



## Detail

**Complaint Number:** 766

**Immigration Judge:** (b)(6)

**Complaint Received Date:** 05/14/13

**Current ACIJ**  
McGoings, Michael C.

**Base City**  
(b) (6)

**Status**  
CLOSED

**Final Action**  
Complaint dismissed because it  
cannot be substantiated

**Final Action Date**  
06/11/13

**Past ACIJ's:**

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	Out-of-court conduct	OIG

**Complaint Narrative:** Interpreter alleges ACIJ's letter of counseling was harassment and reprisal for union activities.

Complaint History	
06/11/13	Complaint dismissed because it cannot be substantiated
06/11/13	EEO investigation pending
06/17/13	Database entry created

# Immigration Judge Complaint Intake Form

HQ Use Only:  
complaint #: \_\_\_\_\_  
source: first / subsequent

Date Received at OCIJ: 6.10.2013

complaint source information	
complaint source type	
<input type="checkbox"/> anonymous <input type="checkbox"/> BIA <input type="checkbox"/> ___ Circuit <input type="checkbox"/> EOIR <input type="checkbox"/> DHS <input type="checkbox"/> Main Justice <input type="checkbox"/> respondent's attorney <input type="checkbox"/> respondent <input type="checkbox"/> OIL <input type="checkbox"/> OPR <input checked="" type="checkbox"/> OIG <input type="checkbox"/> media <input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.) <input type="checkbox"/> other: _____	
complaint receipt method	
<input type="checkbox"/> letter <input type="checkbox"/> IJC memo (BIA) <input checked="" type="checkbox"/> email <input type="checkbox"/> phone (incl. voicemail) <input type="checkbox"/> in-person <input type="checkbox"/> fax <input type="checkbox"/> unknown <input type="checkbox"/> other: _____	
date of complaint source (i.e., date on letter, date of appellate body's decision)	complaint source contact information
5.14.2013	name: Mike Tompkins address: Sp. Agent in Charge Operations Branch 1 Investigations Division 1425 New York Ave Ste 7100 email: Washington, DC 20530 phone: _____ fax: _____
additional complaint source details (i.e., DHS component, media outlet, third party details, A-number)	

complaint details		
IJ name	base city	D ACIJ
(b) (6)		McGaughey
relevant A-number(s)	date of incident	
/		
allegations		
Interpreter alleges ACIJ's letter of counseling was harassment and reprisal for union activities.		
nature of complaint		
<input type="checkbox"/> in-court conduct <input checked="" type="checkbox"/> out-of-court conduct <input type="checkbox"/> due process <input type="checkbox"/> bias <input type="checkbox"/> legal <input type="checkbox"/> criminal <input type="checkbox"/> incapacity <input type="checkbox"/> other: _____		



**U.S. Department of Justice**

**Office of the Inspector General**

***Investigations Division***

---

*1425 New York Avenue NW, Suite 7100  
Washington, D.C. 20530*

May 14, 2013

**MEMORANDUM**

**TO:** Juan P. Osuna  
Director  
Executive Office for Immigration Review

**FROM:** Michael P. Tompkins  
Special Agent in Charge  
Operations Branch I  
Investigations Division

**SUBJECT:** (b) (6)

The attached complaint concerning (b) (6) was received by this office.

After reviewing this complaint, we have determined that an investigation by the Office of the Inspector General is not warranted. Therefore, this matter is being referred to you for whatever action you deem appropriate.

The Inspector General Act requires that the identity of complainants not be disclosed unless disclosure is unavoidable during the course of an investigation. Please keep this request in mind in connection with any action that you should take regarding this matter.

Please refer to OIG file No. (b) (6) in any correspondence relating to this matter.

Attachment



(M) - EDIR

ACKNO VTR

JK 2/1/13

(complainant in  
(DMS))

# Transmission Log

(b) (6)

Tuesday, 2012-10-09 05:47

(b) (6)

Date	Time	Type	Job #	Length	Speed	Fax Name/Number	Pages	Status
2012-10-09	05:42	SCAN	68	7:20	14400	(b) (6)	23	OK -- V.17 AO31

DEAR WHISTLEBLOWING AGENCY  
THIS WAS SENT 10-9-2012  
AND NOT A SINGLE RESPONSE  
FROM YOU. PLEASE REPLY ON  
THIS ABUSE OF POWER BY AN  
ACIT, INTIMIDATION AND  
VICARIOUS HARASSMENT OF  
A UNION (b) (6) CARRYING  
OUT NORMAL PROTECTED GROUND  
ACTIVITIES. Thank you

(b) (6)

(b) (6)

(b) (6)

Horowitz noted that members of Congress and leading private sector  
organizations have recognized the important role that an ombudsman can  
play in dealing with whistleblower issues. "The creation of an ombudsman  
position is being recognized as a best practice in the area, and I want the OIG  
to be at the forefront on these important matters," said Horowitz.  
For further information about the new OIG Whistleblower  
Ombudsman, please contact OIG Chief of Staff Jay Lerner, or Counselor to  
Arch at (202) 814-8495.

(b) (6)



**Pls. Ronald (EOIR)**


---

From: (b) (6) (EOIR)  
 Sent: Tuesday, September 25, 2012 4:55 PM  
 To: (b) (6) (EOIR)  
 Cc: (b) (6) (EOIR)  
 Subject: (b) (6)

Just finished case with (b) (6) where he provided outstanding simultaneous and consecutive interpreting in this emotionally sensitive VAWA Cancellation case.

Thanks (b) (6) for staying past your departure time so I can complete the case. Much appreciated.

Judge (b) (6)



Date	Time	Type	Job #	Length	Speed	Fax Name/Number	Pages	Status
2012-10-09	05:20	SCAN	67	1:45	14400	(b) (6)	9	OK -- V.17 1R30

(b) (6)

Tuesday, 2012-10-09 05:22

transmission Log

(b) (6)

(b) (6)

Whistleblowing action by (b) (6) Interpreter, The United States Department of Justice, The Executive Office for Immigration Review, since (b) (6) even though the official Entry on Duty date is (b) (6) due to prior federal service as a (b) (6) (b) (6) (b) (6) (b) (6) circa). The issues are:

- 1) Vicarious harassment by the Assistant Chief Immigration Judge (b) (6) Esquire, by (b) (6) writing a Letter of Counseling (contents sent to you for scrutiny) where there is a mixed reprisal attack against me because of my prior defense of union member (b) (6) in a proposed suspension that was later dropped due to the efforts of our attorney, (b) (6) Esquire, and union member and witness (b) (6) protected union activity among them;
- 2) Suggesting that an Interpreter change in work conditions where I advocated (contents shown) for higher pay due to the increased complexity of simultaneous interpreting techniques versus the former consecutive process would involve greater fatigue rates and that our EOIR Interpreters, not having the same two person Interpreter teams as Article III Courts enjoy, would have greater fatigue rates without any recourse or relief for said issues. I did make recommendations for training - which the Honorable Judge ignored and the same fatigue issue brought up by me was mentioned, please note, the email message sent by EOIR Language Service unit (b) (6) (sic) about the same subject.
- 3) The union meeting that occurred on Friday, 29 April 2012, the only time that AFGE National Executive Vice President Everett Kelley could make, was going to have low attendance and I invited AFGE colleagues from two different federal agencies to attend. Our Court Administrator, (b) (6) had given us permission to have the meeting for only our EOIR members, but, he did not protest the extra members attending only Judge (b) (6) did, as (b) (6) vicariously harassed me by jumping three levels of the Chain of Command, i.e., our Court Administrator, (b) (6) (b) (6) our Deputy Court Administrator, (b) (6) and my direct supervisor, (b) (6) Supervisory Interpreter.
- 4) The last attack deals with my professional acumen with charges of incompetence refuted by Dr. (b) (6) University's Interpreter and Translator's School and a lecturer approved by EOIR at the 1999 Interpreters' Conference where we both did a workshop for our colleagues and where (b) (6) was later hired by the EOIR Judges to give a seminar to these same Immigration Judges about how to best use Interpreters. (b) (6) supported my use of terms and expressions that were critiqued by Judge (b) (6) who does not hold any credentials in interpreting and I do.

The remedy I propose is to have my attorney's fees reimbursed and that this Letter of Counseling by retracted totally with an apology and in the future that we talk about these matters as our 2012 Management - AFGE Local (b) (6) Collective Bargaining Contract expounds. Here is a summary of other issues that confound our court as a Hostile Work Environment as evidenced by the following issues and the personal attack made upon me by Judge (b) (6) where I am supposed to be such an incompetent where is the proof and how come in the past (b) (6) years of government service, (b) (6) of which

1A

even Upper Management has signed off on Outstanding ratings, there is a bundling up of negativity without any proof but only generalized, negative statements?

(b) (6) began (b) (6) career as an Immigration Judge (henceforth to be known as an IJ) in the (b) (6) from private practice. From the time I served as an interpreter for (b) (6) would always come in late for court, as did (b) (6) mentor, The Honorable Immigration Judge, (b) (6), and Esquire. The excuse given is to allow the Trial Attorney who represents DHS (The Department of Homeland Security) and the private bar to converse and limit the issues in the case to the salient points. In truth, it is always doing another task, personal or professional that causes the delays. Presently the ACIJ (b) (6) has thirty cases to handle from now to the end of this year, 18 of those from a recent August, 2012, Master Calendar (Calendar Call or preliminary hearing) where (b) (6) favorite (b) (6) Supervisory Interpreter and my own supervisor, (b) (6), were present.

