



Detail

Complaint Number: 707

Immigration Judge: (b)(6)

Complaint Received Date: 12/26/12

Current ACIJ
Dufresne, Jill H.
Past ACIS:

Base City
(b)(6)

Status
CLOSED

Final Action
Oral counseling

Final Action Date
06/06/13

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	Bias In-court conduct	Respondent Atty (b)(6) and (b)(6)

Complaint Narrative: Bias, prejudice & defamatory statements

Complaint History	
01/03/13	Complaint referred to ACIJ
01/07/13	Database entry created
02/13/13	IJ response due 2/27/13
05/16/13	Disciplinary Counsel dismisses judge's complaint about Attorney (b)(6)
05/23/13	ACIJ contacts the attorney
06/06/13	Oral counseling

Immigration Judge Complaint Intake Form

HQ Use Only:
complaint #: _____
source: first / subsequent

Date Received at OCIJ: _____

complaint source information	
complaint source type	
<input type="checkbox"/> anonymous <input checked="" type="checkbox"/> respondent's attorney <input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.) <input type="checkbox"/> other: _____	<input type="checkbox"/> BIA <input type="checkbox"/> respondent <input type="checkbox"/> OIL <input type="checkbox"/> Circuit <input type="checkbox"/> EOIR <input type="checkbox"/> OPR <input type="checkbox"/> DHS <input type="checkbox"/> OIG <input type="checkbox"/> Main Justice <input type="checkbox"/> media
complaint receipt method	
<input checked="" type="checkbox"/> letter <input type="checkbox"/> fax	<input type="checkbox"/> IJC memo (BIA) <input type="checkbox"/> unknown <input type="checkbox"/> email <input type="checkbox"/> other: _____ <input type="checkbox"/> phone (incl. voicemail) <input type="checkbox"/> in-person
date of complaint source (i.e., date on letter, date of appellate body's decision) 12/21/12	complaint source contact information name: _____ address: (b) (6) email: _____ phone: _____ fax: _____
additional complaint source details (i.e., DHS component, media outlet, third party details, A-number)	

complaint details		
IJ name	base city	ACIJ
(b) (6)		D. Torres
relevant A-number(s)	date of incident	
(b) (6)	3/30/12 et al	
allegations		
Bias, prejudice & defamatory statements		
nature of complaint		
<input checked="" type="checkbox"/> in-court conduct <input type="checkbox"/> incapacity	<input type="checkbox"/> out-of-court conduct <input type="checkbox"/> other: _____	<input type="checkbox"/> due process <input checked="" type="checkbox"/> bias <input type="checkbox"/> legal <input type="checkbox"/> criminal

(b) (6)

(b) (6)

December 21, 2012

Hon. Jill H. Dufresne, Assistant Chief Immigration Judge
5107 Leesburg Pike
Suite 2500
Falls Church, VA 22041

11/31/13
already orally
counselled
by gill

Re: Complaint against Immigration Judge (b) (6)

Dear Judge Dufresne:

I hereby file this formal complaint against Immigration Judge (b) (6) on behalf of (b) (6), and our client (b) (6). Judge (b) (6) demonstrated improper bias and prejudice in violation of the Ethics and Professionalism Guide for Immigration Judges by informing (b) (6) that his unopposed motion to change venue was denied (or deferred) the afternoon before the master hearing, in ordering (b) (6) removed *in absentia* despite the Department of Homeland Security's ("DHS") non-opposition to (b) (6) motions for a change of venue and of a continuance and statements that it was not seeking an *in absentia* order, in making defamatory statements against (b) (6) and in subsequently filing a complaint against (b) (6) attorney, (b) (6). In so doing, Judge (b) (6) denied (b) (6) a constitutionally fair hearing. Judge (b) (6) also made defamatory statements against the DHS and notably, as far as I am aware, did not file a complaint against any DHS attorney, which constitutes additional evidence of bias and prejudice against (b) (6) and his attorneys. Judge (b) (6) has not only shown bias and prejudice and acted with impropriety and unprofessionalism in this case but (b) (6) has also exhibited a pattern and practice of bias and prejudice in the cases of several other non-citizens and immigration attorneys across the country. (b) (6) should be discharged, or permanently removed from the bench to a non-adjudicatory position, or at a minimum suspended for a significant period of time coupled with a public admonishment. Moreover, we ask for an immediate order recusing (b) (6) from all (b) (6) cases until such time as a decision may be made on the pending complaint and request for permanent recusal.

FACTUAL AND PROCEDURAL HISTORY OF (b) (6) CASE

(b) (6) born (b) (6) 1956, age 56, is a native and citizen of Jamaica. (See Notice to Appear ("NTA"), Form E42B, Application for Cancellation of Removal for Certain Non-Permanent Residents ("Form E42B"), attached to Respondent's motion to change venue. He entered the United States without inspection in or around April 1985. (See NTA; Form E42B). (b) (6) has two United States citizen children, (b) (6) born on (b) (6).

