IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN IMMIGRATION LAWYERS ASSOCIATION, Plaintiff, v. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, *et al.*, Defendants.	Civil Action No. 13-cv-00840 Judge Christopher R. Cooper

FOURTH DECLARATION OF JULIE A. MURRAY

I, Julie A. Murray, hereby declare as follows:

1. I am counsel for plaintiff American Immigration Lawyers Association (AILA) in the above-captioned case. The statements and conclusions in this declaration are based on my personal knowledge.

2. On AILA's behalf, I have conducted all negotiations with defendants Executive Office for Immigration Review and Department of Justice (collectively, EOIR) in the course of this litigation.

3. I have received copies from EOIR of all records released to AILA in this litigation and have reviewed many of them. EOIR's initial release of records began in October 2013 and ended in June 2014. EOIR's complaint database, its key linking judges to particular complaints using a three-letter unique identifier, and all of the original complaint files are available at http://www.aila.org/infonet/eoir-records-relating-misconduct. EOIR made numerous subsequent releases beginning in spring 2015.

AILA's narrowing of its request

4. On December 1, 2016, in an attempt to expedite the litigation, AILA informed defendants, through counsel, that it no longer intended to pursue on remand the names and identifying information of 49 immigration judges. *See* Doc. 54-6, Exh. D to Defs.' Renewed Mot. for Summ. J. These 49 judges were subject to one or two complaints, all of which were dismissed by EOIR during the period covered by AILA's request.

5. On March 6, 2017, after reviewing a draft *Vaughn* index provided by EOIR and again in an attempt to expedite the litigation, AILA informed defendants that it no longer intended to pursue on remand the names and identifying information of 28 additional immigration judges. *See* Doc. 54-7, Exh. E to Defs.' Renewed Mot. for Summ. J. AILA did not provide defendants with the criteria it used to make this decision. AILA expressly stated in its March 2017 letter that it did not concede that these judges' names or the names of any other judges with similar complaint profiles remaining at issue in the litigation were exempt from disclosure.

6. Although defendants' filings in this case purport to identify "criteria" that AILA used to determine which judges' names to forgo, *see* Defs.' Renewed Mot. for Summ. J. Memo. 10 (citing Statement of Material Facts ¶ 23), AILA did not determine to exclude categorically judges with the characteristics that EOIR identifies.

7. In addition to the judges identified in the letters described above, AILA has determined to forgo further litigation over the names and identifying information of the following judges: ACI, ANN, ANY, ARX, ASA, ASO, AZP, BGF, BGZ, BSP, CCB, CGZ, CSG, DPM, DSE, DTS, EDZ, EXB, FEG, FFY, FGO, FWP, FYT, GER, GST, GYO, HFX, HKD, HPY, HWY, HXS, HYG, IFH, IJN, INE, IWF, JCB, JEG, JEQ, JQM, KDD, KEK, KMB,

KTN, KXI, LBV, LDQ, LEJ, LVD, LXP-1, LXP-2, LYP, LZH, MFQ, NCR, NGP, OAU, ODX, OKM, PCG, PGA, PGB, PIR, PZR, QFH, QNR, QPH, RDO, ROX, RXJ, SWN, TXL, TZD, UEY, UZF, VHU, VIC, VIZ, VQD, VVM, WEB, XLN, XUM, XYV, YPG, YRP, YSK, YUU, ZIZ, ZKG, and ZPL. It does not concede that the names and identifying information pertaining to these judges or any other judges with similar complaint profiles remaining at issue in the litigation are exempt from disclosure.

8. There are thus 34 judges whose names and identifying information remain at issue in this litigation. *See* Exhibit A to this declaration.

EOIR disclosures and redactions

9. When AILA submitted the FOIA request at issue in this case, it indicated that it intended "to widely disseminate the requested information to the public through its website and other means." Doc. 16-1, Rodrigues Decl., Ex. A (FOIA Request), at 4. That intent supported AILA's eligibility for a public interest fee waiver for any fees associated with processing the request. After AILA sued defendants, EOIR began releasing records at no cost to AILA.

10. AILA created a page on its website for records released in response to its FOIA request. On a rolling basis, AILA posted to this page, available at http://www.aila.org/content/default.aspx?docid=46467, a full copy of the complaint database entries it received, the "key" that EOIR provided that linked judges to particular complaints against them by using three-letter unique identifiers assigned to each judge, the complaint files, and some subsequent releases by EOIR. EOIR made these subsequent releases for a number of purposes: (1) to disclose additional information previously withheld from complaint files as "non-responsive," in accordance with decisions by this Court and the D.C. Circuit; (2) to disclose redacted records that pertained to previously released complaint files but that had been referred to other components, such as the

Department of Justice's Office of Professional Responsibility or Office of Inspector General, for review before release, and (3) to provide AILA with reprocessed records that were intended to correct earlier inadvertent releases made by the agency.

11. Early in this litigation, counsel for defendants notified me on at least two occasions that EOIR had inadvertently released information in records responsive to AILA's FOIA request. When notified of these inadvertent releases, AILA complied with EOIR's instructions with respect to these releases.

12. In January 2017, a private attorney with no role in this litigation advised AILA, through counsel, and defendants that he had viewed records released to AILA in response to AILA's FOIA request. He indicated that he had discovered that text beneath the black rectangles of EOIR's redactions could be viewed by the public in certain circumstances. This third party indicated that he had uncovered the vulnerabilities in documents released to AILA in March, April, and May 2015 as subsequent releases intended to provide information once redacted as nonresponsive. He also advised that he had blogged about these redactions on his firm's website. His initial blog post, dated January 16, 2017, along with subsequent updates, remains available at https://amjolaw.com/2017/01/16/secret-identities-of-immigration-judges-revealed/.

13. Until informed by the third party, AILA was not aware that information underlying some of EOIR's redactions was not effectively redacted. When posting records to its website, AILA relied on EOIR to assure that redactions to the records that it released electronically were properly done. AILA has not attempted to use the insecure versions of documents it received from EOIR to independently verify the accuracy of the third party's findings with respect to which judges were subject to which complaints.

14. In the third party's initial blog post, he indicated that by viewing the text that EOIR had attempted to redact, he was able to identify judges subject to a subset of complaints at issue in the litigation. To identify additional complaints to which a judge had been subject, the third party apparently then relied on the key that EOIR provided to AILA (and that AILA has posted on its website), which assigned each judge subject to at least one complaint during the time period covered by AILA's request a three-letter unique identifier and indicated which complaints pertained to that identifier. The third party stated that he had identified 60 immigration judges subject to 474 complaints covered by AILA's FOIA request. Before AILA decided to narrow the litigation on remand by excluding some judges' names, there were 201 judges' identities at issue and 767 complaints.

15. The third party included in his January 16 blog post a link to a "modified key," similar to the one EOIR provided AILA in this litigation, that replaced the three-letter unique identifier linking a judge to a complaint with the judge's name, as he had determined the name to be based on viewing the text that had been redacted. He also combined, for twelve judges, the complaint files linked to those judges and posted them under headings that identified particular judges to whom the third party believed the complaints related instead of the three-letter unique identifiers used by EOIR. The modified key and combined complaint files remain available on the third party's website at https://amjolaw.com/2017/01/16/secret-identities-of-immigration-judges-revealed/.

16. Before receiving any correspondence from EOIR related to the redactions discussed by the third party, AILA began removing from its website the documents identified by the third party, i.e., releases made in spring 2015. AILA subsequently agreed with EOIR that it would not repost the documents on its website until EOIR had reprocessed them.

17. Although AILA has not been able to determine how many times the specific documents reviewed by the third party were viewed and/or downloaded from AILA's website, the documents were publicly available there for more than one year, since at least December 1, 2015. The page where the documents were posted was viewed 7,518 times between November 2013, when the page was created, and January 17, 2017, when AILA removed the documents identified by the third party.

18. On January 23, 2017, EOIR issued a press statement on the third party's disclosures, criticizing the third party's decision to publish information about the inadvertent releases and calling the key that he provided "inaccurate." That statement is available at https://www.justice.gov/eoir/pr/eoir-statement-erroneous-public-release-immigration-judge-information. EOIR did not specify any inaccuracies.

19. On January 24, 2017, a reporter for the Daily Beast wrote about the third party's disclosures and linked to the third party's January 16 blog post. She indicated that she had reviewed the documents. *See* Betsy Woodruff, *The DOJ Accidentally Doxxed These Immigration Judges*, The Daily Beast, Jan. 24, 2017, http://www.thedailybeast.com/articles/2017/01/24/the-doj-accidentally-doxxed-these-immigration-judges.

20. Also on January 24, 2017, the third party published a blog post that responded to EOIR's assertions that his conclusions were inaccurate. He included there a screenshot of one page of EOIR records that included the unredacted names of seven immigration judges and, in most cases, complaint numbers next to those names, and he made available a link to an unredacted version of a much longer release that EOIR had made to AILA (with new redactions that the third party stated he had applied independently to conceal "personal information of complainants and immigrants"). The January 24 blog post and embedded link remain available

on the third party's website at https://amjolaw.com/2017/01/24/eoir-misleads-public-on-judge-misconduct-complaints/.

21. On January 26, 2017, the third party published a third blog post about the redactions. He identified the titles of specific PDF files that had been posted on AILA's website before AILA received notice about the vulnerabilities. He indicated that he had relied on these documents to uncover the names of immigration judges. He also described in greater detail than before the process he had used to identify judges' names and made available "3-4 page files for each Immigration Judge," each of which included the pages from releases that he had relied on to identify a particular judge. The January 26 blog post and links to each judge file remain available at the third party's website at https://amjolaw.com/2017/01/26/dear-eoir-dont-knowingly-make-false-statements-about-me/.

22. On January 27, 2017, a blog post about the third party's disclosures appeared in Techdirt, a technology-related blog. Like the Daily Beast article, the Techdirt post linked to the third party's original January 16 blog post. *See* Tim Cushing, *DOJ Blows Redaction Effort; Exposes Immigration Judges Accused of Misconduct*, Techdirt, Jan. 27, 2017, https://www.techdirt.com/articles/20170125/11153036563/doj-blows-redaction-effort-exposes-immigration-judges-accused-misconduct.shtml.

23. On February 6, 2017, I realized that some of the records identified by the third party as having ineffective redactions had been filed in this Court in 2014 and in the D.C. Circuit in 2015. Those filings were created by incorporating PDFs that EOIR released to AILA in the electronic form in which they were released. I also determined that some pages that appeared to have ineffective redactions in one court filing had come from a complaint file that had not been identified by the third party and that was released to AILA before the releases that the third party

had flagged as suffering from ineffective redactions. I took note of these pages because their text remained "clickable," that is, the pages did not appear when I clicked on them to have been saved as images after redactions were applied.

24. Without waiting for a request from EOIR, AILA removed the additional complaint file suspected as having ineffective redactions from its website and scanned a printed copy of the document back into a PDF before reposting it. The same day, I contacted EOIR's counsel to initiate a joint motion to substitute all ECF filings in this Court that included records with vulnerable redactions. With EOIR's agreement, I also remedied the vulnerabilities in the appellate ECF filing.

25. After the third party exposed shortcomings in EOIR's previous releases, EOIR made additional releases to AILA in which EOIR inadvertently released some information.

26. Specifically, on January 24, 2017, EOIR reprocessed and released to AILA records to comply with the D.C. Circuit's decision.[1] On February 2, 2017, I advised government counsel by email that the names of two immigration judges that had been redacted pursuant to FOIA Exemption 6 in earlier versions of these documents were now entirely unredacted. I identified the specific Bates numbers of the pages at issue. I asked for clarification as to whether these disclosures were inadvertent and stated that AILA would temporarily postpone posting these documents online and reviewing any other documents that were released as part of the same batch of reprocessed records. EOIR ultimately reprocessed the records.

27. In February 2017, EOIR produced to AILA documents that were intended to replace those documents with redactions flagged as vulnerable by the third party the previous

[1] It also produced a *Vaughn* index corresponding to these releases. That index was missing information and had to be updated and re-released on February 23, 2017.

month. On March 2, 2017, I advised the government by email that, in reviewing these reprocessed documents, some of the reprocessed pages "continue[d] to have redactions that appear[ed] to suffer from the same vulnerabilities that EOIR's reprocessing was supposed to correct." I took note of these records because some pages remained "clickable," that is, the pages did not appear to have been saved as images after redactions were applied. I provided the government with specific Bates pages that appeared problematic. I requested that the government "produce protected copies of the three documents" I identified and "assure us that the latest productions . . . are sufficient to protect private information."

28. Before receiving a substantive response to my March 2 email, I contacted counsel for EOIR on March 6 to identify an additional document re-released in February that had been reprocessed for the purpose of correcting vulnerable redactions. I advised EOIR's counsel that redactions in this document also appeared to suffer from continued vulnerabilities.

29. EOIR subsequently reprocessed the February 2017 records.

30. In addition to time spent dealing with EOIR's errors with respect to ineffective redactions, I have spent considerable time corresponding with the government with respect to other processing errors, such as missing pages, Bates numbers, or entire documents in subsequent releases.

31. In preparing the newly reprocessed documents for posting in advance of this filing, I again took note of what appear to be ineffective redactions in some documents and have advised the government. At this time, AILA has not posted online these potentially affected records.

Redactions at issue

32. Attached to this declaration as Exhibit A is a chart, created by me and my office assistant, that identifies (1) each judge remaining at issue in this litigation using the three-letter unique identifier assigned by EOIR; (2) the total number of complaints against that judge during the period covered by AILA's request; and (3) the judge's employment status, according to defendants' *Vaughn* index submitted in April 2017, *see* Doc. 54-3, Exh. 1. The chart lists any judge's employment status as "Active" where the defendants' *Vaughn* index did not indicate that a judge had retired or otherwise left the bench.

33. In addition, the chart incorporates information supplied by EOIR in complaint database entries to provide (1) the number assigned by EOIR to each complaint against a judge, (2) the final action taken on that complaint, (3) the nature of the misconduct complained of (e.g., in-court conduct, legal, bias, out-of-court conduct), and (4) the type of complainant (e.g., respondent, respondent's attorney, Board of Immigration Appeals).

34. The chart groups judges first by the number of complaints filed against them (all judges subject to 20 or more complaints are grouped together in red, then those judges subject to 10 to 19 complaints in orange, then judges subject to 6 to 9 complaints in yellow, and then those judges subject to 3 to 5 complaints in blue). Within those groups, judges are arranged alphabetically by three-letter unique identifier. The complaints for each judge are then organized alphabetically by EOIR's description of the final action taken on the complaints, such as oral counseling or a written reprimand.

35. My observations in paragraphs 36-74 below are based on my review of this chart and other records released to AILA that I have reviewed.

36. Seven immigration judges were the subject of 20 or more closed complaints each during the time period covered by the records. These judges are GEP (21), HKX (30), IQV (25), KMJ (26), OPU (29), PBZ (32), and TXY (23). These seven judges were collectively responsible for 186 complaints—or nearly a quarter of all complaints—in the original release. All of these judges were subject to one or more complaints that resulted either in disciplinary action or corrective action, such as oral counseling or training. *See* Doc. 16-2, Keller Decl., Exh. A & B (describing the basis for taking corrective and disciplinary action and distinguishing those types of complaint disclosures from dismissals where, for example, a complaint cannot be substantiated). Three of the seven judges remain active.

