MEMORANDUM REPORTING LAW-BREAKING AND SERIOUS MISCONDUCT BY EOIR EMPLOYEES

TO: Office of the Inspector General, Department of Justice and
Office of Professional Responsibility, Department of Justice

FROM: Jacqueline Stevens, Professor, Political Science Department, Northwestern University

SUBJECT: Administrative misconduct by Cynthia Long, Atlanta Court Administrator, Executive Office of Immigration Review; adjudicative misconduct by William Cassidy, EOIR adudicator; adjudicative misconduct by Wayne Houser, EOIR adjudicator; administrative misconduct by supervisors in the Office of the Acting Director and Office of the Chief Immigration Judge. (Obstructing access to immigration hearings in violation of 8 CFR § 1003.27 and management failure to correct this; destroying documents in violation of 18 USC § 2071 and agency procedures for implementing 5 USC § 552, Freedom of Information and Privacy Act.)

DATE: November 21, 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. I write because I am concerned about persistent law-breaking by government employees who are violating the civil rights of the most legally fragile population in the country, unrepresented immigrants and U.S. citizens in detention centers.

Pursuant to 28 USC 0.29c(a) and (b), I write to bring to the attention of the Department of Justice (DOJ) Office of the Inspector General (OIG) and Office of Professional Responsibility (OPR) incidents of serious administrative and adjudicative misconduct Mark Lyttle and I witnessed when we attempted to observe hearings in the immigration court of William Cassidy in Atlanta on October 7, 2009.

Our experiences are consistent with a separate and recent incident documented by my colleague, Vincent Lloyd on October 29, 2010, and earlier reports of similar events by Rev. Tracy Blagec in 2009, and myself on April 19, 2010 (see http://stateswithoutnations.blogspot.com/2010/04/atlanta-immigration-judge-sics-guards.html) all pointing to a pattern of the Atlanta EOIR adjudicators and staff violating 8 CFR § 1003.27(public access to hearings).

I also want to bring to the attention of your agencies efforts to cover-up the misconduct described herein, in violation of 18 USC § 2071 and the EOIR procedures for implementing 5 USC § 552 and ensuring compliance with the law and agency procedures more generally.

ALLEGATIONS OF LAW-BREAKING AND SERIOUS MISCONDUCT

1) Violation of 8 CFR § 1003.27 by William Cassidy and Cynthia Long on October 7, 2009.

At approximately 1:25 pm Mr. Cassidy arrived in courtroom #5 to preside over a 1 pm docket that was posted in the EOIR waiting room and listed three cases. After entering, Mr. Cassidy proceeded to ascertain the purpose of each individual's presence. Mr. Lyttle and I responded to his inquiry by saying we were observing.

After hearing this reply, Mr. Cassidy immediately turned around and, without a word, left the room from the rear, providing no explanation to the respondent (appearing via televideo), the attorney, or the respondent's wife. Approximately two minutes later a woman entered the main entrance and addressed Mr. Lyttle and myself, reprimanding us for not "checking in" and telling us we had to leave immediately. Not wishing to create a disturbance I went into the hall with a woman who identified herself as Cynthia Long, the court administrator. She asked for my name and wrote it down; she also said that there were asylum hearings being held and we would not be allowed to attend them. I then asked if all hearings that afternoon were asylum hearings. Ms. Long said she would check. At this point we had walked back to the EOIR waiting area.

Ms. Long left the lobby and I inferred she was consulting with Mr. Cassidy. During her absence I called and left a message for Susan Eastwood in the public relations office at EOIR headquarters to complain that we were being barred from observing the hearings in Mr. Cassidy's court and to point out that the policy requiring people to "check in" before attending hearings was inconsistent with 8 CFR § 1003.27 as it was being used to prevent access for the purpose of conducting secret hearings to the detriment of respondents, and not to assist respondents who might truly desire private hearings. Moreover, Ms. Eastwood informed me later that afternoon that Ms. Long's "check-in" requirement was not consistent with EOIR policy.

I asked Ms. Long to identify who was instructing her not to allow us to attend the hearings. She said, "The juh" as if stopping herself from saying "the judge," and then offered incoherent statements to dissuade us from attending, including mentioning one, then two asylum hearings. I pointed out the contradictions in her explanations and the inconsistency between them and the docket information. She left and then returned, announcing that we could return to the court for the next hearing, providing no explanation for this reversal.

