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August 8, 2017

James McHenry
Acting Director
Executive Office for Immigration Review
U.S. Department of Justice
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

CC: H. Kevin Mart, Assistant Chief Immigration Judge, EOIR
Lauren Alder Reid, Chief and Counsel, Office of Communications and Legislative Affairs, EOIR
Richard W. (Bill) Spivey, Warden, Stewart Detention Center, CoreCivic

VIA USPS AND EMAIL

Re: Observations and Practices of Stewart Immigration Court

Dear Director McHenry:

We write to provide you with findings gathered during observations of, and representation of detained immigrant respondents at, the Stewart Immigration Court starting in March 2017. This observation and ongoing representation has taken place as part of the Southeast Immigrant Freedom Initiative (SIFI) of the Southern Poverty Law Center (SPLC).

The SPLC has previously addressed the conduct of immigration judges and court personnel at the Stewart Immigration Court, which has the highest rates of deportation of any immigration court in the country.[1] Although your agency has noted that it initiated discussions with local immigration judges (IJs) as a result of our correspondence, our observers continue to note due process concerns for respondents before this court, principally in hearings before IJs

[1] Letter from Southern Poverty Law Center and Human Rights First to Dir. Juan Osuna, EOIR, Reports Regarding Due Process Concerns for Detained Pro Se Respondents, Stewart Immigration Court, Lumpkin, Georgia (Aug. 25, 2016), *available at* https://www.splcenter.org/sites/default/files/2016-8-25_stewart_detention_center-eoir_letter_0.pdf; *see also U.S. Deportation Outcomes by Charge: Completed Cases in Immigration Courts (FY 2017 through June 2017)*, TRAC Reports, Inc., http://trac.syr.edu/phptools/immigration/court_backlog/deport_outcome_charge.php (last accessed July 20, 2017) ("TRAC Outcomes") (according to the TRAC Outcomes, the Otay Mesa court had a higher rate of deportation – 99.9 percent – but TRAC Outcomes reports only one case was heard in that court during the time period in question)

Saundra Arrington (Dempsey)[2] and Dan Trimble. IJ Arrington in particular stands out for her troubling lack of professionalism and her hostility towards respondents.

Only 8.5 percent of individuals who appear in the Stewart Immigration Court have prevailed in their cases from October 2016 through June 2017, in contrast to a 45.9 percent average in immigration courts nationwide.[3] Immigrant respondents at Stewart also overwhelmingly lack legal representation. Only six percent of detainees at Stewart Detention Center were represented by counsel between 2007 and 2012, in contrast to a 14 percent representation rate of all detained individuals, and a 37 percent representation rate of all immigrants in removal proceedings nationwide.[4]

Beyond this lack of access to representation, our observations identified several areas of concern indicating that the Stewart Immigration Court IJs – in particular, Judges Arrington and Trimble – engage in practices that undermine detained immigrants' constitutional due process rights. We witnessed that Judges Arrington and Trimble – and at times Judge Duncan – failed to engage in basic and routine procedures necessary to uphold due process.

Also, Judges Arrington and Trimble made several statements that could be construed as prejudiced against immigrant respondents. Judge Arrington in particular frequently lacked the necessary patience, dignity, and courtesy that professional rules of conduct require of judges in immigration proceedings. Finally, telephonic interpreters appearing in front of all of the Stewart IJs failed to interpret all English language conversations, and often limited interpretation for questions directed to the respondent.

I. Background

A. Standards for Conduct in Immigration Courts

1. Professionalism

Immigration Judges (IJs) employed by the Executive Office for Immigration Review (EOIR) are bound by ethical requirements to promote "public confidence in their impartiality, and avoid impropriety."[5] IJs must be "faithful to the law and maintain professional competence in it" by being knowledgeable about immigration law, skillfully applying immigration law to individual cases, and engaging in reasonable preparation to perform their duties.[6]

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[2] IJ Arrington refers to herself as IJ Dempsey in the court proceedings. However, the EOIR records continue to refer to her as IJ Arrington. To avoid confusion, we will refer to her as IJ Arrington in this letter.

