

Juan P. Osuna
Director
Executive Office for Immigration Review
U.S. Department of Justice
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

August 25, 2016

VIA USPS AND EMAIL

**Re: Reports raising due process concerns for detained *pro se* Respondents,
Stewart Immigration Court, Lumpkin, Georgia**

Dear Director Osuna:

We write to raise concerns regarding reported practices at the immigration court located at Stewart Detention Center (“Stewart” or “SDC”) in Lumpkin, Georgia. The Southern Poverty Law Center and Human Rights First are non-profit organizations that provide pro bono legal representation to and advocate on behalf of individuals appearing before the immigration courts. We are particularly concerned about the due process rights of immigrants appearing before certain immigration courts—including Stewart—where the rate of legal representation is extremely low.¹ During a recent stakeholder visit at Stewart on August 10, 2016, we spoke with over 126 detained individuals—the overwhelming majority of whom were representing themselves in immigration court proceedings *pro se*—about their experiences in immigration court. The reports provided by these respondents, as well as by local legal practitioners, indicate constitutionally problematic practices in the immigration adjudication process at the Stewart immigration court.

We believe that the reported practices of immigration judges at Stewart may violate the due process rights of detained respondents, particularly those appearing *pro se*. These practices indicate bias against asylum seekers, and suggest breaches of professional and ethical standards. *See* Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635.101; Executive Office for Immigration Review, Ethics and Professionalism Guide for Immigration Judges (2011). The first section of this letter offers further detail on these reported violations. In

¹ For example, only six percent of detainees at Stewart Detention Center were represented by counsel between 2007 and 2012. Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Penn. L. Rev. 1, 7, 38 (2015).

sum, there is evidence of bias against asylum seekers, and potential breaches of professional and ethical standards. The second part of this letter includes recommendations as to how these potential violations may be remedied and prevented in the future. We request that the Executive Office for Immigration Review (EOIR) immediately investigate these practices, and implement corrective measures to prevent further violations of due process.

I. Violations of Due Process

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.” *Matter of Exame*, 18 I. & N. 303, 306 (BIA 1982). As the Ethics and Professionalism Guide for Immigration Judges specifies, “[a]n Immigration Judge . . . should not, in the performance of official duties, by word or conduct, manifest improper bias or prejudice.” Executive Office for Immigration Review, Ethics and Professionalism Guide for Immigration Judges 3 (2011).

Under applicable statutory and regulatory provisions, a lawful removal proceeding is one in which “[t]he immigration judge shall receive and consider material and relevant evidence, rule upon objections, and otherwise regulate the course of the hearing,” 8 C.F.R. § 1240.1(c), and “the alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government.” 8 U.S.C. § 1229a(b)(4)(B).

Detained respondents, legal advocates, and observers report troubling practices by immigration judges at Stewart that prevent *pro se* detained respondents from effectively arguing their cases and suggest bias that may rise to the level of misconduct.² In addition, immigration judges have issued prohibitively high bonds. These reports include:

- **Individuals in detention report that immigration judges at Stewart Immigration Court demonstrate bias against *pro se* Central American asylum seekers.**

A number of detained individuals and local legal practitioners at Stewart reported that Immigration Judge Sandra Arrington, in off-the-record group presentations, has informed *pro se* respondents from Central American countries that they will not receive relief. Before the start of master calendar hearings, Judge Arrington reportedly has separated *pro se* respondents from those with counsel by asking one group to sit on one side of the courtroom and the other group to sit on the other side. Central American respondents reported that, as they heard through the interpreter, IJ Arrington then informed them that they would not receive asylum, withholding of removal, or Convention Against Torture relief. Such broad, negative statements to *pro se* respondents by their nature indicate preferential treatment of individuals who have representation. Such treatment contravenes the 2011 Ethics and Professionalism Guide for Immigration Judges, which specifies that “[a]n Immigration Judge . . . should not, in the performance of official duties, by word or conduct, manifest improper bias or prejudice,” and “shall

² Further detailed information is available upon request.

not give preferential treatment to any organization or individual when adjudicating the merits of a particular case.”

Additionally, several detained immigrants from Central American countries and local practitioners indicated that immigration judges at Stewart have made disparaging statements towards Central Americans respondents stating they have no valid claims to asylum relief, indicating bias against asylum seekers from those countries. To the extent these statements have been made off-the-record, the Operating Policies and Procedures Memorandum (OPPM) 03-06 indicates that “immigration judges should limit all off-record dialogue,” and must summarize any off-record discussion immediately upon returning to the record.

