DEX 5

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

National Association of Immigration Judges, *Plaintiff,* v. James R. McHenry III, *Defendant.*	Case No. 20-cv-731

I, **SIRCE E. OWEN,** do hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge, information, and belief:

1. I serve as the Assistant Chief Immigration Judge for the immigration court located at 180 Ted Turner Drive, S.W., Suite 241, Atlanta, Georgia, 30303, (hereinafter the "Atlanta-Ted Turner Drive Immigration Court") which is a component of the Executive Office for Immigration Review ("EOIR"). 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. As Assistant Chief Immigration Judge for the Atlanta-Ted Turner Drive Immigration Court, my responsibilities include managing and coordinating the Immigration Judge and Court Administrator activities in the court that I supervise. I was appointed to this position in August 2018. As an Assistant Chief Immigration Judge, I have knowledge of the policies, procedures, and practices related to staffing, scheduling, and docketing immigration removal and bond hearings at the courts.

3. In addition, between June 2019 and January 2020, I served as the Acting Deputy Director of EOIR. In my capacities as an Assistant Chief Immigration Judge and as Acting

Deputy Director I have knowledge of the policies and procedures set forth by EOIR, including the process for the submission and review of speaking engagement requests by EOIR personnel. Since joining EOIR in 2018, I have reviewed numerous speaking engagement requests submitted by EOIR personnel.

4. In January 2020, EOIR issued a memorandum titled "Submission and Processing of Requests for Speaking Engagements" (hereinafter the "January 2020 memorandum"). This memorandum followed and clarified a prior memorandum issued on September 1, 2017, titled "Speaking Engagement Policy for EOIR Employees" (hereinafter the "September 2017 memorandum"). Both of these memoranda applied to all EOIR personnel, including Immigration Judges.

5. The January 2020 memorandum also introduced EOIR personnel to the new online portal for submission of speaking engagement requests. Prior to the development of the online portal, personnel wishing to submit speaking engagement requests were required to do so by completing request forms and submitting them via electronic mail. (See the September 2017 memorandum.)

6. Under the January 2020 Memorandum, requests by EOIR personnel must now be submitted through the online portal. The first-line supervisor makes the initial cut on the request, and if he or she denies the request, he or she provides an explanation and the requestor is notified via an electronic message. If the first-line supervisor approves the request, he or she then forwards it to the SET for review and a recommendation. The highest-level Agency supervisor involved, which is typically the Deputy Director who supervises both OCIJ and the components represented in the SET, ultimately makes the final decision on speaking requests.

7. As an Assistant Chief Immigration Judge, I am the first-line supervisor for the Immigration Judges assigned to the Atlanta-Ted Turner Drive Immigration Court. I also directly supervise the Court Administrator, Judicial Law Clerks, and Attorney Advisors assigned to the Atlanta-Ted Turner Drive Immigration Court. When any of these personnel submit a speaking engagement request to the SET (hereinafter "SET request") through the online portal, I am notified via an electronic message that I have a request to review.

8. In reviewing the SET request, I consider the capacity designation made by the requester, but I also look beyond any such designation to review the documentation submitted by the requestor, the described nature of the speaking engagement, the subject matter that the employee will be discussing, the potential type and size of the audience, the media associated with the event, and other relevant factors to determine in which capacity the employee would be speaking. I also determine whether the invitation to the employee was based due all or in part to their position as an employee of EOIR. And I consult the Supervisor's Checklist as an additional resource in my review of the SET request (Exh. A).

9. For SET requests submitted by Immigration Judges, there is a presumption that the request will be deemed to be in the Immigration Judge's official capacity if any or all of the following are present in the request: the topic on which they are being asked to speak involves immigration law, the request was made to the Immigration Judge in whole or in part based on their position as a judge with EOIR, or the request was made based on their position as an employee of the Federal Government. I reach this conclusion regardless of whether or not the speaking request is described by the Immigration Judge as being in their personal capacity. The substance of the request controls the ultimate determination of the actual capacity of the speaking engagement, not how it is described in the SET request.

10. I review SET requests by Immigration Judges with this additional scrutiny due to the Immigration Judges' positions of prominence within EOIR, based on their seniority within the courts, based on their level of pay relative to other EOIR personnel, and based on their positions as adjudicators. Due to their positions with EOIR, they are given great deference not only by EOIR colleagues, but also by the public as a whole. They have been appointed by the Attorney General and are given various authorities that include ordering the removal of aliens from the United States. When they enter a courtroom, the occupants stand as a show of respect and abide by the Immigration Judge's rules and rulings. Therefore, it is imperative that I review the SET request with such careful attention to ensure that an Immigration Judge's speaking engagement does not result in allegations or complaints that would call into question his or her impartiality in matters related to immigration law while performing his or her duties.