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(b) (6)
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1992, and (b) (6) born on (b) (6) 1995, in (b) (6) and (b) (6) (b) (6), respectively. (See Form E42B). His parents are also lawful permanent residents. Id. According to (b) (6) doctor, (b) (6) suffered from acute transverse myelitis which left him with a "significant disability." (See letter from (b) (6) MD, attached to motion to reopen). He has difficulty controlling his legs, difficulty using his arms and hands, difficulty walking and marked fatigability. (Id.) He suffers from chronic pain and numbness in his arms and legs which makes it difficult for him to travel. (Id.)

On August 20, 2011, (b) (6) was taken into detention and issued an NTA charging him as removable for being inadmissible under the Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i) for being present in the United States without being admitted or paroled. (See NTA). The NTA lists (b) (6) address as: (b) (6). The I-213 specifically states that (b) (6) suffers from transverse myelitis. See I-213. On the same day, (b) (6) was released on a \$5000 bond set by ICE. His case was transferred from (b) (6) to (b) (6) and he was scheduled for a master hearing on February 1, 2012. See hearing notice dated September 9, 2011 (with incorrect address).

Through counsel, (b) (6) requested a continuance for attorney preparation time and because of a scheduling conflict. See Respondent's motion for continuance or in the alternative motion to appear telephonically filed on or about January 18, 2012. The DHS filed a written non-opposition to the motion. See DHS' Memorandum in Response to Motion, by Assistant Chief Counsel (b) (6) dated January 30, 2012. The motion for continuance was granted, and the case was reset to April 18, 2012, at 9:00 a.m. in (b) (6) (See IJ's Order dated Jan. 30, 2012, and master hearing notice dated Jan. 31, 2012).

On March 30, 2012, (b) (6) submitted a timely motion to change venue, or in the alternative, motion to allow Respondent's counsel to appear telephonically 18 days in advance of his August 18, 2012, master hearing date, in compliance with EOIR Practice Manual Ch. 5.7(c). (See Respondent's Motion to Change Venue, or in Alternative, Motion to Allow Respondent's Counsel to Appear Telephonically ("motion to change venue"); see also Decision and Order of the Immigration Judge on (b) (6) motion to reopen ("IJ Dec.") at 2). In his motion, (b) (6) admitted the factual allegations in the NTA and conceded removability, explained that he has no ties to (b) (6) and that he resides in (b) (6) that his attorney's office is in (b) (6). To his motion, he attached a hospital bill showing his address in (b) (6) (b) (6) as well as Form E42B and Form E42B filing receipt. See motion to change venue.

On or about April 11, 2012, DHS Assistant Chief Counsel (b) (6) filed with the Court a written memorandum of non-opposition to (b) (6) motion to change venue. (See DHS' Memorandum in Response to the Motion dated April 11, 2012).

Although (b) (6) felt that (b) (6) had a strong motion to change venue motion, and (b) (6) explained that he expected it would be granted, (b) (6) always told (b) (6) (b) (6) that there was a chance that the Immigration Judge could deny the motion, and that if he did not go he would likely be ordered deported in absentia. See Affirmation of (b) (6) attached as Exhibit A; Affidavit of (b) (6), attached as Exhibit B.

Starting April 13, 2012, (b) (6) staff followed up with the (b) (6) Immigration Court several times to inquire about the status of the unopposed motion to change venue. See Affidavit of legal assistant, (b) (6) attached as Ex. H to Respondent's Motion to Reopen. However, each time, the IJ's clerk requested that (b) (6) call back at a later time. See *id.*

On April 17, 2012, at 2:45 p.m., the IJ's clerk called (b) (6) counsel and informed him that the IJ had denied the unopposed motion to change venue but granted the motion for counsel to appear telephonically. See Affirmation of (b) (6) attached to the Respondent's motion to reopen at Ex. G. The IJ's clerk informed (b) (6) that (b) (6) motion for change of venue was denied. *Id.* (b) (6) inquired whether the IJ had received the DHS' memorandum of non-opposition and she confirmed that (b) (6) had. *Id.* Despite (b) (6) request for an explanation, the IJ's clerk stated that she was unable to provide any explanation at all as to why the unopposed motion to change venue had been denied. *Id.* (b) (6) explained to the IJ's clerk that (b) (6) suffers from a medical condition which affects his mobility and that given the very short notice he was not able to travel to (b) (6). *Id.* (b) (6) then requested that she ask the IJ if he would allow (b) (6) to also appear telephonically. *Id.* The IJ's clerk responded that she was unable to and confirmed again that (b) (6) was required to appear in person. *Id.*