Judge (b) (6) Esquire, presently has the distinction of the most cases of any IJ at (b) (6) Immigration Court. Over 1200 cases with 43 off calendar cases that, according to the Court regs, must be reported to the Court Administrator, (b) (6) (hence CA) by the Legal Assistant (LA) (b) (6). We do not know if (b) (6) has made this report which is a requirement. There are 23 motions, if not more by now, that have not been finished in the time period allowed by the regs.

Judge (b) (6) became the Assistant Chief Immigration Judge in (b) (6) after spending lot of time recruiting Legal Assistants (LA's) such as (b) (6) (today (b) (6) Administrative Assistant - AA) and (b) (6) then (b) (6) now (b) (6) by a new marriage and the Time and Attendance Timekeeper for the court - mind you, an (b) (6) former Interpreter and private practitioner was a certified Timekeeper that they ignored to give the job to (b) (6) who had been IJ (b) (6) prior LA.

The current ACIJ began in (b) (6) Initially (b) (6) said to me, that (b) (6) had been a union member and was sympathetic to our working to improve the staff's lot. In December, 2008, this approach changed during an incident involving (b) (6) alleged (although evident) love interest, the late IJ (b) (6) (b) (6) IJ (b) (6) LA was in chambers with (b) (6) when ACIJ (b) (6) appeared entering abruptly per Annette's testimony. ACIJ (b) (6) was irritated over a personal issue and (b) (6) left the chambers office to have the door slammed shut behind making more noise than normally occurs with a politely shut door.

That afternoon, December 19, 2008, the ACIJ decided to move (b) (6) from covering (b) (6) to one of more volatile IJ's, (b) (6) with the excuse that the cases needed to have LA's as in more leveled out IJ's to cover which was false. Judge (b) (6) told the CA at that time, since retired due to harassment and a good background witness, (b) (6) and the current DCA (b) (6) that "This was on Judge (b) (6) - interpretation - Judge (b) (6) was interfering in the policy as it was the CA's hegemony to deal with staff while the Judge handles the Judges' supervision.

Our union spent over \$8,000.00 with a (b) (6) Esquire, after our former even more volatile union member, (b) (6) the union vice president at that time, accused me of racism if we did not take the action to an outside lawyer because she did not feel the AFGE Attorneys, (b) (6) in

2A



(b) (6) among other Regional union reps, to be competent besides her assertion that the regional did not care about our small union.

The moves were (b) (6) the LA from IJ (b) (6) where she had served more than a dozen years to IJ (b) (6) not a bad assignment, but, still insulting and hurtful as (b) (6) as well as (b) (6) cried all that afternoon. Then (b) (6) was assigned to IJ (b) (6) which is quite painful as IJ (b) (6) was considered the most difficult IJ to work with having gone through more than a dozen LA's in fifteen years. Then, (b) (6) to IJ (b) (6) a good assignment, and (b) (6) who had just lost her own IJ, the Honorable (b) (6) Esquire, to IJ (b) (6) former IJ.

At the same time, a new employee who had been with us less than three (3) years, (b) (6) who had come from private practice and everyone agreed was an excellent worker, was given Acting Supervisor status for the (b) (6) Floor, where IJ (b) (6) served. (b) (6) is not a true Management favorite, actually, (b) (6) has stayed out of office politics, and is regarded as a good co-worker similar to the prior ACIJ, (b) (6) (b) (6) who is a company (b) (6) in that there had been complaints about IJ (b) (6) mentor whom (b) (6) named profusely in (b) (6) introductory speech after the former ACIJ (b) (6) announced (b) (6) naming and the ACIJ gave nearly tearful thanks to in (b) (6) comments.

(b) (6) (the Deputy Court Administrator – DCA) circa spring, 2009, had (b) (6) admonish me for making ten (1) copies for union de minimus use for an approved meeting at noon. I filed an FLRA to complain about the matter and had a neutral reply advising the DCA to read our Collective Bargaining Agreement (the CBA) for further information as to how to treat this de minimus action. The remedy that was requested was an apology from the DCA which never happened.

We move on to October, 2011, when (b) (6) and I received the chilling (b) (6) message "It has come to my attention that either now or in the past you have been involved in outside employment..." That prompted a flurry of activity on both (b) (6) and my part documenting (without knowledge as to what Management had up their sleeves) concerning my volunteer work. I filed a FOIA where it was revealed that (b) (6) had been going through social network media to find a picture at a (b) (6) (b) (6) gathering where my picture appeared along with Attorney (b) (6) a known Guatemalan client practitioner, and two other community leaders. I was introduced as a Special Olympics volunteer, but, in spite of my telling the photographer for this event not to put my title in, but, only Special Olympics, the US DOJ EOIR Interpreter was added after my name.

The email from (b) (6) to the ACIJ and the CA ((b) (6) Court Administrator) had several entries where it had 'more on (b) (6) as if this were a smear campaign.

I wound up having a formal meeting with (b) (6) former Ethics Counsel, on the saucer loudspeaker phone present remotely from Falls Church, Virginia, the headquarters EOIR Office, the ACIJ, the CA, the DCA, and (b) (6) and, I believe, for what reason is beyond me, (b) (6), too.

The highlight moment came when (b) (6) says - "Well, (b) (6) we sent out an ethics bulletin circa 2008 that delineated that even volunteer service is considered outside employment and you have been noticed about that regulation." Right then, the CA, (b) (6), burst out with "I never got that

3f



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Assistant Chief Immigration Judge (b) (6)

(b) (6)

July 27, 2012

(b) (6)  
(b) (6) Immigration Court

(b) (6)

Re: Letter of Counseling

Dear (b) (6)

The purpose of this letter is to counsel you regarding your lack of focus and inappropriate conduct, which are affecting your ability to perform your work duties and have been causing me to lose confidence in you. Specifically, I have three areas of concern, which relate to your overall lack of focus: (1) your failure to follow my instructions as the ACIJ for this court directing you to stop sending your side-bar comments about interpreter pay in response to an email that management sent out seeking input and questions for a training session for all interpreters; (2) your failure to abide by your commitment to include only FOIR union employees in a meeting you held on June 29, 2012; and (3) your tendency to embellish testimony in court or otherwise misstate testimony, both of which are inconsistent with your duties as an interpreter.

Failure to Follow Instructions

On June 29, 2012, I sent an email to a large number of employees at the (b) (6) and (b) (6) courts, as well as at Headquarters, following up on an earlier request from the LSU for input into a training session for interpreters that was planned to take place in July 2012. Attachment 1. You were included on that email in your official capacity as an interpreter in the (b) (6) court. You responded to that email by replying to all recipients of my e-mail identifying what you believed to be the "key issues." *Id.* Rather than addressing the request posed in the initial email, you instead broadcasted your opinion that court interpreters needed to be paid more. *See id.* You closed the email with your signature, "(b) (6) AFGE Local (b) (6) soon to merge with AFGE (b) (6)." *Id.* That same day, I responded to you with a direction that you follow the instructions regarding the request posed in the initial email and highlighted that the request was not for comments on pay grades of interpreters. *Id.* Despite my instruction, you

AI

replied copying all the recipients of my e-mail again and continued to press your point, arguing that interpreters are underpaid. *Id.* Notably, the email distribution included supervisors and managers (not members of the collective bargaining unit), as well as staff interpreters.

While I respect your right to represent the union and its members, you attempted to do so in this instance in an inappropriate manner and over my instructions for you to stop. I do not dispute your right to raise issues of concern with members of the union or with management, as long as you do so in an appropriate manner. Your decision to "reply all" to a work-related email to raise unrelated issues caused confusion and unnecessarily interfered with efficient operation of the court. I directed you to remain on-topic, but you ignored my direction and pressed on with your agenda in another "reply all" email. I then had to call for a meeting with you and your supervisors to address this matter in person. As I told you during our July 2, 2012 meeting, when faced with a work-related request, it is crucial that you focus on the task at hand and respect that there is an appropriate manner and forum for union activity. Moreover, you should follow the instructions of your supervisors, of which I am one, as your failure to do so could result in disciplinary action.

#### Lack of Follow-through on Commitments

I also want to address my inability to trust that you will follow through on the commitments you make. Most recently, you reneged on your agreement to include only EOIR employees in a meeting you were hosting with the AFGE national representatives. Specifically, on April 10, 2012, you sent an email to Court Administrator (b) (6) asking to reserve a conference room in the (b) (6) Immigration Court on four separate dates for union meetings. Attachment 2. (b) (6) responded, asking whether this meeting was only for EOIR employees. *Id.* You confirmed: "There will be no outside employees visiting from any other federal agencies." *Id.* Based on this representation, (b) (6) approved your request to use the conference room. *Id.*

Despite your unequivocal commitment, you invited a union steward from the Department of Homeland Security and a union representative from the Social Security Administration to attend the meeting on June 29. *See* Attachment 3. When I asked you to clarify who attended the meeting and who had authorized non-EOIR employees to enter EOIR space, your response was scattered and off-point. *See id.* My best interpretation of your explanation is that you were not thinking clearly because you overheated when picking up pizza, and you were embarrassed by the low turn-out for your meeting, so you went through the building looking for additional people to attend the meeting. *See id.* No one authorized these non-EOIR employees to enter EOIR space, which you know is a violation of official agency policy at the (b) (6) Immigration Court.

