MEMORANDUM ALLEGING SERIOUS MISCONDUCT BY LAUREN ALDER REID

TO: Office of the Inspector General, Department of Justice

FROM: Jacqueline Stevens, Professor, Political Science Department, Northwestern University, 601 University Place, Evanston, IL 60208
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SUBJECT: Lauren Alder Reid, Legal Counsel, Office of Legislative and Public Affairs Executive Office of Immigration Review. Allegations of violating 8 CFR 1003.27 - Public access to hearings;18 USC § 2071 - (Concealment, removal, or mutilation generally); and serious administrative misconduct (wanton disregard for agency procedures for implementing 5 USC § 552, Freedom of Information and Privacy Act

DATE: December 6, 2010

I am employed as a professor in the political science department at Northwestern University. I publish findings from my research on immigration law enforcement in scholarly and popular venues, including *The Nation* magazine.

Pursuant to 28 USC 0.29c(a) I write to bring to the attention of the Department of Justice (DOJ) Office of the Inspector General (OIG) allegations of regulatory, statutory, and procedural violations. Specifically, I believe that federal employee, Lauren Alder Reid, Counsel for the Office of Legislative and Public Affairs (OLPA) at the Executive Office of Immigration Review (EOIR) authored and supervised the implementation of a memorandum and unlawful procedures designed to detain and screen those trying to attend open immigration court hearings. In addition, I am attaching evidence that I believe indicates that Ms. Reid subsequently concealed the existence of the underlying memorandum or memorandums from the EOIR FOIA office revealing a policy at odds with the ones OLPA officials, including Ms. Reid, acknowledge. In light of the fact that 18 USC § 2071 seems to meet the criteria for a "crime of moral turpitude" and thus would subject to banishment the stakeholders her actions endanger, I find Ms. Reid's actions appearing to violate 18 USC § 2071 especially troubling.

28 USC 0.29c(a) states:

> Reporting to the OIG. Evidence and non-frivolous allegations of criminal wrongdoing or serious administrative misconduct by Department employees shall be reported to the OIG, or to a supervisor or a Department component's internal affairs office for referral to the OIG, except as provided in paragraph (b) of this section.)

Paragraph (b) refers to misconduct more appropriately investigated by the Office of Professional

Responsibility. The allegations herein refer to serious misconduct that is largely administrative (though administrative hearings are adversely affected). In the event I believe these concerns are under the jurisdiction of the OIG.

Allegation #1) Writing and distributing instructions impeding implementation of 8 CFR 1003.27 - Public access to hearings

According to information and belief, including personal inspection and transcription, a memorandum appearing on OLPA letterhead and "updated August 14, 2009" was disseminated to EOIR staff in immigration courts across the country. The title and name at the top are "Counsel, Office of Legislative and Public Affairs, Lauren Alder Reid." (Elaine Komis, Susan Eastwood, Crystal Riley and Andree Burke are the names below hers.)

The first line states: "The Office of Legislative and Public Affairs serves as the Executive Office of Immigration Review's liason with Congress, the news media, and other interested parties by communicating accurate and timely information about the agency's activities and programs." The document misstates OLPA's functions and encourages EOIR staff to unlawfully obstruct the public's access to the immigration courts.

EOIR's OLPA often does not provide "accurate" or "timely information about the agency's activities and programs."

> According to David Burnham, a former *New York Times* reporter and co-director of the Transactional Records Access Clearinghouse, the staff in the EOIR public affairs office have a "bizarre conception of their role. We ask simple administrative questions and they say, Oh, you have to submit a FOIA request." Lauren Alder Reid, the agency's public affairs legal counsel, sent numerous e-mails along these lines to me but, along with top agency officials, is not responding to document requests from the agency's FOIA office as required by law. (From Exhibit A, "Our Lawless Courts," *The Nation*, October 20, 2010)

Moreover, the August 14, 2009 memorandum issued under Ms. Reid's name states, under the heading "<u>How You Can Assist OLPA</u>"

> OLPA appreciates notice of the following:
> -High profile cases or important issues and events that may spark congressional or media interest;
> -Media attendance at immigration hearings.