37. Judge GEP was subject to 21 complaints and is retired. He or she was suspended as a result of one of those complaints, and received oral counseling on at least 13 occasions in response to complaints involving a range of allegations implicating his or her duties, such as "in-court conduct" and "bias." Of those 13 complaints ending in oral counseling, 11 originated with the Board of Immigration Appeals. One (Complaint 744) noted that the BIA had expressed concern about the judge's neutrality and remanded the case to another immigration judge. Only 2 of the 21 complaints involved allegations of "out-of-court conduct."

38. Judge HKX was subject to 30 complaints and is retired. The most serious final action for those complaints was oral counseling, used for 2 complaints. However, EOIR resolved 24 of the 30 complaints by concluding that no further action was needed when the judge retired. None of the complaints involved "out-of-court conduct." Twenty-eight of the complaints involved "in-court conduct" among other allegations, and the remaining two complaints asserted misconduct on a "legal" basis.

39. Judge IQV was the subject of 25 complaints and is retired. In imposing a 14-day suspension against this judge for one complaint, EOIR issued a disciplinary letter that recounted twenty-two separate incidents over a two-year period of "repeated outbursts and intemperate behavior," including "verbal attacks on pro se respondents" that may have resulted in the respondents spending "additional time in detention." Complaint 25 (revised release file) (Bates 864-3 to 864-6), http://www.aila.org/infonet/eoir-records-relating-misconduct. Only one of the complaints involved "out-of-court conduct," and EOIR indicated that it involved "in-court conduct" as well.

40. Judge KMJ was subject to 26 complaints and remains active. EOIR resolved two of those complaints with written reprimands, six of them with written counseling, and numerous others with oral counseling. In one of the two complaints ending in a written reprimand (Complaint 759), EOIR's database noted that the BIA had found the judge's in-court conduct to be "hostile, partial, argumentative, and badgering to the witness." In the file for the other complaint (Complaint 332, Bates 0796), DOJ's Office of Professional Responsibility found that the judge "engaged in professional misconduct by acting in reckless disregard" of his or her "professional responsibility to appear to be fair and impartial in the administration of justice" based on the judge's comments on the record. EOIR also concluded six of the complaints by determining that corrective action had already been taken. Only 2 of the 26 complaints involved "out-of-court" conduct, and one of those 2 complaints also involved an allegation of a "due process" violation.

41. Judge OPU was subject to 29 complaints and remains active. EOIR resolved 24 of those complaints by oral counseling and an additional 1 with training. As evidenced by, for example, complaint files 74, 403, 434, 620, 698, and 757, this judge was the subject of repeated

complaints or concerns regarding his or her intemperate comments and demeanor at hearings, including one complaint related to the judge's "overwhelming hostility, sarcasm[, and] intimidation" toward detained immigrant children in which the complaint voiced concern that the judge's behavior was re-traumatizing victims of severe abuse. (Complaint 41). The complaint file for Complaint 620 indicates that this judge, in response to one noncitizen seeking relief from removal under the Convention Against Torture who did not know who had killed his uncle, asked, "Okay then who do you believe shot your uncle? The butcher, the baker, the candlestick maker, the priest, the nun?" None of the complaints against Judge OPU involved "out-of-court conduct."

42. Judge PBZ was the subject of 32 complaints and remains active. The most serious action taken by EOIR in response to these complaints was "written counseling," used to respond to 6 complaints. Oral counseling was used to respond to 13 complaints. Only 1 of the complaints involved "out-of-court conduct," and EOIR indicated that it involved "in-court conduct" as well.

43. Judge TXY was subject to 23 complaints and remains active. Four complaints were resolved by written counseling, 8 by oral counseling, and another complaint by training. Six other complaints were concluded on the ground that corrective action had already been taken. Only one of the complaints against this judge involved "out-of-court conduct."

44. Seven immigration judges remaining at issue were the subject of 10 to 19 closed complaints each during the time period covered by the records. Those judges are FRW (18), GOE (13), KSI (13), PSI (13), QJC (11), WTW (13), and ZMO (10). Three of those judges

remain on the bench, and a fourth (GOE) remains a DOJ employee.[2] These seven judges were collectively responsible for 91 complaints—or roughly 11 percent of all complaints—in the release. Six of these seven judges were subject to at least one complaint that resulted in discipline or corrective action. All 18 complaints against the remaining judge (FRW) were closed without action because the judge was terminated before the complaints could be resolved. Of the 91 complaints made against these seven judges, only six of them involved "out-of-court conduct."

45. Judge FRW was subject to 18 complaints. Those complaints were all resolved without action when the judge was terminated. Complaints linked to this judge include allegations that the judge inappropriately called a respondent "simple" and commented on her illness and mastectomy (Complaint 240); stated that he or she could not imagine a female respondent supervising crews on a construction site because the respondent was "exceedingly mousy" (Complaint 268); and concluded that a noncitizen seeking asylum on the basis of sexual orientation did not seem gay, thus leading a court of appeals to conclude that the judge engaged in impermissible stereotyping (Complaint 388).

46. Judge GOE was subject to 13 complaints and continues to work for DOJ, although he or she is no longer an immigration judge. Two of those complaints (Complaints 111 and 383) resulted in suspensions. While the former involved "out-of-court conduct," the only one to do so among complaints against Judge GOE, Complaint 383 involved "in-court conduct." EOIR's database indicates that Complaint 383 involved "continuing allegations of intemperate conduct on the bench," and that the judge had been "detailed" to the BIA pending the outcome of

[2] Despite a request from AILA for EOIR to do so, EOIR has refused to provide any information about this former judge's current position within DOJ, including whether the person continues to have a public-facing role. *See* Doc. 54-7, Letter from AILA to EOIR (Mar. 6, 2017).

an investigation. The complaint file for that complaint includes a 2010 reprimand letter detailing previous misconduct by the judge and cataloging new instances of misconduct during 15 separate days of hearings. The letter admonished the judge in particular for instances in which the judge was "rude, condescending, or impatient with respondents, many of whom do not speak English as a first language or at all, and most of whom are going through an event that will dictate the quality of the remainder of their lives." (Bates 13799-800). It also noted that the judge had been on notice of "EOIR's concerns since at least 2005" and had been subject to training, reprimands, and a previous suspension. (Bates 13802).

47. Judge KSI was subject to 13 complaints and remains active. Four of the complaints were resolved by written counseling, four by oral counseling, and one by training. Only one complaint involved "out-of-court conduct." As one example, one of the complaints resulting in written counseling (Complaint 615) involved an instance in which the judge deported a juvenile during a hearing in absentia when the juvenile did not appear in court within 15 minutes of his hearing time. The judge was later informed by court personnel that the juvenile had been waiting in the court waiting room for his attorney while the hearing took place, and the judge made no effort to determine whether the juvenile was there. Despite multiple discussions with a supervisor, the judge failed to reopen the proceedings. In a written counseling letter roughly one month after the incident, the supervisor voiced concern about the judge's inability to acknowledge his or her "insensitivity" and emphasized "the perception of unfairness that persists based on the fact that this situation has gone uncorrected." The complaint file does not indicate whether the deportation order against the juvenile was ever corrected.

48. Judge PSI was subject to 13 complaints and remains active. Six of the complaints resulted in oral counseling. Complaint 499, for example, involved an allegation that the judge

had denied the respondent a right to counsel by questioning the respondent outside the presence of her attorney and attempting to elicit prejudicial statements during that time. Only one of the complaints involved what EOIR categorized as "out-of-court conduct"; the complainant there (Complaint 365) contended that the judge was not in compliance with the agency's requirement that he or she maintain bar membership as an immigration judge. That complaint was concluded based on the determination that corrective action had already been taken.

49. Judge QJC was subject to 11 complaints and remains active. Three complaints ended in oral counseling, while a fourth ended in written counseling. In Complaint 164, the judge's supervisor indicates in written counseling that because of the judge's conduct on the bench, "the respondent was precluded from presenting his claims for relief and didn't receive a fair hearing." The written counseling notes that the BIA also expressed concern about the judge's divulging information about an asylum applicant's case to a private attorney who did not represent the applicant. The BIA ordered the case remanded to a different judge. Only one of the complaints against this judge involved "out-of-court conduct."

50. Judge WTW was subject to 13 complaints and is retired. At least five of the complaints ended with oral counseling, one with written counseling, and one with a written reprimand. Four additional complaints (Complaints 263, 264, 265, 266) were described as "complaint resolved per complaint" in EOIR's database, but the complaint files indicate that the complaints actually ended in a written reprimand that was unsuccessfully challenged by the judge. That reprimand letter admonishes the judge for turning off the tape recorder of proceedings to make inappropriate comments about the religious background of an attorney appearing before him or her and for bringing a magazine to read on the bench. (Bates 13003). None of the 13 complaints involved "out-of-court conduct."

51. Judge ZMO was subject to 10 complaints and is retired. Four of the complaints ended in oral counseling, and each involved the judge's handling of a matter before him or her. Complaint 453, for example, involved a complaint from the BIA in a case in which the respondent argued that he had been unable to testify on his own behalf because of the judge's conduct. Another complaint, the only complaint involving activity classified as "out-of-court conduct" by EOIR, ended with a written reprimand.

52. Fifteen immigration judges were the subject of between 6 and 9 closed complaints each during the time period covered by the records. Those judges are ATQ (8), DPY (7), GNE (6), GUC (9), JIT (8), LLN (8), NHQ (7), QVI (8), RCW (8), SQX (8), VED (6), VJL (8), YEL (7), YKB (8), and YWK (7). These fifteen judges were collectively responsible for 113 complaints—or roughly 15 percent of all complaints—in the release. Ten of these judges remain on the bench. EOIR's database indicates that at least one complaint ended with formal discipline or corrective action for 14 of the 15 judges, and three complaints against the remaining judge (Judge RCW) were closed because "corrective action" had already been taken, indicating that some conduct had already been determined to warrant management action even if not so classified by EOIR in its database. Of the 113 complaints at issue among these judges, only 19 involved "out-of-court conduct," and each judge subject to an "out-of-court conduct" complaint was also subject to numerous others not involving what EOIR classified as "out-of-court conduct." Six of the judges were not subject to any complaints categorized by EOIR as pertaining to "out-of-court conduct."

53. ATQ was subject to 8 complaints and remains active. All of the complaints against this judge resulted in disciplinary action or corrective action. For instance, one complaint resulting in suspension (Complaint 455) dealt with the judge's repeated failure to keep records of

proceedings of master calendar hearings, despite instruction to do so. The complaint file demonstrates that the judge's supervisor indicated that the judge's failure to record proceedings, or even to make notes in some case, "create[d] a situation of there being no record of what was done at a hearing." (Bates 11324). Only 2 of the 8 complaints involved allegations of what EOIR classified as "out-of-court conduct." One of those (Complaint 208) involved the judge's failure to respond to questions from a government ethics officer with respect to concerns about the judge's public financial disclosure report. The other (Complaint 594) involved the judge's determination to reopen certain proceedings; accordingly, whether the conduct occurred in the court or elsewhere, it necessarily pertained to the judge's official duties.

54. Judge DPY was subject to seven complaints and remains active. One of the complaints resulted in oral counseling. That complaint (Complaint 745) was referred to EOIR by the BIA based on its determination that the judge's "conduct during the proceedings was not in accordance with the standards of professionalism required of Immigration Judges and [REDACTION] tone was not consistent with [REDACTION] role." (Bates 9489). The BIA remanded the case to a different immigration judge. None of the complaints dealt with "out-of-court conduct."

55. Judge GNE was subject to six complaints and is retired. One complaint resulted in suspension, another in a written reprimand, and two more in written counseling. Although three of those four complaints involved what EOIR classified "out-of-court conduct," the fourth (Complaint 683) involved serious allegations regarding the judge's tone and statements on the record during a hearing. The BIA brought that complaint to EOIR based on the impropriety of numerous transcript statements, including the judge telling the respondent he was either "lucky

or stupid," that his "application [was] basically worthless," and that "[y]eah, all right, sir, discrimination happens." (Bates 3802).

56. Judge GUC was subject to nine complaints and remains active. Three of the complaints resulted in oral counseling. Two involved what EOIR classified as "out-of-court conduct" but still pertained to the judge's duties: Complaint 412 involved an allegation that the judge had participated in politicized hiring practices. Complaint 712 involved allegations that the judge had made unauthorized statements to a reporter writing an article about him or her. The judge explained in response to the complaint that the statements had been made while the judge was on the bench; the nature of the conduct at issue evidences little privacy interest in the complaint. (Bates 7067). The other six complaints were dismissed but are of significant public interest given the pattern of allegations, all of which allege in-court misconduct or violations of due process.

57. Judge JIT was subject to eight complaints and is retired. EOIR's complaint database indicates that one complaint ended in a written reprimand, one in written counseling, and two in oral counseling. In addition, one complaint listed as resolved by "Decision subsequently mitigated" ended in a suspension. The complaint database indicates that complaint (Complaint 588) dealt with "[o]ngoing intemperate behavior in court." In the complaint file, the judge's supervisor indicated that "respondents, members of the bar, and members of the public lose confidence in and respect for the court and the immigration proceedings when they when witness an Immigration Judge acting intemperately and rudely," and noted that the judge's "repeated outbursts, degrading tone, and abusive behavior toward counsel" had caused the supervisor to "lose confidence" in the judge's ability. Four of the eight complaints were classified as dealing with "out-of-court conduct."

58. Judge LLN was subject to 8 complaints and is retired. Three of those complaints, all of which involved in-court conduct and were referred by the BIA, were resolved by oral counseling. In addition, Complaint 246 (classified in EOIR's database as resolved "per complaint") was referred by the BIA and involved the judge's sarcastic tone and inappropriate comments on the bench, including the judge's statement to a respondent that he should "arrange for extra-judicial violence to protect himself in his native country." (Bates 10604). And the complaint file for Complaint 505, although described as resolved "per complaint," indicates that the complaint—which again addressed the judge's conduct on the bench—was closed because oral counseling had already been provided in relation to another similar matter. (Bates 11800). None of the complaints against this judge involved what EOIR classified as "out-of-court conduct."

59. Judge NHQ was subject to 7 complaints and remains active. One complaint was resolved by suspension, one by written reprimand, and three by written counseling. The complaint resulting in suspension (Complaint 589) involved allegations classified as involving both in-court and out-of-court conduct. However, the judge was disciplined for having a prohibited ex parte conversation with a party regarding a need for additional record evidence and for "exhibiting a level of disorganization and lack of preparation that precluded [him or her] from rendering a decision." Only two other complaints involved what EOIR classified as "out-of-court conduct."

60. Judge QVI was subject to 8 complaints and remains active. At least two complaints ended in written counseling and two ended in oral counseling. Complaint 544, which ended in written counseling, involved an allegation that the judge not only failed to follow an

express BIA directive but also closed a hearing to a respondent and his counsel. None of the complaints involved what EOIR termed "out-of-court conduct."

61. Judge RCW was subject to eight complaints and is retired. Only one of those complaints (Complaint 364) involved what EOIR classified as "out-of-court conduct." The remaining complaints all involved allegations of in-court conduct or bias, among other things. Although the database does not describe any of the complaints as being closed with discipline or corrective action, three complaints, all referred by the BIA, were closed based on EOIR's *previous* corrective action with respect to another matter. Complaint 123, one such complaint, involved a BIA finding that the judge inappropriately chastised the respondents' counsel and through his or her conduct "may have influenced the finding the respondents were in part not credible."