I am troubled by your lack of judgment and frenzied response to a run-of-the-mill situation. You admittedly were not thinking clearly. *Id.* Nonetheless, you forgot the commitment you made to (b) (6) and you violated court security procedures. This series of events is yet another example of you losing focus, which undermines your own credibility and causes people to lose confidence in you.

A 2



### Difficulty with In-court Duties

In addition, I have received complaints regarding your behavior in court, as well as personally observed your disruptive behavior. Specifically, Immigration Judges have requested that you not interpret for them because you disrupt proceedings in a whole host of ways. Your faults include: embellishing testimony, exaggerating what is being said, misstating testimony, inappropriately adding to the Judge's or witnesses' testimony as well mocking others with false accents and tone. Most significant is that judges cannot rely on you to provide appropriate and accurate interpretation of the proceedings. For example, on April 11, 2012, you were interpreting in my courtroom, and I had to intervene three times because your interpretation of what the respondent's fiancé had said was completely incorrect, and you inappropriately put your own characterization on statements that I or the respondent had made. See A(b) (6). You can hear me on the record saying to you: "We need to go over that again." This is a diplomatic way of me telling you that your interpretation was incorrect. At another time, you hear me say: "It is lost in translation." In one instance, you translated my statement that I did not want the respondent to feel "overwhelmed" as "I do not want you to feel like a tsunami has hit you." *Id.* at 20:00-20:25. I never used the word "tsunami" and it should not have been used by you in your interpretation. Revising and characterising testimony cannot be tolerated.

As you are well aware, complaints about your interpretation or behavior in the courtroom have been on-going for quite some time, and we have periodically adjusted the interpreter's schedule to honor requests that you not interpret for certain judges or otherwise provide a "cooling off" periods for judges that have complained. This arrangement is not ideal for you or the judges and negatively impacts the efficient operation of the court.

You must take the time necessary to focus on your official duties as an interpreter and ensure that you are performing your duties to the standards expected of you. If you need assistance or training to ensure your performance is satisfactory, please let me know.

Please be advised that because this counseling does not constitute a formal disciplinary action, this letter will not be placed in your official personnel file.

Sincerely,

(b) (6)

Assistant Chief Immigration Judge

cc: (b) (6) Court Administrator  
(b) (6) Deputy Court Administrator  
(b) (6) LSU Supervisor  
(b) (6) LSU Supervisor

A<sub>3</sub>

# ATTACHMENT 1

From: (b) (6) (EOIR)  
Sent: Monday, July 02, 2012 11:11 AM  
To: (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR)  
Cc: (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR);  
(b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR);  
(b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR);  
(b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR);  
(b) (6) (EOIR)  
Subject: RE: Your Input for the Interpreter's Training in July-URGENT-URGENT  
Importance: High

(b) (6)

You are out of line and you need to stop.

If you have anything to discuss with the management team, please follow the established protocol and place it on an agenda to discuss. You will then be referred to the proper place in which you can address your concerns about pay grades.

This is not the proper forum or venue to discuss this.

Judge (b) (6)

From: (b) (6) (EOIR)  
Sent: Monday, July 02, 2012 8:15 AM  
To: (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR)  
Cc: (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR);  
(b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR);  
(b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR);  
(b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR); (b) (6) (EOIR);  
(b) (6) (EOIR)  
Subject: RE: Your Input for the Interpreter's Training in July-URGENT-URGENT

Dear Judge (b) (6):

Good day, Your Honor and all concerned:

As we recall 'full and complete' was not part of the consideration for the GS-012, (b) (6) (b) (6) Supervisory and Federally Certified Court Interpreter (I believe) of the (b) (6) Court could attest and correct that if my contention is in error, as that court had documentation to prove up a GS-013 rating backed up by their truly doing the 'full and complete'. Incidentally, State Department Interpreters start at a GS-013 subject to a maximum promotion to GS-014. Please see below:  
The application deadline for this position has passed, it is here for reference only.

**SALARY RANGE:** \$89,033.00 to \$136,771.00 / Per Year

④ S



**OPEN PERIOD:** Friday, June 08, 2012 to Friday, June 29, 2012

**SERIES & GRADE:** GS-1040-13/14

**POSITION:** Full-Time - Permanent

**INFORMATION:**

**PROMOTION POTENTIAL:** 14

**DUTY LOCATIONS:** 1 vacancy(s) - Washington DC Metro Area, DC, US

**WHO MAY BE** Open to all U.S. citizens

**CONSIDERED:**

"You are encouraged to read the entire announcement before you submit your application package. Your application may not get full consideration if you do not follow the instructions as outlined."

"More than one selection may be made from this announcement if additional identical vacancies in the same title, series, grade and unit occur."

**JOB SUMMARY:**

The men and women of the US Department of State with their skills, character and commitment to public service, are the backbone of America's diplomacy. Civil Service employees support the foreign policy mission from offices in Washington, DC and worldwide.

Join us in helping to shape a freer, more secure and prosperous world as we formulate, represent and implement US foreign policy. Choose from hundreds of career possibilities - there's something for everyone!

The Bureau of Administration provides support programs to the Department of State and U.S. embassies and consulates. This position is located in The Office of the Deputy Assistant Secretary for Operations, Office of Language Services (A/OPR/LS) Interpreting Division. The incumbent will handle the most difficult interpreting (Persian) assignments in the Federal Government, including services for the President, cabinet members, and congressional leaders.

**KEY REQUIREMENTS**

- Incumbent will be subject to random drug testing.
- One year probationary period, unless excepted by regulation.
- Relocation expenses will NOT be paid.
- Must be able to obtain and maintain a Top Secret security clearance.

(5) S

- U.S. Citizenship is required.
- This position requires the applicant to pass a Language Conference Test.

**DUTIES:**

Back to top

As an Interpreter, your duties will include:

For the record the promotion to GS-012 from a GS-011 was based on the clerical duties as well as our normal Interpreter duties as well as all of the 'additional duties as assigned' such as doing the Master Calendar clerical work, replaced by today's NTA preparation, closing out cases we are assigned to then and now, and an occasional stipulated removal matters.

The primary point I made related to the issue was as follows:

Federal Court Interpreters serve on a half hour basis with two person teams on and off for a half hour of simultaneous and consecutive work.

I pointed out the Friday AFGE meeting which we thank you for graciously approving, as AFGE National Vice President Everett Kelly was only available to meet with us at that time.

Thank you for your time, friends,

As to the training we need practice cases to handle the new full and complete technique. Those of us who hold Independent Government Agency and (b) (6) and Consortium Supreme Court Certifications and Qualifications can assist those who have Certificates and less professional acumen credentials.

The practice program that (b) (6) Interpreter Faculty has would be ideal.

Grateful for your time and interest in our professional enhancement,

(b) (6)  
AFGE Local (b) (6)

From: (b) (6) (EOIR)  
Sent: Friday, June 29, 2012 2:58 PM

(\*) KINLEY NOTE  
LANGUAGE SERVICES  
UNIT RAY PERRON'S  
OBSERVATIONS (\*)

65

SUGGESTIONS  
MAKE  
RESULTS  
9C1J

**Importance:** High

IMMEDIATELY?

(b) (6) wants questions from all interpreters.

AN EXCUSE FOR  
LACK OF PLANNING  
WHY NOT ADDRESS  
THIS IN JUNE.

(b) (6)

(b) (6)  
(b) (6)

(b) (6)

**Good Afternoon,**

95



I hope that this email finds everyone well.

As part of our preparations for the upcoming Staff Interpreter training in July, we would like to solicit your input regarding one of the sessions in particular – the panel discussion on Full and Complete Interpretation.

This session will be presented by a few of our (b) (6) Supervisory Staff Interpreters in whose courts full and complete interpretation has been done for several years. So that they may prepare for this presentation as thoroughly as possible, they have asked that you submit any questions you may have so they can ensure that they and the issues involved are adequately addressed.

Questions may relate to:

- Modes of interpretation employed with full and complete and when to utilize them
- Decalage
- Use of the SI equipment
- Working with IJ's
- Addressing fatigue
- Other

Please email your questions to me with a cc: to Ray Perron no later than COB Thursday, April 5.

Your input will help to ensure that this session is as informative and useful as possible, so we encourage you to submit any questions at all you may have. We will then try to group them by topic and forward them to the panel.

Thank you in advance!

Regards,

Karen

Cc: Ray Perron

⊗ HERE IS MR  
RAY PERRON'S  
OBSERVATION —  
IDENTICAL TO  
MINE, DOES HE  
GET CRITIQUED? ⊗

⊗ 105

# ATTACHMENT 2

From: (b) (6) (EOIR)  
Sent: Wednesday, April 11, 2012 11:47 AM  
To: (b) (6) (EOIR)  
Cc: (b) (6) (EOIR)  
Subject: FW: We request the use of the Conference Room (b) (6) Floor Noon-One PM for the following dates for the (b) (6) AFGE CAMPAIGN, SIR.

Approved.

(b) (6) please make sure the conference room is reserved these dates during the noon hour for AFGE (b) (6)

(b) (6)

Court Administrator

(b) (6) Immigration Court

From: (b) (6) (EOIR)  
Sent: Wednesday, April 11, 2012 10:27 AM  
To: (b) (6) (EOIR)  
Subject: We request the use of the Conference Room (b) (6) Floor Noon-One PM for the following dates for the (b) (6) AFGE CAMPAIGN, SIR.

Dear (b) (6)

Good day sir and correct, this is for two AFGE National Reps, Messrs. (b) (6) (b) (6) training our employees AFGE (b) (6). There will be no outside employees visiting from any other federal agencies.

