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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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

DECLARATION OF LAUREN ALDER REID,
ASSISTANT DIRECTOR, OFFICE OF POLICY,
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

1. I am the Assistant Director for the Office of Policy within the Executive Office for Immigration Review (EOIR). I have held this position since August 2018. My testimony is based on my own personal knowledge and experience, on information contained in the records of EOIR, or on information provided to me by EOIR personnel.
2. From December 2017 to August 2018, I was Chief of the Immigration Law Division in EOIR's Office of Policy. From August 2009 to December 2017, I served as Chief and Counsel of the Communications and Legislative Affairs Division in EOIR's Office of Policy.

3. I held several positions prior to joining EOIR. From October 2007 to August 2009, I was an Attorney Advisor in the Office of Legislative Affairs at the U.S. Department of Justice. From September 2006 to October 2007, I served as an Assistant General Counsel at the U.S. Sentencing Commission. From December 2005 to September 2006, I worked at Department of Homeland Security, U.S. Customs and Border Protection, Office of Air and Marine. From September 2004 to December 2005, I was a Presidential Management Fellow with the Drug Enforcement Administration. I received a Bachelor of Arts from Denison University in 2001, and a Juris Doctor from the University of Pittsburgh School of Law in 2004.
4. As the Assistant Director for EOIR's Office of Policy, I am the individual responsible for the Office's functions, including all agency policy and regulatory review and development; internal and external communications; oversight of *pro bono* and legal orientation program activities; and legal education, research, and certifications. The Office is tasked with maintaining communication among components through the efforts of the Communications and Legislative Affairs Division.
5. The Communications and Legislative Affairs Division (CLAD) serves as EOIR's liaison with district congressional offices, the news media, and other interested parties by communicating accurate and timely information about the agency's activities and programs. Among other things, CLAD handles all interview requests in order to present a unified voice for EOIR and to ensure consistency with the Attorney General's messages.

Pre-2017 Policy on Speaking Engagements

6. Before 2017, immigration judges (IJs) could, upon supervisory approval and, in consultation with CLAD, and, if necessary, upon review by an EOIR ethics officer, participate in speaking engagements in their official capacity, personal capacity, or personal capacity with use of title and disclaimer (PTD). The PTD designation allowed IJs to use their official titles at speaking engagements in their personal capacity provided they also included a disclaimer that their views were their own and they were not speaking on behalf of EOIR.
7. While IJs were required to obtain supervisory approval and, if necessary, ethics approval, before participating in any official capacity, personal capacity, or PTD speaking engagement, there was no uniform process in place to review speaking engagement requests to ensure that speeches and presentations accurately reflected, and were consistent with, EOIR's mission.
8. EOIR's primary mission is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws.

2017 Memorandum

9. On September 1, 2017, EOIR Director James McHenry issued a Speaking Engagement Policy for EOIR Employees (2017 Policy). Noting that interest in immigration law had grown exponentially over the last ten years, including interest in the operation of the immigration courts, the Director explained that the 2017 Policy was intended to clarify the approval process that all EOIR personnel, including IJs, were required to follow to speak at an event.

10. The 2017 Policy clarified that, as before, personnel are required to obtain supervisory approval to speak at an event. The 2017 Policy further clarified that, after obtaining supervisory approval, all requests to speak in an official capacity and/or to speak about immigration-related topics must be reviewed by the Office of General Counsel (OGC) and CLAD, via the headquarters speaking engagement team (SET). The process set up by the 2017 Policy was intended to enable CLAD to review and confirm that official capacity and/or immigration-related speeches and presentations accurately reflected, and were consistent with, EOIR's mission.

11. Under the 2017 Policy, official capacity and/or immigration-related speaking engagement requests were to be submitted to SET no later than seven days before the scheduled event by sending a completed Speaking Engagement Form, accompanied by presentation materials and talking points, to EOIRspeakers@usdoj.gov. Every effort was made to fully adjudicate the request within that time frame, but in light of the varying complexity of the nature of the requests and the occasional need for additional information, timely resolution of the requests could not be guaranteed.

12. The 2017 Policy also outlined the available speaking engagement capacities. The 2017 Policy eliminated the PTD designation, a change that had been contemplated for at least six years prior to the issuance of the 2017 Policy. Consequently, all personnel speaking engagements were categorized as either official- or personal-capacity speaking engagements. This change was intended in part to bring EOIR in line with other DOJ components and to eliminate confusion when an employee nominally spoke in their "personal capacity" but spoke about matters relating to their official duties and using their official title.