62. Judge SQX was subject to 8 complaints and remains active. Five of the complaints were resolved by oral counseling, and a sixth by written counseling. The complaint resolved by written counseling (Complaint 735) involved an instance in which the judge had suggested on the record that an asylum applicant could avoid persecution related to testimony in a criminal proceeding by falsely stating that he or she did not remember the incident if asked to testify. Only one of the complaints involved out-of-court conduct.

63. Judge VED was subject to six complaints and is active. Only one of the complaints concerned "out-of-court conduct." That complaint concerned the judge's failure to submit a public financial disclosure report and resulted in a written reprimand. Two additional complaints were substantiated, resulting in oral and written counseling. The complaint resulting in written counseling (Complaint 676) involved a finding by the BIA that the judge terminated a case without any legal basis for doing so. In the written counseling, the judge's supervisor states

that the judge's decision was "inflammatory and unacceptable" and demonstrated "rash" behavior.

64. Judge VJL was subject to eight complaints and is active. Three complaints ended in oral counseling and a fourth in written counseling. Only one of the complaints related to what EOIR termed "out-of-court conduct." Others clearly pertained to the judge's official duties. Complaint 139, for example, involved a finding by the BIA that the judge had repeatedly—and without justification—accused a respondent of lying to him or her.

65. Judge YEL was subject to seven complaints and remains active. At least one complaint (Complaint 559) was resolved by written counseling, and that written counseling letter indicates that it was based on numerous oral and written complaints. (Bates 2758). The letter indicated that the judge's "tone and diction" did not demonstrate that he or she "treat[ed] all people with appropriate respect" or in a "fair and impartial manner." (Bates 2758-59). The judge's supervisor indicated that the judge's actions had been described by private attorneys as "having a chilling effect on their exercise of appeal rights." (Bates 2760). Private attorneys had told the supervisor that they "felt threatened" by the judge, that the judge did not care about due process, and that the judge presided over a "kangaroo court." (Bates 2760). Notably, the complainant in Complaint 559 indicated that he or she had spoken to numerous other attorneys about the judge's behavior, most of whom "prefer[red] not to file complaints out of fear of retribution" from the judge. (Bates 2757). None of the complaints against Judge YEL dealt with what EOIR termed "out-of-court conduct."

66. Judge YKB was subject to eight complaints and remains active. Four complaints were resolved by oral counseling, and a fifth was concluded based on corrective action already having been taken. Complaint 34, for example, was concluded with oral counseling after a court

of appeals found that the immigration judge prejudiced the respondent's ability to present evidence and remanded the case to a different judge. None of the complaints against YKB involved what EOIR classified as "out-of-court conduct."

67. Judge YWK was subject to seven complaints and is retired. One complaint was resolved with oral counseling, and three others were closed based on corrective action having already been taken. Complaint 110, for example, falls in this latter category, and notes that oral counseling occurred. That complaint involves a finding by the BIA that the judge's remarks during a hearing on a matter were "inappropriate" and "sarcastic." (Bates 4170). Complaint 315, also resolved on the ground that corrective action already had been taken, similarly dealt with an allegation that the judge had made "sarcastic and prejudicial comments" throughout a hearing. (Bates 8409). None of the complaints dealt with "out-of-court conduct."

68. Five immigration judges remain at issue who were the subject of 3 to 5 closed complaints each during the time period covered by the records. Those judges are CGP (5), DWL (3), KSV (5), OPP (5), and TAD (5). All but Judge KSV remain active. None of the complaints against these judges were characterized as involving "out-of-court conduct" in EOIR's database. In each case, at least one complaint against a judge was resolved with formal discipline, such as a written reprimand or suspension, or all complaints against the judge ended with oral counseling, that is, none of the complaints was dismissed as unsubstantiated.

69. Judge CGP was subject to five complaints and remains active. All of the complaints resulted in oral counseling and none involved what EOIR termed "out-of-court conduct." Complaint 750 involved an allegation related to the judge's treatment of a respondent's attorney in court. The judge's supervisor noted in an email to the judge that "[e]ven

the [government] attorney was objecting to what the court was doing and the path that the discussion had taken." (Bates 7236).

70. Judge DWL was subject to three complaints and remains active. None of the complaints involved "out-of-court conduct." One was resolved by oral counseling and another by a written reprimand. The complaint resulting in formal reprimand (Complaint 22) involved the judge's conduct in a case in which the BIA found that the judge "conducted the trial in a manner that was unfair and required reversal and remand to a different Immigration Judge." (Bates 864). The reprimand letter noted, for example, that the judge stated on the bench that he or she was considering the opinions of his or her relatives, told the respondent "you've practiced this rehearsal, this little story," and "demean[ed] the respondent for lack of intelligence or judgment." *Id.*

71. Judge KSV was subject to five complaints and is retired. None of the complaints involved "out-of-court conduct." Two were resolved by suspensions, and another two by oral counseling. Complaint 656, *see* Doc. 20-1, Attach. E, describes a proposed suspension by EOIR for an incident in which Judge KSV, in front of parties and counsel in open court, described a respondent's son with autism as a "wild animal posing as a child." The proposed suspension letter recounts other incidents in which the immigration judge had been counseled about "badgering of a witness" and inappropriate remarks on the bench that "were or could be perceived as belittling." Complaint 699, *see* Doc. 20-1, Attach. F, includes an October 15, 2012, e-mail from one Assistant Chief Immigration Judge (ACIJ) to other EOIR staff in which the ACIJ states that "[i]t should probably come as no surprise[] to any of us that there is another complaint on [Immigration Judge] [redacted] conduct." The ACIJ states that he, too, is concerned about the judge's conduct with respect to a particular respondent. The complaint in

the file, which originated with a government employee, states that one employee present for the proceeding thought the judge "treated [the] respondent so disrespectfully she found it necessary to step out of the courtroom to take a break from the embarrassment." The complainant went on to state that he or she was bringing the issue to EOIR's attention because of "embarrass[ment] for the [redacted] court" and that it was "ridiculous that EOIR ha[d] someone on the bench who ha[d] such inappropriate demeanor, which can be perceived as biased." Judge KSV was suspended for one day as a result of the incident at issue in that complaint.

72. Judge OPP was subject to five complaints and remains active. Four of the complaints were resolved by oral counseling. And although the fifth (Complaint 480) is described in EOIR's database as resolved "per complaint," the complaint file indicates that this complaint was closed after oral counseling related to two separate matters in which the judge's conduct had been referred to EOIR by the BIA for review. None of the complaints involved "out-of-court conduct"; rather, all relate to "bias," "due process" violations, and "in-court conduct." Complaint 461 involved, for example, a referral by the BIA based on its conclusion that the judge had discouraged a respondent from filing an asylum application. In a response to the complaint, the judge recognized that his or her conduct "was a violation of [the respondent's] due process rights which impacted him later when he filed his Motion to Reopen." (Bates 4726).

73. Judge TAD was subject to five complaints and remains active. One complaint was resolved with a written reprimand, another by oral counseling. An additional complaint (Complaint 368) was resolved "per complaint" according to EOIR's database, but the complaint file indicates it was resolved in conjunction with the complaint ending in a written reprimand. None of the complaints involved "out-of-court conduct." The letter of reprimand against the judge in complaint files 322 and 368 indicates that the judge had, in one hearing, engaged in

"graphic and inappropriate questioning" of a respondent about her consensual sexual activity with a same-sex partner, including whether "she had had an orgasm." (Bates 13294). The reprimand described the judge's questioning as "prurient" and "irrelevant" to the respondent's asylum claim. (Bates 13295).

74. In light of the characteristics of these judges, as described further in the accompanying chart attached as Exhibit A, the public interest in disclosure of the remaining judges' names and identifying information outweighs the judges' privacy interests.

75. On June 1, 2017, I obtained a copy of DOJ's Ethics and Professionalism Guide for Immigration Judges (2011), available at http://www.justice.gov/sites/default/files/eoir/legacy/2013/05/23/EthicsandProfessionalismGuideforIJs.pdf. A true and correct copy of that document is attached as Exhibit B.

76. On May 31, 2017, I obtained a copy of a letter from the Southern Poverty Law Center (SPLC) and Emory Law School to EOIR Director Juan Osuna, Mar. 2, 2017, available at https://www.splcenter.org/sites/default/files/2017-atl_complaint_letter_final.pdf. A true and correct copy of that document is attached as Exhibit C.

77. For fiscal years 2010 through 2014, EOIR has released annual aggregate data describing the complaints it received against immigration judges and its resolutions of those complaints. *See* https://www.justice.gov/eoir/immigration-judge-conduct-and-professionalism. EOIR's website does not currently provide this information for any year since 2014. A true and correct copy of that web page is attached as Exhibit D.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

Executed June 1, 2017, in Washington, DC.

/s/ Julie A. Murray
Julie A. Murray

Exhibit A

Judges Remaining at Issue in the Litigation

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
GEP (Retired)																					
21 Complaints	189	Complaint concluded - corrective action already taken	X	X											X						
	330	Complaint dismissed as merits-related			X		X								X						
	566	Complaint dismissed because it cannot be substantiated					X								X						
	601	Complaint dismissed because it cannot be substantiated						X											X		
	66	Complaint dismissed due to the complainant's failure to state a claim			X						X										
	477	Complaint resolved per complaint			X												X				
	523	Complaint resolved per complaint			X			X									X				
	456	IJ suspended						X									X				
	51	Oral Counseling		X	X										X						
	57	Oral Counseling			X						X										
	70	Oral Counseling					X								X						
	98	Oral Counseling		X			X								X						
	122	Oral Counseling					X											X			
	126	Oral Counseling			X		X								X						
	199	Oral Counseling			X		X								X						
	416	Oral Counseling			X										X						
	541	Oral Counseling	X												X						
	577	Oral Counseling		X											X						
	637	Oral Counseling					X								X						
	744	Oral Counseling	X												X						
	780	Oral Counseling		X	X										X						

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
HKX (Retired)																					
30 Complaints	7	Complaint concluded - IJ retirement made action unnecessary			X		X								X		X				
	18	Complaint concluded - IJ retirement made action unnecessary		X	X										X						
	19	Complaint concluded - IJ retirement made action unnecessary		X	X										X						
	44	Complaint concluded - IJ retirement made action unnecessary		X	X										X						
	45	Complaint concluded - IJ retirement made action unnecessary			X										X						
	53	Complaint concluded - IJ retirement made action unnecessary			X										X						
	101	Complaint concluded - IJ retirement made action unnecessary			X										X						
	105	Complaint concluded - IJ retirement made action unnecessary		X	X										X						
	109	Complaint concluded - IJ retirement made action unnecessary			X										X						
	154	Complaint concluded - IJ retirement made action unnecessary		X	X		X								X						
	221	Complaint concluded - IJ retirement made action unnecessary			X										X						
	257	Complaint concluded - IJ retirement made action unnecessary			X										X						
	279	Complaint concluded - IJ retirement made action unnecessary		X	X							X		X							
	299	Complaint concluded - IJ retirement made action unnecessary	X		X										X						
	311	Complaint concluded - IJ retirement made action unnecessary			X		X								X						
	312	Complaint concluded - IJ retirement made action unnecessary	X		X										X						
	313	Complaint concluded - IJ retirement made action unnecessary	X	X	X										X						
	361	Complaint concluded - IJ retirement made action unnecessary			X										X						
	404	Complaint concluded - IJ retirement made action unnecessary			X										X						
	437	Complaint concluded - IJ retirement made action unnecessary			X										X						
	438	Complaint concluded - IJ retirement made action unnecessary			X										X						
	470	Complaint concluded - IJ retirement made action unnecessary			X										X						
	478	Complaint concluded - IJ retirement made action unnecessary			X										X						
	485	Complaint concluded - IJ retirement made action unnecessary					X								X						
	73	Complaint dismissed as merits-related					X								X						
	198	Complaint dismissed as merits-related		X	X										X						
	170	Complaint dismissed because it cannot be substantiated			X							X									
	272	Complaint dismissed because it cannot be substantiated			X							X									
	236	Oral Counseling	X	X	X										X						
	259	Oral Counseling			X										X						

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
IQV (Retired)																					
25 Complaints	327	Complaint concluded - corrective action already taken		X	X										X						
	665	Complaint concluded - corrective action already taken			X												X				
	763	Complaint dismissed as merits-related					X				X										
	351	Complaint dismissed because it cannot be substantiated		X	X		X				X										
	548	Complaint dismissed because it cannot be substantiated			X						X										
	585	Complaint dismissed because it cannot be substantiated		X										X							
	617	Complaint dismissed because it cannot be substantiated			X						X										
	151	Complaint resolved per complaint		X	X										X						
	172	Complaint resolved per complaint		X	X										X						
	182	Complaint resolved per complaint		X	X										X						
	262	Complaint resolved per complaint			X						X										
	277	Complaint resolved per complaint	X	X	X										X						
	377	Complaint resolved per complaint			X				X	X	X										
	393	Complaint resolved per complaint		X	X										X						
	406	Complaint resolved per complaint			X										X						
	539	Complaint resolved per complaint			X						X										
	25	Decision - Suspension			X						X										
	80	Oral Counseling			X												X				
	218	Oral Counseling		X											X						
	538	Oral Counseling			X												X				
	679	Oral Counseling			X												X				
	648	No final action in database (performance counseling per file)	X	X							X										
	390	Written Counseling			X										X						
	514	Written counseling			X										X						
	659	Written Counseling			X										X						

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
KMJ (Active)																					
26 Complaints	283	Complaint concluded - corrective action already taken	X	X	X										X						
	296	Complaint concluded - corrective action already taken	X	X	X										X						
	314	Complaint concluded - corrective action already taken		X											X						
	334	Complaint concluded - corrective action already taken		X					X						X						
	336	Complaint concluded - corrective action already taken			X										X						
	203	Complaint concluded- corrective action already taken	X	X	X										X						
	215	Complaint dismissed because it cannot be substantiated	X		X							X									
	521	Complaint dismissed because it cannot be substantiated							X		X										
	522	Complaint dismissed because it cannot be substantiated			X						X										
	565	Complaint dismissed because it was disproven			X										X						
	4	Complaint dismissed due to the complainant's failure to state a claim		X			X				X										
	645	Complaint dismissed due to the complainant's failure to state a claim			X						X										
	700	Complaint resolved per complaint			X										X						
	150	Oral Counseling			X										X						
	543	Oral counseling			X		X								X						
	611	Oral Counseling			X						X										
	662	Oral Counseling			X										X						
	781	Oral Counseling					X								X						
	55	Written Counseling					X								X						
	62	Written Counseling					X								X						
	175	Written Counseling		X			X								X						
	357	Written Counseling	X		X		X								X						
	574	Written counseling			X						X				X						
	616	Written counseling			X										X						
	332	Written reprimand	X	X	X						X							X			
	759	Written reprimand			X										X						