The schedule has been designed to insure that we will maximize coverage opportunities for our members, sir.

Thank you,

(b) (6)

DID NOT KNOW NVP EVERETT

KELLEY  
WAS TO

ATTEND

(b) (6)

OUR CA, DID

NOT COMPLAIN ABOUT THE

(11) S

OTHER TWO FEDS  
FROM OUR BUILDING

From: (b) (6) (EOIR)  
Sent: Wednesday, April 11, 2012 9:52 AM  
To: (b) (6) (EOIR)  
Subject: RE: We request the use of the Conference Room (b) (6) Floor Noon-One PM for the following dates for the (b) (6) AFGE CAMPAIGN, SIR.

(b) (6) - This isn't for training attendees outside of the office right? Just our employees?

(b) (6)

Court Administrator

(b) (6) Immigration Court

From: (b) (6) (EOIR)  
Sent: Tuesday, April 10, 2012 2:55 PM  
To: (b) (6) (EOIR)  
Cc: (b) (6)  
Subject: we request the use of the Conference Room (b) (6) Floor Noon-One PM for the following dates for the (b) (6) AFGE CAMPAIGN, SIR.

Dear (b) (6) :

We request in the month of June, 2012, the following luncheon meeting times for our (b) (6) Floor Conference Room or any location you suggest if there is a scheduling conflict -

19 Tuesday

21 Thursday

22 Friday

29 June - Friday -

For those dates, sir, we shall have National AFGE Rep (b) (6) (b) (6) AFGE (b) (6) District Rep, visiting us for training on these dates. Many issues to be covered will include OPM matters and heading off grievances.

125



Thank you for considering our request, sir.

(b) (6)

---

13 S

# ATTACHMENT 3

From: (b) (6) (EOIR)  
Sent: Monday, July 09, 2012 4:44 PM  
To: (b) (6) (EOIR)  
Cc: (b) (6) (EOIR); (b) (6) (EOIR)  
Subject: RE: AFGE Visitors Conference Room Use

OK I wish to meet with you about the matter as the only time that what you heard happened was the last day that AFGE reps, including the National Vice President, Everett Kelley, came.

As we would say in Spanish (teníamos tres gatos) I went out of my way to buy three large pizzas for the crowd that never materialized. I was extremely embarrassed as we had as many union members from Local (b) (6) as there were National reps (3).

I asked a steward from both DHS, who had never had any clerical National Union reps visit them or even give them guidance. They are part of our very same District (b) (6) and one person, a rep from SSA, to attend the meeting.

I had a fainting spell before coming over from the (b) (6) Pizza (about 11:50 am) and had water placed on me by (b) (6) himself, of (b) (6) Pizza, roughly ten blocks from our offices, and, although late, got to (b) (6) to escort the AFGE National Reps in. I was not in any condition to think clearly, but, to repeat, my embarrassment level was very high as how can I represent such a small group of our members, notwithstanding it being a Friday.

This Friday 29 June 2012 meeting was the only one in which any outside folks appeared, two people (2) to be precise as it would benefit them to know more about what is going on for their benefit. We had the meeting and cleaned up after ourselves so as to not have any other issues other than what you had reported to you, about two (2) outside federal union member employees from agencies housed in our building attend a meeting.

I wish to meet with you to express what I have written to respectfully and quickly reply to you. If more of our people had been there, I would never have thought of asking one person each from different floors to attend. Otherwise, we would still be eating pizza! Not good for my rotund figure I assure you.

Please let me know your schedules tomorrow if we can visit for a moment. Bear in mind this was the first time we had had visitors from AFGE National District office since 2004!

(b) (6)

From: (b) (6) (EOIR)  
Sent: Monday, July 09, 2012 3:56 PM  
To: (b) (6) (EOIR)  
Cc: (b) (6) (EOIR); (b) (6) (EOIR)

THE CA HAD NO PROBLEM WITH THIS  
(14) S ONLY OUR  
ACIT (b) (6)

**Subject: AFGE Visitors Conference Room Use**  
**Importance: High**

Good Afternoon (b) (6)

I am in need of clarification on your request to use the conference room to meet with AFGE representatives in which they were going to do training for the members of our CBA at the Immigration Court on June 19, 21, 22 and 29. (b) (6)

The understanding was that this was going to be for the benefit of our employees and that "no outside employees visiting from any other federal agencies" would be present. Based upon your representations, management allowed you to use the conference room on the four different dates you requested. I realize that some of these dates were rescheduled by you but the approval to use the conference room stood as requested.

It has come to my attention that there were others in attendance at these meetings, in which you were present, who work for other agencies and, in fact, are not even employees of our agency or the (b) (6) Immigration Court.

Please advise, if the information that I have received is correct. If the information is correct, please advise what agencies were involved and who provided the authorization for employees of other agencies to enter EOIR space to conduct any business without the knowledge and consent of EOIR management.

**Judge** (b) (6)

↓  
THROUGH THE RUMOR  
SWITCH NETWORK. THE  
PERSONS(2) CAME THROUGH THE  
FRONT AND WERE ANNOUNCED  
EVEN THREE  
SUPERVISORS  
BY TO LEARN.  
NO ONE COMPLAINED  
ABOUT OR



The RD observed that the Union was certified in 1979 as the exclusive representative of a unit of Immigration Judges employed by the Immigration and Naturalization Service (INS). [n2] Four years later, in 1983, the Executive Office for Immigration Review (EOIR) was created through an internal reorganization in which the Immigration Judge function, previously performed by employees of the INS, was combined with the Board of Immigration Review. The primary function of the Board is to hear appeals of the Judges' decisions. [n3]

Immigration Judges are appointed by the U.S. Attorney General for the purpose of conducting formal, quasi-judicial proceedings involving the rights of aliens to enter or remain in the United States. It is undisputed that these duties have remained essentially unchanged since the early 1970s when the position was titled "Special Inquiry Officer" and located in the INS. Pursuant to a regulatory change in 1973, incumbents of this position were formally authorized to use the title "Immigration Judge." By 1979, when the unit was certified, all of the Judges were, and have continued to be, attorneys. [n4]

Organizationally, Immigration Judges serve in 52 courts located throughout the country. The Office of the Chief Immigration Judge, which is also located within the EOIR, is responsible for providing overall policy direction, as well as operational and administrative support, to the Immigration Courts. Two Deputy Chief Immigration Judges assist the Chief Judge in providing [ v56 p617 ] program direction and establishing priorities for the Immigration Judges. Supervisory responsibility for the Judges, however, is directly delegated to eight Assistant Chief Immigration Judges, who serve as the principal liaison between the Office of the Chief Judge and the Immigration Courts. Although the Assistant Chief Immigration Judges serve as first-line supervisors for the Immigration Judges, they do not evaluate the Immigration Judges or review their decisions. Rather, in their adjudicatory role, the Judges are independent.

11.C. The daily activities of the Immigration Courts are managed by the court administrators who, like the Judges, are supervised by an Assistant Chief Immigration Judge. It is the responsibility of the court administrators to hire, supervise, and evaluate the court's support staff, including language clerks, language specialists, legal technicians, and clerk/typists. Court administrators, however, "[do] not share the supervisory responsibility with [the] Immigration Judges, who have no supervisory responsibility or authority." RD's Decision at 4.

The operating policies and procedures of the Immigration Courts are set forth in numbered memoranda that are collectively known as "Operating Policies and Procedures Memoranda" (OPPMs). *Id.* at 5. OPPMs were first implemented after the Immigration Courts were transferred to the EOIR as a means of establishing improved management and uniform policies and procedures throughout the courts. OPPMs are directed to court administrators, Immigration Judges, and other court personnel. Forty-one OPPMs are currently in effect and cover a variety of subjects such as case processing, burden of proof, leave administration, wearing of the robe, and recording immigration hearings. It is the intent of the current Chief Immigration Judge to circulate draft OPPMs to field personnel for comment before issuance.

In addition to OPPMs, the Office of the Chief Immigration Judge has also established a system of advisory committees for the purpose of obtaining input from Immigration Judges and court administrators on subjects relevant to the operation of the Immigration Courts. This system was implemented in order to address the poor relationship that existed between the Immigration

26

Judges and court administrators. Committee members are appointed by the Chief Judge and "serve at his pleasure." *Id.* at 5. Although the stated purpose of the committees is to "work on various initiatives and projects for the benefit of the [courts,]" the RD found that "[t]hey appear to be used primarily to obtain input from [J]udges and court administrators" with regard to pertinent issues. *Id.* Other initiatives implemented by the Office of the Chief Immigration Judge include a formal training program wherein newly appointed Immigration Judges are trained at the National Judicial College; a court evaluation program wherein each court is evaluated through a system of peer review; and a liaison Judge program wherein each Immigration Court selects a Judge to serve a six month term as the point of contact between the Assistant Chief Immigration Judge, the court administrator, the local INS and private bar and other personnel. The RD found that "[t]he record includes no evidence of any policy or directive issued by an [a]dvisory [c]ommittee or as a result of its deliberations." *Id.* The RD similarly found no evidence that Judges who participate in the court evaluation program "serve any greater or different role than that of court administrators and support staff." *Id.* at 6.

The daily routine of an Immigration Judge involves hearing and deciding cases that arise from the operation of the INS. A court's jurisdiction to decide these cases is determined at the time a case is filed. After filing, the cases are randomly assigned by the court administrator to an individual Judge and placed on a Judge's calendar on his or her master calendar day. At that time, the Judge hears presentations from the parties and their attorneys, identifies the issues, and advises individuals as to their right to representation. The Judge also sets time frames and briefing schedules, as well as the date for trial.

