since 1986. Settlement discussions are ongoing. And while Gonzalez still believes in her immigration enforcement mission, she hopes the Justice Department will do more to get the best people.

"The way you do that is by opening it up and allowing people to compete on the merits of their qualifications," she says.