- **Respondents indicate that immigration judges at Stewart have failed to instruct detained *pro se* respondents who have passed credible fear interviews that they must complete an I-589 Application for Asylum and Withholding of Removal in order to proceed with their asylum claim.** At least one *pro se* respondent was not provided a Form I-589 or instructions on pursuing his asylum claim at his master calendar hearing. The Immigration Court Practice Manual indicates that immigration judges must “advise[] the respondent of any relief for which the respondent appears to be eligible.” EOIR, Immigration Court Practice Manual § 4.15(g). Respondents who have passed credible fear interviews are clearly entitled to be informed of their right to apply for asylum and the procedure for seeking such relief.
- **Individuals in detention report that immigration judges at Stewart have discouraged appeal and have failed to provide forms required for *pro se* detained respondents to appeal denials of relief before the Board of Immigration Appeals.** At least one *pro se* respondent who wished to file an appeal was not able to obtain the required written information before the expiration of the appeal period. Another detained *pro se* respondent reported that IJ Arrington discouraged him from appealing his case by explaining that he would be detained for an additional four months while the appeal was pending and that the appeal would only result in his case being remanded back to her. Federal statutes require that upon a decision to order an individual removed from the United States, “the judge shall inform the alien of the right to appeal that decision.” *See* 8 U.S.C. § 1229a(c)(5). While continued detention is certainly a possible consequence of a detained respondent’s decision to appeal, an IJ should not prejudge for a respondent what the Board of Immigration Appeals would do with his or her decision.
- **Respondents reported that they were not aware of the existence of the Legal Orientation Program (LOP) program at Stewart;** those who were aware of the program reported that no sign-up sheets for the program were available in their units. While we recognize that the placement of sign-up sheets is the responsibility of U.S. Immigration and Customs Enforcement (ICE), the EOIR OPPM 08-01, Guidelines for Facilitating Pro Bono Legal Services, indicates that “Judges and courts are encouraged to support legal orientations and group rights presentations, whether or not funded by the [Legal Orientation & Pro Bono Program].” EOIR OPPM 08-01 § III.D. In light of the low levels of representation at Stewart, participation in the LOP is particularly important

to ensure that basic information is imparted to respondents before they appear in immigration court.

- **Respondents report that immigration judges often set prohibitively high bonds.** Several detained individuals and numerous local advocates report that bond-eligible individuals have been given bond amounts that are beyond their means to pay, even when demonstrating extensive family and community ties in the United States and other equities.
- **Respondents and other advocates report that *pro se* respondents are not permitted to bring writing implements or paper with them to record or document information during their hearings.** Lack of writing implements and paper have prevented *pro se* respondents from being able to record important information related to their case and potential appeal. We do not know of this practice existing in any other immigration court in the country. While we are unsure of the origin of this prohibition, the EOIR has a responsibility to ensure that ICE and its contractors do not impose rules that violate respondents' right to equal treatment before the court.

II. Recommendations

In light of these reports, we recommend that EOIR immediately implement the following corrective measures at the Stewart immigration court:

- **EOIR should investigate and monitor immigration judges at the Stewart Immigration Court to ensure compliance with standards to protect due process and impartiality.** EOIR should immediately investigate IJ Arrington for potential misconduct based on biased statements against *pro se* respondents and Central American asylum seekers. EOIR should also instruct all immigration judges to provide a blank I-589 to all those appearing at a master calendar hearing following a positive credible fear interview, provide information required for appeal to the BIA, to inform all respondents of their right to appeal an order of removal, and to ensure that respondents whose claims are denied, in whole or in part, and who reserve appeal, are provided with the necessary forms to file their notices of appeal.
- **EOIR should require that recording equipment must remain on whenever an immigration judge is present in the courtroom, including before the start of proceedings.** In addition, we request that EOIR immediately instruct court administrators to release copies of recordings of hearings to respondents upon request, including to *pro se* individuals in detention.
- **EOIR should require that IJs provide information about the Legal Orientation Program (LOP) in operation at Stewart before the end of any proceeding.**

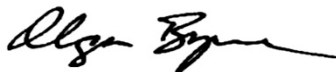
- **EOIR should require IJs and the Court Clerk to provide all respondents at Stewart with paper and writing implements during any hearing, or ensure that they are allowed to enter the courtroom with writing implements and documents they have themselves brought with them.**
- **EOIR should instruct immigration judges that they must consider ability to pay in cases where bond is required for release, and EOIR should implement a policy favoring conditional parole without payment of bond.** The U.S. Department of Justice has made clear, in the criminal justice context, that bond practices that result in incarcerating indigent individuals solely because of their inability to pay violates the Fourteenth Amendment.³ EOIR should instruct immigration judges to (1) impose bond only when release on conditional parole or other less restrictive measures, including reporting requirements, would not mitigate flight risk, and (2) consider ability to pay to avoid keeping individuals in detention based on their economic circumstances.

We appreciate your prompt attention to these very serious matters. We appreciate the opportunity to further engage with EOIR regarding these troubling practices and discuss further corrective measures. Please contact Eunice Cho at eunice.cho@splcenter.org, (404) 521-6700, and Olga Byrne at ByrneO@humanrightsfirst.org, with any questions.

Sincerely,



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³ See, e.g., Walker v. City of Calhoun, Georgia, No. 16-10521-HH (11th Cir., Aug. 18, 2016) (brief for the United States as *amicus curiae*).