During a trial, the parties are represented by counsel and the rules of evidence are observed. Thereafter, in arriving at their decisions, Immigration Judges are required to apply immigration statutes, applicable regulations, published decisions of the Board of Immigration Appeals and federal appellate courts, and other foreign and state laws. After the trial, the Judge issues his or her decision, almost always orally, and advises the parties of their appeal rights. Oral decisions are not transcribed unless they are appealed; are not published; and are final and binding only with respect to the parties to the case. With limited exception, decisions of the Immigration Judges may be appealed to the Board of Immigration Appeals and review of their decisions is *de novo*. Certain cases may also be appealed to the appropriate U.S. circuit court.

Each Immigration Judge is responsible for the manner in which proceedings in his or her courtroom are conducted. Some Immigration Courts have issued local rules which consist of operating procedures governing practice in their courtrooms. These rules are developed collegially by the Judges of the issuing courts, with an opportunity for input by the INS and the [v56 p618] local private bar. The rules must, however, be consistent with applicable Federal rules and Agency regulations and approved by the Office of the Chief Immigration Judge.

Immigration Judges typically spend 36 hours of a 40 hour workweek hearing cases and issuing decisions. Judges are permitted to spend four hours per week on administrative matters, at a scheduled time. On average, Immigration Judges complete 35 cases a week.

### III. RD's Decision

ADJ (b) (6)  
HAC 30-2-05-11-10-11  
30  
FILED  
JAN 11 2011  
U.S. DEPT. OF JUSTICE



The RD found that under section 7103(a)(11) of the Statute, a management official is defined as "an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency." *Id.* at 8. The RD additionally found that in *Department of the Navy, Automatic Data Processing Selection Office*, 7 FLRA 172, 177 (1981) (*Navy/ADP*), the Authority held that management officials are individuals who: (1) create, establish or prescribe general principles, plans or courses of action for an agency; (2) decide upon or settle upon general principles, plans or courses of action for an agency; or (3) bring about or obtain a result as to the adoption of general principles, plans or courses of action for an agency.

Applying the definition set forth in *Navy/ADP* to the facts of this case, the RD concluded that Immigration Judges are not management officials within the meaning of the Statute. In reaching this result, the RD first rejected the Agency's claim, based upon *U.S. Department of Justice, Board of Immigration Appeals*, 47 FLRA 505 (1993) (*BIA*), that Immigration Judges make policy through the issuance of their decisions. In this connection, the RD observed that the nature and effect of the Judges' decisions has not changed since the unit was certified in 1979. The RD further observed that the definition of a management official has also remained unchanged during this period of time. Next, the RD observed that in arriving at their decisions, Immigration Judges are required to apply immigration laws and regulations, that their decisions are not published and do not constitute precedent. Finally, the RD observed that the decisions are binding only on the parties to the case, are "routinely" appealed, and are subject to *de novo* review. RD's Decision at 9. Based on these factors, the RD found that the role of an Immigration Judge can be readily distinguished from that of a member of the Board of Immigration Appeals. According to the RD, unlike decisions of an Immigration Judge, decisions of the Board of Immigration Appeals constitute a final administrative ruling, are binding on the Judges below and, consequently, influence and determine immigration policy.

The RD also rejected the Agency's claims that the sheer volume of decisions issued by the Judges and the finality of their decisions, unless they are appealed, affect the Agency's policy. The RD found that "no matter the volume of decisions issued or number of appeals filed, the fact remains that when an Immigration Judge issues a decision[,] he or she is applying and following established Agency law and policy." *Id.*

As concerns the Agency's assertion that Immigration Judges make policy on both the local and national levels through their involvement in other Agency activities, the RD observed that the Agency principally relied on the development of local rules governing the practice in some courts. According to the RD, these rules govern such matters as filing procedures, motion practice, attorney withdrawal or substitution procedures, and other details of practice in a particular court. As such, the RD found that "they constitute rules for the conduct of parties in the courts, [and] not [A]gency policy." *Id.* at 10. In this connection, the RD observed that these rules are "necessarily established within the framework of the Code of Federal Regulations and . . . must be approved by the [Office of the Chief Immigration Judge]." *Id.* The RD further observed that not all courts have developed them, and in some courts such rules are merely discretionary. The RD accordingly determined, based on precedent such as *U.S. Department of Energy, Headquarters, Washington, D.C.*, 40 FLRA 264 (1991) (*DOE, Headquarters*), that the Agency had failed to establish that such activities involved the formulation, determination, or influencing of agency policy.

40

The RD also found that other activities cited by the Agency failed to establish that Immigration Judges are now management officials. These activities included, *inter alia*, participation of some Judges on advisory committees to the Office of the Chief Immigration Judge; the opportunity for Judges to review and comment on OPPMs; and participation in the court evaluation system. In the RD's view, while these activities "appear to be commendable efforts to utilize the professional expertise of the [Agency's] employees and to seek input from those on the front-lines, . . . [e]mployees who perform such ad hoc tasks and lend their expertise and assistance are not establishing agency policy[.]" RD's Decision at 11.

Finally, the RD found no merit in the Agency's contention that Immigration Judges are management officials by virtue of their judicial independence, professional stature and qualifications, the formal amenities of [ v56 p619 ] the courtroom and other similar factors. According to the RD, the record establishes that over the years, the professional status of the Immigration Judge has been recognized and increasingly supported by OPM, Congress, the Department of Justice, and by the Office of the Chief Immigration Judge itself. In particular, the RD noted that in a 1996 memoranda entitled "Clarification of Organizational Structure and Supervisory Responsibilities," the current Chief Judge stated:

This organizational structure and supervisory delegation was established so that the Immigration Judges are unencumbered by any supervisory and management obligations and are free to concentrate on hearings. The Immigration Judges [function] in an independent decision-making capacity determining the facts in each case, applying the law, and rendering a decision.

*Id.* at 11-12. Moreover, the RD further noted that when asked at the hearing whether these statements were true at the time they were written, and whether they continued to be true, the Chief Judge replied "yes" to both questions. Based on these circumstances the RD determined:

While the [J]udges have some authority to control practice in their own courtrooms, they have no authority to set overall policy as to how the courts as a whole will operate. Nor do they have the authority to direct or commit the [A]gency to any policy or course of action. They are highly trained professionals with the extremely important job of adjudicating cases.

*Id.* at 12. The RD, accordingly, concluded that Immigration Judges are not management officials and that the bargaining unit continues to be appropriate.

#### IV. Positions of the Parties

##### A. Application for Review

The Agency alleges that review of the RD's decision is warranted on several grounds. First, the Agency alleges that review is warranted under section 2422.31(c)(1) of the Authority's Regulations because the RD's decision raises an issue for which there is an absence of precedent. According to the Agency, that issue is whether Immigration Judges function as management officials under applicable law.

EC



The Agency next contends that review is warranted under section 2422.31(c)(3)(iii) of the Authority's Regulations because the RD "committed clear and prejudicial error concerning substantial factual matters." Application for Review at 2. The Agency argues in this regard that the RD committed a number of errors. First, the Agency claims that the RD erred in finding that the decisions of Immigration Judges are "routinely" appealed. *Id.* at 3. According to the Agency, the evidence shows that although appeal rates among the Immigration Judges may vary, "statistically, Immigration Judge decisions are only appealed approximately 10% of the time." *Id.* In the Agency's view, "[t]hat means that [their] decisions are final and binding 90% of the time." *Id.*

The Agency also contends that the RD committed a clear and prejudicial error in stating that the Board of Immigration Appeals reviews the decisions of the Immigration Judges and issues final administrative rulings, which constitute binding precedent on the Judges below. The Agency maintains that the Judges' decisions are not reviewed by the Board of Immigration Appeals "or anyone else" prior to issuance. *Id.* The Agency further maintains that like the decisions of the Immigration Judges, decisions of the Board of Immigration Appeals are subject to review at a higher administrative level and that "relatively few" of these decisions constitute precedent binding on the Judges. *Id.* at 4.

In addition, the Agency maintains that the RD committed a clear and prejudicial error because he "understated the degree of involvement that Immigration Judges have in formulating and influencing [its] operational policies[.]" *Id.* In support of this assertion, the Agency claims that the RD erroneously dismissed the Judges' role in serving on advisory committees and participating in the court evaluation program as that of front-line employees being consulted for their professional expertise. The Agency claims that the RD failed to recognize that the Judges' expertise with regard to these activities is "management expertise" and cites various portions of the record to support this position. *Id.* (emphasis in original).

As a final ground, the Agency asserts that review is warranted under 2422.31(c)(3)(i) of the Authority's Regulations because the RD failed to apply established law. The Agency advances two arguments with regard to this ground. First, the Agency maintains that the RD incorrectly applied the Authority's decision in *BIA*, 47 FLRA 505, to the facts of this case. Second, the Agency claims that the RD failed to address private sector precedent in assessing the issues in this case.

With respect to the RD's application of *BIA*, the Agency asserts that in assessing whether BIA members are management officials within the meaning of the Statute, the Authority "looked primarily to the effect [ v56 p620 ] that the decisions . . . had on immigration law." *Id.* at 8. The Agency further asserts that in doing so, the Authority considered several factors including: the finality of the issued decisions; the number of issued decisions; the discretion of the decision-makers; and the overall influence of the decisions on agency policy. The Agency submits that had the RD "properly" applied each of these factors, he would have concluded that the overall effect of the Immigration Judges' decisions on immigration policy is comparable to that of the decisions of the Board of Immigration Appeals.

