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17 New Immigration Judges Largely Held Prior Gov't Roles

By **Alyssa Aquino**

Law360 (May 6, 2021, 10:20 PM EDT) -- The first group of 17 immigration judges to begin working under the Biden administration includes eight former prosecutors, seven attorneys who counseled U.S. Immigration and Customs Enforcement and two who were most recently private practitioners, according to a Thursday announcement.

The U.S. Department of Justice's Executive Office for Immigration Review released the names and biographies of a total of 17 judges, who all started in their new roles in April. Thirteen of the judges were appointed by Attorney General Merrick B. Garland, two were chosen by former Attorney General William Barr, who resigned in December, and former acting attorneys general Jeffrey Rosen, who replaced Barr, and Monty Wilkinson after him, each appointed one.

The new judges were largely sourced from government ranks, with eight of them having had recent stints in prosecutors' offices at the local, state and federal levels.

The judges who were most recently in private practice are Tamaira Rivera, a Garland appointee who handled immigration defense at Advantage Immigration PA, and Elliot Kaplan, a Barr appointee who was of counsel at Kutak Rock LLP.

Another of Garland's picks, Elizabeth Crites, was an ICE attorney from 2016, and worked at Broyles Kight & Ricafort PC before that.

Three of the appointees also held judge advocate positions within the U.S. Air Force and the Army.

The 17 New Immigration Judges Who Started in April

Judge	Position	Court
Bryan E. DePowell	Immigration Judge	Adelanto Immigration Court
Bryan D. Watson	Immigration Judge	Atlanta – W. Peachtree Street Immigration Court
Elizabeth Crites	Immigration Judge	Chicago Immigration Court
Nicholle M. Hempel	Immigration Judge	Houston – Greenspoint Park Immigration Court
Martinique M. Parker	Immigration Judge	Houston – Greenspoint Park Immigration Court
David M. Paxton	Immigration Judge	Houston – Greenspoint Park Immigration Court
Kenya L. Wells	Immigration Judge	Houston – Greenspoint Park Immigration Court
Mark R. Whitworth	Immigration Judge	Houston – Greenspoint Park Immigration Court
Adam Perl	Immigration Judge	New York – Broadway Immigration Court
William H. McDermott	Immigration Judge	New York – Federal Plaza Immigration Court
Kathy J. Lemke	Immigration Judge	Portland Immigration Court
Megan B. Herndon	Assistant Chief Immigration Judge	Richmond Immigration Adjudication Center
Wade T. Napier	Unit Chief Immigration Judge	Richmond Immigration Adjudication Center
Tamaira Rivera	Unit Chief Immigration Judge	Richmond Immigration Adjudication Center

Kathryn Mattingly, an assistant press secretary at EOIR, told Law360 that the varying onboarding timelines aren't unusual since individual candidates receive a conditional offer, before undergoing background checks.

"Once that process is completed, an immigration judge receives a firm offer and an entrance on duty date, which generally occurs on a quarterly basis to coincide with a New Immigration Judge Training Class," Mattingly said.

Five of the judges are serving at the Houston Immigration Court, while six are at the new Richmond Immigration Adjudication Center, which operates remotely.

The remote-only centers have been criticized by immigration advocacy groups, including the American Immigration Lawyers Association, which filed a lawsuit in November seeking more information on what it described as **"black sites"** closed off from the public.

Both Garland and Barr picked judges for the Richmond site. Garland named Megan Herndon to a supervisory role as the court's assistant chief immigration judge and Barr chose private attorney Kaplan and Jeb Terrien from the U.S. Attorney's Office for the Western District of Virginia.

Herndon began her career at ICE, working at offices in California, Washington, D.C., and Virginia, before entering the U.S. Department of State's Office of Visa Services. She has worked at the State Department for the last six years.

Her State Department experience will be important, according to Muzaffar Chishti, a senior fellow at the Migration Policy Institute, a nonpartisan think tank.

"She has a background in service and that matters," Chishti said,

Garland also named private practitioner Rivera, Wade Napier and David Robertson to the Richmond court. Napier served as the assistant U.S. attorney in Kentucky for the past 13 years and Robertson spent the last three decades as a U.S. Army judge advocate, according to EOIR.

Garland also named judges for immigration courts in Chicago; Adelanto, California; Portland, Oregon; and Atlanta.

Wilkinson and Rosen each named a judge for immigration courts in New York City and Newburgh, New York, respectively.

The choice of judges with law enforcement backgrounds could garner disapproval from liberal groups, but Chishti said that candidates with a government background have already gone through a vetting process and are easier to clear "when you want to do that in a hurry," especially considering the 1.3 million case backlog in the immigration courts.

However, former immigration judge and current private attorney Jeffrey Chase raised concerns over the apparent speed of the appointments. Immigration law and its administration changed vastly under former President Donald Trump, whose attorneys general used their **self-referral powers** to issue precedents that, in some cases, **restricted the number of people** who can qualify for asylum. The Justice Department has also curbed immigration judges' **discretionary powers**, such as their ability to administratively close or continue cases, and instituted case completion quotas.

"If you're looking at this whole system, shouldn't you put your hirings on hold until you actually figure out your whole needs, how to train them and what law will apply to them?" Chase said.

--Editing by Michael Watanabe.