Following (b) (6) conversation with the IJ's clerk, (b) (6) consulted with his supervisor (b) (6) and with (b) (6). See Exhibits A & B. (b) (6) explained and confirmed that he could not travel to (b) (6) on such short notice given his medical condition and financial situation. See Ex. B. As per (b) (6) instructions, (b) (6), a senior attorney at (b) (6) contacted the Assistant Chief Immigration Judge Jill Dufresne, Judge (b) (6) supervisor, of the Office of the Chief Immigration Judge ("OCIJ") to find out if that office could facilitate, at the very least, (b) (6) appearing telephonically in (b) (6) (b) (6) offices at the hearing the next day. See Affirmation of (b) (6) attached to Respondent's motion to reopen as Ex. F; (b) (6) Affirmation, attached as Ex. A. The OCIJ suggested that she call the (b) (6) Court Administrator, (b) (6), to find out whether she would accept a faxed motion for a continuance of the hearing, or, in the alternative, a motion for counsel and Respondent to appear telephonically. *Id.*

At approximately 3:45 pm on April 17, 2012, (b) (6) was able to get a hold of the Court Administrator, (b) (6) and explained the situation, including that (b) (6) health problems prevented him from making the trip to (b) (6) on such short notice. *Id.* (b) (6) refused to accept a faxed motion for continuance, or in the alternative, a motion for counsel and Respondent to appear telephonically, as suggested by the OCIJ. *Id.* In addition, although (b) (6) admitted that the motion to change venue had been filed in a timely fashion pursuant to the Immigration Court Practice Manual, the motion should have been filed earlier because the IJ gave the DHS ten days to respond. *Id.* However, she agreed that the DHS had responded, and had responded in the form of a non-opposition to our motion to change venue. *Id.* (b) (6) also stated that she saw no problem with the IJ's clerk informing (b) (6) at such a late date and time of the IJ's decision denying the change of venue motion. *Id.* She said that in fact (b) (6) (b) (6) was lucky to have even received a call from the Court regarding the motion; sometimes the Court does not call an attorney regarding a motion prior to the hearing. *Id.* (b) (6)

suggested that if he is not going to (b) (6) he should appear with us in our offices by telephone and maybe we could explain the circumstances to the IJ at that time, but that she, as the Court Administrator, could not help remedy the situation. Id.

Because (b) (6) had stated that the court would not accept a faxed motion, (b) (6) (b) (6) mailed a motion to continue, or in the alternative, for both counsel and (b) (6) to appear telephonically, to the Court via overnight Federal Express. The motion to continue explained the great difficulty that (b) (6) would have faced traveling to (b) (6) on such short notice. Id. Additionally, (b) (6) through counsel, filed an interlocutory appeal of the IJ's denial of his change of venue motion, by overnight Federal Express with the Board of Immigration Appeals ("Board").

The morning of April 18, 2012 at 8:30 a.m., (b) (6) arrived at (b) (6) office. (See Affirmation of (b) (6) attached to motion to reopen as Ex. G). (b) (6) called the (b) (6) Court shortly after 8:30 a.m. and informed the IJ's clerk that (b) (6) would not be able to appear in person but that he was at (b) (6) office in (b) (6) and was able to appear telephonically. (Id.). (b) (6) also informed the clerk that he had sent (b) (6) (b) (6) motion to continue, or, in the alternative, motion for both counsel and (b) (6) to appear telephonically, by Federal Express overnight delivery the previous day. (Id.).

At or around 11:30 a.m., (b) (6) still had not received a call from the IJ and called the (b) (6) Immigration Court again. (Id.). The IJ's clerk informed (b) (6) that the IJ had not yet completed (b) (6) master calendars and that he should wait for (b) (6) call. (Id.). The clerk also confirmed (b) (6) that the IJ had received the motion to continue and that it had been presented to the IJ to review. (Id.).

At 1:30 p.m., (b) (6) still had not received a call from the IJ. See Affirmation of (b) (6) attached to motion to reopen as Ex. H. Accordingly, (b) (6) (b) (6) a legal assistant with (b) (6) called the (b) (6) Immigration Court to inquire about whether the IJ would be calling. Id. (b) (6) was told that counsel should continue to wait and call the Court again later that afternoon. Id.

The IJ never called to conduct the hearing. Id. Instead, the record of proceeding transcript reveals that the IJ conducted an in absentia proceeding at around 2 pm that day, without calling (b) (6) counsel. See copy of certified transcript, attached as Ex. C. The DHS Assistant Chief Counsel, (b) (6) noted on the record that the DHS was not seeking removal *in absentia* at that time. The DHS noted that it was erring on the side of caution. The DHS noted that (b) (6) was represented by counsel, and that counsel had explained, although not yet substantiated, that (b) (6) had difficulty traveling due to a medical problem. The IJ disagreed with DHS and stated that it was (b) (6) the Immigration Judge, and not any type of stipulation between the parties, that determines whether (b) (6) would order a respondent removed *in absentia*.

The IJ complained about having 2000 to 3000 motions to adjudicate per year and (b) (6) about inheriting the docket of an Immigration Judge who had recently left.

The IJ acknowledged receipt of (b) (6) motion for continuance, or in the alternative motion for him and counsel to appear telephonically; however, (b) (6) denied the motions. See Ex. C. (b) (6) also repeatedly noted that (b) (6) counsel had submitted an affirmation with his motion to continue stating that he had been informed that the motion to change venue had been denied, and that that was incorrect. At the end of the hearing, (b) (6) had (b) (6) court clerk, without being sworn in, state on the record and without being cross-examined by (b) (6) counsel, that she had in fact told (b) (6) that the motion had been deferred not denied. Id.