13. The 2017 Policy clarified that when EOIR personnel are assigned to participate as speakers or panel participants or otherwise present information on behalf of the agency at conferences or other events, they are doing so in their official capacities. It further clarified that any EOIR personnel speaking at events hosted by a Federal Department, Office, or Agency must speak in an official capacity. The 2017 Policy also clarified that certain EOIR personnel, including component heads and other senior EOIR officials, members of the Board of Immigration Appeals, Deputy Chief Immigration Judges, and Assistant Chief Immigration Judges, may only speak in their official capacity. It also clarified that some IJs may or may not be expected to speak in their official capacity, depending on the particulars of the speaking engagement. The 2017 Policy also clarified that other EOIR personnel may appear and speak at an event in their official capacity if it is part of their official duties or they have been assigned to do so by their supervisor.
14. The 2017 Policy explained that EOIR is under constant scrutiny as an adjudicatory body. Immigration judges in particular have a duty to exercise their independent discretion in all cases in an impartial manner. *See* 8 C.F.R. § 1003.10(b). As such, the 2017 Policy provides that EOIR personnel must avoid all improprieties and the appearance of impropriety to ensure complete public confidence in the integrity of the agency, its adjudicatory process, and all individual adjudications.
15. The 2017 Policy clarified that when EOIR personnel participate in speaking engagements in their personal capacities, they are not appearing at the event as part of their official duties or on behalf of the agency and, therefore, may not imply that EOIR is endorsing or sanctioning the speaking engagement.

16. The 2017 Policy explained that, as before, EOIR personnel may not use or permit the use of their official titles or positions to identify themselves in connection with personal-capacity speaking activities, unless that information is included as one of several biographical details when such information is provided to identify speakers in connection with the activities, provided that their titles or positions are given no more prominence than other significant biographical details.
17. At the same time, although the 2017 Policy eliminated the PTD designation, it noted that, in limited circumstances where an introduction does not include an overall biographical sketch, an IJ may be introduced using his or her title so long as the IJ uses an appropriate disclaimer at the beginning of his or her remarks in order to avoid the perception that he or she is appearing on behalf of the agency. It also noted that the sponsoring organization could not use an IJ's official title to promote an event in which the IJ is invited to speak.
18. The 2017 Policy also reiterated the ethics rules governing travel reimbursements and other compensation for both personal- and official-capacity speaking engagements.
19. On September 13, 2017, Director McHenry sent an email to all EOIR personnel providing additional guidance regarding what qualifies as a "speaking engagement" requiring SET approval. The Director explained that SET approval would likely be required for any events in which personnel would be speaking about EOIR with more than one non-DOJ person or for which groups external to DOJ would be sending out notice of the event. The Director's email also reminded personnel, consistent with longstanding policy, that any phone calls, emails, or visits from the news media or Congress should be directed to CLAD.

2018 Memorandum of Understanding

20. On May 10, 2018, EOIR and the National Association of Immigration Judges (NAIJ) executed a Memorandum of Understanding (MOU) regarding the implementation of the 2017 Policy as it applies to IJs.

21. To my knowledge, the MOU requires EOIR to provide NAIJ a summary of IJ speaking engagement requests received by the SET every six months, identifying the following information:

    a. the date the request was submitted;

    b. the IJ requestor;

    c. the requestor's supervisor;

    d. a description of the event;

    e. the date of the event;

    f. whether the request was approved or denied; and

    g. the speaking capacity (personal or official) of the request.

22. These summaries are prepared for EOIR by CLAD; according to reports from CLAD, EOIR has provided five summaries to date under the MOU, including four relating to the 2017 Policy.

23. CLAD reports reflect that between May 1, 2018 and October 31, 2018, SET received 33 IJ speaking engagement requests, one of which was incomplete and one of which was withdrawn. SET received 13 requests for IJs to speak in their official capacity, eight of which were approved. SET received an additional 18 requests for IJs to speak in their personal capacity, 15 of which were approved.

