

Justice Department Cited for 'Calculated Unethical Conduct'

Government attorneys were cited Thursday for unethical behavior by a federal judge and now the Senate Judiciary Committee chairman is calling for changes to the Justice Department's oversight.

In 2014, 26 states sought a preliminary injunction in federal court to block implementation of President Obama's expanded "deferred deportation" executive order. In response, Justice Department (DOJ) attorneys told to a federal judge the government would not implement the order until Feb. 18, 2015, and there was no need for an injunction in the meantime.

"However, despite that representation, the Department of Homeland Security approved at least 100,000 applications for deferred deportation under the new order before February 18," Grassley stated in a press release Friday morning.

The court immediately issued a preliminary injunction on Feb. 16, 2015, ordering the implementation of the president's order be stopped. Grassley also directed a number of questions to the department. Yet, even after the order was issued, the department approved another 2,000 extended work permits.

That case has since move up through the Fifth Circuit Court of Appeals, and now on to the Supreme Court. But Judge Andrew Hansen of the Southern District of Texas, who heard the original case, isn't done with those Justice Department attorneys.

"Apparently, lawyers, somewhere in the halls of the Justice Department whose identities are unknown to this Court, decided unilaterally that the conduct of the DHS in granting three-

year DACA renewals [was] immaterial and irrelevant to this lawsuit and that the DOJ could therefore just ignore it,” he wrote. “Then, for whatever reason, the Justice Department trial lawyers appearing in this Court chose not to tell the truth about this DHS activity. The first decision was certainly unsupportable, but the subsequent decision to hide it from the Court was unethical.”

Just in case a casual reader wasn't sure just how angry Hansen was, he tried to make it abundantly clear, suggesting that if he had the authority to disbar the attorneys involved, he would have done so. Unable to do that, however, he revoke those attorneys' pro hac vice—permission to argue court cases in states in which they aren't licensed—and barred them from appearing in his court ever again.

But he wasn't finished there. He also ordered:

- the Obama administration must provide the court with a list of all of the aliens who were given benefits under the Obama amnesty plan;
- all DOJ attorneys stationed in Washington, D.C., who appear in the courts of any of the 26 states that filed the lawsuit must take a yearly ethics course taught by someone unaffiliated with DOJ;
- Attorney General Loretta Lynch must file a report annually for the next five years, listing all of the DOJ attorneys who have appeared in those 26 states, and certifying their attendance at the aforementioned ethics course;
- Lynch must file a comprehensive plan within 60 days “to prevent this unethical conduct from ever occurring again”;
- Lynch must ensure that “Justice Department trial lawyers tell the truth—the entire truth”; and
- Lynch must inform him within 60 days of the steps she is taking to ensure the Office of Professional Responsibility at DOJ “effectively polices the conduct

of the Justice Department lawyers and appropriately disciplines those whose actions fall below the standards that the American people rightfully expect from their Department of Justice.”

Hansen did note that none of these events took place during Lynch’s tenure as Attorney General, but rather under her predecessor, Eric Holder. Noting Lynch is a former U.S. Attorney, he said he “cannot but hope” she would also believe it is DOJ attorneys’ duty to “act honestly in all of their dealings with a court, with opposing counsel, and with the American people.”

Hans von Spakovsky, a senior legal fellow at the Heritage Foundation, said Hansen’s order “one of the most devastating critiques I have ever read of the misbehavior of lawyers at the U.S. Justice Department.” Grassley, as chairman of the Judiciary Committee, also decided to weigh in on the issue with an official statement delivered by his spokeswoman, Beth Taylor:

“Unfortunately, I know what it’s like to be misled by false information from Justice Department lawyers,” he said. “Now, to be caught intentionally lying to a federal court on another high profile and serious matter threatens to create a crisis of confidence in the integrity of the Justice Department.

“When a federal judge sanctioning those lawyers writes: ‘there seems to be a lack of knowledge about or adherence to the duties of professional responsibility in the halls of the Justice Department,’ it is time for changes. The judge is correct that the Department’s Office of Professional Responsibility has been ineffective in policing its attorneys.”

Grassley said he has “long supported” giving jurisdiction over attorney misconduct to the Office of Inspector General. Noting the OIG is “more independent,” he said such a move would

“ensure greater transparency and accountability.”

“This incident only underscores the need for that kind of reform,” he added. “In the meantime, Attorney General Lynch must address what the judge said was ‘unethical conduct’ and put an end to the dishonesty in the halls of the Justice Department.”