11. If any of the above criteria discussed in Paragraphs 6 and 7 apply to the SET request by an Immigration Judge, I then evaluate the details of the request to determine if this presumption that the speaking engagement would be in his or her official capacity can be rebutted. However, if an Immigration Judge is introduced to the audience with his or her title and employer, discussing topics upon which he or she issues decisions in his or her adjudicatory responsibilities, it is difficult, if not impossible, to separate EOIR from the message of the speaker, regardless of any purported disclaimer that the opinions are those of the speaker and not EOIR.

12. If I determine that a SET request by an EOIR employee, which was described as being in his or her personal capacity, is instead a speaking engagement that would be in his or her official capacity, I deny the request, with a recommendation that the request be resubmitted

in his or her official capacity. If the EOIR employee elects not to resubmit the request in his or her official capacity, then no further action is needed.

13. If I determine that the speaking engagement which was requested in the EOIR employee's official capacity is appropriately described as in the employee's official capacity, I then conduct further review to determine whether an employee of EOIR should participate. For example, I evaluate the subject matter of the speaking engagement to determine whether another EOIR employee may have more knowledge or expertise in the matter that would make him or her a more appropriate speaker.

14. If I determine that he or she should, then I will determine whether the requesting employee is the most appropriate speaker for the topic. EOIR personnel, and in particular Immigration Judges, are routinely requested to speak on various topics, the most frequent topic being immigration law. As part of their duties, Immigration Judges participate in a variety of official speaking engagements such as mock hearings, where law students or immigration law practitioners can observe and experience a removal hearing, or on law symposium panels on topics related to immigration law. In addition, Immigration Judges are often invited to speak at luncheons or continuing legal education seminars by local bar associations. Based on the nature of the request, I evaluate which EOIR employee would be best suited to participate in his or her official capacity, based on his or her experience, the type of docket he or she handles (if an Immigration Judge is requested), and whether his or her participation would comply with the relevant ethics guidelines.

15. If the SET request is made by an Immigration Judge to speak in his or her official capacity, I also review his or her scheduled dockets for the date of the requested speaking engagement to determine whether the request would disrupt existing dockets. As an Assistant

Chief Immigration Judge, I may determine that I would be better suited to officially speak on behalf of EOIR. Further, because Assistant Chief Immigration Judges do not carry a full docket of cases due to their other duties, their attendance at a speaking engagement will cause minimal, if any, disruption to existing scheduled dockets.

16. Therefore, even if a particular EOIR employee is not approved to speak in his or her official capacity, it does not mean that an EOIR employee will not be available to participate at all. Rather, the first-line supervisor, and ultimately the SET, may determine that a different EOIR employee would be a more appropriate speaker at the event.

17. If I determine that the speaking engagement will be in the employee's personal capacity, I evaluate whether the employee's participation would cause any disruptions to EOIR's operations or result in any negative publicity or scrutiny to EOIR or the Federal Government.

18. If a SET request is denied, I use the online portal to notify the requesting employee. If the SET request is approved, I use the online portal to approve and forward the request to the SET. The Deputy Director has the ultimate approval authority for all SET requests submitted by EOIR personnel.

19. In addition to reviewing SET requests as an Assistant Chief Immigration Judge, I also reviewed requests during my detail as Acting Deputy Director. As a member of the SET, I employed the same considerations and criteria when reviewing requests that had been elevated to the SET by first-line supervisors in the field and at EOIR headquarters. I also have personally submitted SET requests for speaking engagements that I was invited to, both as an Assistant Chief Immigration Judge and as Acting Deputy Director.

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

Signed in Atlanta, Georgia on July 20, 2020.

SIRCE OWEN Digitally signed by SIRCE OWEN
Date: 2020.07.20 11:27:43 -04'00'

Sirce E. Owen
Assistant Chief Immigration Judge

Exhibit A

Supervisor's Checklist	**YES**	**NO**
Is EOIR participation advantageous and practical?	☐	☐
Does the event's intended message align with EOIR messaging?	☐	☐
AND If not, will the event consider an EOIR-specific message?	☐	☐
Is the requesting speaker the correct speaker for the event and message (e.g. consider current demands of the immigration court; whether there is a notable performance or conduct issue; whether person is a SME)	☐	☐
If you answer "no" to any of the above, the SET is unlikely to recommend approval for this speaking engagement.		
Is the event open to the public?	☐	☐
Is the event open to the press?	☐	☐
If you answer "yes" to either of the above, please again consider whether the requestor is the appropriate speaker for the event and message.		
Has the SET approved other EOIR speakers for this event?	☐	☐
AND If so, would the already approved speaker(s) meet the need?	☐	☐
If you answer "yes" to both of the above, please again consider whether this request is appropriate.		
Is the message consistent with EOIR messaging?	☐	☐
AND If not, is the message able to be refined?	☐	☐
If you answer "no" to any of the above, the SET is unlikely to recommend approval for this speaking engagement.		