These instructions are followed by information in italics indicating that the media are allowed to attend open hearings and that reporters are not required to notify OLPA before attending hearings.

For reasons described below, I believe the instruction to convey information to EOIR headquarters about media attendance is evidence of Ms. Reid encouraging EOIR staff to violate 8 CFR 1003.27 and also suggests the existence of an earlier document on the topic of media access, one with possibly more stringent unlawful restrictions on public and media access to open hearings.

On information and belief, the memorandum referenced above is responsible for my access to open immigration hearings being obstructed or temporarily impeded by EOIR court administrators at the Stewart Detention Center immigration courts, the Atlanta immigration courts, the Falls Church

immigration courts, and two others. I also have heard reports of similar obstructions or delays at the Baltimore immigration courts, the Arlington immigration courts, and the Tacoma Detention Center immigration courts. ("[Sandy] Restrepo told me that since a 2008 Seattle University report documenting GEO's mistreatment of people in its custody, there have been 'constant problems' with court access. She blames the EOIR as well as GEO. 'The court administrator doesn't want a similar type of report to come out' about the Tacoma immigration courts, Restrepo believes.") (Exhibit A)

Based on interviews and my own personal experiences, I believe these obstructions are occurring at the instruction of the EOIR's OLPA and that the memorandum or memorandums referenced here and apparently distributed by Lauren Alder Reid or on her behalf, indicate that she and perhaps her colleagues and superiors are responsible for serious misconduct associated with these unlawful obstructions.

(I have attended hearings elsewhere without such obstructions. In those locations the physical and security procedures for the federal buildings make the intercessions described below impossible. In other words, when EOIR staff are in a position to stop and question whether court visitors are with the media, this has occurred and it has not occurred where the buildings have occupants other than the Department of Homeland Security and the EOIR and guards are not instructed to closely monitor the movement of visitors.)

The memorandum's *instruction* to notify OLPA about the media directly contravenes its *information* about the media's authorization to attend open hearings. The instruction's implementation requires EOIR employees to screen all visitors: the only means to provide information one's bosses would "appreciate" is by stopping everyone and asking if they are with the media, and asking which hearing they plan to attend, all of which I have experienced. Presumably if Ms. Reid encounters a news story written by a journalist who entered a hearing without notice being given to OLPA, OLPA, located in agency headquarters, would be unappreciative and EOIR staff would face reprimands from supervisors in an agency run by unknown Falls Church insiders who, based on information and belief, rule by intimidation, cronyism, and cultivate an "us versus them" bunker mentality toward the public. (One senior adjudicator informed me that the EOIR supervisory instructions come from unnamed sources and that while this immigration judge knows whom to ask to request more computer paper, the supervisors responsible for agency procedures are unknown.) In this context, the interagency memorandum apparently authored by Ms. Reid provides a strong incentive for EOIR staff to cultivate OLPA appreciation through screening the public and no incentive for them to allow unconstrained public access to open hearings, as 8 CFR 1003.27 requires.

Moreover, once court staff are on notice that a visitor is with the media, the staff notify the immigration judges. This practice unlawfully discriminates against the media – by making their presence known to immigration judges in contrast with other observers from the public – and as a result, the advance alert makes it impossible for journalists to observe hearings as they would be occurring normally. One bedrock principle of First Amendment jurisprudence for press access to federal buildings is that the government is not permitted to treat members of the press differently from other citizens,[1] a principle with which Ms. Reid, an attorney in a public affairs office, should be very familiar. Absent cameras and other recording devices, there is no lawful basis for discriminating in the treatment of someone attending the hearing who may publicize the events occurring therein and someone who is unlikely to

[1] See Pell v. Procunier, 417 U.S. 817 (1974), Houchins v. KQED, Inc., 438 U.S.1, (1978); see also U.S. v. Yonkers Bd. of Educ., 747 F.2d 111 (2d Cir. 1984).

do so. The de facto unlawful discrimination by EOIR staff affects the public's ability to understand how immigration courts normally function. Indeed, one immigration judge analogized the advance warnings they receive based on visitors being unlawfully detained and screened to that of a restaurant tipped off that a reviewer is dining. "You're not going to serve up your worst slop," the adjudicator told me. Of course for the public to evaluate its immigration courts, in accordance with 8 CFR 1003.27, it is absolutely imperative to allow anyone who may write about their observations to inspect the government's "worse slop," to speak, an objective Ms. Reid's memorandum thwarts.

