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U.S. Department of Justice
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CC: H. Kevin Mart, Assistant Chief Immigration Judge, EOIR
Lauren Alder Reid, Chief and Counsel, Office of Communications and Legislative Affairs, EOIR

March 2, 2017

VIA USPS AND EMAIL

Re: Observations of Atlanta Immigration Court

Dear Director Osuna:

We write to provide you with findings of observations of the Atlanta Immigration Court conducted by Emory Law students, in conjunction with the Southern Poverty Law Center, during the fall semester of 2016. Six Emory Law students observed the Court in September and October 2016 seeking to identify any apparent factors leading to the Court's reputation as one where rule of law principles are not widely respected.¹ Atlanta Immigration Judges (IJs) "have been accused of bullying children, victims of domestic abuse and asylum seekers," while "[immigration] attorneys complain that judges impose such stringent requirements on their clients that they are

¹ See Elise Foley, *Here's Why Atlanta Is One of The Worst Places To Be An Undocumented Immigrant*, HUFFINGTON POST, May 25, 2016, http://www.huffingtonpost.com/entry/deportation-raids-immigration-courts_us_574378d9e4b0613b512b0f37; Chico Harlan, *In an Immigration Court That Almost Always Says No, A Lawyer's Spirit is Broken*, WASHINGTON POST, Oct. 11, 2016, https://www.washingtonpost.com/business/economy/in-an-immigration-court-that-nearly-always-says-no-a-lawyers-spirit-is-broken/2016/10/11/05f43a8e-8eee-11e6-a6a3-d50061aa9fae_story.html?utm_term=.430a15e12a55; Ted Hesson, *Why It's Almost Impossible to Get Asylum in Atlanta*, VICE MAGAZINE, Jun. 8, 2016, <http://www.vice.com/read/why-its-almost-impossible-to-get-asylum-in-atlanta>. See also Southern Poverty Law Center, *Immigrant Detainees in Georgia More Likely to Be Deported Than Detainees Elsewhere; Georgia Detainees Less Likely to Be Released on Bond* (2016), <https://www.splcenter.org/news/2016/08/23/immigrant-detainees-georgia-more-likely-be-deported-detainees-elsewhere>.

impossible for an immigrant to meet.”² Atlanta’s Immigration Court records one of the highest denial rate of asylum applications—98 percent—in the United States.³

The observations identified several areas of key concern that indicate that some of the Immigration Judges do not respect rule of law principles and maintain practices that undermine the fair administration of justice. During the course of our observations, we witnessed the following issues:

- Immigration Judges made prejudicial statements and expressed significant disinterest or even hostility towards respondents in their courts. In at least one instance, an Immigration Judge actively refused to listen to an attorney’s legal arguments. In another instance, an Immigration Judge failed to apply the correct standard of law in an asylum case.
- Immigration Judges routinely canceled hearings at the last minute, with little notice to respondents and attorneys, creating a culture that denies respondents’ access to court.
- In the overwhelming majority of cases witnessed, Immigration Judges denied bond to immigrant detainees, or set bonds at a prohibitively high amount that indicate a lack of consideration to required factors.
- On occasion, Immigration Judges prohibited observers in their courtrooms, even though Immigration Courts are open to the public.⁴
- At least one Immigration Judge conflated immigration detention with criminal incarceration, regularly referring to detention centers as “jails” and at least once referring to detainees as “prisoners.” Although immigration proceedings are civil, not criminal in nature, detainees appearing in the Atlanta Immigration Court are required to wear colored jumpsuits, handcuffs, leg shackles, and chains around their waists during their hearings, creating a high potential for bias.
- Court interpreters regularly failed to interpret all English language conversations during hearings for respondents, and often only interpreted the proceedings when an attorney or judge directly addressed a respondent.
- In some instances, the Atlanta Immigration Court did not have available interpreters who could speak the respondents’ language. In one observed instance where an

² Daun Lee, *Are Asylum Seekers More Likely to Be Deported in Atlanta’s Immigration Courts?*, USAAttorneys.com (Jun. 22, 2016) available at <http://immigration.usattorneys.com/asylum-seekers-deported-atlantas-immigration-courts/>.