24. CLAD reports also show that between November 1, 2018 and April 30, 2019, SET received 20 IJ speaking engagement requests, one of which was withdrawn. SET received six requests for IJs to speak in their official capacity, one of which was approved. SET received an additional 13 requests for IJs to speak in their personal capacity, 12 of which were approved.
25. According to CLAD's reports, between May 1, 2019 and October 31, 2019, SET received 25 IJ speaking engagement requests, one of which was incomplete and three of which were withdrawn. This total also includes a denial that did not indicate a specific capacity. SET received five requests for IJs to speak in their official capacity, one of which was approved. SET received an additional 15 requests for IJs to speak in their personal capacity, eight of which were approved.
26. As reflected in CLAD's reports, between November 1, 2019 and January 4, 2020, SET received 9 IJ speaking engagement requests. SET received two requests for IJs to speak in their official capacity, both of which were approved. SET received an additional 7 requests for IJs to speak in their personal capacity, six of which were approved.
27. In sum, CLAD has verified that between May 1, 2018 and January 4, 2020, SET adjudicated 87 IJ speaking requests. This total also includes a denial that did not indicate a specific capacity. Overall, of the 87 IJ speaking requests, the SET approved 53 (61%), denied 27 (31%), two (2%) were determined to be incomplete, and 5 (6%) were withdrawn.

January 2020 Memorandum

28. On January 17, 2020, Director McHenry issued a memorandum updating the speaking engagement policy ("2020 Memorandum"), wherein he announced the establishment of a new automated speaking engagement request portal located on EOIR's intranet for the submission of SET requests. The Director specifically explained that the 2020 Memorandum did not substantively alter the 2017 Policy, which he reissued with the 2020 Memorandum, nor did it alter, or purport to alter, the 2018 MOU between EOIR and NAIJ. The Director clarified, however, that speaking engagements also include written pieces intended for publication in any print or online media.

29. As the Director explained, the new automated speaking engagement request portal was intended to provide more certainty and clarity surrounding the submission, tracking, and delineation of responsibility of each speaking engagement request.

30. Noting that stakeholders and other members of the public continue to be interested in hearing about, and understanding, what the agency does and specifically how immigration courts operate, the Director explained that the 2020 Memorandum did not change the SET approval process, but merely changed the mechanism by which approval is sought. In particular, the 2020 Memorandum eliminated the prior email-based SET approval process and replaced it with an automated speaking engagement request portal, located on EOIR's intranet, intended to increase efficiency and reduce any potential confusion in the submission and evaluation of speaking-engagement requests.

31. A new SET Request Form developed in connection with the 2020 Memorandum is housed on an internal portal that automates the speaking request process and allows personnel to easily upload information related to their proposed speaking engagements.

Once submitted, the portal automatically sends the form and related materials to the requestor's first-line supervisor for review. If the request is incomplete or otherwise does not pass the supervisor's review, the supervisor will deny the request via the portal and provide an explanation for the denial. If the denial is based on an incomplete submission, a requester may resubmit a request with the necessary information included. If the supervisor preliminarily approves the proposed speaking engagement, it will be routed via the portal to the SET team for further review.

32. The SET team consists of the Office of Policy and the Office of the Director, augmented by OGC for requests when an ethics opinion or review for ongoing litigation is needed. SET team review ensures compliance with both the law and agency policy, as well as consistency in EOIR's communications.

33. The OGC Ethics Program (Ethics) will review any SET request that has been recommended for approval. Ethics neither approves nor denies speaking engagement requests, but offers guidance to ensure that speakers do not encounter ethical dilemmas.

34. In addition to introducing the new automated speaking engagement request portal located on EOIR's intranet, the 2020 Memorandum reiterated that there are only two speaking-engagement capacities: (1) official capacity or (2) personal capacity. The 2020 Memorandum further reiterated that in either capacity, all personnel—especially non-supervisory adjudicators—must maintain impartiality and avoid the appearance of impropriety, favoritism, or preferential treatment.

35. The 2020 Memorandum included a description and examples of appearances in official and personal capacities. It also clarified that whether a speaker is presenting in an official or personal capacity is determined by the totality of the circumstances. The label given

by either the inviter or the invitee may be helpful to begin analysis of the request, but is not necessarily dispositive.

36. The 2020 Memorandum reiterated that where EOIR personnel have been invited to participate in speaking engagements related to immigration law or policy issues, their official EOIR duties or their official duties or positions, such invitations shall be deemed to constitute official-capacity requests, regardless of how they are labeled. The 2020 Memorandum also reiterated that all such requests must be approved through the SET process, and directed invitees to submit a request to participate via the new automated speaking engagement portal located on EOIR's intranet page.