[3] TRAC Outcomes; *see also* Christie Thompson, *America's Toughest Immigration Court: Welcome to Stewart Detention Center, The Black Hole of the Immigration System*, The Marshall Project, (Dec. 12, 2016, 12:00 A.M.), https://www.themarshallproject.org/2016/12/12/america-s-toughest-immigration-court#.56rpXqggF (FY 2015 data); *FY 2015 IJ Decisions by Disposition and Immigration Court*, The Marshall Project, (Dec. 2, 2016, 4:47 P.M.), https://www.themarshallproject.org/documents/3230396-CThompson-TheMarshallProject#.OPuIHQnUe (same).

[4] Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Penn. L. Rev. 1, 7, 38 (2015).

[5] DEP'T OF JUSTICE, ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES 1 (2011); *see also* Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635.101.

[6] DEP'T OF JUSTICE, ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES at 2.

It is well established that immigrants in removal proceedings are entitled to due process.[7] This right to due process includes "a hearing before a fair and impartial arbiter" without judicial conduct indicating "pervasive bias and prejudice."[8] As EOIR's Ethics and Professionalism Guide for Immigration Judges specifies, IJs should be "patient, dignified, and courteous, and should act in a professional manner towards all litigants, witnesses, lawyers, and others with whom the Immigration Judge deals in his or her official capacity," and "[a]n Immigration Judge . . . should not, in the performance of official duties, by word or conduct, manifest improper bias or prejudice."[9] In addition, federal regulations require that decisions of an immigration judge shall "contain reasons for granting or denying" a respondent's request, whether oral or written.[10]

2. Cases Involving Mentally Incompetent Respondents

Immigration law and regulations require additional protections of the due process rights of mentally incompetent immigrant respondents. The Immigration and Nationality Act (INA) requires the Attorney General to "prescribe safeguards to protect the rights and privileges" of individuals whose "mental incompetency" makes their understanding of the proceeding "impracticable."[11] Such safeguards include prohibiting IJs from accepting an admission of removability if the mentally incompetent respondent is unrepresented and requiring a "hearing on the issues."[12]

3. Cases Involving Respondents with Limited English Proficiency

EOIR must also provide all respondents who are considered to have limited proficiency in English ("LEP") with "meaningful access" to immigration courts, which include the provision of interpreters "during all hearings, trials, and motions during which the LEP individual must and/or may be present."[13] According to EOIR's own Interpreter Handbook, "the interpreter's job is to interpret in a manner which allows the respondent/applicant . . . to understand the proceedings as if no language barrier existed."[14]

B. Methodology

Forty-three volunteer attorneys and law students, organized through and supervised by SIFI, observed sessions of the Stewart Immigration Court from March 20 to April 14, 2017. The project observed court sessions of the four IJs currently assigned to Stewart: Saundra Arrington, Randall Duncan, Njeri Maldonado, and Dan Trimble. Observers were required to take extensive notes during their sessions, complete a short survey form and, afterwards, to answer a much longer survey form for all respondents. During these weeks, these attorneys and law students observed hearings for 436 individuals, including approximately 37 bond hearings, 48 individual

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[7] *See, e.g.*, *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903).
[8] *Matter of Exame*, 18 I. & N. 303, 306 (BIA 1982).
[9] ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES at 3.
[10] 8 C.F.R. § 1240.12(a).
[11] 8 U.S.C. § 1229a(b)(3); *see also Matter of M-A-M-*, 25 I. & N. 474 (BIA 2011); *Mohamed v. Gonzales*, 477 F.3d 522, 526 (8th Cir. 2007) ("A mentally incompetent person, although physically present, is absent from the hearing for all practical purposes.").
[12] 8 C.F.R. § 1240.10(c).
[13] Exec. Order No. 13166, 65 Fed. Reg. 50121, 50121 (Aug. 11, 2000).
[14] OCIJ Interpreter Advisory Committee, Office of the Chief Immigration Judge Interpreter's Handbook at 12.

merits hearings, 4 initial master calendar hearings, and 359 master calendar reset hearings. We list an approximate number of bond hearings because, in some instances, our observers noted IJs making bond determinations during or immediately before master calendar or individual merits hearings. On one occasion, the observer noted that the IJ used information provided during the bond portion of the hearing to determine the merits of the case,[15] even though federal regulations prohibit using the bond record in a merits decision.[16]

Starting on April 17, 2017 (immediately following the court observation period), SIFI attorneys began representing detained immigrants at the Stewart Detention Center. Some of concerns we have raised about Judge Arrington in particular arise out of the representation period, rather than the court observation period. All observations noted in this letter as occurring on April 17, 2017 or later have occurred in the course of SIFI attorneys' presence in court on behalf of clients during the representation period.