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
OPU (Active)																					
29 Complaints	20	Complaint dismissed because it cannot be substantiated			X						X										
	698	Complaint dismissed because it cannot be substantiated		X	X									X							
	767	Complaint dismissed because it cannot be substantiated		X							X										
	343	Complaint resolved per complaint	X		X						X										
	3	Oral Counseling			X		X								X						
	54	Oral Counseling			X										X						
	61	Oral Counseling			X										X						
	71	Oral Counseling	X	X											X						
	74	Oral Counseling	X	X	X										X						
	81	Oral Counseling		X	X										X						
	103	Oral Counseling	X	X			X								X						
	190	Oral Counseling			X						X										
	204	Oral counseling		X	X										X						
	323	Oral Counseling	X	X							X										
	342	Oral Counseling	X	X	X		X				X										
	379	Oral Counseling								X					X						
	403	Oral Counseling			X										X						
	405	Oral Counseling					X								X						
	409	Oral Counseling					X								X						
	419	Oral Counseling		X	X										X						
	434	Oral Counseling			X										X						
	501	Oral Counseling					X								X						
	547	Oral Counseling	X								X										
	558	Oral Counseling		X											X						
	608	Oral Counseling	X	X	X		X								X						
	620	Oral Counseling			X										X						
	664	Oral Counseling		X	X						X										
	757	Oral Counseling			X										X						
	41	Training			X						X										

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
PBZ (Active)																					
32 Complaints	421	Complaint concluded - corrective action already taken			X										X						
	276	Complaint dismissed as merits-related		X			X								X						
	8	Complaint dismissed as merits-related					X								X						
	10	Complaint dismissed as merits-related		X			X								X						
	161	Complaint dismissed as merits-related			X									X							
	167	Complaint dismissed as merits-related	X									X									
	442	Complaint dismissed as merits-related		X											X						
	561	Complaint dismissed as merits-related		X			X				X										
	96	Complaint dismissed because it cannot be substantiated		X	X				X		X										
	302	Complaint dismissed because it cannot be substantiated		X	X										X						
	694	Complaint dismissed because it cannot be substantiated		X	X					X	X										
	413	Complaint dismissed because it cannot be substantiated			X						X										
	187	Complaint dismissed because it was disproven	X		X										X						
	69	Oral Counseling					X								X						
	72	Oral Counseling			X										X						
	99	Oral Counseling	X	X			X								X						
	426	Oral Counseling		X	X										X						
	428	Oral Counseling		X											X						
	510	Oral Counseling	X	X											X						
	517	Oral Counseling		X											X						
	545	Oral Counseling		X											X						
	549	Oral Counseling	X	X											X						
	555	Oral Counseling		X											X						
	579	Oral Counseling		X											X						
	604	Oral Counseling			X						X										
	657	Oral Counseling		X	X		X								X						
	42	Written Counseling					X								X						
	255	Written Counseling			X										X						
	360	Written Counseling		X	X										X						
	458	Written Counseling		X											X						
	600	Written counseling		X											X						
	631	Written Counseling		X	X										X						

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
TXY (Retired)																					
23 Complaints	669	Complaint concluded - corrective action already taken			X										X						
	675	Complaint concluded - corrective action already taken			X										X						
	708	Complaint concluded - corrective action already taken					X								X						
	741	Complaint concluded - corrective action already taken			X		X										X				
	754	Complaint concluded - corrective action already taken			X										X						
	758	Complaint concluded - corrective action already taken			X										X						
	1	Complaint dismissed because it cannot be substantiated	X	X								X									
	584	Complaint dismissed because it cannot be substantiated						X									X				
	623	Complaint resolved per complaint							X						X						
	644	Complaint resolved per complaint	X	X	X										X						
	11	Oral Counseling			X										X						
	30	Oral Counseling		X											X						
	219	Oral Counseling		X	X										X						
	391	Oral Counseling	X		X										X						
	460	Oral Counseling			X										X						
	488	Oral Counseling					X								X						
	502	Oral Counseling					X								X						
	525	Oral Counseling			X										X						
	591	Training			X										X						
	29	Written Counseling		X			X								X						
	85	Written Counseling		X										X							
	381	Written Counseling		X	X										X						
	481	Written Counseling		X			X								X						

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
FRW (Terminated)																					
18 Complaints	87	Complaint concluded - IJ termination during trial period made action unnecessary					X								X						
	140	Complaint concluded - IJ termination during trial period made action unnecessary			X		X								X						
	162	Complaint concluded - IJ termination during trial period made action unnecessary		X											X						
	185	Complaint concluded - IJ termination during trial period made action unnecessary			X										X						
	192	Complaint concluded - IJ termination during trial period made action unnecessary		X	X										X						
	201	Complaint concluded - IJ termination during trial period made action unnecessary		X											X						
	214	Complaint concluded - IJ termination during trial period made action unnecessary					X								X						
	222	Complaint concluded - IJ termination during trial period made action unnecessary			X		X								X						
	223	Complaint concluded - IJ termination during trial period made action unnecessary		X	X										X						
	224	Complaint concluded - IJ termination during trial period made action unnecessary			X										X						
	235	Complaint concluded - IJ termination during trial period made action unnecessary		X	X										X						
	240	Complaint concluded - IJ termination during trial period made action unnecessary		X	X										X						
	252	Complaint concluded - IJ termination during trial period made action unnecessary					X								X						
	268	Complaint concluded - IJ termination during trial period made action unnecessary			X		X								X						
	326	Complaint concluded - IJ termination during trial period made action unnecessary			X										X						
	335	Complaint concluded - IJ termination during trial period made action unnecessary			X										X						
	337	Complaint concluded - IJ termination during trial period made action unnecessary	X	X	X		X				X				X						
	388	Complaint concluded - IJ termination during trial period made action unnecessary		X	X		X								X	X		X			

Judge	No.	Final Action on Complaint	Basis for Complaint							Complaint Source									
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other
GOE (Remains at DOJ)																				
13 Complaints	58	ACIJ decision			X												X			
	511	Complaint concluded - corrective action already taken			X										X					
	590	Complaint concluded - corrective action already taken			X										X					
	124	Complaint dismissed because it cannot be substantiated		X	X									X						
	627	Complaint dismissed because it cannot be substantiated			X							X								
	319	Complaint dismissed because it was disproven		X	X										X					
	91	Complaint resolved per complaint			X												X			
	93	Complaint resolved per complaint			X							X								
	112	Complaint resolved per complaint						X									X			
	113	Complaint resolved per complaint			X							X								
	383	Decision - Suspension			X												X			
	111	Decision subsequently upheld						X									X			
	68	Oral Counseling			X										X					
KSI (Active)																				
13 Complaints	643	Complaint dismissed as merits-related					X					X								
	171	Complaint dismissed because it cannot be substantiated			X						X									
	534	Complaint dismissed because it cannot be substantiated						X						X						
	158	Complaint dismissed due to the complainant's failure to state a claim		X	X										X					
	655	Oral Counseling			X						X									
	673	Oral Counseling			X		X				X									
	688	Oral Counseling		X			X				X									
	761	Oral Counseling		X											X					
	79	Training			X		X				X									
	573	Written counseling			X												X			
	586	Written Counseling		X	X		X								X					
	615	Written counseling		X	X												X			
	790	Written Counseling		X											X					

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
PSI (Active)																					
13 Complaints	365	Complaint concluded - corrective action already taken						X					X								
	136	Complaint dismissed as merits-related					X								X			X			
	191	Complaint dismissed as merits-related	X	X	X							X									
	498	Complaint dismissed as merits-related	X	X	X						X										
	346	Complaint dismissed because it cannot be substantiated	X		X										X						
	603	Complaint dismissed because it was disproven	X		X						X										
	353	OPR finding of no professional misconduct -mistake					X								X			X			
	149	Oral Counseling					X								X						
	180	Oral Counseling	X	X	X		X								X						
	349	Oral Counseling			X										X						
	499	Oral Counseling		X	X										X			X			
	569	Oral Counseling			X										X						
	663	Oral Counseling			X						X										
QJC (Active)																					
11 Complaints	146	Complaint dismissed as merits-related	X	X	X		X					X									
	448	Complaint dismissed as merits-related		X										X							
	597	Complaint dismissed as merits-related	X				X				X										
	148	Complaint dismissed because it cannot be substantiated			X							X									
	564	Complaint dismissed because it was disproven		X										X							
	168	Complaint dismissed due to the complainant's failure to state a claim			X									X							
	504	Database entry created			X												X				
	395	Oral counseling						X									X				
	459	Oral Counseling			X										X						
	536	Oral Counseling					X								X						
	164	Written Counseling			X										X						

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
WTW (Retired)																					
13 Complaints	132	Complaint resolved per complaint			X										X						
	206	Complaint resolved per complaint			X										X						
	263	Complaint resolved per complaint			X						X										
	264	Complaint resolved per complaint		X	X										X						
	265	Complaint resolved per complaint			X										X						
	266	Complaint resolved per complaint		X	X										X						
	39	Oral Counseling	X		X						X										
	67	Oral Counseling	X		X										X						
	211	Oral Counseling		X	X										X						
	350	Oral Counseling	X		X										X						
	516	Oral Counseling	X	X	X										X						
	531	Written counseling		X	X												X				
	254	Written reprimand			X							X			X						
ZMO (Retired)																					
10 Complaints	784	Complaint concluded - corrective action already taken		X							X										
	261	Complaint dismissed because it cannot be substantiated		X	X		X											X			
	529	Complaint dismissed because it cannot be substantiated					X											X			
	658	Complaint dismissed because it cannot be substantiated								X		X									
	774	Complaint dismissed due to the complainant's failure to state a claim					X								X						
	453	Oral Counseling		X	X										X						
	677	Oral Counseling		X			X								X						
	686	Oral Counseling		X											X						
	752	Oral Counseling					X								X						
	457	Written reprimand							X								X				

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
ATQ (Active)																					
8 Complaints	455	Decision - Suspension		X	X												X				
	179	Oral Counseling			X												X				
	594	Oral Counseling							X								X				
	202	Written Counseling		X											X						
	380	Written Counseling			X		X								X						
	400	Written Counseling			X										X						
	414	Written Counseling			X										X						
	208	Written reprimand							X								X				
DPY (Active)																					
7 Complaints	160	Complaint dismissed as merits-related			X						X										
	576	Complaint dismissed as merits-related		X			X								X						
	129	Complaint dismissed because it cannot be substantiated	X		X						X										
	278	Complaint dismissed because it cannot be substantiated	X	X	X		X					X									
	546	Complaint dismissed because it cannot be substantiated	X	X	X								X								
	355	Complaint dismissed due to the complainant's failure to state a claim			X						X										
	745	Oral Counseling			X										X						
GNE (Retired)																					
6 Complaints	649	Complaint dismissed as merits-related					X					X									
	177	Complaint dismissed because it cannot be substantiated					X					X									
	702	Decision - Suspension							X								X				
	651	Written counseling							X								X				
	683	Written Counseling	X		X										X						
	668	Written reprimand							X								X				

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
GUC (Active)																					
9 Complaints	429	Complaint dismissed as merits-related		X	X		X							X							
	610	Complaint dismissed as merits-related		X										X							
	169	Complaint dismissed because it cannot be substantiated			X									X							
	535	Complaint dismissed because it cannot be substantiated		X	X						X										
	642	Complaint dismissed because it cannot be substantiated	X		X						X										
	723	Complaint dismissed because it was disproven			X														X		
	134	Oral Counseling			X			X				X									
	412	Oral Counseling						X												X	
	712	Oral Counseling						X									X				
JIT (Retired)																					
8 Complaints	530	ACIJ decision						X									X				
	89	Complaint dismissed because it cannot be substantiated			X						X							X			
	233	Complaint dismissed because it cannot be substantiated						X			X										
	588	Decision subsequently mitigated			X												X				
	157	Oral counseling		X	X										X			X			
	370	Oral Counseling			X										X						
	410	Written Counseling						X												X	
	693	Written reprimand						X									X				
LLN (Retired)																					
8 Complaints	63	Complaint dismissed as merits-related			X										X						
	401	Complaint dismissed because it cannot be substantiated			X						X										
	207	Complaint dismissed due to the complainant's failure to state a claim	X	X	X										X						
	246	Complaint resolved per complaint		X	X										X						
	505	Complaint resolved per complaint			X										X						
	17	Oral Counseling			X										X						
	127	Oral Counseling		X	X										X						
	220	Oral Counseling			X										X						

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
NHQ (Active)																					
7 Complaints	100	Complaint dismissed as merits-related		X			X								X						
	425	Complaint resolved per complaint							X								X				
	589	Decision - Suspension		X	X				X								X				
	82	Written Counseling							X								X				
	582	Written Counseling			X												X				
	710	Written Counseling	X		X												X				
	424	Written reprimand							X											X	
QVI (Active)																					
8 Complaints	618	Complaint concluded - corrective action already taken		X	X		X								X						
	690	Complaint dismissed as merits-related					X						X								
	705	Complaint dismissed as merits-related			X		X				X										
	578	Complaint resolved per complaint					X								X						
	417	Oral Counseling			X						X										
	471	Oral Counseling			X										X						
	544	Written Counseling	X	X	X		X								X						
	567	Written counseling	X		X										X						
RCW (Retired)																					
8 Complaints	123	Complaint concluded - corrective action already taken		X	X										X						
	217	Complaint concluded - corrective action already taken	X	X	X										X						
	291	Complaint concluded - corrective action already taken	X	X											X						
	364	Complaint concluded - IJ retirement made action unnecessary							X								X				
	205	Complaint dismissed because it cannot be substantiated		X			X								X						
	213	Complaint dismissed because it cannot be substantiated		X	X		X								X						
	321	Complaint dismissed because it cannot be substantiated		X	X							X									
	231	Complaint dismissed due to the complainant's failure to state a claim			X										X						

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
SQX (Active)																					
8 Complaints	60	Complaint dismissed as merits-related	X	X											X			X			
	599	Complaint dismissed because it cannot be substantiated			X			X									X				
	280	Oral Counseling		X	X										X						
	281	Oral Counseling		X	X										X						
	684	Oral Counseling			X										X						
	727	Oral Counseling	X		X		X									X					
	736	Oral Counseling					X								X						
	735	Written Counseling			X										X						
VED (Active)																					
6 Complaints	288	Complaint dismissed as merits-related					X								X						
	527	Complaint dismissed as merits-related					X								X						
	48	Complaint dismissed because it cannot be substantiated		X	X										X						
	156	Oral counseling					X										X				
	676	Written Counseling					X								X						
	305	Written reprimand							X								X				
VJL (Active)																					
8 Complaints	59	Complaint dismissed as merits-related					X								X						
	418	Complaint dismissed as merits-related	X				X				X										
	176	Complaint dismissed because it cannot be substantiated	X	X				X	X						X						
	777	Complaint dismissed because it cannot be substantiated			X														X		
	52	Oral Counseling			X										X						
	139	Oral Counseling			X										X						
	408	Oral Counseling		X	X										X						
	493	Written Counseling					X								X						