³ U.S. Department of Justice, Executive Office for Immigration Review, FY 2015 STATISTICS YEARBOOK, tbl.12, FY Asylum Grant Rate by Immigration Court (2016), available at <https://www.justice.gov/eoir/page/file/fysb15/download>. The Immigration Courts that have the lowest approval rate at zero percent heard between zero and five cases during FY 2015, compared to 244 in Atlanta. *Id.*

⁴ Executive Office for Immigration Review, *Observing Immigration Hearings*, available at <https://www.justice.gov/eoir/observing-immigration-court-hearings> (noting that immigration hearings are generally open to the public).

interpreter was not available, an Immigration Judge continued to conduct a bond hearing without interpretation for the respondent.

I. Background

A. Standards for Conduct in Immigration Courts

Immigration Judges (IJ) 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 “act impartially” and 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

It is well established that immigrants in removal proceedings are entitled to due process. This right to due process includes “a hearing before a fair and impartial arbiter” without judicial conduct indicating “pervasive bias and prejudice.”⁷ 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.”⁸

In addition, EOIR must 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.”⁹ 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.”¹⁰

B. Methodology

Emory Law Students observed sessions of the Atlanta Immigration Court from August 31 to October 14, 2016. Over the course of seven weeks, six Emory Law students observed court sessions of the five current IJs: Michael P. Baird; William A. Cassidy; Wayne K. Houser, Jr.; Jonathan D. Pelletier; and Earle B. Wilson.

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.

⁷ *Matter of Exame*, 18 I. & N. 303, 306 (BIA 1982).

⁸ ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES at 3.

⁹ Exec. Order No. 13166; 65 Fed. Reg. 50121, 50121 (Aug. 11, 2000).

¹⁰ OCIJ Interpreter Advisory Committee, Office of the Chief Immigration Judge Interpreter’s Handbook at 12.

The observers planned to sit in on the exact type and number of sessions held by each IJ in the Court during a typical week. This covered 45 sessions in total, and broke down into 27 merits hearings, 13 master calendar hearings, two custody hearings, and three master/custody hearings. Students took extensive notes during their sessions, completed a short survey form, and answered a much longer survey form for up to 10 respondents, if there were that many in a hearing. They were required, however, to include information regarding hearings with anything of note, even if the total sessions recorded in master calendar sessions exceeded 10 respondents. The statistics offered below are based on the input into the longer survey forms and therefore should be used to give the reader an indication, rather than an exact empirical finding.

1. Difficulties Completing Targeted Observation Sessions

Student observers faced some difficulty completing the full number of sessions during the observation period because IJs unexpectedly cancelled sessions or prohibited observers from attending them. First, several IJs routinely failed to hold calendared hearings or cancelled them, sometimes without notification to the Court Clerk. Over the course of seven weeks, observers were unable to attend 14 of the 45 sessions listed on the Court calendar provided to the local bar. Observers later learned, although without formal confirmation, that each IJ held hearings every other week on Mondays and Fridays, and not every week, as was listed publicly on the published calendar. Even if we assume that the Monday and Friday practice is accurate, the IJs cancelled another six sessions over the course of seven weeks, often with little notice to respondents or attorneys who had been scheduled for a hearing. Despite these difficulties, students attended a wide variety of hearings, including master calendars, bond hearings, and merits hearings for all of the IJs.

IJs sometimes prohibited students from sitting in on merits hearings. Students were often able to observe in individual merits hearings with the respondent's permission. The exception to this was IJ Baird's merits hearings. Students were closed out of all of IJ Baird's merits hearings, except for one that did not involve the submission of evidence.¹¹ Students waited in the courtroom to obtain permission from the respondents and informed IJ Baird of this, but IJ Baird requested that the students leave the courtroom before they had the opportunity to ask for consent. Because of these difficulties, the analysis in this report is incomplete with respect to IJ Baird's hearings. Students also were unable to attend two of six of IJ Cassidy's merits hearings because of his last-minute cancellations at the end of the observation period. Because of the apparent routine cancellation of hearings by IJs on Mondays and Fridays, however, attending four of the six sessions likely completed a week of hearings in IJ Cassidy's courtroom.

2. Judges' Awareness of Observations

Before the beginning of the observation period, Emory Law Professor Hallie Ludsin provided the Atlanta Immigration Court with an official letter stating that students would be observing their sessions for class credit. The IJs consistently asked observers why they were present in the courtrooms, to which observers explained that they were there for educational purposes.