Immigration Judges were aware of observers' presence and role in the hearings. At the beginning of the observation period, SPLC attorneys conferred with local EOIR staff to inform them of the court observation project. The IJs consistently asked observers why they were present in the courtrooms, to which volunteers explained that they were there for court observation. Volunteers encountered challenges accessing the courtrooms for observation. Under federal regulations, "[r]emoval hearings shall be open to the public, except that the immigration judge may, in his or her discretion, close proceedings" in specific limited circumstances.[17] While the volunteers made court and security staff aware of their presence and purpose, volunteers were not permitted to observe all of the hearings. For example:

- In the first week of the observation, volunteers were not permitted to view most of the bond hearings, which took place first thing in the morning; an exclusion for which no explanation was provided. After some advocacy with local EOIR staff, volunteers were permitted to view most bond hearings, but still were excluded from some, again without explanation.
- On more than one occasion, security staff told volunteers that there was not enough space in the courtroom for observers and denied them entry, even as detained individuals were periodically removed from the courtroom following their master calendar hearings.[18] An SPLC attorney recently witnessed security staff saying that there was not enough space in the courtroom and denying entry to a group of observers. The security staff denied the observers entry to the courtroom until the observers requested a security supervisor. The supervisor then checked the courtroom and found that there was actually enough space.[19]
- On one occasion, volunteers waited for nearly two hours hoping to observe hearings.[20] Significant waiting periods were common.

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[15] N.Y.V.V., Mar. 31, 2017, Arrington. Respondents' names and A numbers are available upon request.
[16] 8 C.F.R. § 1003.19(d).
[17] 8 C.F.R. § 1240.10(b); *see also* 8 C.F.R. § 1003.27 (limited circumstances under which IJ may restrict public access to hearings)
[18] C.R.C., A.T. Apr. 4, 2017 (observers' initials listed for notes 18-22)
[19] B.H., July 12, 2017.
[20] G.N., Apr. 10, 2017.

- When the court called a break and cleared the courtroom, volunteers were sometimes not allowed back in to the courtroom when the hearings resumed.[21]
- On other occasions, volunteers were only permitted to enter the courtroom for observation after the hearings had already begun, making it difficult to follow the remainder of the hearing.[22]
- Finally, some judges initially took the position that volunteers would not be permitted to view any asylum hearings. After some internal advocacy, all of the judges started asking the respondent if he would allow the volunteers to be present, which was the proper approach.

II. Observations of the Stewart Immigration Court

During our observations of the Stewart Immigration Court, we encountered several areas of concern, which are detailed below. The examples below illustrate problems endemic to Stewart Immigration Court. The cited examples do not provide an exhaustive list of the times these problems have occurred, and in fact, many of these examples illustrate standard practice. As set forth below (§ III, Recommendations), we request that EOIR investigate and monitor the Immigration Judges at the Stewart Immigration Court to ensure compliance with standards to protect due process, impartiality, and professionalism.

A. Examples of Prejudice, and Lack of Courtesy and Professionalism

As noted above, IJs should be "patient, dignified, and courteous, and should act in a professional manner towards all litigants, witnesses, lawyers, and others with whom the Immigration Judge deals in his or her official capacity," and "should not, in the performance of official duties, by word or conduct, manifest improper bias or prejudice."[23] Our observers noted specific examples of concern where IJs made statements that could be construed as prejudiced against immigrant respondents or their counsel, or lacked the necessary patience, dignity, and courtesy required of IJs in immigration proceedings.