(b) (6) staff later learned that (b) (6) was ordered removed by calling the EOIR 1-800 case status phone number. See (b) (6) Affirmation, attached to motion to reopen as Ex. G; (b) (6) Affirmation, attached as Ex. A.

On April 23, 2012, (b) (6) counsel received a copy of the IJ's decision on (b) (6) motion to change venue. See Order of U.S. Immigration Judge ("IJ Order") dated April 17, 2012; Affirmation of (b) (6) attached as Ex. A; see also copy of envelope in which decision arrived, copy of cover sheet, and a copy of the two decisions contained in the envelope, attached as Ex. D. Instead of denying the motion to change venue as the IJ's clerk had informed (b) (6) the IJ's order stated that (b) (6) would defer judgment on the motion until April 18, 2012, the day of the master hearing. IJ Order dated April 17, 2012. Although the order is dated April 17, 2012, the certificate of service states it served by mail on (b) (6) counsel on April 18, 2012. In addition, the envelope that contained the IJ's order deferring the change of venue motion and the in absentia order bears a postmark of April 19, 2012, contradicting the certificate of service. See copy of envelope, attached as Ex. D.

On May 18, 2012, (b) (6) filed a motion to reopen the *in absentia* order. See (b) (6) Motion to Reopen Based on Exceptional Circumstances and the Immigration Judge's Abuse of Discretion and Request for Emergency Stay of Removal dated May 16, 2012. In the motion, (b) (6) through counsel, argued that (b) (6) failed to appear for his hearing due to exceptional circumstances relating to his medical condition, and included a letter from (b) (6) doctor, and that the IJ's prejudicial conduct and abuse of discretion resulted in (b) (6) removal order and rendered his proceedings fundamentally unfair. See id.

On June 8, 2012, the Board issued a decision dismissing the interlocutory appeal of the IJ's denial of (b) (6) change of venue motion as moot because after the IJ deferred decision on the motion to change venue, (b) (6) then ordered (b) (6) removed *in absentia* on April 18, 2012.

On June 18, 2012, the DHS filed a memorandum in response to (b) (6) motion to reopen stating that it was unopposed to (b) (6) motion to reopen. See DHS' Memorandum in Response to the Motion dated June 18, 2012. This non-opposition was signed by Deputy Chief Counsel, (b) (6) Id.

On August 14, 2012, the IJ denied (b) (6) motion to reopen finding (b) (6) (1) failed to demonstrate exceptional circumstances which warrant reopening; (2) failed to demonstrate that the IJ abused (b) (6) discretion or acted in an arbitrary and capricious manner; and (3) failed to demonstrate that his case merited *sua sponte* reopening. See Decision

and Order of the Immigration Judge dated August 14, 2012 ("IJ Dec."). Additionally, the IJ levied unsupported and defamatory accusations against (b) (6) counsel and the DHS. Specifically, the IJ accused (b) (6) of making a false statement in his affirmation, i.e., that the IJ had denied the change of venue motion when in fact the IJ had deferred a decision on that motion until the master hearing date. The IJ also alleged that (b) (6) did not competently represent (b) (6) and conducted himself in an improper manner before the Court. IJ Dec. at 9-10. The IJ additionally accused the DHS of acting in a "incredible" and "troublesome" manner, "blindly" agreeing to (b) (6) counsel's request and stated that similar and improper agreements have been reached by the DHS and (b) (6) in other cases before the Court. Id.

On September 11, 2012, (b) (6) filed a timely notice of appeal of the IJ's denial of his motion to reopen, and on November 1, 2012, (b) (6) submitted a timely brief appeal of the IJ's decision denying (b) (6) motion to reopen. In his appeal, (b) (6) argued that Judge (b) (6) (1) erred by finding that (b) (6) failed to demonstrate exceptional circumstances which warrant reopening; (2) acted in an arbitrary and capricious manner by denying his March 30, 2012 motion to change venue; and (3) demonstrated extreme bias and prejudice which constituted a due process violation.

On November 19, 2012, the DHS filed the "Department of Homeland Security's Response to Appeal" with the Board. See Department of Homeland Security's Response to Appeal dated Nov. 19, 2012. In it, the DHS stated, "The Department of Homeland Security, (DHS) **did not oppose** the respondent's Motion to Reopen filed with the (b) (6) Immigration Court dated May 18, 2012. The DHS continues to **not oppose** the respondent's motion at this time." Id. (emphasis in original).

Shortly after the appeal was filed and the DHS filed its non-opposition, on November 26, 2012, the EOIR Office of the General Counsel issued a letter to (b) (6) stating that Judge (b) (6) had filed a complaint against him. Judge (b) (6) decision denying the motion to reopen serves as Judge (b) (6) complaint.

ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES

The Preamble to the Ethics and Professionalism Guide for Immigration Judges states that Immigration Judges should act in a manner that promotes public confidence in their impartiality, and avoid impropriety and the appearance of impropriety in all activities. See Ethics and Professionalism Guide for Immigration Judges, *available at*: [http://www.justice.gov/eoir/sibpages / IJConduct/EthicsandProfessionalismGuideforIJs.pdf](http://www.justice.gov/eoir/sibpages/IJConduct/EthicsandProfessionalismGuideforIJs.pdf). Section IX, entitled "Acting With Judicial Temperament and Professionalism," states that an Immigration Judge should be "patient, dignified, and courteous, and should act in a professional manner toward all litigants, witnesses, lawyers and others . . . and should not, in the performance of official duties, by words or conduct manifest improper bias or prejudice." The test for the appearance of impropriety is whether the conduct would create in the mind of a reasonable person with knowledge of the relevant facts, the belief that the Immigration Judge's ability to carry out his or her responsibilities with integrity, impartiality and competence is impaired. Id.

I. JUDGE (b) (6) MANIFESTED IMPROPER BIAS AND PREJUDICE AND FAILED TO ACT IN A PATIENT, DIGNIFIED, COURTEOUS OR PROFESSIONAL MANNER IN ADJUDICATING (b) (6) CASE

- A. The IJ manifested bias and prejudice by informing (b) (6) of (b) (6) decision to deny (or defer) (b) (6) motion to change venue the afternoon before his April 18, 2012 hearing, even though the motion was timely filed, unopposed by the DHS, and included a relief application and receipt notice**

Notwithstanding (b) (6) medical problems, the IJ acted in an unprofessional, biased and prejudicial manner by informing (b) (6) of (b) (6) decision to deny (or defer) (b) (6) decision on (b) (6) motion to change venue until the day before (b) (6) hearing at 2:45 pm. As stated in the Ethics and Professionalism Guide for Immigration Judges, the test for the appearance of impropriety is whether the conduct would create in the mind of a reasonable person with knowledge of the relevant facts, the belief that the Immigration Judge's ability to carry out his or her responsibilities with integrity, impartiality and competence is impaired. Given all the facts in the way he handled (b) (6) motion to change venue, it is clear that Judge (b) (6) ability to carry out his responsibilities with integrity, impartiality and competence is impaired.

There is no valid reason that Judge (b) (6) failed to inform (b) (6) of (b) (6) decision to deny (or defer) his motion to change venue until the afternoon before the hearing. As the (b) (6) Court Administrator confirmed, (b) (6) timely submitted his motion to change venue on March 30, 2012, in conformance with the Immigration Court Practice Manual Ch. 5.7(c). As the Court Administrator observed, Judge (b) (6) gave the DHS 10 days to respond, which brought the calendar to April 10th. As the Court Administrator noted, the DHS had the opportunity to respond and responded in the form of a non-opposition: on April 11, 2012, DHS Assistant Chief Counsel (b) (6) filed with the Court a written memorandum of non-opposition to (b) (6) motion to change venue. See DHS' Memorandum in Response to the Motion dated April 11, 2012. That still left seven days before the hearing during which the IJ could have made a decision and informed (b) (6) of (b) (6) decision.

The IJ complained that (b) (6) failed to render a decision in a timely manner because of the 2000-3000 motions (b) (6) receives each year and because at the time, (b) (6) had inherited Judge (b) (6) caseload. (b) (6) also chastised (b) (6) counsel for not submitting the change of venue motion sooner. However, Judge (b) (6) routinely renders (b) (6) decisions on the day before the hearing and informs respondents the day before the hearing of (b) (6) decisions. See Part II, *infra*, and attorney affirmations, attached as Exhibit E. Moreover, it is clear, despite (b) (6) excuses, that Judge (b) (6) did not wish to rectify (b) (6) late decision making and late notice to (b) (6), because despite (b) (6) efforts to appear telephonically for his hearing or to obtain another continuance, Judge (b) (6) still ordered (b) (6) removed *in absentia*.

B. The IJ failed to act impartially when (b) (6) proceeded with an *in absentia* order despite (b) (6) repeated attempts to explain to the IJ why he could not travel to (b) (6) on such late notice. (b) (6) communicated willingness to appear telephonically in counsel's office, the DHS' non-opposition to the motion to change venue and to a continuance of the April 18, 2012 hearing, and a notation on the I-213 that (b) (6) suffers from transverse myelitis.

The IJ failed to act impartially when (b) (6) proceeded with an *in absentia* order despite (b) (6) repeated attempts to explain to the IJ why he could not travel to (b) (6) on such late notice. (b) (6) willingness to appear telephonically in counsel's office and the DHS' non-opposition to the motion to change venue and to a continuance of the April 18, 2012 hearing. While the IJ may not be bound by any stipulation between the parties, as (b) (6) repeatedly pointed out in the denial of (b) (6) motion to reopen and at the April 18, 2012, hearing, at the same time, (b) (6) is required to act impartially. Therefore, (b) (6) should not appear to be more interested in prosecuting a case than the DHS, who placed respondent in removal proceedings.