¹¹ J.C., Oct. 6, 2016, Michael P. Baird. Please note that initials for all respondents have been changed; additional information may be available upon request.

IJ Cassidy asked each of the four students who observed his sessions to come forward and talk to him after his sessions were over, and invited one of the four into his chambers. During one conversation, IJ Cassidy expressed concern with how the observers would use the information and whether their observations would portray him in a negative fashion. He then sought to explain his decisions. In another conversation, IJ Cassidy described why he sometimes did not permit observers in his court, although Immigration Court proceedings are open to the public.¹² IJ Cassidy expressed dismay about “reporters who write all sorts of things about me.” He continued: “I just follow the law. When you have an uninvited guest in your home, what do you do? You have to tell them to leave.”¹³ IJ Cassidy then provided explanations for comments made during the proceedings.¹⁴ He promised the observer, “let me know if you want to clerk for us. Petition for it and I will put in a good word for you.”¹⁵

One observer noted in a later proceeding that IJ Cassidy glanced at him when he spoke harshly to a witness before apologizing and stating, “I did not intend to be abrupt.”¹⁶ In their conversation after the hearing, the observer reported that IJ Cassidy asked whether the observer thought he was “mean or harsh” in his ruling. He sought to explain to another observer why he ruled the way he did and then asked how the observers would use the information they have gathered.¹⁷

Based on these conversations, it is likely that the observers’ findings are skewed. We believe that at some IJs may have modified their conduct while under observation. The information gleaned during observation, however, is likely skewed towards presenting the IJs and the Court in a more favorable light.

II. Observations of the Atlanta Immigration Court

During our observation of the Atlanta Immigration Court, we encountered several areas of concern, which are detailed below.

A. Examples of Prejudice, Lack of Courtesy and Professionalism, or Disinterest in Immigration Hearings

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.”¹⁸ Our observers noted specific examples of concern where IJs made statements that indicated potential prejudice

¹² Executive Office for Immigration Review, *Observing Immigration Hearings*, available at <https://www.justice.gov/eoir/observing-immigration-court-hearings> (noting that immigration hearings are generally open to the public).

¹³ IJ Cassidy explain to a different observer that the IJs close some hearings for the protection of the respondents who may not realize they need it. S.K.N.R., Oct., 5, 2016, William A. Cassidy.

¹⁴ M.D.S., Sept. 21, 2016, William A. Cassidy.

¹⁵ Notes from Sept. 21, 2016, on file with authors.

¹⁶ B.W.D., Oct. 6, 2016, William A. Cassidy.

¹⁷ J.C.M.C., Oct. 5, 2016, William A. Cassidy.

¹⁸ ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES at 3.

against immigrant respondents, or lacked the necessary patience, dignity, and courtesy required of IJs in immigration proceedings.

1. Expressions of Prejudice

In one hearing, an attorney for a detained respondent argued that his client was neither a threat to society nor a flight risk.¹⁹ In this hearing, IJ Cassidy rejected the respondent's request for bond, stating broadly that "an open border is a danger to the community." He then analogized an immigrant to "a person coming to your home in a Halloween mask, waving a knife dripping with blood" and asked the attorney if he would let that person in. The attorney disagreed with IJ Cassidy, who then responded that the "individuals before [him] were economic migrants and that they do not pay taxes." The attorney again disagreed with both claims. IJ Cassidy concluded the hearing by stating that the credible fear standard is not a proper test for review of asylum seekers, wholly disregarding the established legal standard for such cases.²⁰ In a private conversation after this case, IJ Cassidy told the observer that the cases that come before him involve individuals "trying to scam the system" and that none of them want to be citizens. He also remarked that he thought the U.S. should be more like Putin's Russia, where "if you come to America, you must speak English."²¹ In another hearing, IJ Wilson told a respondent that "this case is like every case . . . came in from Mexico for medical treatment then try to claim asylum."²²

2. Lack of Courtesy and Professionalism

Several observers also noted that IJs lacked courtesy and professionalism towards respondents, often appearing intimidating or hostile toward respondents. An intimidating demeanor makes it difficult for witnesses and respondents to adequately and accurately express themselves, as was the case for a witness.