1. Towards Respondents

In one master calendar hearing, IJ Arrington questioned the respondent about his charges for driving without a license, and questioned whether his employer knew he was working illegally. IJ Arrington then told the respondent, "the people behind you are laughing because they know you're trying not to tell the truth and you're not going to get away with it."[24] IJ Arrington often made statements that could be construed as prejudicial and lacking in professionalism in cases involving respondents with criminal records. In one case, IJ Arrington told a respondent that he was a "one man crime spree," based on a review of his criminal charges, many of which had been dismissed or had not been adjudicated.[25] In another case, an observer noted IJ Arrington's aggressive demeanor towards a pro se respondent.[26] IJ Arrington began proceedings

[21] C.R.C., Apr. 3, 2017; C.R.C., Apr. 4, 2017.
[22] E.J., Apr. 7, 2017.
[23] ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES at 3.
[24] A.C.C., Apr. 12, 2017, Arrington.
[25] J.R.R., Apr. 12, 2017, Arrington.
[26] H.O., Apr. 3, 2017, Arrington.

stating that the respondent had a "huge criminal history," comprised of nine convictions for driving without a license over fifteen years.

IJ Arrington's conduct in cases remanded from the Board of Immigration Appeals (BIA) also raised concern with respect to impartiality and professionalism. In one bond hearing on remand from the BIA, IJ Arrington noted that she agreed with the dissenting BIA member, and again refused to grant bond. When explaining her decision, she told the respondent that "I know you're ticked off. You don't have to sit there looking like that. I'm reading your body language." After the pro se respondent noted that "[t]he BIA rules against you every time, and you still do your own personal thing," Judge Arrington instructed the bailiffs to remove him from the courtroom.[27]

In another case, the observer noted that IJ Arrington appeared to be upset with the respondent after the respondent requested an interpreter. IJ Arrington refused to order the respondent's removal, even though neither the respondent nor the government opposed it. IJ Arrington reset the case for a date two months in the future, when she had reset most other cases for two weeks later. The observer noted that this prolonging of detention appeared to be punitive, given the respondent's desire to be removed and IJ Arrington's apparent hostility towards the respondent because she disagreed with his stated need for an interpreter.[28]

Although Stewart has one of the lowest rates of representation in the country, judges expressed disbelief when respondents noted the difficulty in finding counsel or assistance in completing legal documents pro se. IJs expressed reluctance to provide additional time to respondents to prepare their cases. For example, IJ Duncan expressed incredulity when a respondent requested additional time to complete his asylum application in English, stating that he had received approximately 15 other applications from Haitian men in the past few weeks, implying there must be someone to help him. When the pro se respondent replied that the other applicants were lucky to have found help, IJ Duncan stated, "not just one person, MANY people."[29] Similarly, when a pro se respondent explained that he was unable to complete his Form EOIR-42B, application for cancellation of removal, because he was unable to contact anyone outside of detention, IJ Trimble merely replied that many people in immigration detention are able to complete their applications. IJ Trimble ordered the respondent removed.[30]

Just last week, a SIFI attorney observed a pro se respondent explain to IJ Arrington, even though he is not from the United States, he thinks of himself as an American because he grew up in this country. IJ Arrington cut off the respondent and told him, on the record and in front of a number of detainees, attorneys, and courtroom observers, "First, if you truly believe you are an American, you should be speaking English, not Spanish."[31] This comment was hostile, gratuitous, and highly inappropriate in any forum, and particularly by a judge in an immigration court. The same SIFI attorney also observed Judge Arrington *sua sponte* convert a pro se respondent's master calendar hearing into a bond hearing and then ordered the respondent

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[27] N.H., Apr. 14, 2017, Arrington.
[28] M.S., Apr. 3, 2017, Arrington.
[29] D.F., Apr. 13, 2017, Duncan.
[30] M.E.O., Mar. 21, 2017, Trimble.
[31] Aug. 3, 2017 Aff of Phi U. Nguyen

removed, though the respondent clearly had no opportunity to prepare for the bond hearing and had not yet been given the opportunity to answer IJ Arrington's question about whether he wanted to speak to an attorney.[32]

2. Towards Respondents' Counsel

At a hearing on May 18, 2017, IJ Arrington mischaracterized on the record an off-the-record conversation she had just completed with two SIFI attorneys, insisting that she would deny a respondent's motion for a custody hearing "because no G-28 had been filed." Off the record, IJ Arrington indicated she would deny the motion because the attorneys "should know better" than to make an oral request for a bond hearing, though the Immigration Court Rules of Procedure specifically permit such requests.[33] On the record, Judge Arrington was deliberately hostile towards the SIFI attorneys, referring to them as "individuals in the room who purport to be pro bono attorneys." Later, on the same respondent's pro se motion seeking a continuance of his individual merits hearing because he was waiting for more evidence to arrive, Judge Arrington told him his "180-day Asylum EAD Clock" would be stopped as a result of the continuance, though the clock had never actually started. She also told him he would remain detained, effectively pre-judging the bond motion that had not yet been filed. This appeared to be an effort to intimidate the respondent and his counsel.[34]