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
YEL (Active)																					
7 Complaints	452	Complaint dismissed as merits-related		X									X								
	454	Complaint dismissed because it cannot be substantiated			X						X										
	667	Complaint dismissed because it cannot be substantiated	X	X	X							X									
	716	Complaint dismissed because it cannot be substantiated		X	X							X									
	568	Complaint resolved per complaint		X	X						X										
	583	Complaint resolved per complaint		X	X						X										
	559	Written counseling		X	X						X										
YKB (Active)																					
8 Complaints	436	Complaint concluded - corrective action already taken		X	X										X		X				
	14	Complaint dismissed as merits-related		X			X							X		X					
	245	Complaint dismissed as merits-related		X			X								X						
	713	Complaint dismissed because it was disproven	X	X								X									
	5	Oral Counseling		X										X							
	33	Oral Counseling	X	X			X								X			X			
	34	Oral Counseling		X											X	X		X			
	701	Oral Counseling		X			X				X										
YWK (Retired)																					
7 Complaints	110	Complaint concluded - corrective action already taken			X										X						
	155	Complaint concluded - corrective action already taken			X										X						
	315	Complaint concluded - corrective action already taken	X	X	X	X	X								X						
	249	Complaint dismissed as merits-related					X								X						
	128	Complaint resolved per complaint			X	X									X						
	239	Complaint resolved per complaint			X										X						
	251	Oral Counseling			X										X						

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
CGP (Active)																					
5 Complaints	646	Oral Counseling			X						X										
	689	Oral Counseling		X	X						X										
	748	Oral Counseling	X	X	X		X												X		
	749	Oral Counseling	X	X	X		X				X										
	750	Oral Counseling	X	X	X		X				X										
DWL (Active)																					
3 Complaints	285	Complaint dismissed because it cannot be substantiated			X						X										
	503	Oral Counseling			X						X										
	22	Writen reprimand		X	X										X						
KSV (Retired)																					
5 Complaints	793	Complaint dismissed as merits-related			X							X									
	656	Decision - Suspension			X												X				
	699	Decision - Suspension	X	X	X												X				
	16	Oral Counseling			X										X						
	447	Oral Counseling			X										X						
OPP (Active)																					
5 Complaints	480	Complaint resolved per complaint			X										X						
	46	Oral Counseling			X										X						
	282	Oral Counseling	X	X	X										X						
	384	Oral Counseling			X										X						
	461	Oral Counseling		X											X						

Judge	No.	Final Action on Complaint	Basis for Complaint								Complaint Source										
			Bias	Due Process	In-Court Conduct	Incapacity	Legal	Criminal	Out-of-Court Conduct	Other	Respondent's Attorney	Respondent	OIG/OPR	Third Party	BIA	Media	DHS/EOIR/OIL	Circuit Court	Anonymous	Other	
TAD (Active)																					
5 Complaints	464	Complaint dismissed because it cannot be substantiated		X								X									
	709	Complaint dismissed because it cannot be substantiated		X	X									X							
	368	Complaint resolved per complaint			X												X				
	490	Oral Counseling					X								X						
	322	Written reprimand			X										X		X				

Exhibit B

ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES

Preamble

To preserve and promote integrity and professionalism, Immigration Judges employed by the Executive Office for Immigration Review (EOIR) should observe high standards of ethical conduct, act in a manner that promotes public confidence in their impartiality, and avoid impropriety and the appearance of impropriety in all activities.

I. Introduction

The provisions in this Guide are binding on all Immigration Judges employed by the Executive Office for Immigration Review. Violations of these provisions may not be used to challenge the rulings of an Immigration Judge. These provisions do not create any rights or interests for any party outside of the Department of Justice, nor may violations of these provisions furnish the basis for civil liability or injunctive relief. The provisions in this Guide do not supersede the personnel or disciplinary rules, or management policies, of the Executive Office for Immigration Review, the Department of Justice, and/or the United States Government. Similarly, this Guide does not affect the applicability or scope of the provisions of the Standards of Ethical Conduct for Executive Branch Employees, or the rules or code(s) of professional responsibility applicable to an Immigration Judge. 5 C.F.R. § 2635.101.

II. Standards of Conduct
(5 C.F.R. Parts 2635, 3801; 28 C.F.R. Part 45)

An Immigration Judge shall comply with the standards of conduct applicable to all attorneys in the Department of Justice, including the Standards of Ethical Conduct for Employees of the Executive Branch, codified in Title 5 of the Code of Federal Regulations, and the Department's supplemental regulations at 5 C.F.R. Part 3801 and 28 C.F.R. Part 45.

III. Ethics Guidance
(5 C.F.R. § 2635.107(b))

Immigration Judges are encouraged to seek ethics opinions to ensure that their conduct comports with applicable rules and regulations. When an Immigration Judge requests ethics guidance from the Office of Government Ethics, the Departmental Ethics Office, the Office of General Counsel of the Executive Office for Immigration Review, or the Professional Responsibility Advisory Office, the Immigration Judge should endeavor to disclose all legally relevant facts. 5 C.F.R. § 2635.107(b).

Note: Disciplinary action will not be taken against any Immigration Judge who has engaged in conduct in good faith reliance upon the advice of an agency ethics official provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances.

IV. Professional Competence

An Immigration Judge should be faithful to the law and maintain professional competence in it.

Note: In order to "maintain professional competence" in the law, Immigration Judges should strive to be knowledgeable about immigration law, should be skillful in applying it to individual cases, and should attempt to engage in preparation that is reasonably necessary to perform an Immigration Judge's responsibilities.

V. Impartiality
(5 C.F.R. § 2635.101(b)(8))

An Immigration Judge shall act impartially and shall not give preferential treatment to any organization or individual when adjudicating the merits of a particular case. An Immigration Judge should encourage and facilitate pro bono representation. An Immigration Judge may grant procedural priorities to lawyers providing pro bono legal services in accordance with Operating Procedures and Policies Memorandum (OPPM) 08-01.

VI. Appearance of Impropriety
(5 C.F.R. § 2635.101(b)(14))

An Immigration Judge shall endeavor to avoid any actions that, in the judgment of a reasonable person with knowledge of the relevant facts, would create the appearance that he or she is violating the law or applicable ethical standards.

VII. Reporting Misconduct
(5 C.F.R. § 2635.101(b)(11); 28 C.F.R. § 45.12)

An Immigration Judge shall disclose waste, fraud, abuse, and corruption to appropriate authorities, such as a supervisor, or to the Office of the Inspector General. Immigration Judges, like all Department employees, also have a duty to report allegations of misconduct by Department of Justice attorneys, as explained by Chapter 1-4.100 of the United States Attorneys' Manual (USAM). In addition, Immigration Judges have a duty to report allegations of

misconduct by non-Department attorneys or judges, as explained by Chapter 1-4.150 of the USAM.

VIII. Acting in a Neutral and Detached Manner

An Immigration Judge should not be swayed by partisan interests or public clamor.

IX. Acting with Judicial Temperament and Professionalism

An Immigration Judge should be patient, dignified, and courteous, and should act in a professional manner towards all litigants, witnesses, lawyers and others with whom the Immigration Judge deals in his or her official capacity, and should not, in the performance of official duties, by words or conduct, manifest improper bias or prejudice.

> ***Note:** An Immigration Judge should be alert to avoid behavior, including inappropriate demeanor, which may be perceived as biased. The test for appearance of impropriety is whether the conduct would create in the mind of a reasonable person with knowledge of the relevant facts the belief that the Immigration Judge's ability to carry out his or her responsibilities with integrity, impartiality, and competence is impaired.*
>
> ***Note:** An Immigration Judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the immigration process into disrepute. Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant reference to personal characteristics. Moreover, an Immigration Judge must avoid conduct that may reasonably be perceived as prejudiced or biased. Immigration Judges are not precluded from making legitimate reference to any of the above listed factors, or similar factors, when they are relevant to an issue in a proceeding.*
>
> ***Note:** An Immigration Judge has the authority to regulate the course of the hearing. See 8 C.F.R. §§ 1240.1(c), 1240.9. Nothing herein prohibits the Judge from doing so. It is recognized that at times an Immigration Judge must be firm and decisive to maintain courtroom control.*

X. Membership in Organizations

An Immigration Judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or disability.

> ***Note:*** *Membership of an Immigration Judge in an organization that practices invidious discrimination may, at a minimum, give rise to perceptions that the Immigration Judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which Immigration Judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. See New York State Club Ass'n Inc. v. City of New York, 487 U.S. 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537 (1987); Roberts v. United States Jaycees, 468 U.S. 609 (1984). Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus, the mere absence of diverse membership does not by itself demonstrate invidious discrimination unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination.*

XI. Impartiality in Performing Official Duties
(5 C.F.R. §§ 2635.501 to 2635.503)

An Immigration Judge may not participate, without authorization, in a particular matter involving specific parties which the Immigration Judge knows is likely to have a direct and predictable effect on the financial interest of members of the Immigration Judge's household or in which the Immigration Judge knows a person with whom the Immigration Judge has a covered relationship is or represents a party.

An Immigration Judge has a covered relationship with: (a) a person with whom the Immigration Judge has or seeks a business, contractual, or other financial relationship that involves other than a routine consumer transaction; (b) a person who is a member of the Immigration Judge's household, or a relative with whom the Immigration Judge has a close relationship; (c) a

present or prospective employer of a spouse, parent or child; or (d) an organization which the Immigration Judge now serves, or has served, as an employee or in another capacity, within the past year.

An Immigration Judge is banned from adjudicating any cases in which he/she participated personally and substantially prior to becoming an Immigration Judge. An Immigration Judge may not adjudicate a case if he/she: has personal knowledge of the disputed facts; participated as counselor or advisor in the case; or expressed an opinion concerning the merits of the particular case in controversy. A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of the above provision. However, an Immigration Judge formerly employed by a government agency should disqualify himself or herself in a proceeding if the Immigration Judge's impartiality might reasonably be questioned because of such an association.

If a conflict of interest exists, in order for the Immigration Judge to participate in the matter, the EOIR Director or his/her designee must make a determination that the interests of the government in the Immigration Judge's participation outweigh the concern that a reasonable person may question the integrity of the Department's programs and operations. The determination must be made in writing.

If a conflict of interest exists, and the judge has obtained a determination from the EOIR Director or his/her designee that the judge may continue to participate in the matter, the conflict must be disclosed to the parties, either orally on the record or in writing. If an Immigration Judge disqualifies himself or herself from a case that has been assigned to him or her, he or she must do so in a decision in writing or orally on the record before the parties and otherwise follow all the procedures delineated in OPPM 05-02, Procedures for Issuing Recusal Orders in Immigration Proceedings, or any superseding OPPM.

XII. Use of Public Office for Private Gain
(5 C.F.R. § 2635.702)

Immigration Judges may not use their public office for their own private gain or the gain of persons or organizations with which they are associated personally. An Immigration Judge's position or title should not be used: to coerce; to endorse any product, service or enterprise; or to give the appearance of government sanction. Regarding a request for a letter of reference or recommendation, an Immigration Judge may only use his or her official title and stationery for someone he or she has dealt with in the course of federal employment or someone he or she is recommending for federal employment.

XIII. Use of Nonpublic Information
(5 C.F.R. § 2635.703)

An Immigration Judge may not engage in a financial transaction using nonpublic information, nor allow the use of such information to further his or her private interests or those of another. Nonpublic information is information an Immigration Judge gains by reason of federal employment that he or she knows or reasonably should know has not been made available to the general public and is not authorized to be made available upon request.

XIV. Use of Government Property
(5 C.F.R. § 2635.704)

An Immigration Judge has a duty to protect and conserve government property and shall use government property only for authorized purposes.

> ***Note:** Department of Justice employees are generally authorized to make personal use of most office equipment and library facilities where the cost to the Government is negligible and on an employee's own time. 28 C.F.R. § 45.4. Under the Department's policy on the use of its electronic mail systems, an employee may send a short, personal message to another employee. However, personal messages sent to groups of people and messages to disseminate information on non-Government activities, such as charitable events, religious observances and personal businesses, are prohibited.*

XV. Use of Official Time
(5 C.F.R. § 2635.705)

An Immigration Judge shall use official time in an honest effort to perform official duties. Generally, personal activities should not be conducted during duty hours. An Immigration Judge may not use the official time of another employee for anything other than official business. This section does not apply to official time under section 7131 of the Federal Service Labor-Management Relations Statute.

XVI. Conflicting Financial Interest
(5 C.F.R. §§ 2635.401 to 2635.403)

An Immigration Judge is prohibited from participating in any matter in which he or she has a financial interest. In addition to an Immigration Judge's own financial interest, certain interests are considered his or hers (i.e., "imputed" to him or her), including those of a spouse, minor child, general partner or an organization for which the Immigration Judge serves as an officer, director,

trustee, general partner, or employee. However, an Immigration Judge may participate in such a matter if he or she is granted a waiver. Immigration Judges should contact their Deputy Designated Ethics Officer about possible financial conflicts of interest.

If an Immigration Judge has a financial conflict of interest, remedies include disqualification, divestiture, or a waiver of the disqualification under 18 U.S.C. § 208. Before divesting, however, he/she should determine whether he/she is eligible for a Certificate of Divestiture from the Office of Government Ethics, which would allow him/her to defer paying capital gains tax on the sale of the asset. 5 C.F.R. §§ 2634.1001-1004. A waiver may be granted if the financial interest is found to be not so substantial as to affect the integrity of the Immigration Judge's services.

> ***Note: Immigration Judges (levels IJ-2 and above) employed by the Executive Office for Immigration Review are required to file public financial disclosure reports pursuant to statute every year. Financial disclosure reports are used to identify potential or actual conflicts of interest. If the ethics official charged with reviewing an Immigration Judge's report finds a conflict, the ethics official should, upon consultation with the Immigration Judge's supervisor, decide on the appropriate remedy.***
>
> ***Note: In order to comply with the applicable law and regulations regarding financial reporting and disqualification, Immigration Judges must inform themselves about their personal financial interests, as well as the personal financial interests of spouses and minor children.***

XVII. Outside Employment and Activities
(5 C.F.R. §§ 2635.801 to 2635.803)

An Immigration Judge shall not engage in any outside employment or other outside activity that conflicts with his or her official duties. Immigration Judges should regularly reexamine their avocational activities and the organizations with which they are affiliated to ensure that they do not lead to the perception of partiality on the part of an Immigration Judge.

XVIII. Representation before Federal Agencies
(5 C.F.R. § 2635.801)

An Immigration Judge may not represent anyone before a Federal agency or official, or any court, with or without compensation, on a matter in which the United States is a party or has a substantial interest. This prohibition applies whether the Immigration Judge renders the representation personally or

shares in compensation from someone else's representation. 18 U.S.C. §§ 203 and 205.

Nothing in this Article shall prohibit National Association of Immigration Judges (NAIJ) representatives from acting on behalf of NAIJ, or any of its members or any individual in its collective bargaining unit, as otherwise allowed by law. *See, e.g.*, 18 U.S.C. §§ 205(d), 205(i); 5 U.S.C. § 7102(1).

XIX. Practice of Law
(5 C.F.R. § 3801.106)

An Immigration Judge may not engage in the private practice of law unless it is uncompensated and in the nature of community service, or unless it is on behalf of the Immigration Judge himself or herself, or on behalf of the Immigration Judge's parents, spouse, or minor children. An Immigration Judge is prohibited from engaging in the paid practice of law and from engaging in any employment that involves a criminal matter, be it Federal, state or local, or any matter in which the Department is or represents a party, witness, litigant, investigator, or grant-maker. These prohibitions may be waived by the Deputy Attorney General if the restrictions will cause undue personal or family hardship, unduly prohibit a DOJ employee from completing a professional obligation entered into prior to Government service, or unduly restrict the Department from securing necessary and uniquely specialized services. All requests for a waiver of these prohibitions should be made through EOIR's Office of General Counsel.