The Agency also asserts that the RD incorrectly applied the Authority's decisions in *DOE, Headquarters*, 40 FLRA 264 and *Department of the Interior, U.S. Fish and Wildlife Service*,

66

For the reasons that follow, we conclude that the Agency has not established that compelling reasons exist for granting its application for review under section 2422.31(c) of the Authority's Regulations.

**A. The RD Did Not Commit a Clear and Prejudicial Error Concerning Substantial Factual Matters Relating to the Immigration Judges' Decisions and Involvement in Other Agency Activities**

The Agency alleges that review of the RD's decision is warranted under section 2422.31(c)(3)(iii) of the Authority's Regulations because the RD committed various factual errors relating to the Immigration Judges' decisions, as well as their involvement in other Agency activities. According to the Agency, as a result of these errors, the RD "substantially understated" the effect of the Judges' decisions on the policy set forth in its immigration cases. Application for Review at 3. The Agency submits that the RD's errors include his findings that the decisions of Immigration Judges are "routinely" appealed and that the Board of Immigration Appeals reviews the Judges' decisions and issues final administrative rulings. *Id.*

The Agency also asserts that the RD erroneously "understated the degree of involvement that Immigration Judges have in formulating and influencing [its] operational policies[.]" *Id.* at 4. In this connection, the [ v56 p621 ] Agency asserts that the RD incorrectly dismissed the Judges' role in serving on advisory committees and in participating in the court evaluation program as that of front-line employees being consulted for their professional expertise. We find that these allegations are unavailing.

The Agency argued before the RD that changes have occurred since the bargaining unit was certified in 1979 and, as a result, that these employees now function as management officials. According to the Agency, these new duties and responsibilities include the authority of Immigration Judges to develop local rules governing practice in their courts; the participation of some Judges on advisory committees to the Office of the Chief Immigration Judge; the opportunity to review and comment on OPPMs before they become final; participation in the court evaluation system; and serving as faculty members for the National Judicial College. In the Agency's view, as a consequence of these new activities, Immigration Judges now make policy on both the local and national level.

The Agency also argued that Immigration Judges are management officials by virtue of their judicial independence, their professional stature, qualifications and pay, and other similar factors. Nevertheless, the Agency acknowledged in its post-hearing brief that "the central function of adjudicating immigration cases has . . . remained essentially the same[.]" Agency's Post-hearing Brief at 3.

In his decision, the RD specifically examined the Judges' role with respect to each of the new activities and concluded that the activities did not provide the Judges with the level of influence or authority necessary to find them to be management officials. Rather, the RD specifically found that the Judges participated in these activities in their capacity as "highly trained professionals with the extremely important job of adjudicating cases." RD's Decision at 12. In so finding, the RD relied on well-settled Authority precedent as set forth in such cases as *U.S. Fish and Wildlife Service*, 7 FLRA 643 (finding that employees who provided input into the

78

development of agency regulations were simply experts or professionals rendering resource information and were not management officials) and *DOF, Headquarters*, 40 FLRA 264 (finding that attorneys who provided legal advice, participated in litigation on behalf of the agency, served on various committees and panels, drafted regulations and other documents but did not establish agency policy functioned as technical experts rather than management officials).

Although the Agency submits that the RD incorrectly assessed a number of factual matters relating to the Judges' new responsibilities, such as their role in serving on advisory committees and participating in court evaluation programs, the Agency has failed to establish that any factual errors were involved in the RD's decision. Rather, the Agency is arguing against the evidentiary weight the RD ascribed to those facts.

In these circumstances, we find that the Agency has not established grounds warranting review of the RD's decision under section 2422.31(c)(3)(iii) of the Authority's Regulations. We therefore deny this portion of the application.

### **B. The RD's Decision Does Not Raise an Issue for which there is an Absence of Precedent**

The Agency also alleges that review is warranted under section 2422.31(c)(1) of the Authority's Regulations because there is an absence of Authority precedent addressing the primary issue presented in this case. According to the Agency, that issue is whether Immigration Judges are management officials within the meaning of section 7103(a)(11) of the Statute.

As discussed in section V.A. above, the Agency does not dispute, and indeed specifically acknowledges, that the central duties of an Immigration Judge have remained essentially unchanged since the unit was certified in 1979. Instead, the Agency's contention that Immigration Judges now function as management officials is predicated on the fact that there have been various changes in their duties and responsibilities since that time. Those changes, more fully set forth in section II., include the Judges' authority to develop local rules governing practice in their courts; the participation of some Judges on advisory committees to the Office of the Chief Immigration Judge; the Judges' opportunity to review and comment on OPPMs before they become final; the opportunity to participate in the court evaluation system; and the opportunity of more experienced Judges to serve as faculty members for the National Judicial College.

Notwithstanding the Agency's contention, we find that there is an abundance of Authority case law offering guidance with respect to how the Judges' new duties and responsibilities should be evaluated. Such cases include *U.S. Department of Agriculture, Federal Crop Insurance Corporation, Washington Regional Office and National Federation of Federal Employees*, 46 FLRA 1457, 1458-59 (1993) (finding that hearing officers were not management officials because their recommendations were reviewed by a number of higher levels [ v56 p622 ] and because they did not have the authority to direct or commit the agency to a certain course of action) and *Headquarters, Space Division, Air Force Systems Command, Department of the Air Force, Department of Defense and American Federation of Government Employees, AFI-CIO, Local 2429*, 9 FLRA 885, 887-88 (1982) (finding that employees who wrote and independently

96



interpreted regulations that set forth agency policy were management officials). See also *U.S. Department of Housing and Urban Development, Boston Regional Office, Region 1 Boston, Massachusetts and American Federation of Government Employees, Local 3258, AFT-CIO*, 16 FLRA 38 (1984) (finding that attorneys at the GM-14 level who engaged in litigation on behalf of the agency and provided legal expertise and interpretation of the agency's policies were engaged in implementing, as opposed to shaping, the agency's policies and therefore were not management officials).

A review of the RD's decision shows that he applied such precedent in resolving the Agency's petition in this case. Accordingly, we find that the Agency has not established grounds warranting review of the RD's decision under section 2422.31(c)(1) of the Authority's Regulations. We therefore deny this portion of the application.

### **C. The RD Did Not Fail to Apply Established Law**

As a final ground, the Agency asserts that review of the RD's decision is warranted because the RD failed to apply established law. In support of this assertion, the Agency first maintains that in determining whether Immigration Judges are management officials within the meaning of section 7103(a)(11), the RD incorrectly applied applicable Authority precedent, particularly *BLA*. According to the Agency, the duties and responsibilities of Immigration Judges are substantially similar to those of the members of the Board of Immigration Review as set forth in the Authority's decision. Therefore, consistent with *BLA*, the Agency submits that the RD should have determined that the Judges are management officials.

In *BLA*, the Authority affirmed the RD's determination that a member of the Board of Immigration Appeals was a management official within the meaning of section 7103(a)(11) of the Statute and, therefore, could not be included in the existing bargaining unit. In particular, the Authority concluded that "the incumbent Board Member directly influences Activity policy through his participation in the interpretation of immigration laws and the issuance of decisions and, thereby, meets the definition of a management official set forth in section 7103(a)(11) of the Statute." *BLA*, 47 FLRA at 509. In so concluding, the Authority found significant various powers conferred upon members of the Board. These included the power to "exercise such discretion and authority conferred upon the Attorney General by law as is appropriate and necessary for the disposition of the case." *Id.* (citing 8 C.F.R. § 3.1(d)(2)). The Authority further included the power to issue the final administrative ruling in a case, and to bind the Immigration Judges, District Directors of the INS, as well as the State Department, through the issuance of such rulings. See *id.*

Applying *BLA* to the facts of this case, the RD concluded that unlike decisions of the Board of Immigration Appeals, the decisions of Immigration Judges are not published, do not constitute precedent, are binding only on the parties to the proceedings, and are subject to *de novo* review. The RD accordingly concluded that the decisions of the Judges do not influence and determine the Agency's immigration policy, in contrast to the decisions of the Board. In our view, the RD's application of *BLA* to the facts of this case, including, particularly, the new duties identified by the Agency, was entirely appropriate and fully supported by the evidence. As such, we find that this contention fails to provide a basis for review.

126



We also conclude that the RD correctly applied relevant Authority precedent as set forth in such cases as *DOE, Headquarters* and *U.S. Fish and Wildlife Service* in determining that Immigration Judges do not formulate the Agency's national or local immigration policy. Contrary to the Agency, we find that both of these cases directly support the RD's determination that the Judges' participation on the advisory committees and court evaluation teams established well after the initial certification of the unit is not sufficient to influence the determination of Agency policy in the circumstances of this case. We note, in this connection, that in *DOE, Headquarters*, 40 FLRA at 270, the Authority concluded that attorneys who served on the agency's committees and panels were engaged in these activities as resource persons providing technical expertise, rather than as management officials formulating or effectively influencing the agency's policy. Similarly, in *U.S. Fish and Wildlife Service*, 7 FLRA at 648, the Authority determined that employees who analyzed data, discussed their findings and ultimately prepared preliminary recommendations regarding proposed agency regulations were simply experts or professionals who rendered resource information with respect to agency policies.