Just last week, two SIFI attorneys sought to appear at a complex bond hearing on behalf of respondent from Nepal. Section 2.3(e) of the EOIR Immigration Court Practice Manual specifically allows multiple attorneys to represent a single respondent, as long as the attorneys each filed Notices of Entry of Appearance (Forms E-28). However, Judge Arrington refused to allow both SIFI attorneys to appear, holding steadfastly to her position that there may only be "one lawyer per case" even after the attorneys, and even the court bailiff, explained to her that both had filed E-28s. As a result, only one of the SIFI attorneys was permitted to appear, even though two attorneys represented the ICE Office of Chief Counsel ("OCC") at the same hearing (before the hearing, one of the SIFI attorneys observed IJ Arrington "chatting very amicably" with the two OCC attorneys). Because both SIFI attorneys had prepared for different components of the hearing, the absence of one of the attorneys was prejudicial to the respondent. IJ Arrington's exclusion of one of the SIFI attorneys was improper and arbitrary.[35]

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[32] *Id.*
[33] 8 C.F.R. § 1003.19(b).
[34] May 18, 2017 Aff. of Brian J. Hoffman
[35] Aug. 3, 2017 Aff. of Phi U. Nguyen; Aug. 3, 2017 Aff. of James I.V. Berry.

B. Failure to Engage in Basic and Routine Procedures Necessary for Due Process

1. Failure to Provide Rationales for Decisions

Federal regulations require that decisions of an immigration judge shall "contain reasons for granting or denying" a respondent's request, whether oral or written.[36] Observers, however, noted multiple occasions where immigration judges failed to provide rationales for their decisions, making it difficult for respondents who are denied relief to determine the basis of the decision and whether to appeal.[37] For example:

- IJ Trimble denied relief in one asylum case, explaining only that the government had met its burden, and did not provide any further rationale for his decision.[38]
- In another case, IJ Trimble again denied relief, and asked the respondent's counsel if he wanted to reserve an appeal. The attorney requested a rationale underlying the decision several times; IJ Trimble stated only that the government had met its burden, and the respondent had not. When the attorney stated that he preferred to hear the rationale for the denial before deciding whether to reserve an appeal, IJ Trimble refused.[39]
- IJ Arrington in one case reviewed the criminal charges noted in a respondent's I-213, noted one marijuana conviction, a "number" of charges for driving without a license, and a pending DUI charge. She then ordered the respondent removed to Mexico without explaining on the record the basis for her decision.[40]

2. Failure to Notify Respondents about Future Hearings

Several observers noted that IJs did not properly provide notifications of the next hearing to respondents. Federal statute requires that respondents be provided with written notice of their next proceeding.[41] Based on our observations, IJ Duncan's practice is to set a date on the record for individual hearings only. Observers noted that IJ Duncan did not state a date on the record for subsequent master calendar hearings.[42] Follow-up conversations with individuals detained at Stewart confirmed that several respondents did not receive written notice of their next proceeding. This lack of information impedes respondents' ability to prepare for the next proceeding, including filling out the appropriate documentation and gathering evidence, and to consult with possible counsel.

One particularly egregious lack of notice occurred in June 2017. In preparation for a bond redetermination hearing, a client informed an SPLC volunteer attorney that IJ Arrington had previously denied him bond. However, the IJ had provided the client with no prior written or oral

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[36] 8 C.F.R. § 1240.12(a).
[37] J.E.O.C., Apr. 14, 2017, Duncan; K.G., Mar. 30, 2017, Duncan; J.R.R., Mar. 24, 2017, Trimble.
[38] E.C., Apr. 13, 2017, Trimble.
[39] J.A.R.R., Mar. 24, 2017, Trimble.
[40] E.O.C., Apr. 12, 2017, Arrington
[41] 8 U.S.C. § 1229(a)(2)(A).
[42] J.J., Mar. 28, 2017, Duncan; D.S., Apr. 11, 2017, Duncan.