In one case before IJ Pelletier, a respondent had filed for a deferral of removal because he and his family were being threatened by a Mexican drug gang that he had testified against – a gang for which he had previously worked.²³ The respondent stated that he was afraid to return to Mexico where he would likely be tortured because of the gang's connection to the Mexican government. IJ Pelletier repeatedly berated the respondent for past criminal drug convictions, and described him as not credible and as "not a sympathetic person." He articulated that he allowed for the deferral only because his hands were tied by the Convention Against Torture.²⁴

Two of the observers remarked that they found IJ Cassidy's demeanor intimidating and unfriendly.²⁵ In fact, one observer chose to avoid taking notes during a hearing out of fear of IJ

¹⁹ N.D.T., Oct. 7, 2016, William A. Cassidy.

²⁰ *Id.*

²¹ *Id.*

²² P.L.L., Oct. 6, 2016, Earle B. Wilson.

²³ S.B.J., Sept. 9, 2016, Jonathan D. Pelletier.

²⁴ *Id.*

²⁵ S.K.N.R., Oct. 5, 2016, William A. Cassidy.

Cassidy's scrutiny. The observer was not alone. In one case, IJ Cassidy had to tell the witness to relax – that “she is not in a time out.”²⁶

3. Expressions of Disinterest in Proceedings

Observers also noted that some IJs often expressed disinterest in proceedings during court. Disinterest in proceedings not only indicates a lack of professionalism and courtesy required of IJs, but also raises concern with an IJ's ability to be neutral factfinders in proceedings. Nearly all observers who attended a hearing in IJ Wilson's courtroom reported that he typically leaned back in his chair, placed his head in his hands, and closed his eyes during hearings. When he spoke to respondents, it was often with his back mostly turned toward them. IJ Wilson only became alert when he scolded an attorney or a respondent. One observer reported that in one case, IJ Wilson maintained this posture for 23 minutes straight as he listened to a respondent describe the murder of her parents and siblings during an asylum hearing, appearing wholly disinterested in her story.²⁷

This pattern also emerged in a case of a respondent who claimed to be a U.S. citizen. The respondent asked IJ Wilson what documents she needed to prove her citizenship, among other questions. He repeatedly responded by telling her that this issue was not his problem and that she needed to figure it out if she wished to avoid deportation. IJ Wilson advised her that at a certain point she had to take responsibility for herself and that he was not there to help her figure out what she needed to meet the government's requirements.²⁸

B. Disregard of Legal Arguments

As noted above, 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.²⁹

Observers noted incidents where IJs actively disregarded legal arguments presented in hearings. Several observers reported that IJ Pelletier talked over or refused to listen to attorneys. In one instant where a respondent's attorney and the ICE attorney discussed a point of law, IJ Pelletier told them “I won't listen.”³⁰ In one bond hearing, IJ Cassidy concluded the hearing by stating that the credible fear standard was not a proper test for review of asylum seekers, wholly disregarding the established legal standard for such cases.³¹

C. Frequent Cancellation of Hearings

Observers noted that the Atlanta Immigration Court frequently cancelled immigration sessions, often without adequate notice to respondents, attorneys, or detention facilities. Such cancellation causes great disruption and inconvenience for parties, many of whom may have travelled great distances to attend a cancelled proceeding, raises the cost of representation for respondents and advocates, and undermines confidence in the court's administration. For

²⁶ P.L.L., Oct. 6, 2015, William A. Cassidy.

²⁷ K.D.C., Sept. 19, 2016, Earle B. Wilson.

²⁸ O.D.S., O.D.A., Oct. 6, 2016, Earle B. Wilson.

²⁹ DEP'T OF JUSTICE, ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES at 2.

³⁰ K.V.C., Sept. 21, 2016, J.D. Pelletier.

³¹ N.D.T., Oct. 7, 2016, William A. Cassidy.

example, several IJs routinely failed to hold calendared hearings or cancelled them, sometimes without notification to the Court Clerk. Over the course of seven weeks, observers were unable to attend 14 of the 45 sessions listed on the Court calendar provided to the local bar. We later learned from court administrators that each IJ hold hearings every other week on Mondays and Fridays, and not every week, as was listed publicly on the published calendar.