XX. Serving as an Expert Witness
(5 C.F.R. § 2635.805)

An Immigration Judge may not serve, other than on behalf of the United States, as an expert witness, paid or unpaid, in any proceeding before the United States in which the United States is a party or has a direct and substantial interest, unless specifically authorized by the Designated Agency Ethics Official. Opinion testimony or testimony as to procedures or practice given in any arbitration, disciplinary action, or proceeding under or with respect to a labor agreement or any action under the Federal Labor laws is not "expert testimony" within the meaning of this section.

XXI. Teaching, Speaking, and Writing
(5 C.F.R. § 2635.807)

Generally, an Immigration Judge may not be compensated for speaking or writing about a subject matter that relates to his or her official duties. A subject matter relates to an Immigration Judge's official duties if it deals in

significant part with a matter to which the Immigration Judge is presently assigned or has been assigned in the last year; any ongoing or announced policy, program or operation of the Department; or in the case of a non-career employee, the general subject matter primarily affected by the programs and operations of the Department. 5 C.F.R. § 2635.807. Under 5 C.F.R § 3801.103, an Immigration Judge would only be prohibited from receiving compensation for speaking or writing on a subject matter related to EOIR's policies, programs or operations, not the entire Department's. An Immigration Judge may receive compensation for teaching, even if the course relates to an Immigration Judge's official duties, if the course requires multiple presentations and is offered as part of the regularly established curriculum of: an institution of higher education; an elementary or secondary school; or a program sponsored and funded by the Federal Government or by a state or local government, which is not offered by an entity described above.

When engaging in speaking or writing in a private capacity, an Immigration Judge may not use nonpublic information, nor should there be any use of the Immigration Judge's official title, except as part of other biographical information, or for an article in a scientific or professional journal where there is a disclaimer. An Immigration Judge may not use official time, or that of another employee, to prepare materials. Immigration Judges must seek prior supervisory and ethics approval for written work and speeches.

XXII. Fundraising
(5 C.F.R. § 2635.808)

An Immigration Judge may engage in fundraising in a personal capacity as long as the Immigration Judge does not solicit from subordinates or persons having business with the Department, and does not use his or her official title or position. However, an Immigration Judge may use or permit the use of the term "the Honorable" while fundraising in his/her personal capacity, since Immigration Judges are ordinarily addressed using this general term. In addition, soliciting may not be conducted on government property. Immigration Judges may not engage in fundraising, including active participation in a fundraiser, in their official capacity unless authorized by statute, Executive Order, regulation, or agency determination. The only authorized fundraising in the Department is on behalf of the Combined Federal Campaign. However, an Immigration Judge may be authorized to give an official speech at a fundraising event, if the circumstances are appropriate, even though this constitutes participating in a fundraiser.

XXIII. Just Financial Obligations
(5 C.F.R. § 2635.809)

An Immigration Judge shall satisfy in good faith his or her obligations as a citizen, including all just financial obligations imposed by law, especially those such as Federal, state or local taxes, and child support payments.

XXIV. Purchase of Forfeited Property
(5 C.F.R. § 3801.104)

Without prior written approval, an Immigration Judge may not purchase, directly or indirectly, or use property that has been forfeited to the Government and offered for sale by the Department of Justice or its agents. Similarly, no Immigration Judge may use property forfeited to the United States that has been purchased, directly or indirectly, from the Department of Justice or its agents by the Immigration Judge's spouse or minor child.

XXV. Gifts from Outside Sources
(5 C.F.R. §§ 2635.201 to 2635.205)

An Immigration Judge may not solicit or accept a gift given because of his or her official position, or from a prohibited source. A "prohibited source" is any person who:

(1) has or seeks official action or business with EOIR;

(2) is regulated by EOIR;

(3) has interests that may be substantially affected by the performance of an EOIR Immigration Judge's official duties; or

(4) is an organization composed mainly of persons described above.

XXVI. Gifts that may be Permissible
(5 C.F.R. §§ 2635.201 to 2635.205)

Unless the frequency of the acceptance of gifts would appear to be improper, an Immigration Judge may accept:

(1) items such as publicly available discounts and prizes, commercial loans, food not part of a meal such as coffee and donuts, and items of little value such as plaques and greeting cards.

(2) gifts based on a personal relationship when it is clear that the motivation is not the Immigration Judge's official position.

(3) gifts of $20 or less per occasion, not to exceed $50 in a year from one source.

(4) discounts and similar benefits offered to a broad class, including a broad class of government employees.

(5) most genuine awards and honorary degrees, although in some cases an Immigration Judge will need a formal determination.

(6) free attendance, food, refreshments and materials provided at a conference or widely attended gathering or certain other social events that an Immigration Judge attends in his or her official capacity, and for which the Immigration Judge has received prior approval from his or her component.

When Immigration Judges are participating in their official capacity as speakers or panel members at a conference or other event, they may accept an offer of free attendance at the conference or event on the day of their presentation. Participation in the event on that day is viewed as a customary and necessary part of the Immigration Judge's duties, and is not considered a gift to them or to the Department. 5 C.F.R. § 2635.204(g)(1).

When it is determined that an Immigration Judge's attendance at all (or an appropriate part) of an event is in the interest of the Department because it will further agency programs and operations, the Immigration Judge may accept an unsolicited gift of free attendance from the sponsor of the event if the event is found to be a widely attended gathering. A gathering is widely attended if a large number of people are expected, and persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession. 5 C.F.R. § 2635.204(g)(2).

A determination that an Immigration Judge's attendance at a widely attended gathering is in the interest of the Department may be made orally or in writing. However, if the person extending the invitation has an interest that may be substantially affected by the performance or nonperformance of the Immigration Judge's official duties, or is an association or organization the majority of whose members have such interests, the determination must be made in writing. 5 C.F.R. § 2635.204(g)(3).

(7) gifts based on an outside business relationship, such as travel expenses related to a job interview.

Note: An Immigration Judge should return gifts not meeting the exceptions or contact the Deputy Designated Ethics Officer on how to dispose of them. Perishable items may be given to charity or shared by the office, with approval.

XXVII. Gifts between Employees
(5 C.F.R. §§ 2635.301 to 2635.304)

Immigration Judges may not give, or solicit a contribution for, a gift to an official superior, nor may they accept a gift from an employee receiving less pay. There are a few exceptions to this general prohibition, however. On annual occasions where gifts are traditionally given, such as birthdays, Christmas, and Boss's Day, an Immigration Judge may give the following to an official superior:

(1) items, other than cash, valued at $10 or less;

(2) items such as food and refreshments to be shared in the office; and

(3) personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends.

On special, infrequent occasions, such as marriage, illness, or the birth of a child, or an occasion that terminates the supervisor/subordinate relationship, an Immigration Judge may give an official superior a gift (in excess of the $10 value) that is appropriate to the occasion. In addition, an Immigration Judge may solicit voluntary contributions of nominal amounts from fellow Immigration Judges, but not subordinates, to contribute to the gift.

XXVIII. Frequent Flyer Miles and Airline "Compensation"
(41 C.F.R. § 301)

Some airlines encourage those purchasing tickets to join frequent flyer programs that award free flights and other benefits to frequent flyers. Pursuant to 41 C.F.R. § 301-53.3, Immigration Judges may keep and use for their personal benefit frequent flyer miles accrued incident to government official travel.

Similarly, pursuant to 41 C.F.R. § 301-10.117, Immigration Judges may retain any compensation (e.g., roundtrip airline ticket) an airline gives if they voluntarily surrender their reserved seat on a flight, and if: 1) voluntarily vacating the seat does not interfere with the Immigration Judge's performance of duties; 2) the Immigration Judge bears, and is not reimbursed for, any additional travel expenses incurred as a result of vacating the seat; and 3) the

Immigration Judge is charged leave if taking a later flight incurs additional duty time in a travel status. If the airline involuntarily denies boarding to an Immigration Judge, the Immigration Judge must give EOIR any compensation an airline gives to him or her. 41 C.F.R. § 310-10.116.

XXIX. Seeking Other Employment
(5 C.F.R. §§ 2635.601 to 2635.606)

An Immigration Judge may not take official action on a matter that can affect the financial interest of a person or organization with which he or she is negotiating or has an arrangement for future employment. The remedy is disqualification. 18 U.S.C. § 208.

An Immigration Judge also must disqualify himself or herself from working on a matter when he/she is merely *seeking* employment and is not yet actually negotiating for a job. An Immigration Judge is considered to be seeking employment if he/she sends a resume to a potential employer or if he/she is approached by someone about a position with a potential employer and the Immigration Judge responds in any way other than to clearly decline interest.

See OPPM 05-02, Procedures for Issuing Recusal Orders In Immigration Proceedings.

XXX. Post-Employment Restrictions
(18 U.S.C. § 207 and 5 C.F.R. § 2641)

There are statutory prohibitions on former Immigration Judges that generally prevent them from "switching sides" after leaving government. The following are the primary restrictions:

(1) Lifetime Ban – A former Immigration Judge is prohibited from representing anyone else before the government on a particular matter involving specific parties in which he or she participated personally and substantially.

(2) Two-Year Ban – A former Immigration Judge is prohibited for two years from representing any other person on a particular matter involving specific parties which was pending under his or her responsibility during the Immigration Judge's last year of government service.

XXXI. Political Activities
(5 C.F.R. Parts 733 & 734)

In regard to political activity, Immigration Judges may:

(1) register and vote as they choose.

(2) assist in voter registration drives.

(3) express opinions on candidates and issues.

(4) be a candidate for public office in non-partisan elections.

(5) solicit, accept, or receive political contributions from a fellow member of a Federal labor or employee organization who is not a subordinate, and the request is for a contribution to the multicandidate political committee of a Federal labor organization or to the multicandidate political committee of a Federal employee organization in existence on October 6, 1993.

(6) contribute money to political organizations, in general.

(7) attend and be active at political rallies and meetings.

(8) attend political fundraisers.

(9) join and be an active member of a political party or club.

(10) sign nominating petitions.

(11) campaign for or against referendum questions, constitutional amendments, and municipal ordinances.

(12) distribute campaign literature in partisan elections.

(13) make campaign speeches for candidates in partisan elections.

(14) campaign for or against candidates in partisan elections.

(15) hold office in political clubs and parties.

Immigration Judges may not:

(1) be a candidate in a partisan election.

(2) engage in political activity on duty, in a government office, wearing an official uniform, or using a government vehicle.

(3) solicit, accept or receive political contributions from another person - except as described in paragraph (5), above.

(4) solicit or discourage the political activity of anyone who has business with the Department.

(5) use official authority or influence to interfere with an election.

(6) wear political buttons while on duty.

Note: In 1993, Congress amended 18 U.S.C. § 603, which governs political contributions by Federal employees to their employer or employing authority. The original statute had been interpreted as potentially prohibiting all Executive branch employees from making political contributions to the reelection campaign committee of an incumbent President. However, by memorandum dated May 2, 1995, the White House issued an opinion that states that based on the Hatch Act Reform Amendments of 1993, 18 U.S.C. § 603 would no longer prohibit employees from making contributions to the reelection campaign of an incumbent President.

XXXII. Ex Parte Communications

An Immigration Judge should not initiate, permit, or consider ex parte communications, or consider other communications made to the Immigration Judge outside the presence of the parties or their lawyers, concerning a pending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided that the Immigration Judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication.

(2) An Immigration Judge may consult with court staff and court officials, including supervisors, whose functions are to aid the Immigration Judge in carrying out the Immigration Judge's adjudicative responsibilities, or with other Immigration Judges, provided the Immigration Judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility to personally decide the matter.

(3) An Immigration Judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

If an Immigration Judge inadvertently receives an unauthorized ex parte communication bearing on the substance of a matter, the Immigration Judge should make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond, or to recuse himself or herself if appropriate.

XXXIII. Mechanism for Continuing Dialog

It is understood that the Agency will be providing Immigration Judges with examples relating to the provisions of the Guide. Within thirty (30) days of the effective date of this Guide, each of the parties will designate a person to act as a point of contact (POC) for any updates to the examples.

The NAIJ POC may communicate with the Agency POC any questions or topics about which it would be useful to have an example relating to the Guide. In addition, the NAIJ POC may submit for consideration for use as examples ethics inquiries and answers received by Judges which NAIJ believes would be of general interest.

The Agency POC will consider all suggestions submitted by the NAIJ POC and will notify the NAIJ's POC with the provisions of any updates at least one week prior to any updates. The designated NAIJ POC under this provision will be provided official time to perform a reasonable amount of work associated with these duties.

XXXIV. Disciplinary Action or Action for Failure to Follow the Guide

In the event of conflicting requirements between the provisions of this Guide, the Standards of Ethical Conduct for Executive Branch Employees, the bar rules governing an Immigration Judge's conduct, and/or any oral or written instruction from the Agency, the Immigration Judge should seek appropriate guidance under Article III above. Disciplinary action will not be taken against an Immigration Judge who has engaged in good-faith reliance upon the advice of an agency ethics official in accordance with the Note in Article III. Further, if after consultation with an agency ethics official, the ethics official refers the Immigration Judge to a bar for guidance, compliance with that guidance shall be a defense to disciplinary action against an Immigration Judge.

An Immigration Judge against whom disciplinary or other employment action is taken as a result of an alleged violation of this Guide may avail himself/herself of any rights under the Collective Bargaining Agreement,

including but not limited to the grievance and arbitration procedures under Articles 8 and 9, or any other applicable provision of law or regulation.

The Agency will not cite the specific provisions of this Guide as a basis for disciplinary or other employment action until six months after ratification of the Guide by members of NAIJ and approval by the head of the Agency.

IN WITNESS WHEREOF, on this 26th day of January, 2011, the Executive Office for Immigration Review and the National Association of Immigration Judges have agreed to the provisions of this Ethics and Professionalism Guide for Immigration Judges.