notice of the hearing. On the morning of the bond hearing, a security guard woke the respondent from his bunk a few minutes before he needed to appear. He did not even have enough time to use the bathroom before attempting to argue his bond motion pro se. At the hearing seeking redetermination of previous bond denial, though there was no proof of notice in the court file, IJ Arrington refused to acknowledge a lack of notice of the previous bond hearing. She found there were no changed circumstances warranting the bond redetermination.[43]

Also in June 2017, IJ Trimble denied bond for an SPLC client without looking at the bond motion. An SPLC volunteer had visited the client on a Sunday to inform him SPLC intended to file the bond motion on his behalf. SPLC provided the respondent with a copy of the motion. Early Tuesday morning, a security guard informed the client he had court and brought him there immediately. When the client arrived to court, IJ Trimble told him that it was for his bond hearing. The client did not know he had court that morning, because he received no prior notice. By chance, the client had brought a copy of the bond motion SPLC prepared. He attempted to inform the judge that he had representation and that his attorneys were going to file the bond motion. IJ Trimble did not look at the bond motion and denied bond.[44] On a later bond motion with SPLC present with the client, IJ Trimble was not aware that he had made a prior bond determination; he denied bond again.[45]

3. Failure to Grant Routine Procedural Motions

Advocates have repeatedly raised the procedural difficulties of representing detainees, particularly those who are transferred from other courts and detention centers. For this reason, federal regulations provide that Immigration Judges "for good cause, may change venue."[46] However, IJ Trimble's response to a motion for change of venue illustrates the difficulties that detainees at Stewart face in obtaining the grant of routine procedural motions, and the prolonged detention and cost of these denials. The respondent, who had already been detained for seven months, requested a change of venue and administrative closure from IJ Trimble. The respondent's wife had been granted asylum; USCIS indicated that it would take at least seven additional months to adjudicate the respondent's derivative application. The respondent thus requested administrative closure and a change of venue to allow him to be closer to his attorney and his home, which the government did not oppose. IJ Trimble approved the administrative closure, then denied the change of venue, based solely on the fact that the respondent was already at Stewart. After the attorney respectfully objected, IJ Trimble lost his temper, and threatened counsel that he was "on the edge of going too far." IJ Trimble then changed his mind, and decided not to approve the motion for administrative closure. Eventually, IJ Trimble changed his mind again and granted the administrative closure but flatly refused to approve or consider a change of venue "because he (Respondent) is sitting here in front of me."[47] This created a perverse result: the respondent would remain in custody for months even though IJ Trimble administratively closed his case.

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[43] L.A.R.S., June 13, 2017, Arrington.
[44] A.E.C.U., June 13, 2017, Trimble.
[45] A.E.C.U., June 22, 2017, Trimble.
[46] 8 C.F.R. § 1003.20.
[47] E.G., Apr. 6, 2017, Trimble. The observer noted these were "clearly punitive measures taken against a very good lawyer."

4. Failure to Explain Forms of Relief and Information about Legal Services

Federal regulations provide that immigration judges must inform respondents of their eligibility for certain forms of relief and must make these application forms available to respondents.[48] IJs also have a duty to provide a list of legal service providers to pro se respondents. As the Immigration Court Practice Manual provides:

> If the respondent is unrepresented ("pro se") at a master calendar hearing, the Immigration Judge advises the respondent of his or her hearing rights and obligations, including the right to be represented at no expense to the government. In addition, the Immigration Judge ensures that the respondent has received a list of providers of free and low-cost legal services in the area where the hearing is being held. The respondent may waive the right to be represented and choose to proceed pro se.[49]

The IJs at Stewart did not consistently review forms of relief or refer pro se respondents to legal service providers. Observers noted on more than one occasion that IJ Trimble handled the proceedings very quickly, without explaining forms of relief to respondents.[50] On another occasion, rather than explain the grounds for asylum to a respondent expressing fear of returning to his home country, IJ Arrington said, "The question is, do you want an asylum application or to return to Haiti." The respondent answered, "Haiti, sure," and the IJ ordered his removal without further explanation or discussion.[51]