IJ Cassidy cancelled several sessions in the final weeks of the observation period. According to the Clerk of Court, IJ Cassidy had informed IJ Pelletier, not the Clerk, of the cancellation.³² Such absences lead to delays in proceedings, which often affected respondents waiting for their hearings – some of whom had paid attorneys to attend the hearings. It also wasted the time of the ICE attorney and the interpreter, both of whom were present. During one of these absences, the staff at Irwin Detention Center, from which detainees appear remotely before the court, called in five times ready to proceed with hearings.³³

D. Denial/Lack of Individualized Consideration for Bond

Under the Immigration and Nationality Act, a detained respondent in removal proceedings may be released on payment of a bond of at least \$1,500 or by enrolling in a conditional parole program.³⁴ The Atlanta Immigration Court, on average, sets bonds at a rate much higher than immigration courts nationwide. The national average for immigration bonds set in FY 2015 was approximately \$8,200; the average bond for immigrant detainees located at Irwin County Detention Center, whose bonds are set by the Atlanta Immigration Court, was on average 41% higher, at \$11,637.³⁵ In light of other examples of prejudice and lack of professionalism in this court, it is quite possible that this anomaly may be based on biased adjudication by Atlanta IJs.

To the extent that the Atlanta IJs routinely deny or set bond prohibitively high, it is unlikely that respondents receive a fair, individualized bond hearing. IJ Pelletier and IJ Cassidy rejected bond applications in every case observed. Additionally, the observations suggest that there is some arbitrariness in the setting of bond. IJ Baird set the bond for a respondent at \$20,000, the same as previous immigrants from China because, as he stated, “we seem to be on a roll with \$20,000.”³⁶ At least one ICE attorney evidenced a resolute unwillingness to concede to lowering bonds in particular cases based on their individual circumstances. The ICE attorney appeared upset because the IJ granted a low bond to the respondent fearing that the other respondent attorneys would request similarly lower amounts.³⁷

³² Interview with Clerk at Atlanta Immigration Court, Oct. 12, 2016.

³³ S.N.E., Oct. 12, 2016, William A. Cassidy.

³⁴ INA § 236(a), 8 U.S.C. § 1226(a).

³⁵ Southern Poverty Law Center, *Immigrant Detainees in Georgia More Likely to Be Deported Than Detainees Elsewhere; Georgia Detainees Less Likely to Be Released on Bond* (2016), available at <https://www.splcenter.org/news/2016/08/23/immigrant-detainees-georgia-more-likely-be-deported-detainees-elsewhere>.

³⁶ L.K.W., Sept. 7, 2016, Michael P. Baird.

³⁷ V.L. Oct. 11, 2016, Earle B. Wilson.

E. Referral to Immigrant Detainees as “Prisoners”

One problem observers identified during the master calendar and bond hearings was IJ Baird’s habit of referring to detention centers as “jail;”³⁸ in one hearing alone, he referred to the detention center as a jail five different times.³⁹ During an initial training session for student observers, observers also heard IJ Baird refer to detainees as “prisoners.” This conflation of immigrant detainees and detention centers with criminal inmates and prisons suggest that IJ Baird broadly perceives detained immigrants as criminals. This perception is likely aided by the fact that detainees appear in hearings wearing prison-like jumpsuits and are restrained in hand-cuffs, waist chains and leg restraints.

Observers recorded that immigrant detainees in the Atlanta Immigration Court appeared before the IJs in jumpsuits and shackles.⁴⁰ The overall effect of prison-like jumpsuits, handcuffs, waist chains and leg restraints is highly detrimental to detainees. First and foremost, it sends a message to the IJs that the immigrant detainees are dangerous. Second, these jumpsuits and restraints cause “physical pain and discomfort, embarrassment and humiliation, [and] mental and emotional distress.”⁴¹ The harm may be particularly acute for asylum seekers who suffered government abuse at home.⁴²