Here, a reasonable person would find that the IJ acted in a biased and prejudicial toward (b) (6) in ordering him removed *in absentia*. After he was informed the day before his hearing in (b) (6) at 2:45 that his motion was denied, (b) (6) attempted to explain to the IJ in as many ways as possible why he could not appear in person on April 18, 2012, but that he was willing to appear by telephone with counsel. Through counsel, prior to the hearing, he called the Office of the Chief Immigration Judge and the (b) (6) Court Administrator to try and facilitate a telephonic hearing or a continuance. In addition, he filed a last-minute motion for a continuance, or in the alternative, for himself to appear telephonically with counsel at counsel's office. He even attempted to fax this to the Court, as per the OCIJ's suggestion, but the Court Administrator refused.

In addition to all of his efforts to appear telephonically and explain why he could not travel under the circumstances, the DHS attorney at the April 18, 2012, hearing stated that she was not seeking an *in absentia* order in (b) (6) case and that she was willing to give (b) (6) and his counsel the benefit of the doubt. The transcript reveals that Assistant Chief Counsel (b) (6) stated at the outset of the hearing, "Your Honor, the Government is not seeking an *in absentia* order." (See copy of transcript attached as Ex. C, Certified transcript at 3). (b) (6) explained, "[w]e're just erring on the side of caution. It does appear that the Respondent has an attorney. He has indicated in correspondence with the Court that the Respondent does have some health issues." *Id.* at 3-4. The DHS attempted to explain that (b) (6) may be eligible for cancellation of removal. Before being cut off by the IJ, she stated, "The Respondent may be eligible for . . ." *Id.* at 4. The IJ then spoke for nine pages of the transcript. *Id.* at 4-13. At page 15, the DHS stated again, "We were erring on the side of caution." *Id.* at 15. The IJ sarcastically asked, "What caution would that be?" and the DHS stated, "The Respondent, as I indicated previously, does have counsel, which has represented, though not substantiated, that there were health issues for which the respondent could not appear today." *Id.* at 15. She repeated, "We're just erring on the side of caution," and after the IJ interposed, the DHS continued, "and giving the Respondent the benefit of the doubt and counsel . . ." and after being interrupted by the IJ again, finished, "the benefit of the doubt that they would be able to substantiate that claim." *Id.* at 15-16. It is uncommon in immigration court for

the DHS not to seek an *in absentia* order, and moreover, for a DHS attorney to so clearly express herself and so many times their wish for the IJ not to enter an *in absentia* order. The fact that the IJ went on to order (b) (6) removed *in absentia* despite the DHS' remarks show a clear bias and prejudice towards (b) (6) and demonstrates the IJ's inability to act impartially.

Furthermore, the I-213 detracts from the IJ's claim that there was nothing in the record substantiating (b) (6) medical problem. The IJ repeatedly stated in (b) (6) *in absentia* decision that there was a lack of medical documentation showing that (b) (6) suffered from an illness that would prevent him from traveling. Tr. at 4, 12. While (b) (6) was discussing this and other reasons that (b) (6) had allegedly not shown exceptional circumstances for failing to appear, the DHS handed up to him the I-213 which specifically states that (b) (6) suffers from transverse myelitis, a spinal disease, for which he receives therapy on a weekly basis. Tr. at 12. Clearly, by handing the I-213 up to the IJ at that time, the DHS thought that the I-213 was evidence of his medical condition, and the IJ made a footnote in (b) (6) denial of his motion to reopen that an I-213 is inherently trustworthy. See IJ Dec. at 4 n.1. Additionally, the fact that the I-213 stated that he was "otherwise . . . in good physical health and did not require medication" does not detract from the fact that he has transverse myelitis, a spinal disease.

C. The IJ also exhibited bias and prejudice in making unsubstantiated defamatory statements about (b) (6) in (b) (6) *absentia* order and motion to reopen denial.

The IJ also showed a lack of impartiality by stressing and appearing to base in part (b) (6) decision to order (b) (6) removed and subsequent denial of his motion to reopen on a defamatory and unsubstantiated finding that (b) (6) made a false statement to the Court. Specifically, the IJ repeatedly noted (b) (6) counsel, (b) (6) stated in his affirmation attached to his motion for continuance that the IJ's clerk had told him that (b) (6) motion to change venue had been denied rather than deferred. In (b) (6) decision ordering (b) (6) removed *in absentia*, (b) (6) stated, "[t]he motion to change venue was deferred, not denied, even though there's a lawyer's affirmation in here saying it was denied, which is a very serious matter for a lawyer to put in writing because that's incorrect." Tr. at 6. At the hearing, the IJ even went so far as to get (b) (6) court clerk to state on the record at the *in absentia* hearing (albeit without swearing her in and without allowing an opportunity for cross-examination) that she had informed (b) (6) the day before that (b) (6) decision on the motion had been deferred; she confirmed that she did not say that the motion had been denied. Furthermore, the IJ stated in the denial of (b) (6) motion to reopen, which served as the basis of (b) (6) complaint against (b) (6) that the "Court additionally finds it important to note that Respondent's counsel prepared and submitted a signed attorney affirmation which includes a false statement." IJ Dec. at 9.