FOR THE AGENCY:

Mary Beth Keller
Assistant Chief Immigration Judge
Office of the Chief Immigration Judge
Executive Office for Immigration Review

FOR NAIJ:

1/31/11

Denise Noonan Slavin
Vice President
National Association of Immigration Judges

Exhibit C

EMORY | LAW SPLC Southern Poverty Law Center

Juan P. Osuna
Director
Executive Office for Immigration Review
U.S. Department of Justice
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

CC: H. Kevin Mart, Assistant Chief Immigration Judge, EOIR
Lauren Alder Reid, Chief and Counsel, Office of Communications and Legislative Affairs, EOIR

March 2, 2017

VIA USPS AND EMAIL

Re: Observations of Atlanta Immigration Court

Dear Director Osuna:

We write to provide you with findings of observations of the Atlanta Immigration Court conducted by Emory Law students, in conjunction with the Southern Poverty Law Center, during the fall semester of 2016. Six Emory Law students observed the Court in September and October 2016 seeking to identify any apparent factors leading to the Court's reputation as one where rule of law principles are not widely respected.[1] Atlanta Immigration Judges (IJs) "have been accused of bullying children, victims of domestic abuse and asylum seekers;" while "[immigration] attorneys complain that judges impose such stringent requirements on their clients that they are

[1] *See* Elise Foley, *Here's Why Atlanta Is One of The Worst Places To Be An Undocumented Immigrant*, HUFFINGTON POST, May 25, 2016, http://www.huffingtonpost.com/entry/deportation-raids-immigration-courts_us_574378d9e4b0613b512b0f37; Chico Harlan, *In an Immigration Court That Almost Always Says No, A Lawyer's Spirit is Broken*, WASHINGTON POST, Oct. 11, 2016, https://www.washingtonpost.com/business/economy/in-an-immigration-court-that-nearly-always-says-no-a-lawyers-spirit-is-broken/2016/10/11/05f43a8e-8eee-11e6-a6a3-d50061aa9fae_story.html?utm_term=.430a15e12a55; Ted Hesson, *Why It's Almost Impossible to Get Asylum in Atlanta*, VICE MAGAZINE, Jun. 8, 2016, http://www.vice.com/read/why-its-almost-impossible-to-get-asylum-in-atlanta. *See also* Southern Poverty Law Center, *Immigrant Detainees in Georgia More Likely to Be Deported Than Detainees Elsewhere; Georgia Detainees Less Likely to Be Released on Bond* (2016), https://www.splcenter.org/news/2016/08/23/immigrant-detainees-georgia-more-likely-be-deported-detainees-elsewhere.

impossible for an immigrant to meet."[2] Atlanta's Immigration Court records one of the highest denial rate of asylum applications–98 percent–in the United States.[3]

The observations identified several areas of key concern that indicate that some of the Immigration Judges do not respect rule of law principles and maintain practices that undermine the fair administration of justice. During the course of our observations, we witnessed the following issues:

- Immigration Judges made prejudicial statements and expressed significant disinterest or even hostility towards respondents in their courts. In at least one instance, an Immigration Judge actively refused to listen to an attorney's legal arguments. In another instance, an Immigration Judge failed to apply the correct standard of law in an asylum case.

- Immigration Judges routinely canceled hearings at the last minute, with little notice to respondents and attorneys, creating a culture that denies respondents' access to court.

- In the overwhelming majority of cases witnessed, Immigration Judges denied bond to immigrant detainees, or set bonds at a prohibitively high amount that indicate a lack of consideration to required factors.

- On occasion, Immigration Judges prohibited observers in their courtrooms, even though Immigration Courts are open to the public.[4]

- At least one Immigration Judge conflated immigration detention with criminal incarceration, regularly referring to detention centers as "jails" and at least once referring to detainees as "prisoners." Although immigration proceedings are civil, not criminal in nature, detainees appearing in the Atlanta Immigration Court are required to wear colored jumpsuits, handcuffs, leg shackles, and chains around their waists during their hearings, creating a high potential for bias.

- Court interpreters regularly failed to interpret all English language conversations during hearings for respondents, and often only interpreted the proceedings when an attorney or judge directly addressed a respondent.

- In some instances, the Atlanta Immigration Court did not have available interpreters who could speak the respondents' language. In one observed instance where an

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[2] Daun Lee, *Are Asylum Seekers More Likely to Be Deported in Atlanta's Immigration Courts?*, USAttorneys.com (Jun. 22, 2016) *available at* http://immigration.usattorneys.com/asylum-seekers-deported-atlantas-immigration-courts/.

[3] U.S. Department of Justice, Executive Office for Immigration Review, FY 2015 STATISTICS YEARBOOK, tbl.12, FY Asylum Grant Rate by Immigration Court (2016), *available at* https://www.justice.gov/eoir/page/file/fysb15/download. The Immigration Courts that have the lowest approval rate at zero percent heard between zero and five cases during FY 2015, compared to 244 in Atlanta. *Id*.

[4] Executive Office for Immigration Review, *Observing Immigration Hearings*, *available at* https://www.justice.gov/eoir/observing-immigration-court-hearings (noting that immigration hearings are generally open to the public).

interpreter was not available, an Immigration Judge continued to conduct a bond hearing without interpretation for the respondent.

I. Background

A. Standards for Conduct in Immigration Courts

Immigration Judges (IJ) employed by the Executive Office for Immigration Review (EOIR) are bound by ethical requirements to promote "public confidence in their impartiality, and avoid impropriety."[5] IJs must "act impartially" and be "faithful to the law and maintain professional competence in it" by being knowledgeable about immigration law, skillfully applying immigration law to individual cases, and engaging in reasonable preparation to perform their duties.[6]

It is well established that immigrants in removal proceedings are entitled to due process. This right to due process includes "a hearing before a fair and impartial arbiter" without judicial conduct indicating "pervasive bias and prejudice."[7] As EOIR's Ethics and Professionalism Guide for Immigration Judges specifies, IJs should be "patient, dignified, and courteous, and should act in a professional manner towards all litigants, witnesses, lawyers, and others with whom the Immigration Judge deals in his or her official capacity," and "[a]n Immigration Judge . . . should not, in the performance of official duties, by word or conduct, manifest improper bias or prejudice."[8]

In addition, EOIR must provide all respondents who are considered to have limited proficiency in English ("LEP") with "meaningful access" to immigration courts, which include the provision of interpreters "during all hearings, trials, and motions during which the LEP individual must and/or may be present."[9] According to EOIR's own Interpreter Handbook, "the interpreter's job is to interpret in a manner which allows the respondent/applicant . . . to understand the proceedings as if no language barrier existed."[10]

B. Methodology

Emory Law Students observed sessions of the Atlanta Immigration Court from August 31 to October 14, 2016. Over the course of seven weeks, six Emory Law students observed court sessions of the five current IJs: Michael P. Baird; William A. Cassidy; Wayne K. Houser, Jr.; Jonathan D. Pelletier; and Earle B. Wilson.

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[5] DEP'T OF JUSTICE, ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES 1 (2011); *see also* Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635.101.
[6] DEP'T OF JUSTICE, ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES at 2.
[7] *Matter of Exame*, 18 I. & N. 303, 306 (BIA 1982).
[8] ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES at 3.
[9] Exec. Order No. 13166; 65 Fed. Reg. 50121, 50121 (Aug. 11, 2000).
[10] OCIJ Interpreter Advisory Committee, Office of the Chief Immigration Judge Interpreter's Handbook at 12.

The observers planned to sit in on the exact type and number of sessions held by each IJ in the Court during a typical week. This covered 45 sessions in total, and broke down into 27 merits hearings, 13 master calendar hearings, two custody hearings, and three master/custody hearings. Students took extensive notes during their sessions, completed a short survey form, and answered a much longer survey form for up to 10 respondents, if there were that many in a hearing. They were required, however, to include information regarding hearings with anything of note, even if the total sessions recorded in master calendar sessions exceeded 10 respondents. The statistics offered below are based on the input into the longer survey forms and therefore should be used to give the reader an indication, rather than an exact empirical finding.

1. Difficulties Completing Targeted Observation Sessions

Student observers faced some difficulty completing the full number of sessions during the observation period because IJs unexpectedly cancelled sessions or prohibited observers from attending them. First, several IJs routinely failed to hold calendared hearings or cancelled them, sometimes without notification to the Court Clerk. Over the course of seven weeks, observers were unable to attend 14 of the 45 sessions listed on the Court calendar provided to the local bar. Observers later learned, although without formal confirmation, that each IJ held hearings every other week on Mondays and Fridays, and not every week, as was listed publicly on the published calendar. Even if we assume that the Monday and Friday practice is accurate, the IJs cancelled another six sessions over the course of seven weeks, often with little notice to respondents or attorneys who had been scheduled for a hearing. Despite these difficulties, students attended a wide variety of hearings, including master calendars, bond hearings, and merits hearings for all of the IJs.

IJs sometimes prohibited students from sitting in on merits hearings. Students were often able to observe in individual merits hearings with the respondent's permission. The exception to this was IJ Baird's merits hearings. Students were closed out of all of IJ Baird's merits hearings, except for one that did not involve the submission of evidence.[11] Students waited in the courtroom to obtain permission from the respondents and informed IJ Baird of this, but IJ Baird requested that the students leave the courtroom before they had the opportunity to ask for consent. Because of these difficulties, the analysis in this report is incomplete with respect to IJ Baird's hearings. Students also were unable to attend two of six of IJ Cassidy's merits hearings because of his last-minute cancellations at the end of the observation period. Because of the apparent routine cancellation of hearings by IJs on Mondays and Fridays, however, attending four of the six sessions likely completed a week of hearings in IJ Cassidy's courtroom.

2. Judges' Awareness of Observations

Before the beginning of the observation period, Emory Law Professor Hallie Ludsin provided the Atlanta Immigration Court with an official letter stating that students would be observing their sessions for class credit. The IJs consistently asked observers why they were present in the courtrooms, to which observers explained that they were there for educational purposes.

[11] J.C., Oct. 6, 2016, Michael P. Baird. Please note that initials for all respondents have been changed; additional information may be available upon request.

IJ Cassidy asked each of the four students who observed his sessions to come forward and talk to him after his sessions were over, and invited one of the four into his chambers. During one conversation, IJ Cassidy expressed concern with how the observers would use the information and whether their observations would portray him in a negative fashion. He then sought to explain his decisions. In another conversation, IJ Cassidy described why he sometimes did not permit observers in his court, although Immigration Court proceedings are open to the public.[12] IJ Cassidy expressed dismay about "reporters who write all sorts of things about me." He continued: "I just follow the law. When you have an uninvited guest in your home, what do you do? You have to tell them to leave."[13] IJ Cassidy then provided explanations for comments made during the proceedings.[14] He promised the observer, "let me know if you want to clerk for us. Petition for it and I will put in a good word for you."[15]

One observer noted in a later proceeding that IJ Cassidy glanced at him when he spoke harshly to a witness before apologizing and stating, "I did not intend to be abrupt."[16] In their conversation after the hearing, the observer reported that IJ Cassidy asked whether the observer thought he was "mean or harsh" in his ruling. He sought to explain to another observer why he ruled the way he did and then asked how the observers would use the information they have gathered.[17]

Based on these conversations, it is likely that the observers' findings are skewed. We believe that at some IJs may have modified their conduct while under observation. The information gleaned during observation, however, is likely skewed towards presenting the IJs and the Court in a more favorable light.

II. Observations of the Atlanta Immigration Court

During our observation of the Atlanta Immigration Court, we encountered several areas of concern, which are detailed below.

A. Examples of Prejudice, Lack of Courtesy and Professionalism, or Disinterest in Immigration Hearings

As noted above, IJs should be "patient, dignified, and courteous, and should act in a professional manner towards all litigants, witnesses, lawyers, and others with whom the Immigration Judge deals in his or her official capacity," and "should not, in the performance of official duties, by word or conduct, manifest improper bias or prejudice."[18] Our observers noted specific examples of concern where IJs made statements that indicated potential prejudice

[12] Executive Office for Immigration Review, *Observing Immigration Hearings*, *available at* https://www.justice.gov/eoir/observing-immigration-court-hearings (noting that immigration hearings are generally open to the public).
[13] IJ Cassidy explain to a different observer that the IJs close some hearings for the protection of the respondents who may not realize they need it. S.K.N.R., Oct., 5, 2016, William A. Cassidy.
[14] M.D.S., Sept. 21, 2016, William A. Cassidy.
[15] Notes from Sept. 21, 2016, on file with authors.
[16] B.W.D., Oct. 6, 2016, William A. Cassidy.
[17] J.C.M.C., Oct. 5, 2016, William A. Cassidy.
[18] ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES at 3.

against immigrant respondents, or lacked the necessary patience, dignity, and courtesy required of IJs in immigration proceedings.

1. Expressions of Prejudice

In one hearing, an attorney for a detained respondent argued that his client was neither a threat to society nor a flight risk.[19] In this hearing, IJ Cassidy rejected the respondent's request for bond, stating broadly that "an open border is a danger to the community." He then analogized an immigrant to "a person coming to your home in a Halloween mask, waving a knife dripping with blood" and asked the attorney if he would let that person in. The attorney disagreed with IJ Cassidy, who then responded that the "individuals before [him] were economic migrants and that they do not pay taxes." The attorney again disagreed with both claims. IJ Cassidy concluded the hearing by stating that the credible fear standard is not a proper test for review of asylum seekers, wholly disregarding the established legal standard for such cases.[20] In a private conversation after this case, IJ Cassidy told the observer that the cases that come before him involve individuals "trying to scam the system" and that none of them want to be citizens. He also remarked that he thought the U.S. should be more like Putin's Russia, where "if you come to America, you must speak English."[21] In another hearing, IJ Wilson told a respondent that "this case is like every case . . . came in from Mexico for medical treatment then try to claim asylum."[22]

2. Lack of Courtesy and Professionalism

Several observers also noted that IJs lacked courtesy and professionalism towards respondents, often appearing intimidating or hostile toward respondents. An intimidating demeanor makes it difficult for witnesses and respondents to adequately and accurately express themselves, as was the case for a witness.

In one case before IJ Pelletier, a respondent had filed for a deferral of removal because he and his family were being threatened by a Mexican drug gang that he had testified against – a gang for which he had previously worked.[23] The respondent stated that he was afraid to return to Mexico where he would likely be tortured because of the gang's connection to the Mexican government. IJ Pelletier repeatedly berated the respondent for past criminal drug convictions, and described him as not credible and as "not a sympathetic person." He articulated that he allowed for the deferral only because his hands were tied by the Convention Against Torture.[24]

Two of the observers remarked that they found IJ Cassidy's demeanor intimidating and unfriendly.[25] In fact, one observer chose to avoid taking notes during a hearing out of fear of IJ

[19] N.D.T., Oct. 7, 2016, William A. Cassidy.
[20] *Id.*
[21] *Id.*
[22] P.L.L., Oct. 6, 2016, Earle B. Wilson.
[23] S.B.J., Sept. 9, 2016, Jonathan D. Pelletier.
[24] *Id.*
[25] S.K.N.R., Oct. 5, 2016, William. A. Cassidy.