As further evidence of Ms. Reid's hands-on role in perpetrating these obstructions and screenings, please see her response (Exhibit C) to an email I sent to Ms. Komis (Exhibit B) in which I questioned the delays and other unlawful actions consistent with the OLPA memorandum that Ms. Komis and I witnessed on June 23, 2010 at the Falls Church immigration courts in concert. (Ms. Komis would not answer the policy questions at the time and instructed me to submit my questions in writing; I did so but the only response was to decline to answer them, sent by Ms. Reid.)

EXAMPLE OF REID'S OLPA MEMORANDUM IMPLEMENTATION

On June 23, 2010 I arrived at the Falls Church immigration court entrance at approximately 10:20 a.m. That court is located on the 18th floor, and is accessible only after using a hall phone for entrance to the court lobby, and then being screened before entrance to the immigration court itself. The court employee who admitted me from the hall to the lobby said that I could not observe the hearings without the permission of the court administrator, Sheridan Butler, and instructed me to wait. "She'll be right out and explain everything to you," she said. (I had brought a notebook and used that to record contemporaneously and verbatim specific statements that struck me as problematic.)

After approximately ten minutes a woman identifying herself as the court administrator asked the purpose of my visit. I said I wanted to observe the immigration hearings. She asked if I was with the media. I told her I preferred not to answer the question and that as long as the hearings were open, a DOJ regulation indicated that I was allowed to attend them.

Ms. Butler said, "If you're here for something press-related I need to get permission from Public Affairs." I asked if she realized that her refusal to allow me to enter an open hearing violated a federal regulation. She said, "That's the policy," and asked me to wait. Ms. Butler was straightforward, professional, and courteous. Save the policy she was following, there was nothing at all disturbing about her demeanor or treatment of me. It was very clear to me that she was doing-her-job, so to speak, and this meant screening for the media before allowing observers to enter the courts.

While I was seated alone in the waiting area, a DOJ guard, "H. Shield" interrogated me about my "credentials" and my name, requiring me to produce a driver's license from which he copied my personal information, stating, "The court administrator asked me to get your name." I told him that I had signed into the building at the entrance and saw no reason for producing additional identifying information to him. After I complied I told him that these requirements and his obstruction of my entrance to the immigration court were unlawful. Mr. Shield said, "These are their protocols."

At approximately 10:50 a woman arrived and introduced herself as Elaine Komis. The three of us (Ms. Butler, Ms. Komis and myself, with the guard looking on) discussed the events that had just transpired. Ms. Komis told me that Ms. Butler had "made a mistake" and it was not EOIR policy for court staff to screen for the media and seek permission from OLPA for their entrance to open hearings. While we were having this conversation, a man whom I believe was Mr. Jeffrey Romig, a supervisor in the Office

of the Chief Immigration Judge, entered the room and asked if I had any questions. At that point, we were discussing Ms. Butler's statement that she was preparing to notify the immigration judge that I was entering. I asked if this also was EOIR policy and she replied, "I'd have to let her know that we have a visitor to the court. That's just what we normally do. That is something we do with everyone here. Everyone who comes here has to be screened." I believe this too is unlawful. Attorneys have the right to request closed hearings and immigration judges have the discretion to close hearings pursuant to criteria in the regulation and the rules in the Immigration Court Practice Manual (see 4.9 Public Access). But due process requires that these decisions be made in advance and according to articulable criteria, not as an ad hoc response to the presence of a court observer, a policy suggesting that adjudicators may be closing hearings only for the sake of closing hearings.