Nearly all detention facilities require detainees to wear jumpsuits.⁴³ Immigrants in the Atlanta City Detention Center appear in orange jumpsuits while those from the Irwin County Detention Center appear via videoconference in blue jumpsuits. In most detention centers, the jumpsuits are color coded to indicate the level of security risk to “permit[] staff to identify a detainee’s classification on sight thus eliminating confusion, preventing miscommunication with potentially serious consequences, and facilitating consistent treatment of detainees.”⁴⁴ Under the ICE detention standards, orange jumpsuits indicate a medium security risk.⁴⁵ Even absent color coding, wearing a jumpsuit is seen as so prejudicial in criminal proceedings that it is prohibited. In *Estelle v. Williams*, the U.S. Supreme Court determined that in criminal prosecutions, jumpsuits serve as an “implicit” and “constant reminder of the accused’s condition” – one that “may affect a juror’s judgment.” The Court concluded that the message of danger the jumpsuits sent posed “an unacceptable risk . . . of impermissible factors coming into play” in the jury’s decision.⁴⁶

³⁸ T.W., Sept. 7, 2016, M.P. Baird; F.L., Sept. 14, 2016, M.P. Baird; P.G., Sept. 14, 2016, M.P. Baird.

³⁹ S.G., Sept. 14, 2016, M.P. Baird

⁴⁰ In one master calendar hearing, several detainees brought from the Atlanta City Detention dressed in their own clothes and not jumpsuits. They were, however, all handcuffed and wearing waist chains. J.X.P., R.H., and S.K.V., M.P. Baird, September 14, 2016.

⁴¹ See, e.g. *Uelian De-Abadia-Peixoto et al v. U.S. Dept. Homeland Security*, Complaint for Injunctive and Declaratory Relief, No. 4:11-cv-4001(N.D. Ca. Aug. 15, 2011), available at https://www.aclunc.org/sites/default/files/asset_upload_file233_10376.pdf.

⁴² *Id.* at para. 39.

⁴³ Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – a Two-Year Review* 37 (2011).

⁴⁴ ICE/DRO Detention Standard Classification System 3 (2008), available at https://www.ice.gov/doclib/dro/detention-standards/pdf/classification_system.pdf.

⁴⁵ *Id.*

⁴⁶ *Estelle v. Williams*, 425 U.S. 501, 505 (1976).

The very appearance of physical restraints also provides a high risk of bias. Using shackles and restraints on an immigrant detainee appearing in court is arbitrary and dehumanizing. In fact, one Second Circuit Judge has described his image of a shackled defendant as “a dancing bear on a lead, wearing belly chains and manacles.”⁴⁷

Restraints also physically hinder detainees, making it difficult for them to function effectively during the proceedings. Students observed at least one detainee who could not sign her documents because she was handcuffed.⁴⁸ In another instance, a detained respondent using crutches struggled to come to the front of the room during his hearings while handcuffed and chained around the waist.⁴⁹

The U.S. Supreme Court treats restraints as a measure of “last resort” in criminal hearings because:

Not only is it possible that the sight of shackles and gags might have a significant effect on the jury's feelings about the defendant, but the use of this technique is itself something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold. Moreover, one of the defendant's primary advantages of being present at the trial, his ability to communicate with his counsel, is greatly reduced when the defendant is in a condition of total physical restraint.⁵⁰

The Supreme Court again rejected shackling, even at the punishment phase of a criminal trial, in *Deck v. Missouri*, because “[v]isible shackling undermines the presumption of innocence and the related fairness of the factfinding process” and “[i]t suggests to the jury that the justice system itself sees a ‘need to separate a defendant from the community at large.’”⁵¹

The U.S. District Court of Massachusetts applied the Supreme Court rulings to immigrant detainees, concluding:

It is just as dehumanizing — and, no doubt, demoralizing — to shackle a detainee in an immigration court as it would be to shackle him in a criminal court. To deny or minimize an individual's dignity in an immigration proceeding, or to treat this essential attribute of human worth as anything less than fundamental simply because an immigration proceeding is titulary civil, would be an affront to due process and entirely inconsistent with the values underlying *Deck*.⁵²

The logic should be no different in immigrant removal proceedings before the Atlanta Immigration Court.⁵³

⁴⁷ Fatma Marouf, *The Unconstitutional Use of Restraints in Removal Proceedings*, 67 BAYLOR L. REV. 214, 238 (2015).

⁴⁸ B., Oct. 11, 2016, E.B. Wilson.

⁴⁹ P.M.C., Sept. 21, 2016, W.A. Cassidy.