37. Whereas speaking engagement requests under the 2017 Policy were to be submitted to SET no later than seven days before the scheduled event, speaking engagement requests under the 2020 Memorandum are to be submitted no later than two weeks before the scheduled event. This time frame was expanded from the seven days recommended under the 2017 Policy to better enable the timely review of and response to SET requests, which frequently were incomplete when initially submitted.

38. Under both the 2017 Policy and 2020 Memorandum, speaking engagement requests must be accompanied by presentation materials and talking points. This is intended to ensure compliance with agency policies and to allow CLAD to ensure that EOIR's messaging is consistent across official engagements when reviewing SET requests.

39. If an IJ was permitted to speak publicly about official matters without proper review of talking points through the agency's SET process, an incorrect – or even imprecise – comment could result in many undesirable consequences.

40. For example, if an IJ spoke to a reporter from a cable news network about the immigration court's resumption of hearings following closure due to COVID-19, that judge might provide information specific to the court, or even their own courtroom, that is not broadly applicable.

41. Similarly, such a hypothetical conversation could lead to identification of an ill, or potentially ill, employee, including one who may not wish to be identified. Simple statements, such as using "he" when there are few male employees at a particular court, and it is obvious who is not in court during a given week, could lead to major risk for the agency and harm to an individual.

42. The dynamic nature of the pandemic results in rapidly changing messaging to ensure stakeholders receive consistent and accurate information in a timely manner.

43. If information that once was true becomes false by the time an IJ speaks, that would result in much confusion from conflicting messages. Such an occurrence would:

    a. require both CLAD and DOJ's Public Affairs Office to expend resources toward remedying the confusion[1];

    b. require the Office of Chief Immigration Judge to attempt to address the misinformation at the immigration courts as parties appear, or fail to appear, due to the imprecise talking point;

    c. impact hearings and, possibly, determinations in aliens' cases;

    d. undermine the agency's and the Department's position with stakeholders by removing the agency as the principal point of new information; and

[1] Misinformation is incredibly difficult to resolve in the 24-hour news cycle. News outlets are constantly updating online pieces with the latest that one outlet reports. Even small outlets can quickly and drastically change a story in a matter of minutes.

e. reduce public trust in the agency as the stakeholders perceive a lack of understanding between the individual court/judge and headquarters.

44. The 2020 Memorandum clarified that requests to speak in a personal capacity are also subject to SET review to determine whether they are genuinely personal capacity events, whether there are any ethics concerns with the speaking engagement, and whether the speaking engagement will disrupt EOIR operations by requiring the employee to miss critical work.

45. This last factor is particularly relevant as applied to IJs, who are currently tasked with handling a backlog of more than a million immigration cases. By contrast, when the 2017 Policy was issued, the backlog, while still significant at more than 650,000 cases, was approximately half of what it is now. While speaking engagements serve an important function, EOIR has an indispensable duty to ensure the timely and efficient adjudication of cases, consistent with due process that is paramount to the agency accomplishing its mission. EOIR also has a corps of public information officers and other agency officials who are available to speak so IJs can continue their vital work.

46. Relatedly, to the extent that IJs may wish to participate in an after-hours speaking engagement in their official capacity, EOIR must take into account the costs associated with their travel time and expenses and consider whether the costs associated with the speaking engagement outweigh the potential benefits to the agency.

47. Ultimately, most speaking engagement requests by EOIR employees in either personal or official capacity are approved. As of July 17, 2020, since November 2017, EOIR has received 356 speaking engagement requests. Of those, 256 have been approved, 63 have been denied, 29 were incomplete or withdrawn, and 8 were pending. Approximately 80%

of speaking engagement requests by EOIR employees, excluding those that were incomplete, withdrawn, or pending, are approved. As discussed, the trend is similar for speaking engagement requests made by IJs, though the numbers are different. As of July 17, 2020, since November 2017, EOIR has received 167 speaking engagement requests for IJs. Of those, 98 were approved, 55 were denied, and 14 were incomplete or withdrawn. Of the approvals, 59 were for speaking engagements in the IJ's personal capacity, whereas only 16 personal-capacity requests have been denied.[2]

Executed on July 20, 2020.

LAUREN REID

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[2] There were 17 approvals and 14 denials from November 2017 through April 2018 in which the capacity was not tracked.