At courts without such surveillance and obstructions, adjudicators will simply tell observers who are physically present in the court that the hearing is closed and ensure the court is properly cleared from the bench. Only by allowing public access to the court itself is it possible to protect respondents' due process rights to open hearings by requiring the immigration judge to announce closed hearings in their presence. Screening visitor entrance for the media effectively allows immigration judges to conduct secret hearings. Due process further requires adjudicators to provide a legal reason for closing a hearing; otherwise the public has no way to guarantee the hearings are being conducted without bias or corruption.

Ms. Reid's screening instructions are only consistent with advancing the government's image and not protecting respondent rights, to wit the memorandum's section heading, "How You Can Assist Us," i.e., OLPA -- not the respondents, the public, Congress, and certainly not the media, the actual stakeholders for OLPA's services. The heading makes it clear that the EOIR headquarters is asking court administrators to screen visitors and hence restrict access purely for OLPA's spin control, an objective that lacks any basis in law or agency regulations and appears to be part of a systematic and deliberate effort to obstruct the implementation of 8 CFR 1003.27 and Section 4.9 of the Immigration Court Practice Manual.

As noted above, issuing an instruction that is at odds with the paraphrased recitation of 8 CFR 1003.27 absent a promise of headquarters appreciation for its implementation suggests the memorandum's author's lack of integrity and not a good faith effort to ensure 8 CFR 1003.27 is correctly implemented. The simple fact that on June 23, Ms. Komis and Mr. Romig allowed me to be detained so that they could descend from their offices several floors above to personally inspect me, rather than instruct Ms. Butler to admit me directly, is further evidence that the EOIR prioritized its own surveillance of observers over allowing observers direct access to hearings. Moreover, my own experiences reveal that court administrators regularly call OLPA at EOIR headquarters asking permission for the media or other observers to attend open hearings: if OLPA were truly interested in the integrity of 8 CFR 1003.27 OLPA staff would have instructed the court administrators years ago that such phone calls were inappropriate and that the correct action was to implement the regulation. (To be clear, I had not asked to meet anyone, only to observe the hearings.)[2]

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[2] Mr. Romig indicated that he was there to see if he could answer questions but then refused to answer the one question I asked, which was whether Ms. Butler's phone call to the immigration judge notifying her of my entrance was consistent with EOIR policy. In a truly Orwellian spectacle, he responded to my question by saying that the EOIR was committed to transparency, and not by answering my question, despite the fact that I repeated it and indicated I was giving him an opportunity to practice this transparency. My feeling at the time was that Mr. Romig was there to scrutinize me and to make sure that Ms. Komis and Ms. Butler did not reveal information he preferred to keep in-house, and not to answer my questions. As opposed to Ms. Komis and Ms. Butler, his demeanor struck me as argumentative and uncollegial.

2) Allegation that Ms. Reid and possibly others deliberately concealed the existence of the document restricting media access quoted above and possibly others from the EOIR FOIA office, in violation of 18 USC § 2071 (Concealment, removal, or mutilation generally) and agency procedures for implementing 5 USC § 552.

In her capacity as OLPA counsel fielding questions from the media Ms. Reid regularly deflects requests for timely and accurate information with instructions to consult information on the EOIR's inaccurate website or to file a request under the Freedom of Information Act (see e.g., Exhibit C). But then in a shocking defiance of the FOIA statute and Attorney General Eric Holder's instructions for its implementation, Ms. Reid personally conceals from EOIR FOIA staff a document or documents she apparently authored and which is demonstrably distributed under her name.

In a letter to the EOIR FOIA Office dated August 10, 2010 I cited 5 USC § 552, the Freedom of Information Act, and requested:

> All Executive Office of Immigration Review (EOIR) 'Fact Sheets' or other intra-agency memorandums written or distributed since January 1, 2008 with instructions for EOIR staff regarding media visits to immigration courts. (A senior EOIR staff member reported to me that these are distributed to court administrators.) (Exhibit D)

On November 1, 2010, far outside a time-frame that can be construed as "timely" and after my article on immigration courts was published in *The Nation*, the EOIR sent me a response to this request (EOIR #2010-15,158) that included a cover letter and two single-paged documents (Exhibit E). My FOIA request clearly describes the memorandum authored by Ms. Reid referring to media visits—I wrote the FOIA request after I saw it--and yet the EOIR FOIA office did not include it among the two documents released to me. The document dated July 14, 2009 that I saw indicated that it had "superseded" a previous one and hence I also had expected in response to my request the predecessor document or documents in effect since January 1, 2008, but these also were concealed from the EOIR FOIA staff.