In this case the RD specifically found that the record includes no evidence of any immigration policy [ v56 p623 ] or directive issued by an advisory committee or as a result of its deliberations. The RD also found that the record contains no evidence to establish that Immigration Judges who participate in the court evaluation program serve in a capacity that is any greater than or different from other court personnel who also participate in the program. According to the RD, Agency employees who perform such ad hoc tasks in these and other such activities are not establishing Agency policy but are simply providing expertise as highly trained professionals. In our view, the RD's findings in this regard are fully supported by relevant Authority precedent.

As concerns the Agency's reliance on private sector precedent as set forth in *Bell Aerospace* and *Yeshiva University*, we find that it is misplaced. Under this precedent, an individual who formulates or effectuates agency policy may be found to be a management official. However, at the time that section 7103(a)(11) of the Statute was enacted, Congress specifically chose not to include the word "effectuates" in the definition of a management official. See *Navy/ADP*, 7 FLRA at 174. The deletion of the reference to "effectuates" is a meaningful one because the Board has described "managerial" employees as those who "formulate, determine and effectuate management policies . . . in that they express and make operative the decisions of management." *Bell Aerospace*, 416 U.S. at 276 (quoting *Ford Motor Company*, 66 NLRB 1317, 1322 (1946)). The "effectuation" of policy involves making management decisions operative, as distinguished from the actual determination of policy. Accordingly, the deletion of the word "effectuates" raises the bar for purposes of being a manager under the Statute.

In any event, the private sector cases cited by the Agency do not support its claim. *Bell Aerospace* does not assess the status of the buyers who were at issue in that case. Rather, the Supreme Court simply ruled that the Board could not limit the category of managerial employees to those with a conflict of interest. The decision in *Yeshiva University* relies on facts that are quite different from those presented in the instant case. The Supreme Court in *Yeshiva* ruled that the faculty members of the university were "managerial" based upon clear evidence that a collegial system of decision-making yielded "shared authority." *Yeshiva University*, 444 U.S. at 680. The managerial authority of faculty members extended to such matters as the determination of the curriculum, grading system, and academic calendars, as well as decisions on hiring,

16

tenure, sabbaticals, termination and promotion for teachers, and enrollment levels, absence policies and tuition for students. *See id.* at 676-77. As such, we conclude that the RD did not err in failing to address the private sector precedent argued by the Agency.

In these circumstances, we find that the RD's decision does not warrant review under section 2422.31(c)(3)(i) of the Authority's Regulations. We, therefore, deny the Agency's application. [n5]

**The Agency's application for review of the RD's Decision and Order is denied.**

**Footnote # 1 for 56 FLRA No. 97**

Section 7103(a)(11) provides:

(11) "management official" means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine or influence the policies of the agency[.]

**Footnote # 2 for 56 FLRA No. 97**

The unit is described as:

**INCLUDED:** All Immigration Judges employed by the Immigration and Naturalization Service throughout the United States.

**EXCLUDED:** All other professional and nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order. RD's Decision at 2.

**Footnote # 3 for 56 FLRA No. 97**

The EOIR and the INS are separate components of the Department of Justice. The INS is charged with enforcing the nation's immigration laws, while the EOIR is charged with interpreting these laws and conducting administrative hearings and appellate reviews on a wide variety of immigration issues. *See Union's Post-hearing brief, Exhibit A.*

**Footnote # 4 for 56 FLRA No. 97**

In 1982, the position was reclassified as a GS-905-Attorney and, in 1998, the Office of Personnel Management authorized the title of the classified position to be changed from Attorney/Advisor to Immigration Judge.

**Footnote # 5 for 56 FLRA No. 97**

In arriving at our decision, we have not considered the portions of the Union's opposition concerning the Agency's refusal to bargain to which the Agency objected. We, therefore, find it unnecessary to rule on the Agency's motion to strike. *See, e.g., American Federation of Government Employees, Local 1857, AFL-CIO*, 44 FLRA 959, 969 n.5 (1992).

12-5

**(b) (6)** (EOIR)From: **(b) (6)** (EOIR)

Sent: Tuesday, July 17, 2012 2:11 PM

To: **(b) (6)** (EOIR)Cc: **(b) (6)**@afge.org

**Subject:** Based on the contract after an informal grievance has gone from one supervisor to the DCA it goes to the next up in the chain, our CA

1. We seek redress for the favoritism flavored injustice committed upon one Union Member Local AFGE **(b) (6)** namely. We believe **(b) (6)** deserved an Outstanding rating. Although **(b) (6)** our DCA, argued that receiving an Excellent is a superior rating we find that it flies in the face of logic for the reasons shown below:
2. **(b) (6)** is a new Legal Assistant and has been on the **(b) (6)** Floor for less than five years. Her work, even by the public pronouncements of her own IJ. Judge **(b) (6)** is that "she **(b) (6)** never puts the applications in the CASE System" - I, **(b) (6)** year Interpreter veteran of numerous Master Calendar cases and several within the past six (6) months with IJ **(b) (6)** can attest that is true as one can see on the Action Screen, my name, on the day of the hearing, upgrading applications and poring through ROP's (Record of Proceedings) to determine the filing date which in the last case (Individual Calendar) done with IJ SGA, the case had applications from last November, 2011, that had not been recorded in CASE.
3. We believe that the Colombian Connection and obvious friendship that exists with **(b) (6)** and former **(b) (6)** Floor Supervisor **(b) (6)** is one that **(b) (6)** was tough on **(b) (6)** (pointing out one case of a Trial Attorney's name not being updated in CASE) as one of the reasons why **(b) (6)** had an Excellent (2011) (after getting an Outstanding (2009) her first year with **(b) (6)** (2009) - followed by a lesser grade (2010) when **(b) (6)** was out on an authorized Workmen's Compensation 90 days of Leave and was **(b) (6)** Back Up Supervisor during that entire new tenure).
4. Sadly, **(b) (6)** has been openly on the phone helping her significant other during working hours by guiding him to his client's handy man job sites as well as using **(b) (6)** own English skills to explain to her significant other's potential clients how the work will be performed and the price of the job - all while on government time! Outside indirect employment during last year and some of this year's (2012).
5. We ask to be given a well-deserved Outstanding for the 2011-2012 PWP Year.

The proof for all of the afore-mentioned issues and anecdotes will be provided to buttress these allegations.

We request your time to remedy the matter as a morale builder for **(b) (6)** and similarly situated AFGE Local **(b) (6)** who have not stepped forward.

cc. AFGE

**(b) (6)****(b) (6)**

2012 JUL 19 PM 4:17

P 32/32

FOIA 2013-2789

**(b) (6)**

2013-01-20 12:06

016535



# Transmission Log

JOACRIS

Tuesday, 2012-10-09 05:47

(b) (6)

Date	Time	Type	Job #	Length	Speed	Fax Name/Number	Pages	Status
2012-10-09	05:42	SCAN	68	7:20	14400	(b) (6)	23	OK -- V.17 AO31

THIS OTHER W.B. REGARDS ABUSE OF AUTHORITY  
 BY ONE (b) (6) AS HE ASSIGNS STAFF INTERPRE-  
 TER TO HIMSELF THEN HIRES AN EXPENSIVE OUTSIDE CONTRACTOR.

DEAR WHISTLEBLOWING AGENCY

THIS WAS SENT 10-9-2012  
 AND NOT A SINGLE RESPONSE  
 FROM YOU. PLEASE REPLY ON

THIS ABUSE OF POWER BY AN  
 ACT, INTIMIDATION AND  
 VICARIOUS HARASSMENT OF  
 A UNION (b) (6) CARRYING  
 OUT NORMAL PROTECTED GROUNDED  
 ACTIVITIES. Thank you

TO PERFORM  
 H.A. A.C.  
 HE PERFORMS  
 FOR HIS OWN  
 SELF TEACHING  
 EMPLOYMENT.

(b) (6)

Horowitz noted that Members of Congress and leading private sector  
 organizations have recognized the important role that an ombudsman can  
 play in dealing with whistleblower issues. "The creation of an ombudsman can  
 be at the forefront on these important matters," said Horowitz.  
 position is being recognized as a best practice in the area, and I want the OIG  
 ombudsman, please contact OIG Chief of Staff Jay Lerner, or Counselor to  
 Robert P. Storch at (202) 514-3456.

(b) (6)

(b) (6)

(b) (6)

(b) (6)





U.S. Department of Justice

Office of the Inspector General

**DOJ INSPECTOR GENERAL ANNOUNCES  
NEW WHISTLEBLOWER OMBUDSPERSON**

**New Position will Emphasize Key Role and  
Protections of Agency Whistleblowers**

Department of Justice Inspector General Michael E. Horowitz announced today that he has created a Whistleblower Ombudsperson position within the Department of Justice Office of the Inspector General (OIG), which we understand is one of the first such positions in the federal government. Horowitz has hired an experienced federal prosecutor as Counselor to the Inspector General to help lead the new effort.

"Whistleblowers play a critical role in uncovering waste, fraud, abuse, and mismanagement," said Horowitz, "and this new position will enable the OIG to continue its leadership as a strong and independent voice within the Department of Justice on whistleblower issues." Horowitz, who was sworn in as Inspector General on April 16, 2012, noted, "In just my first three months on the job, I have seen first-hand how whistleblowers have advanced the OIG's efforts to address wasteful and improper spending, improve the Department's operations, and protect the public's safety."