We returned and the attorney who had previously been seated was in the hall and explained that his client was saying good-bye to his wife via the televideo link to the Stewart Detention Center. He asked if we would remain in the hall for this. We complied with this request. After a woman and infant left the court room, Mr. Lyttle and I entered and sat down at the rear of an empty room. The interpreter with whom we had previously been speaking before Mr. Cassidy entered also was absent, apparently dismissed by Mr. Cassidy while we were in the lobby. We waited for several minutes and no one entered until Ms. Long reappeared and told us we had to leave because there were no more cases. We left and returned to the docket, which listed two additional

cases, and then she claimed one had been canceled. I said that meant there should still be one more hearing. She said it was an asylum hearing.

There are two problems with her statements, which I believe were improvised at the direction of Mr. Cassidy:

A) Evidentiary asylum hearings may be closed only at the request of the respondent.

8 CFR § 1003.27 states: "All hearings, other than exclusion hearings, shall be open to the public except that: (a) Depending upon physical facilities, the Immigration Judge may place reasonable limitations upon the number in attendance at any one time with priority being given to the press over the general public; (b) For the purpose of protecting witnesses, parties, or the public interest, the Immigration Judge may limit attendance or hold a closed hearing."

EOIR procedures state that the Immigration Judge may close asylum hearings only at the request of the respondent:

> Evidentiary hearings involving an application for asylum or withholding of removal ("restriction on removal"), or a claim brought under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, are open to the public unless the respondent expressly requests that the hearing be closed. In cases involving these applications or claims, the Immigration Judge inquires whether the respondent requests such closure." (Immigration Practice Manual, 4(a)(1).)

Presumably this rule is in place because the purpose of the regulation is to balance two important government objectives: open hearings to deter due process violations and corruption, and regulatory privacy protections, especially for asylees who may fear from foreign agents retribution against themselves or their families.

B) Crucially, Ms. Long appears to have simply lied. None of the hearings on Mr. Cassidy's docket that afternoon were asylum hearings. Statements to the contrary apparently were fabricated to deter observation by those who were unfamiliar with the relevant regulation and procedures, as had been reported to me by Rev. Tracy Blegac, an Atlanta-area court observer who reported to me that Ms. Long and Mr. Cassidy had issued similar explanations to her on prior occasions in 2009, also for the purpose of obstructing her observation of immigration court hearings.

In response to a FOIA request, I received a cover letter dated January 25, 2010 (Exhibit A) and a docket printed out on December 16, 2009 (Exhibit B). It only lists one hearing (see below) and it is *not an asylum hearing*, as indicated on the docket itself and confirmed by the respondent's attorney's receptionist, who informed me that attorney Nancy Quinn had a telephonic hearing with Mr. Cassidy during the afternoon in question. She told me she was certain it was not an asylum hearing. Telephonic hearings of course are not exempted from 8 CFR § 1003.27. (To clarify, the attorney in the hall with whom I spoke was a man.)

2) Violation of 18 USC § 2071 and EOIR procedures for implementing 5 USC § 552.

For the purpose of publicizing Ms. Long's and Mr. Cassidy's unlawful obstruction of our access to immigration hearings I had filed a request under 5 USC § 552 for Mr. Cassidy's October 7, 2009 dockets. In response to this request I received a docket that listed only a single 1 pm hearing for Mr. Cassidy, not the three I had seen on the docket posted October 7, 2009. (Exhibit B)

The cover letter states:

> Please be advised the original Immigration Court calendar could not be located. However, the enclosed Immigration Court calendar was obtained from the Immigration Court computer database.

It also states:

> Also in your FOIA request, you were seeking the name of the interpreter who was scheduled to appear at 1:00 p.m. on October 7 2009 before Judge William Cassidy in Atlanta, Georgia. Please be advised no responsive information was located.

Long before December 16, 2009, I had informed the EOIR that I possessed the only information that it included in the docket released to me. The information in the entry produced by printing the database on December 16, 2009, more than two months after the EOIR received my FOIA request, had been conveyed by me to EOIR staff in the course of complaining about my obstruction. In other words, supervisory staff in the public affairs office as well as Ms. Long and Mr. Cassidy were aware from my email correspondence to them that I had copied this information during my time in the lobby. They released to me information they knew I already had, while person or persons destroyed and concealed the additional information that would provide witnesses to what I believe was Mr. Cassidy's dismissal of the interpreter who was waiting for the third case. (The case information was destroyed, the interpreter information either destroyed or concealed from the EOIR FOIA office.)

