Twitter Thread by Matthew Hoppock



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Last week the @DOJ_EOIR quietly updated its list of "Myths vs. Fact." I haven't factchecked the new one, but it's much longer and at first glance appears to even more misleading than the previous one.

Also, EOIR uploaded the new one at the same URL as the prior one, which effectively removes the prior one from the internet. I've saved a copy of the old one here: https://t.co/w6aZoiilvh

The first one, which McHenry seems to have unilaterally issued in May 2019, was met with confusion and disbelief by others in the agency, including the union representing immigration judges. They have since been decertified, so https://t.co/1KcyQcePmO

A FOIA request for any email messages to the ACIJs (who manage the nation's immigration judges) giving guidance about the "Myths vs Fact" document turned up nothing. https://t.co/LxcaazT4rU

Retired Immigration Judges and former BIA members also spoke out in May, 2019 about how wildly inaccurate the document was. https://t.co/Yj9DnfYIdO

Later, a FOIA request for something else turned up these notes from a Senior OCIJ meeting confirming the Office of Chief Immigration Judge wasn't consulted and "did not support" the document. https://t.co/CgwDkYjfo1

7. **EOIR Fact Sheet on Myths vs Reality**
   - OCIJ did not support it.
   - OCIJ did not provide input.
   - OCIJ was unaware of the document.

Note: these notes are not for distribution. They are for internal OCIJ management use only. They are intended as an informal means of capturing FYI items and To Do items. They are not to be considered a formal record of the meeting, a statement of agency decisions, or statement of agency policy.

I posted a fact-check of the prior version here, also showing the EOIR director McHenry himself had authored the document circulated afterward that tried to explain it. https://t.co/qXWxexFAmq

> So who wrote the Myths vs Reality memo (the most politically slanted and repeatedly false publication by the agency to date)? James McHenry, the EOIR Director. https://t.co/dFWa6c9xyU
>
> — Matthew Hoppock (@MatthewHoppock) July 23, 2020

Lol at this snippet. This ignores that the OIG found quite the opposite re the appointment of, for example, current Deputy Chief Appellate Immigration Judge Garry Malphrus here: https://t.co/1ZYr8sffGG

within one of these categories. Immigration Judges, Appellate Immigration Judges, administrative law judges, and all of EOIR's senior leadership are hired through an open, competitive, non-partisan, merit-based process. Although approximately 560 positions at EOIR currently require appointment by the Attorney General according to statute, regulation, policy, or the Appointments Clause of the Constitution, the fact that the Attorney General appoints an individual to a position does not convert that position to a political position.

I mean

4. Candidates Hired Without EOIR Interviews

We also found several instances in which candidates were offered positions as IJs even before their names had been sent to EOIR. Two are of particular note because they later served as sources of additional IJ candidates when Goodling became the Department's White House Liaison.[68] The first candidate was Garry Malphrus, who had worked with Sampson on the Senate Judiciary Committee where Malphrus served as a staff member to a Republican Senator from South Carolina. He was working at the White House as an Associate Director of the Domestic Policy Council, and his résumé contains numerous references noting his political party affiliation.[69]

This little update to the section on VTC makes it appear that in 2020 EOIR had quite an increase in hearings continued due to video malfunction. Compare 2019 to 2020:

9. **MYTH:** VTC is unreliable, and its use violates due process.

FACT: VTC has been used by EOIR since the 1990s, and its use was expressly authorized by statute in 1996. It is used widely throughout many federal agencies, and federal courts have consistently rejected general challenges to its use as a violation of due process. There is no indication of a statistically significant difference in outcomes between VTC cases and in-person cases. Less than one-tenth of one percent (.0052%) of EOIR VTC hearings, 310 out of nearly 60,000, are continued due to a VTC malfunction.