The IJ's allegations of impropriety on the part of (b) (6) in stating that the motion was denied instead of deferred in his affirmation are without merit. It should be noted the disciplinary ground under 8 C.F.R. § 1003.102(c) for making a false statement arises when a representative: "[k]nowingly or with reckless disregard makes a false statement of material fact or law, or willfully misleads, misinforms, threatens, or deceives any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant

matter relating to a case, including knowingly or with reckless disregard offering false evidence.”

First, there is ample evidence that the IJ’s clerk told (b) (6) actions and the record indicate that (b) (6) really thought that the motion had been denied, not deferred, and thus (b) (6) cannot be held responsible for “knowingly” or with “reckless disregard” making a false statement. The strongest evidence that (b) (6) sincerely thought that the motion had been denied, not deferred, is that he filed an interlocutory appeal of the IJ’s decision denying the motion to change venue. (b) (6) must have been well aware that in deciding the interlocutory appeal, the Board would have to review the record and the IJ’s order to render a decision. In fact, in its decision dismissing the appeal, the Board noted that the IJ deferred the decision, not denied it. In addition, (b) (6) submitted a copy of that interlocutory appeal to the IJ. It defies logic that an attorney would state in an affirmation that he gave the IJ to review that he was informed by the IJ’s clerk that a motion had been denied if that attorney thinks there is an IJ order contradicting his statement.

Furthermore, (b) (6) had no motivation to state that the motion to change venue was denied. Obviously, either the IJ’s clerk made a mistake when she spoke to (b) (6) or (b) (6) misunderstood her. It did not make a difference in terms of the effect on (b) (6). The end result was the same. Either way, with a denial or a deferral, (b) (6) was required to appear for a hearing in (b) (6) the next morning. In either situation, he would not have been able to appear on such short notice. In this way, the false statement was not even material as required. By not taking any of these facts into consideration and attempting to make (b) (6) statement into a “very serious matter,” Tr. at 6, the IJ failed to act impartially.

Finally, there is evidence leading a reasonable person to believe the clerk never had the order in her hand when she called (b) (6) and perhaps that is why she said it was denied when it was really deferred. (b) (6) received both the *in absentia* order and the IJ’s order deferring decision on the motion to change venue in the same envelope postmarked April 19, 2012. See envelope, cover sheet and decisions received, attached as Ex. D. The date on the change of venue deferral order certificate of service is incorrect. The order was issued on April 17, 2012 but the certificate of service states it was served on April 18, 2012 when it was in fact served on April 19, 2012, the post-marked date of the envelope. This inconsistency demonstrates the confusion surrounding the deferral order and calls into question the credibility of the IJ’s clerk. One can infer from this that the clerk did not have the written order in her hand when she called (b) (6). The IJ’s clerk called (b) (6) on April 17, 2012 and told him it was denied but it is possible she did not have a hardcopy of the deferral order until April 18, 2012, the day that she prepared the incorrect certificate of service. In addition, although not mailed until April 19, 2012, the coversheet for both orders is dated the April 18, 2012, and clearly refers to both the deferring order being entered allegedly on the April 17, 2012 and the *in absentia* entered on the April 18, 2012. It should also be noted that when (b) (6) spoke to Judge (b) (6) clerk on April 17, 2012, she was not able give a reason why the order was denied or deferred, which, coupled with the discrepancies in dates makes it almost certain that the IJ’s clerk did not have the order on April 17, 2012, as the IJ and clerk alleged.

Judge (b) (6) handling of the situation was improper and (b) (6) clerk’s statement at (b) (6)

(b) (6) April 18, 2012 *in absentia* hearing should be given little weight. Judge (b) (6) did not swear (b) (6) clerk in and did not provide Respondent's counsel with an opportunity to cross examine her as due process requires. She is Judge (b) (6) employee which also makes her an interested party. Before leveling unfounded accusations against (b) (6) in (b) (6) motion to reopen, and particularly before initiating a complaint against (b) (6) with the EOIR Disciplinary Committee, Judge (b) (6) acting as an impartial adjudicator, should have held an evidentiary hearing to determine the nature of the conversation between (b) (6) and (b) (6) clerk but (b) (6) failed to do so which further demonstrates that (b) (6) accusations are without merit.