⁵⁰ *Illinois v. Allen*, 397 U.S. 337, 344 (1970).

⁵¹ *Deck v. Missouri*, 544 U.S. 622, 631 (2007).

⁵² *Reid v. Donelan*, 2 F. Supp. 3d 38, 45 (D. Mass. 2014).

⁵³ See, e.g. *Uelian de Abadia- Peixoto, et al. v. United States Department of Homeland Security, et al.*, No.: 3:11-cv-4001 (N.D. Cal. 2014).

F. Inadequate Interpretation for Respondents

Interpretation is essential for the more than 85 percent of respondents before the Immigration Courts who do not speak English.⁵⁴ 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.⁵⁵ 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.

Our observers noted several examples where interpretation failed for respondents in the Atlanta Immigration Court. In one case of a Portuguese-speaking respondent, the only interpreter that was present spoke only Spanish, and this interpreter left the hearing. IJ Baird then attempted to speak to the respondent in English, although it was clear that the respondent could not understand him.⁵⁶ IJ Baird nonetheless concluded the bond hearing without input from the respondent, whose attorney was absent from the hearing, but who had requested a low bond amount during a prior phone call. IJ Baird then set the respondent’s bond at \$25,000, the highest observed bond amount that day. Without the benefit of an interpreter, the respondent was deprived of the opportunity to argue for a reduced bond amount.

In another instance, a Chuj-speaking asylum seeker’s hearing was delayed for five months because there was no translator available.⁵⁷

Even when interpreters were available, there remained a significant and consistent issue: the interpretation provided to respondents was usually one-sided. Observers reported that while respondents’ statements were always translated to the court, conversations between the immigration judge and the respondent’s attorney or the immigration judge and other English-speaking witnesses in the courtroom were often not translated back to the respondent. Due process requires that respondents be given competent interpretation in proceedings. Full comprehension of witnesses or attorney statements may prove crucial in the outcome of a hearing, as respondents must consider all information when deciding how to respond to an IJ, the ICE attorney or evidence. However, observers reported that respondents were often informed of what occurred in the courtroom only after their hearings ended.⁵⁸

III. Recommendations

Based on our observations, we respectfully provide the following recommendations regarding the Atlanta Immigration Court:

⁵⁴ Laura Abel, *Language Access in Immigration Courts*, BRENNAN CTR. JUST. 1 (2011), http://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language_Access_in_Immigration_Courts.pdf.

⁵⁵ Office of the Chief Immigration Judge, *Immigration Court Practice Manual* 64 (2013); Abel, *Language Access* at 1.

⁵⁶ K.J., Sept. 19, 2016, M.P. Baird.

⁵⁷ A.L. Sept. 2, 2016, E.B. Wilson.

⁵⁸ See, e.g. P.C., Oct. 11, 2016, Earle B. Wilson.

- Investigate and monitor IJs at the Atlanta Immigration Court to ensure compliance with standards to protect due process and impartiality.
- Instruct all IJs in the Atlanta Immigration Court that the recording equipment must remain on whenever an IJ is present in the courtroom, including during bond proceedings, to ensure transparency and accountability for prejudicial statements made in hearings.
- Investigate the frequent and routine cancellation of Immigration Court hearings by Atlanta-based IJs; instruct IJs that proper and adequate notice be provided to respondents, ICE attorneys, detention facilities, and the local immigration bar when hearings are cancelled.
- EOIR should ensure high-quality interpretation in the Atlanta Immigration Court by ensuring that all interpreters provide complete interpretation of hearings for all respondents. EOIR should also 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.
- EOIR should ensure availability of sample translations or allow for non-profit organizations to provide information regarding administrative forms and availability of relief in languages other than English at the Atlanta Immigration Court.
- EOIR should ensure availability of a Legal Orientation Program (LOP) for detainees at Irwin County Detention Center and Atlanta City Detention Centers, and ensure that IJs provide information about any such programs.

We appreciate your prompt attention to these very serious matters. We appreciate the opportunity discuss these issues with EOIR. Please contact Lisa Graybill at lisa.graybill@splcenter.org, Eunice Cho at eunice.cho@splcenter.org, and Professor Hallie Ludsin at hludsin@emory.edu with any further questions.

Sincerely,



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