# DEX 2

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF VIRGINIA**
**ALEXANDRIA DIVISION**

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| NATIONAL ASSOCIATION OF IMMIGRATION JUDGES, affiliated with the International Federation of Professional and Technical Engineers,<br><br>Plaintiff,<br><br>v.<br><br>JAMES R. MCHENRY III, in his official capacity as Director of the Executive Office for Immigration Review,<br><br>Defendant. | Civil Action No. 20-cv-731 |

**DECLARATION OF CHRIS COX**
**ASSOCIATE GENERAL COUNSEL**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

I, CHRIS COX, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that my testimony below is true and correct:

1. I am an Associate General Counsel with the Executive Office for Immigration Review ("EOIR"), an agency within the Department of Justice ("DOJ"). I am the Ethics Counsel for EOIR and have served in that capacity since May 2016. I make this Declaration based on my own personal knowledge, on information contained in the records of EOIR, or information provided to me by EOIR personnel.

2. Prior to joining EOIR, I served as an Attorney Advisor in the Office of General Counsel at the Department of Health and Human Services.

3. As Ethics Counsel for EOIR, my responsibilities, among others, include responding to inquiries and providing guidance to all EOIR personnel regarding the government-wide Standards of Ethical Conduct. The Ethics Office also provides guidance to personnel, from Attorney Advisors, Immigration Judges, members of the Board of Immigration Appeals, leadership of other EOIR components including the Office of the Director, Office of Policy, Office of the General Counsel, Office of the Chief Administrative Hearing Officer, to all non-attorney EOIR employees regarding whether they may participate in particular activities in compliance with their professional ethics obligations and the applicable standards of the Department of Justice. I also conduct training for newly hired EOIR personnel, including Immigration Judges, Assistant Chief Immigration Judges, Board Members, and EOIR attorneys, regarding their ethics responsibilities.

4. Prior to the issuance of the Speaking Engagement Policy for EOIR Employees on September 1, 2017, personnel would submit the Speaking Engagement Form, along with their supervisor's approval and any supporting materials, to the EOIR Ethics Mailbox via EOIR.Ethics@usdoj.gov. At that time, the Ethics attorneys were charged with processing the requests by reviewing the Speaking Engagement Form, and confirming whether the requesting employee would be participating in either his or her capacity as an individual (personal capacity), professional (official capacity), or in their individual capacity with the permitted use of their official title and a disclaimer ("PTD"), which would include a statement that the requestor's views were his or her own and did not necessarily represent the views of EOIR or the Department of Justice.

5. The Ethics attorneys further evaluated the request to determine whether the activity complied with the government-wide ethical standards of conduct, applicable EOIR policies and Department of Justice supplemental regulations regarding outside activities.

6. Upon completion of the review, the Ethics attorneys would send a recommendation to the requestor and their supervisor via email whether the request should be approved or denied from an ethics perspective; that recommendation would also provide additional guidance with applicable restrictions or limitations concerning the specific activity. To my knowledge, in such situations, the supervisor made the ultimate decision as to whether the request was for the requestor to speak in their official, personal or PTD capacity, and whether to approve or deny the request.

7. In July 2017, after consulting with other attorneys and senior officials within the Office of the General Counsel ("OGC"), the Office of Communications and Legislative Affairs ("OCLA"—now known as the Communications and Legislative Affairs Division "CLAD") and the Office of the Director ("OOD"), I forwarded a

draft of an updated speaking engagement policy to Director McHenry that would clarify the approval process for a speaking engagement request by any EOIR employee, the capacity in which an employee could speak, and the standards by which each request would be evaluated. In drafting the policy, I consulted the ethics regulations in 5 CFR Part 2635 – Standards of Ethical Conduct for Federal Employees, Subparts A, B, E, G, and H, as well as 5 CFR § 3801.106 (DOJ Supplemental Standards).

8. My understanding is that the policy update was necessitated by a significant number of requests for EOIR personnel, particularly IJs, to speak at a wide range of events due to the increased public interest in immigration. The objective of the policy update was to clarify the engagement request procedure and the capacity in which a requestor could speak. Further, the policy was intended to ensure that speaking engagements advanced EOIR's mission, presented EOIR and the immigration courts as fair and impartial adjudicators, and that the message conveyed by the speakers was consistent.

9. The new policy, issued in its final form on September 1, 2017, set forth the two capacities in which an EOIR employee could speak – official or personal – and defined those capacities. The new policy eliminated the "PTD" capacity.

10. From an ethics perspective, it was my understanding that the term "PTD" could be collapsed into the official and personal capacity categories, as it is not a term or speaking capacity that is defined in the ethics regulations, but rather a term that appeared to have been developed by agency. However, the policy prescribed that at an event where no biographical information was provided, IJs participating in a personal capacity could be introduced using their titles with an appropriate disclaimer to clarify that they are not appearing on behalf of the agency. Furthermore, the sponsoring organization could not use their official title in promotional material surrounding the event.

11. The policy also established the Speaking Engagement Team ("SET"), consisting of an official from the OOD, the OGC and OCLA (now known as CLAD), which would be responsible for independently reviewing speaking engagement requests.

12. Requests, to include the completed Speaking Engagement Form, supervisory approval and relevant documents, were to be submitted to the SET (the Speakers Mailbox) via EOIR.speakers@usdoj.gov. All requests, whether for an engagement in an official or personal capacity, initially required supervisory approval and were required to be submitted to the Speakers Mailbox by the supervisor on behalf of the requesting employee. A request to speak in an official capacity required the submission of presentation slides, hand-out materials, and talking points, to ensure

compliance with Agency policies and allow OCLA to ensure consistent messaging across official engagements.

13. As of January 2020, the Speaking Engagement Process has moved online. The requesting employee must complete the form online and include all relevant documents with the request. Once the request is submitted, it is forwarded to the employee's supervisor for review. If the supervisor approves the request, it is forwarded to the OOD and OCLA for their review. Ethics is also given the opportunity to provide additional guidance if necessary.

Executed on July 20, 2020

WILLIAM COX Digitally signed by WILLIAM COX
Date: 2020.07.20 14:53:37 -04'00'

W. Chris Cox
Associate General Counsel for Ethics
Executive Office for Immigration Review