Like many detention facilities, Stewart has a Legal Orientation Program (LOP) that provides detained individuals with information about forms of relief and assists them with filling out applications in English.[52] However, IJ Trimble rarely referred respondents to the LOP. For example, out of a docket of 26 master calendar hearings one morning, IJ Trimble told only one respondent about the LOP at Stewart.[53] In another instance, IJ Arrington appeared to openly undercut the credibility of the LOP. When a respondent explained to IJ Arrington that the LOP had viewed his case as "difficult to resolve," she replied in a sardonic tone that this was "typical of them."[54] IJs should provide all pro se respondents with information about the LOP.

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[48] *See, e.g.* 8 C.F.R. § 1240.11(a)(2) (referring to applications for creation of the status of lawful permanent residence, including cancellation of removal, "[t]he immigration judge shall inform the alien of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter and shall afford the alien an opportunity to make application during the hearing"); § 1240.11(c)(1) (requiring immigration judges to advise respondents who express a fear of return that they may apply for asylum or withholding in the United States; to make application forms available to respondents; and to advise respondents that they may be represented at no expense to the government).

[49] Office of Chief Immigration Judge, *Immigration Court Practice Manual* 69.

[50] O.Z., Mar. 21, 2017, Trimble; R.C.C., Mar. 21, 2017, Trimble.

[51] M.F., Apr. 12, 2017, Arrington.

[52] *See* Department of Justice, Executive Officer for Immigration Review, Legal Orientation Program, https://www.justice.gov/eoir/legal-orientation-program (explaining the purpose and components of the program).

[53] M.V., Mar. 21, 2017, Trimble.

[54] M.A.B.R., Apr. 10, 2017, Arrington.

C. Failure to Provide Safeguards to Mentally Incompetent Respondents

Public reports following the recent suicide of a detainee have recently called into question the treatment of mentally ill detainees at Stewart Detention Center.[55] The apparent failure to address mental health issues extends to the Stewart Immigration Court, as well.

During the court observations, volunteers also noted issues and observed the IJs refusing to acknowledge or respond to mental health and incompetency concerns, though the law mandates a hearing on the issue of the respondent's competency.[56] One observer reported that an IJ proceeded even though the respondent was rocking back and forth and had trouble understanding the proceedings.[57] Another observer noted that IJ Maldonado did not directly acknowledge when a respondent threatened suicide, but rather asked the same questions robotically, and then ordered his removal.[58] On another occasion, IJ Duncan ordered the removal of a respondent who did not appear to understand the proceedings; he answered "No" both when asked if he was abandoning his asylum application and when asked if he still wanted to apply for asylum.[59] Lastly, IJ Trimble ordered the removal of a respondent who was showing signs of severe depression and who did not appear to understand the proceedings.[60]

D. Inadequate Interpretation for Respondents

Immigration Courts are required to provide interpreters, free of charge, for respondents who are unable to "fully understand and participate in removal proceedings" in English.[61] Respondents who must participate in immigration hearings without adequate interpretation are not afforded a fair opportunity to present their cases and may suffer other prejudicial consequences.

During our observations, respondents who received telephonic interpretation at Stewart failed to receive a full and adequate interpretation of their hearings. In these hearings, the court provided interpretation only when questioning the respondent. Respondents in these hearings were not provided with interpretation for conversations among the IJ, the DHS attorney, and the respondent's attorney, if represented. As an example of a common practice: during a bond hearing using a telephonic Spanish interpreter, IJ Arrington asked the respondent's attorney a series of questions without interpretation. No questions were directed to the respondent, so the entirety of the hearing proceeded without interpretation. At the end of the hearing, IJ Arrington

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[55] *See*, Jeremy Redmon, *ICE Detainee Who Hanged Himself Had History of Mental Health Problems*, Atlanta Journal-Constitution (July 11, 2017, 3:30 P.M.), http://www.myajc.com/news/state--regional-govt--politics/ice-detainee-who-hanged-himself-had-history-mental-health-problems/MF8JWWpA8v3wefl5BjgLhO/; Jeremy Redmon, *GBI: ICE Detainee Who Died in Georgia Was Isolated for 19 Days*, Atlanta Journal-Constitution (May 16, 2017, 9:05 A.M.), http://www.ajc.com/news/breaking-news/gbi-ice-detainee-who-died-georgia-was-isolated-for-days/DcGHSwotmwlu5oi8yGJqwM/.