According to information from EOIR FOIA staff, Ms. Reid was the individual who responded to their request for these documents. Ms. Reid's production of two documents (Exhibit E) that were apparently responsive was done in such a manner as to "close" the request and thus conceal from the EOIR's FOIA office and of course myself and, by extension, immigration attorneys, Congress, federal employees and others who read my blog and *The Nation* additional responsive documents. The fact that the document or documents concealed contain an instruction Ms. Reid knew that I had found troubling and the source of actions leading to the obstruction of court access Ms. Komis called a "mistake" is further grounds for believing Ms. Reid deliberately concealed the existence of this document from the EOIR FOIA office and myself.

Ms. Reid's apparent effort to conceal from her colleagues responsive documents that she appears to have authored suggests actions in violation of 18 USC § 2071:

> 18 USC § 2071. Concealment, removal, or mutilation generally. (a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.
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> (b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or

> destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States...

Moreover, EOIR procedures require EOIR employees to comply with FOIA officer requests consistent with the provisions of 5 USC § 552(a)(d)

> ("(d) Access to records. Each agency that maintains a system of records shall-- (1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;
> (2) permit the individual to request amendment of a record pertaining to him and--
> (A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and
> (B) promptly, either--
> (i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or
> (ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

Ms. Reid's failure to produce the memorandum or memorandums she appears to have authored and that are responsive to requests for these from the EOIR's FOIA office suggests a wanton and reckless disregard of agency procedures and thus constitutes serious administrative misconduct. Her failure to produce a document I believe she possesses and is responsive to my request utterly corrodes any confidence that the EOIR is able to effectively implement the FOIA for any of its responses and hence is especially troubling.

Of course the FOIA and Privacy Act contemplate exemptions. Not every disagreement about exemptions, for instance, warrants a misconduct investigation -- the appropriate avenue being an appeal to the federal courts. However, Ms. Reid did not claim she lacked any responsive documents or provide legal reasons for exempting the July 14, 2009 memorandum from disclosure. Instead, based on information from FOIA staff, Ms. Reid appears to have concealed from them the existence of at least one responsive document for no legal reason. Based on this and other experiences with FOIA responses from EOIR staff, I believe Ms. Reid's actions are part of an unlawful culture of secrecy encouraged by EOIR Acting Director Thomas Snow, who himself has not responded to requests from the agency FOIA office. I believe the most effective means for ensuring the prompt and ongoing access to public hearings and records consistent with the regulation on immigration court access, the FOIA, and the statute prohibiting federal employees from concealing documents is for the OIG to hold accountable the individuals who are obstructing the public's lawful access to proceedings and information.

By naming Ms. Reid I do not mean to suggest that I believe she acted alone but rather that I have specific evidence that at least Ms. Reid appears to have committed serious misconduct in obstructing the implementation of immigration court access and the Freedom of Information Act. It is possible, and I believe likely, that a thorough investigation will lead to the discovery of additional EOIR staff

who violated the laws, regulations, and rules designed to ensure public access to open immigration court hearings and hold the EOIR accountable to public scrutiny.

I draw largely on the events affecting me personally because they assist me in documenting a pattern of unlawful actions on the part of EOIR staff that the general public and even other journalists lack expertise and time to pursue, while attorneys are not in a position to report such matters because of demonstrable EOIR retaliation (the subject of a forthcoming misconduct complaint), not because I believe my experiences are more egregious than those encountered by others. As the statements from Ms. Butler and Mr. Shields indicate, they were simply following agency protocols that applied to everyone. I have seen first-hand the effects of immigration judges holding secret hearings and am concerned that the EOIR policies implemented by Ms. Reid are responsible for the obstruction of the regulations and laws designed to prevent this. I am hopeful that intercession by the DOJ OIG will encourage a new commitment to the rule of law at this agency.