According to an experienced EOIR official who personally works with the docket databases at a different location, the only explanation for case information disappearing from the calendar database maintained on the EOIR computer network is someone deleting it, in violation of 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..."

Furthermore, the statement that the EOIR found "no responsive information" about the missing interpreter's identity is inconsistent with the sign-in sheets the Atlanta EOIR staff maintained on a clipboard at the front desk; based on information and belief, I understand these pages were used to verify interpreter appearances for purposes of compensation. Based on information and belief, it is my understanding that Ms. Long was responsible for supervising responses to FOIA requests and personally oversaw the production of the docket information. It appears that she deliberately withheld this information, in violation of EOIR procedures for FOIA requests, and also concealed the existence of the document indicating the interpreter's identity, in violation of 18 USC § 2071.

3) At approximately 9 a.m. on October 29, 2010 adjudicator Wayne Houser announced to Vincent Lloyd, a court observer, that a hearing was closed because it was an asylum hearing. Mr. Houser did not make an inquiry of the respondent as to whether this was the respondent's preference and did not indicate that the respondent or attorney had requested a closed hearing. This is in violation of CFR § 1003.27 and EOIR procedures designated in the Immigration Practice Manual at 4(a)(1).)

In closing I want to address to potential objections to these complaints. (1) and (2) refer to events that happened a year to nine months ago. And, 8 CFR § 1003.27 authorizes adjudicators to close hearings for the purpose of "protecting witnesses, parties, or the public interest."

This first documented event here only establishes a long-standing pattern, one described to me by observers who had experienced this previously and repeated on April 19, 2010, which I will be describing in a separate complaint. Rev. Blagec wrote me in an email on November 16, 2010, "one of the heads of security, Dan Piccolo (uncertain of spelling) casually mentioned (during a conversation about something else while we were holding a prayer vigil [in August, 2009] outside the building) that the judges routinely tell security to not allow observers in court. he just said it like it was matter of fact and ok."

Second, the EOIR has determined that the best test of whether adjudicators may close hearings for the purpose of "protecting witnesses, parties, or the public interest" is whether respondents request such a closed hearing. This is consistent with numerous federal court decisions on the topic of closing immigration and other adjudicative hearings more generally. See, e.g., The Committee on Communications and Media Law of the Association of the Bar of the City of New York, "If It Walks, Talks and Squawks . . . . The First Amendment Right of Access to Administrative Adjudications: a Position Paper, 23 Cardozo Arts & Ent LJ 21 ("the presumption in favor of openness is so strong that, even when a proceeding has been historically closed, courts have applied the Richmond Newspapers test flexibly, finding that the structural benefits of public access alone may still tip the balance in favor of the recognition of a presumptive First Amendment right of access... Given that most administrative adjudications have invariably been open to the public since the creation of the modern administrative state - both as a matter of due process and legislative policy - the historical record unquestionably evinces a tradition of access under the Richmond Newspapers analysis.")

Thus, federal court decisions and EOIR procedures limit adjudicator's prerogative to arbitrarily close hearings in order to respect the important objective of protecting respondents' due process rights as well as those of the public to scrutinize administrative hearings. Both of these rights are crucial to democratic governance and the rule of law, and both are defeated if the Attorney General or a specific adjudicator closes hearings on the pretext of protecting the public interest, much less if they close hearings without announcing any legal reason.

In light of the fact that the Mr. Houser and Mr. Cassidy deny asylum claims at among the highest rates in the country (83% and 85% respectively, according to TRAC data), respondents would appear to have far more to fear from the impropriety of their secret proceedings than, say, a secret agent from El Salvador posing as political science professor and journalist and using a U.S. citizen Mr. Cassidy had deported as a ruse to infiltrate the proceedings, the only possible explanation for closing a bona fide asylum hearing to Mr. Lyttle and myself, although of course in this particular instance the asylum claim was simply fabricated.

The EOIR's unlawful deportation of legal residents and U.S. citizens directly follows from its secrecy, cover-ups, and tolerance of unlawful practices. In light of these egregious human rights violations and the EOIR's persistent failure to alert your agencies to the misconduct of their employees and to change the unlawful practices by their employees, I will be filing subsequent complaints on these and other matters.

Rev. Blagec and Dr. Lloyd have indicated that they are available to address questions your investigators may have and I am happy to provide their contact information on request.