The OIG Whistleblower Ombudsperson will focus on training and educating employees within the Department about the role and importance of whistleblowers in improving the effectiveness and efficiency of the Department's operations, as well as their legal rights and protections against retaliation. The OIG Whistleblower Ombudsperson also will be responsible for alerting Department officials and managers to the possible repercussions of retaliation against those who make protected disclosures. In addition, the OIG Whistleblower Ombudsperson will:

- Ensure that whistleblower complaints are reviewed and addressed by the OIG in a prompt and thorough manner;
- Communicate with whistleblowers about the status and resolution by the OIG of those complaints;
- Monitor investigations of retaliation claims that are within the jurisdiction of the OIG; and
- Serve as the OIG liaison to other U.S. agencies with whistleblower responsibilities, such as the Office of Special Counsel, and to non-governmental whistleblower organizations and advocacy groups.

(b) (6) Interpreters  
Sept. 24<sup>th</sup> - Sept 28<sup>th</sup>, 2012

(b) (6)

Monday 9-24-12

(b) (6)

9:30

10:00

1:00

3:00

(b) (6)

CONTINUED WHISTLE-BLOWING ISSUE-FLAGRANT  
USE OF OUTSIDE CONTRACTORS TO DO ASSIGNED STAFF WORK

Tuesday

9-25-12

(b) (6)

8:30

1:00

3:00

(b) (6)

9:00

10:30

(b) (6)

(b) (6)

2:30

(b) (6)

1:00

1:00 master

(b) (6)

LACK OF SUPERVISION OF STAFF MIS-MANAGED CASE WORK.

Wednesday

9-26-12

(b) (6)

1:00 Master Cal.

(b) (6)

1:00/Sp

8:00

1:00

(b) (6)

(b) (6)

Thursday

9-27-12

(b) (6)

9:00

10:00

(b) (6)

1:30

(b) (6)

(b) (6)

Friday

9-28-12

(b) (6)

8:30

1:00

(b) (6)

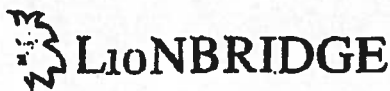
9:00

1:00 -- relay

(b) (6)

1

(b) (6)



United States Department of Justice  
Executive Office for Immigration Review  
Office of the Chief Immigration Judge

CERTIFICATION OF INTERPRETATION (COI) FORM

Interpreter Name (b) (6) COI #: (b) (6)  
Hearing Location (b) (6) City/State: (b) (6)  
Interpretation Date: 09 / 24 / 12 Scheduled Time: 9:00 a.m./p.m.  
**TO BE COMPLETED BY INTERPRETER**

ASSIGNMENT(S)  
START TIME(S) 9:00 am  
10:00 am  
FILE NUMBER A (b) (6)  
IMMIGRATION JUDGES(S) (b) (6)

I, (b) (6), hereby certify that the foregoing interpretations between the Spanish  
(name of interpreter)

Language and English are accurate interpretations of the immigration hearing(s) held before the above listed  
Immigration Judge(s) on Sep. 24<sup>th</sup> 2012 at the time(s) given above.  
(month) (date) (year)

I also certify that:  
☒ I am a United States Citizen; or,  
☐ I am a Lawful Permanent Resident; or,  
☐ I am not a United States Citizen nor a Lawful Permanent Resident, but I am qualified to interpret for the Immigration Court. Specify Immigration Status: (b) (6)  
☐ Interpreter's First Hearing  
(Interpreter's Signature)

**TO BE COMPLETED BY IMMIGRATION COURT PERSONNEL**  
START TIME 9:00 a.m./p.m.  
10:00 a.m./p.m.  
END TIME 9:15 a.m./p.m.  
11:30 a.m./p.m.  
IMMIGRATION JUDGES(S) (b) (6)  
INTERPRETER LUNCH: From: a.m./p.m. To: a.m./p.m.

☐ Interpreter late. Time of Arrival: a.m./p.m.  
☐ Interpreter appeared, but not ordered. Time Released: a.m./p.m.  
☐ Interpreter appeared, but not used (indicate reason not used below.) Time Released a.m./p.m.

COMMENTS: 3 (b) (6)

INTERPRETER MUST SEND YELLOW COPY TO LIONBRIDGE WITHIN 10 DAYS OF HEARING FOR PAYMENT

PAGE: 09/23/2012  
TIME: 08:47 AM

Immigration Judge Detainee Calendar

From 09/25/2012 to 09/25/2012

**Bearing Date:**  
**09/25/2012 - Tuesday**

Start Time	End Time	# Loc	N. Alien Name	A-Number	E/C Type	T/V Adj	Nat	Alien Regs.	Jan	Comp. Date	Comp. Type	Adj Ben To	Adjours	Cal. Type
03:02	10:30	1	(b) (6)	(b) (6)	ABWV	46	CU		SP					I V
07:00	02:30	2	(b) (6)	(b) (6)	ABWV	09	HA		CRB					I V
02:30	04:00	3	(b) (6)	(b) (6)	ABWV	09	GI		KCH					I V

Total Case(s) for Judge 3

\*CPS = Research and Case Types; Missing Types = 1 - Initial, A - Adjustment, B - Bond;  
 \*Case Type = DEP - Deportation, EXG - Exclusive, RZC - Rescission, RMV - Removal, AOC - Asylum Only, CCR - Claim Status Review, CFI - Credible Fear Review,  
 Telephonic/V - Video Hearing/P - In-Person; ! = Elder Alien) (\* = A Completed Hearing, Bond, Notice to Re-open; @ = Suspended Asylum Case)

④



Immigration Review/OPS 1  
1/23/2012

CMR  
FOIA 2013-2789

2013 JAN 23 AM 10:52

RECEIVED  
OIG-INV-110

016541

## Keller, Mary Beth (EOIR)

---

**From:** Scheinkman, Rena (EOIR)  
**Sent:** Tuesday, June 11, 2013 5:03 PM  
**To:** Keller, Mary Beth (EOIR); McGoings, Michael (EOIR)  
**Subject:** Re: OIG Matters: (b) (6) and Non-Responsive

No issue. This makes sense. Thanks.

---

**From:** Keller, Mary Beth (EOIR)  
**Sent:** Tuesday, June 11, 2013 04:59 PM  
**To:** Scheinkman, Rena (EOIR); McGoings, Michael (EOIR)  
**Subject:** RE: OIG Matters: (b) (6) and Non-Responsive

And, actually, the one against Judge (b) (6) would be closed as unsubstantiated, unless and until something would come back from eeo.  
Does that create an issue for you? I just think that for Mike to "investigate" the matter with a pending eeo is problematic. Mtk

*MaryBeth Keller*

Assistant Chief Immigration Judge

---

**From:** Scheinkman, Rena (EOIR)  
**Sent:** Tuesday, June 11, 2013 4:50 PM  
**To:** McGoings, Michael (EOIR)  
**Cc:** Keller, Mary Beth (EOIR)  
**Subject:** RE: OIG Matters: (b) (6) and Non-Responsive

Understood. Thank you.

---

**From:** McGoings, Michael (EOIR)  
**Sent:** Tuesday, June 11, 2013 4:48 PM  
**To:** Scheinkman, Rena (EOIR)  
**Cc:** Keller, Mary Beth (EOIR)  
**Subject:** RE: OIG Matters: (b) (6) and Non-Responsive

Rena – your description of both matters is correct. We also agreed that, should the EEO investigation in the first matter disclose any ACU misconduct warranting an investigation, the complaint would be reopened. Thanks.

MCM

---

**From:** Scheinkman, Rena (EOIR)  
**Sent:** Tuesday, June 11, 2013 3:41 PM  
**To:** McGoings, Michael (EOIR)  
**Cc:** Keller, Mary Beth (EOIR)  
**Subject:** RE: OIG Matters: (b) (6) and Non-Responsive

Judge McGoings:

Just to confirm, based on further discussions between you and MaryBeth, OCIJ will close both cases without further action. The first matter (b) (6) will be entered into the IJ complaint database as a complaint against ACIJ (b) (6) and closed on the basis that it is the subject of a pending EEO investigation.

Please let me know if this is accurate, or make any necessary corrections if I misunderstood something.

Thank you,  
Rena

---

**From:** McGoings, Michael (EOIR)  
**Sent:** Tuesday, June 11, 2013 8:32 AM  
**To:** Scheinkman, Rena (EOIR)  
**Cc:** Keller, Mary Beth (EOIR)  
**Subject:** RE: OIG Matters: (b) (6) and Non-Responsive

Rena –

(b) (5)

Non-Responsive

Thanks.

MCM

---

**From:** Scheinkman, Rena (EOIR)  
**Sent:** Monday, June 10, 2013 10:55 AM  
**To:** McGoings, Michael (EOIR)  
**Cc:** Keller, Mary Beth (EOIR); Rosenblum, Jeff (EOIR)  
**Subject:** OIG Matters: (b) (6) and Non-Responsive

Judge McGoings:

Attached please find two OIG matters. In both matters, OIG has determined that an investigation is not necessary and has referred the matter to EOIR for appropriate action.

The first one is a purported whistleblower action by (b) (6) an interpreter in (b) (6). The complaint asserts a number of allegations against ACIJ (b) (6) including alleged harassment when (b) (6) issued him a letter of counseling and an ethics issue involving (b) (6) outside employment. Please note that the events surrounding the letter of counseling are the subject of a pending EEO investigation. (b) (5)

(b) (5)

Non-Responsive

I look forward to your thoughts.

Regards,  
Rena

Rena Scheinkman  
Acting Chief Counsel, Employee and Labor Relations Unit  
Executive Office for Immigration Review  
Office of the General Counsel

Ph: (b) (6)  
Fax: (b) (6)