



December 2, 2019

Via Electronic Mail

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**RE: ADMINISTRATIVE COMPLAINT REGARDING EL PASO SERVICE PROCESSING CENTER  
IMMIGRATION COURT JUDGES**

Dear Director McHenry, Inspector General Horowitz, and Director Amundson,

On April 3, 2019, the American Immigration Council (“Council”) and the American Immigration Lawyers Association (“AILA”) jointly submitted a complaint<sup>1</sup> (“Complaint”) to the U.S. Executive Office for Immigration Review (“EOIR”), the Inspector General for the Department of Justice, and the Office of Professional Responsibility (“OPR”)<sup>2</sup> regarding the allegations of misconduct by immigration judges (“IJs”) in the El Paso Service Processing Center Immigration Court (“El Paso SPC Court”), specifically:

- The use of problematic standing orders by IJs at the El Paso SPC Court that undermine due process and diminish access to counsel;
- A culture of hostility and contempt toward noncitizens who appear at the El Paso SPC Court; and
- The use of problematic court practices which undermine due process and a fair day in court for noncitizens appearing before the El Paso SPC Court.

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<sup>1</sup> American Immigration Council and the American Immigration Lawyers Association, [How the El Paso Immigration Court Fails to Uphold Due Process](#) (April 3, 2019).

<sup>2</sup> Complainants received a response from the Office of Professional Responsibility (OPR) on April 8, 2019, indicating that OPR was referring the matter to the Office of the Inspector General and the Executive Office for Immigration Review.

Now, seven months after the Complaint was submitted, we write regarding two further inquiries.

First, we request an update on what, if any, changes EOIR has made regarding the problematic use of “standing orders” which directly contradict the Immigration Court Practice Manual.<sup>3</sup> As noted in the Complaint, EOIR has been on notice of this issue for years, yet it has repeatedly insisted that standing orders are not permitted.<sup>4</sup> The Complaint detailed the existence of five distinct standing orders in use by at least one IJ at the El Paso SPC Court. Following submission of the Complaint, the Council learned through a Freedom of Information Act production that written standing orders also are in use at the Tacoma, Seattle, Dallas, and Detroit immigration courts.<sup>5</sup> Accordingly, EOIR has identified more than a dozen distinct standing orders in use in various immigration courts across the country.

Given that the use of standing orders is so extensive, the Council and AILA are renewing their requests that EOIR should:

- Post all standing orders to its website, as it is statutorily required to do under 5 U.S.C. §§ 552(a)(1)(A) and (B); and
- Conduct a thorough investigation regarding the use of these standing orders and repeal and prohibit problematic standing orders, including those which impact the substantive rights of respondents in removal proceedings.<sup>6</sup>

Second, the Council and AILA would like to know the status of any investigations, disciplinary measures, or systematic changes at the El Paso SPC Court that are occurring or may have occurred in light of the allegations included in the Complaint. This includes a request for information on the following topics:

- Whether EOIR has provided any additional training on appropriate conduct at the El Paso SPC Court or in any other immigration court;
- Whether any disciplinary actions have been instituted;
- Whether IJs at the El Paso SPC Court have been instructed to keep recording equipment turned on during bond proceedings and other times when the IJ is in the courtroom;
- Whether EOIR has taken steps toward reforming the IJ complaint process in a way that promotes independence and transparency; and

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<sup>3</sup> See AILA-EOIR Liaison Meeting Agenda Questions and Answers 8, AILA, Oct. 21, 2008, available at <https://www.justice.gov/sites/default/files/eoir/legacy/2009/01/29/eoiraila102108.pdf>.

<sup>4</sup> Meeting notes from a 2016 stakeholder meeting indicate that EOIR believes that IJs “should not be adopting their own local rules that affect groups or classes of respondents appearing before the court” and rejected calls to post standing orders online because “there are no ‘local rules’, and thus there is no need to post these rules or provide them accordingly.” See EOIR Liaison Stakeholder Meeting Agenda, Unofficial AILA Notes (Nov. 11, 2016), on file with author.

<sup>5</sup> American Immigration Council, *Immigration Judge Standing Orders FOIA Response from EOIR* (Aug. 30, 2019).

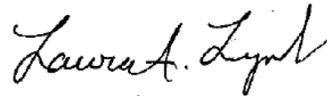
<sup>6</sup> As detailed in the Complaint, this would include a prohibition on any standing orders which “require the complete submission of evidence in support for an application for relief at an unreasonable period of time *before* the individual merits hearing,” that “prohibit respondents from submitting supplementary evidence after submission of an initial application for relief,” that “establish an upper limit for the number of pages that may be filed as part of an initial application for relief,” and that “prohibit or discourage motions of telephonic appearances.” Complaint, at 23.

- Whether EOIR has issued guidance regarding the use of standing orders in the El Paso SPC Court.

Thank you in advance for your time and consideration. We appreciate your prompt attention to these very serious matters and welcome the opportunity to discuss these issues with EOIR and OPR. Please do not hesitate to contact us with any questions.



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