Cassidy's scrutiny. The observer was not alone. In one case, IJ Cassidy had to tell the witness to relax – that "she is not in a time out."[26]

3. Expressions of Disinterest in Proceedings

Observers also noted that some IJs often expressed disinterest in proceedings during court. Disinterest in proceedings not only indicates a lack of professionalism and courtesy required of IJs, but also raises concern with an IJ's ability to be neutral factfinders in proceedings. Nearly all observers who attended a hearing in IJ Wilson's courtroom reported that he typically leaned back in his chair, placed his head in his hands, and closed his eyes during hearings. When he spoke to respondents, it was often with his back mostly turned toward them. IJ Wilson only became alert when he scolded an attorney or a respondent. One observer reported that in one case, IJ Wilson maintained this posture for 23 minutes straight as he listened to a respondent describe the murder of her parents and siblings during an asylum hearing, appearing wholly disinterested in her story.[27]

This pattern also emerged in a case of a respondent who claimed to be a U.S. citizen. The respondent asked IJ Wilson what documents she needed to prove her citizenship, among other questions. He repeatedly responded by telling her that this issue was not his problem and that she needed to figure it out if she wished to avoid deportation. IJ Wilson advised her that at a certain point she had to take responsibility for herself and that he was not there to help her figure out what she needed to meet the government's requirements.[28]

B. Disregard of Legal Arguments

As noted above, IJs must be "faithful to the law and maintain professional competence in it" by being knowledgeable about immigration law, skillfully applying immigration law to individual cases, and engaging in reasonable preparation to perform their duties.[29]

Observers noted incidents where IJs actively disregarded legal arguments presented in hearings. Several observers reported that IJ Pelletier talked over or refused to listen to attorneys. In one instant where a respondent's attorney and the ICE attorney discussed a point of law, IJ Pelletier told them "I won't listen."[30] In one bond hearing, IJ Cassidy concluded the hearing by stating that the credible fear standard was not a proper test for review of asylum seekers, wholly disregarding the established legal standard for such cases.[31]

C. Frequent Cancellation of Hearings

Observers noted that the Atlanta Immigration Court frequently cancelled immigration sessions, often without adequate notice to respondents, attorneys, or detention facilities. Such cancellation causes great disruption and inconvenience for parties, many of whom may have travelled great distances to attend a cancelled proceeding, raises the cost of representation for respondents and advocates, and undermines confidence in the court's administration. For

[26] P.L.L.., Oct. 6, 2015, William A. Cassidy.
[27] K.D.C.., Sept. 19, 2016, Earle B. Wilson.
[28] O.D.S., O.D.A., Oct. 6, 2016, Earle B. Wilson.
[29] DEP'T OF JUSTICE, ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES at 2.
[30] K.V.C., Sept. 21, 2016, J.D. Pelletier.
[31] N.D.T., Oct. 7, 2016, William A. Cassidy.

example, several IJs routinely failed to hold calendared hearings or cancelled them, sometimes without notification to the Court Clerk. Over the course of seven weeks, observers were unable to attend 14 of the 45 sessions listed on the Court calendar provided to the local bar. We later learned from court administrators that each IJ hold hearings every other week on Mondays and Fridays, and not every week, as was listed publicly on the published calendar.

IJ Cassidy cancelled several sessions in the final weeks of the observation period. According to the Clerk of Court, IJ Cassidy had informed IJ Pelletier, not the Clerk, of the cancellation.[32] Such absences lead to delays in proceedings, which often affected respondents waiting for their hearings – some of whom had paid attorneys to attend the hearings. It also wasted the time of the ICE attorney and the interpreter, both of whom were present. During one of these absences, the staff at Irwin Detention Center, from which detainees appear remotely before the court, called in five times ready to proceed with hearings.[33]

D. Denial/Lack of Individualized Consideration for Bond

Under the Immigration and Nationality Act, a detained respondent in removal proceedings may be released on payment of a bond of at least $1,500 or by enrolling in a conditional parole program.[34] The Atlanta Immigration Court, on average, sets bonds at a rate much higher than immigration courts nationwide. The national average for immigration bonds set in FY 2015 was approximately $8,200; the average bond for immigrant detainees located at Irwin County Detention Center, whose bonds are set by the Atlanta Immigration Court, was on average 41% higher, at $11,637.[35] In light of other examples of prejudice and lack of professionalism in this court, it is quite possible that this anomaly may be based on biased adjudication by Atlanta IJs.

To the extent that the Atlanta IJs routinely deny or set bond prohibitively high, it is unlikely that respondents receive a fair, individualized bond hearing. IJ Pelletier and IJ Cassidy rejected bond applications in every case observed. Additionally, the observations suggest that there is some arbitrariness in the setting of bond. IJ Baird set the bond for a respondent at $20,000, the same as previous immigrants from China because, as he stated, "we seem to be on a roll with $20,000."[36] At least one ICE attorney evidenced a resolute unwillingness to concede to lowering bonds in particular cases based on their individual circumstances. The ICE attorney appeared upset because the IJ granted a low bond to the respondent fearing that the other respondent attorneys would request similarly lower amounts.[37]

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[32] Interview with Clerk at Atlanta Immigration Court, Oct. 12, 2016.
[33] S.N.E., Oct. 12, 2016, William A. Cassidy.
[34] INA § 236(a), 8 U.S.C. § 1226(a).
[35] Southern Poverty Law Center, *Immigrant Detainees in Georgia More Likely to Be Deported Than Detainees Elsewhere; Georgia Detainees Less Likely to Be Released on Bond* (2016), *available at* https://www.splcenter.org/news/2016/08/23/immigrant-detainees-georgia-more-likely-be-deported-detainees-elsewhere.
[36] L.K.W., Sept. 7, 2016, Michael P. Baird.
[37] V.L. Oct. 11, 2016, Earle B. Wilson.

E. Referral to Immigrant Detainees as "Prisoners"

One problem observers identified during the master calendar and bond hearings was IJ Baird's habit of referring to detention centers as "jail;"[38] in one hearing alone, he referred to the detention center as a jail five different times.[39] During an initial training session for student observers, observers also heard IJ Baird refer to detainees as "prisoners." This conflation of immigrant detainees and detention centers with criminal inmates and prisons suggest that IJ Baird broadly perceives detained immigrants as criminals. This perception is likely aided by the fact that detainees appear in hearings wearing prison-like jumpsuits and are restrained in hand-cuffs, waist chains and leg restraints.

Observers recorded that immigrant detainees in the Atlanta Immigration Court appeared before the IJs in jumpsuits and shackles.[40] The overall effect of prison-like jumpsuits, handcuffs, waist chains and leg restraints is highly detrimental to detainees. First and foremost, it sends a message to the IJs that the immigrant detainees are dangerous. Second, these jumpsuits and restraints cause "physical pain and discomfort, embarrassment and humiliation, [and] mental and emotional distress."[41] The harm may be particularly acute for asylum seekers who suffered government abuse at home.[42]

Nearly all detention facilities require detainees to wear jumpsuits.[43] Immigrants in the Atlanta City Detention Center appear in orange jumpsuits while those from the Irwin County Detention Center appear via videoconference in blue jumpsuits. In most detention centers, the jumpsuits are color coded to indicate the level of security risk to "permit[] staff to identify a detainee's classification on sight thus eliminating confusion, preventing miscommunication with potentially serious consequences, and facilitating consistent treatment of detainees."[44] Under the ICE detention standards, orange jumpsuits indicate a medium security risk.[45] Even absent color coding, wearing a jumpsuit is seen as so prejudicial in criminal proceedings that it is prohibited. In *Estelle v. Williams,* the U.S. Supreme Court determined that in criminal prosecutions, jumpsuits serve as an "implicit" and "constant reminder of the accused's condition" – one that "may affect a juror's judgment." The Court concluded that the message of danger the jumpsuits sent posed "an unacceptable risk . . . of impermissible factors coming into play" in the jury's decision.[46]

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[38] T.W., Sept. 7, 2016, M.P.Baird; F.L., Sept. 14, 2016, M.P. Baird; P.G., Sept. 14, 2016, M.P. Baird.
[39] S.G., Sept. 14, 2016, M.P. Baird
[40] In one master calendar hearing, several detainees brought from the Atlanta City Detention dressed in their own clothes and not jumpsuits. They were, however, all handcuffed and wearing waist chains. J.X.P., R.H., and S.K.V., M.P. Baird, September 14, 2016.
[41] *See, e.g. Uelian De-Abadia-Peixoto et al v. U.S. Dept. Homeland Security*, Complaint for Injunctive and Declaratory Relief, No. 4:11-cv-4001(N.D. Ca. Aug. 15, 2011), *available at* https://www.aclunc.org/sites/default/files/asset_upload_file233_10376.pdf.
[42] *Id*. at para. 39.
[43] Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – a Two-Year Review* 37 (2011).
[44] ICE/DRO Detention Standard Classification System 3 (2008), *available at* https://www.ice.gov/doclib/dro/detention-standards/pdf/classification_system.pdf.
[45] *Id*.
[46] *Estelle v. Williams*, 425 U.S. 501, 505 (1976).

The very appearance of physical restraints also provides a high risk of bias. Using shackles and restraints on an immigrant detainee appearing in court is arbitrary and dehumanizing. In fact, one Second Circuit Judge has described his image of a shackled defendant as "a dancing bear on a lead, wearing belly chains and manacles."[47]

Restraints also physically hinder detainees, making it difficult for them to function effectively during the proceedings. Students observed at least one detainee who could not sign her documents because she was handcuffed.[48] In another instance, a detained respondent using crutches struggled to come to the front of the room during his hearings while handcuffed and chained around the waist.[49]

The U.S. Supreme Court treats restraints as a measure of "last resort" in criminal hearings because:

> Not only is it possible that the sight of shackles and gags might have a significant effect on the jury's feelings about the defendant, but the use of this technique is itself something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold. Moreover, one of the defendant's primary advantages of being present at the trial, his ability to communicate with his counsel, is greatly reduced when the defendant is in a condition of total physical restraint.[50]

The Supreme Court again rejected shackling, even at the punishment phase of a criminal trial, in *Deck v. Missouri*, because "[v]isible shackling undermines the presumption of innocence and the related fairness of the factfinding process" and "[i]t suggests to the jury that the justice system itself sees a 'need to separate a defendant from the community at large.'"[51]

The U.S. District Court of Massachusetts applied the Supreme Court rulings to immigrant detainees, concluding:

> It is just as dehumanizing — and, no doubt, demoralizing — to shackle a detainee in an immigration court as it would be to shackle him in a criminal court. To deny or minimize an individual's dignity in an immigration proceeding, or to treat this essential attribute of human worth as anything less than fundamental simply because an immigration proceeding is titularly civil, would be an affront to due process and entirely inconsistent with the values underlying Deck.[52]

The logic should be no different in immigrant removal proceedings before the Atlanta Immigration Court.[53]

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[47] Fatma Marouf, *The Unconstitutional Use of Restraints in Removal Proceedings*, 67 BAYLOR L REV. 214, 238 (2015).
[48] B., Oct. 11, 2016, E.B. Wilson.
[49] P.M.C., Sept. 21, 2016, W.A. Cassidy.
[50] *Illinois v. Allen*, 397 U.S. 337, 344 (1970).
[51] *Deck v. Missouri*, 544 U.S. 622, 631 (2007).
[52] *Reid v. Donelan*, 2 F. Supp. 3d 38, 45 (D. Mass. 2014).
[53] *See, e.g. Uelian de Abadia- Peixoto, et al. v. United States Department of Homeland Security, et al*., No.: 3:11-cv-4001 (N.D. Cal. 2014).

F. Inadequate Interpretation for Respondents

Interpretation is essential for the more than 85 percent of respondents before the Immigration Courts who do not speak English.[54] Immigration Courts are required to provide interpreters, free of charge, for respondents who are unable to "fully understand and participate in removal proceedings" in English.[55] Respondents who must participate in immigration hearings without adequate interpretation are not afforded a fair opportunity to present their cases and may suffer other prejudicial consequences.

Our observers noted several examples where interpretation failed for respondents in the Atlanta Immigration Court. In one case of a Portuguese-speaking respondent, the only interpreter that was present spoke only Spanish, and this interpreter left the hearing. IJ Baird then attempted to speak to the respondent in English, although it was clear that the respondent could not understand him.[56] IJ Baird nonetheless concluded the bond hearing without input from the respondent, whose attorney was absent from the hearing, but who had requested a low bond amount during a prior phone call. IJ Baird then set the respondent's bond at $25,000, the highest observed bond amount that day. Without the benefit of an interpreter, the respondent was deprived of the opportunity to argue for a reduced bond amount.

In another instance, a Chuj-speaking asylum seeker's hearing was delayed for five months because there was no translator available.[57]

Even when interpreters were available, there remained a significant and consistent issue: the interpretation provided to respondents was usually one-sided. Observers reported that while respondents' statements were always translated to the court, conversations between the immigration judge and the respondent's attorney or the immigration judge and other English-speaking witnesses in the courtroom were often not translated back to the respondent. Due process requires that respondents be given competent interpretation in proceedings. Full comprehension of witnesses or attorney statements may prove crucial in the outcome of a hearing, as respondents must consider all information when deciding how to respond to an IJ, the ICE attorney or evidence. However, observers reported that respondents were often informed of what occurred in the courtroom only after their hearings ended.[58]

III. Recommendations

Based on our observations, we respectfully provide the following recommendations regarding the Atlanta Immigration Court:

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[54] Laura Abel, *Language Access in Immigration Courts*, BRENNAN CTR. JUST. 1 (2011), http://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language_Access_in_Immigration_Courts.pdf.

[55] Office of the Chief Immigration Judge, *Immigration Court Practice Manual* 64 (2013); Abel, *Language Access* at 1.

[56] K.J., Sept. 19, 2016, M.P. Baird.

[57] A.L. Sept. 2, 2016, E.B. Wilson.

[58] *See, e.g.* P.C., Oct. 11, 2016, Earle B. Wilson.

- Investigate and monitor IJs at the Atlanta Immigration Court to ensure compliance with standards to protect due process and impartiality.

- Instruct all IJs in the Atlanta Immigration Court that the recording equipment must remain on whenever an IJ is present in the courtroom, including during bond proceedings, to ensure transparency and accountability for prejudicial statements made in hearings.

- Investigate the frequent and routine cancellation of Immigration Court hearings by Atlanta-based IJs; instruct IJs that proper and adequate notice be provided to respondents, ICE attorneys, detention facilities, and the local immigration bar when hearings are cancelled.

- EOIR should ensure high-quality interpretation in the Atlanta Immigration Court by ensuring that all interpreters provide complete interpretation of hearings for all respondents. EOIR should also instruct IJs that court proceedings cannot continue when interpretation is not available in a respondent's language. EOIR should investigate the failure to provide adequate interpretation in non-Spanish languages, and ensure availability for interpretation in such settings.

- EOIR should ensure availability of sample translations or allow for non-profit organizations to provide information regarding administrative forms and availability of relief in languages other than English at the Atlanta Immigration Court.

- EOIR should ensure availability of a Legal Orientation Program (LOP) for detainees at Irwin County Detention Center and Atlanta City Detention Centers, and ensure that IJs provide information about any such programs.

We appreciate your prompt attention to these very serious matters. We appreciate the opportunity discuss these issues with EOIR. Please contact Lisa Graybill at lisa.graybill@splcenter.org, Eunice Cho at eunice.cho@splcenter.org, and Professor Hallie Ludsin at hludsin@emory.edu with any further questions.

Sincerely,

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Exhibit D

IMMIGRATION JUDGE CONDUCT AND PROFESSIONALISM

The Office of the Chief Immigration Judge has established a procedure that allows any person to file a complaint about the conduct of an Immigration J
are links to documents which describe how to file a complaint, the procedures used to process complaints, and statistics concerning the disposition of
There is also a link to the Ethics and Professionalism Guide for Immigration Judges.

Process for Handling Complaints Against Immigration Judges

Summary of Complaint Process (PDF)
Flowchart of Complaint Process (PDF)

Filing a Complaint

Instructions for Filing a Complaint

Immigration Judge Complaint Statistics

Statistics for Oct 1, 2009 to Sep 30, 2010 (PDF)
Statistics for Oct 1, 2010 to Sep 30, 2011 (PDF)
Statistics for Oct 1, 2011 to Sep 30, 2012 (PDF)
Statistics for Oct 1, 2012 to Sep 30, 2013 (PDF)
Statistics for Oct 1, 2013 to Sep 30, 2014 (PDF)

Ethics and Professionalism

Ethics and Professionalism Guide for Immigration Judges (PDF)

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