[56] 8 U.S.C. § 1229a(b)(3); *see also Matter of M-A-M-*, 25 I. & N. at 474; *Mohamed*, 477 F.3d at 526.

[57] T., Apr. 3, 2017, Arrington.

[58] V.A.N., Apr. 18, 2017, Maldonado.

[59] D.L., Apr. 13, 2017, Duncan.

[60] R.C.C., Mar. 21, 2017, Trimble.

[61] Office of Chief Immigration Judge, *Immigration Court Practice Manual* 64.

asked the interpreter to summarize only her ruling.[62] The failure to interpret all portions of the hearing deprives respondents of an opportunity to assist in their own defense.

In another bond hearing before IJ Maldonado, the telephonic interpreter provided interpretation only for portions of the hearing, and only when directed to do so by the IJ.[63] This one-sided interpretation deprives respondents of an opportunity to understand significant aspects of their case. In a court where the majority of the respondents proceed pro se, access to interpretation during the entirety of their proceedings is imperative.

Telephonic interpretation also creates difficulty with attorneys appearing by phone. In a hearing where the attorney of record appeared by telephone, IJ Duncan questioned the respondent using a telephonic interpreter, without the attorney present on the line. Only after the questioning was complete did IJ Duncan call the attorney back and rule on the attorney's motion.[64] While the use of telephonic interpreters may be necessary for some immigration proceedings, the IJs must be trained on how to use interpreters effectively so that the respondent and counsel have access to interpretation for the full proceeding. For example, the IJs should be able to use three-way calling to facilitate communication between an attorney, the interpreter, and the respondent.

Interpreters were not always available in other cases, particularly those involving indigenous languages. For example, the court offered Spanish interpretation for one respondent from Guatemala, even though the interpreter noted that the respondent's primary language was Mam. A Mam interpreter was not available, and the observer noted that it was not clear that the respondent understood fully what was happening in the proceedings.[65]

III. Recommendations

Based on our observations of the Stewart Immigration Court, we respectfully recommend to EOIR the following corrective actions:

- Consider reprimanding, suspending, and/or removing IJ Arrington due to her arbitrary and unprofessional conduct.
- Investigate and monitor IJs at the Stewart Immigration Court to ensure compliance with standards to protect due process, impartiality, and professionalism.
- Review and monitor IJ performance to ensure that full rationales for decisions are provided to respondents; that IJs provide proper notification of future hearings to respondents; and that IJs provide an adequate explanation of potential forms of relief, particularly to pro se respondents;
- Review and monitor the denial of routine procedural motions that enable greater access to counsel and representation, such as motions for change of venue and motions for telephonic appearances;

[62] I.R.R., Mar. 31, 2017, Arrington.
[63] L.M., Apr. 13, 2017, Maldonado.
[64] F.M.D., Apr. 4, 2017, Duncan.
[65] S.M., Apr. 3, 2017, Arrington.

- Continue to instruct all IJs on how to implement the standards announced in *Matter of M-A-M-*, regarding how IJs should handle cases where the respondent presents mental health or incompetency issues, and ensure that IJs follow these standards;
- Guarantee high-quality interpretation in the Stewart Immigration Court by ensuring that all interpreters, including telephonic interpreters, provide complete interpretation of hearings for all respondents, and instruct IJs that court proceedings cannot continue when interpretation is not available in a respondent's language. EOIR should investigate the failure to provide adequate interpretation in non-Spanish languages, and ensure availability for interpretation in such settings; and
- Continue to instruct all IJs to refer pro se respondents to the LOP at their first appearance, and ensure that IJs so refer respondents.

We appreciate your prompt attention to these very serious matters. We appreciate the opportunity to further engage with EOIR regarding these troubling practices and to discuss further corrective measures. Please contact SIFI Director Daniel Werner at daniel.werner@splcenter.org or SIFI Deputy Director Laura Rivera at laura.rivera@splcenter.org with any questions. Mr. Werner or Ms. Rivera also may be reached at (404) 521-6700.

Very truly yours,

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