The IJ also accused (b) (6) of "unilaterally" deciding that (b) (6) would not appear in Court and disregarding an order of the Court. Tr. at 7, IJ Dec. at 4-5, 8. In stating this, the IJ also stated that the fact that (b) (6) did not provide copies of plane, bus or train tickets indicates that "Respondent and Respondent's counsel had advance knowledge of their intention not to appear in Court." IJ Dec. at 8. There is no evidence that (b) (6) unilaterally decided that (b) (6) would not go to Court or that (b) (6) advised (b) (6) not to appear in Court or that they never had any intention of (b) (6) appearing in Court. (b) (6) did not state in his affirmation that he told (b) (6) not to go. In fact, (b) (6) gave him all the proper advisements and it was (b) (6) given the late notice and his medical condition and his lack of finances, who informed (b) (6) that he would not be able to go to (b) (6).¹ See Affidavit of (b) (6) attached as Ex. B; Affirmation of (b) (6) attached as Ex. A.. (b) (6) as his representative, conveyed this to the Court and tried to rectify the situation zealously and competently. (b) (6) always informed that if he didn't go to the hearing, he would likely be ordered deported *in absentia* and never told him not to go, See attached Ex. A & B. For the IJ to assume without knowing, and to state in a written decision and on the record at a master calendar hearing, that (b) (6) unilaterally decided that (b) (6) would not go, is defamation against (b) (6) and additional evidence of Judge (b) (6) bias and prejudice in (b) (6) case and with respect to (b) (6).

D. The IJ also showed a lack of impartiality in (b) (6) paranoid and unsubstantiated defamatory statements about DHS counsel, and by not filing an equivalent complaint against DHS counsel that we are aware of

The IJ's paranoid and unsubstantiated defamatory statements in the motion to reopen denial also show that the IJ handled Mr. (b) (6) case without impartiality and unprofessionally. The IJ stated that it was "apparent to the Court that one DHS trial attorney on April 18, 2012, "after hearing the Court's thoroughly articulated findings, understood the Court's reasoning but *understandably* had to go along with the previous DHS Trial Attorney's actions." IJ Dec. at 10 (emphasis in original). The IJ did not point to anything in the transcript that would substantiate why (b) (6) thought that the DHS attorney agreed with (b) (6). In fact, to the contrary, even after the IJ articulated (b) (6) reasons in over 10 pages of the transcript, the DHS attorney again

¹ (b) (6) is fully aware that the rules require attorneys not to assume that a motion will be granted and to plan for the trip and so we inform our clients to do the same. However, in a case like this, where we had a non-opposition, pleadings, an application for relief and receipt notice, it is reasonable that (b) (6) would not go through the expense of purchasing such expensive travel.

reiterated that the DHS would err on the side of caution and was not seeking an *in absentia* order. See Tr. at 15-16.

Moreover, the IJ found it “incredibl[e]” that a third DHS trial attorney filed a “no opposition” to the motion, and faulted the DHS attorney for never having listened to the tapes. IJ Dec. at 10. The IJ also accused the DHS of “blindly” agreeing to Respondent’s requests. IJ Dec. at 10. The IJ did not explain why it would be necessary to listen to the tapes for the DHS to express its position on a particular case. Simply by using the word “incredible” to describe DHS’ unopposed position even though the DHS had made its position clear throughout the case, shows that Judge (b) (6) thinks that only (b) (6) view is correct and does not take into consideration the parties’ positions or the circumstances of a particular case.

It should be noted that although Judge (b) (6) also levied defamatory remarks against DHS, I am not aware of any complaint filed against any DHS attorney. This is further evidence that Judge (b) (6) is biased and prejudiced against non-citizens and their representatives.

E. Judge (b) (6) also showed bias and prejudice in (b) (6) defamatory statements about (b) (6) generally.

Judge (b) (6) also showed bias and prejudice in (b) (6) defamatory statements about (b) (6). Judge (b) (6) stated that that “it appears that DHS was contacted by Respondent’s counsel and without further investigation, blindly agreed to Respondent’s requests.” IJ Dec. at 10. This statement is pure speculation; the IJ’s comment is merely an assumption and (b) (6) had no basis to make it. The DHS submitted the April 11, 2012 statement of non-opposition to the motion to change venue without being contacted by (b) (6) beforehand. See (b) (6) affirmation, attached as Ex. A. In addition, even if the parties had talked, this is not dishonest or incompetent or in any way a manifestation of impropriety on the part of (b) (6). In fact, Chapter 4, pg. 79 of the EOIR practice manual encourages parties to stipulate in good faith to the fullest extent possible to narrow the factual and legal issues in advance of a hearing to conserve judicial resources.

F. Judge (b) (6) exhibited bias and prejudice by filing an unsubstantiated complaint against (b) (6) of (b) (6) shortly after the DHS filed its non-opposition to the appeal because (b) (6) denial of the motion to reopen, which serves as the complaint, is biased and prejudicial.

Judge (b) (6) exhibited bias and prejudice by filing an unsubstantiated complaint against (b) (6) shortly after the DHS filed its non-opposition to the appeal. On November 19, 2012, the DHS filed the “Department of Homeland Security’s Response to Appeal” with the Board. See Department of Homeland Security’s Response to Appeal dated Nov. 19, 2012. In it, the DHS stated, “The Department of Homeland Security, (DHS) **did not oppose** the respondent’s Motion to Reopen filed with the (b) (6) Immigration Court dated May 18, 2012. The DHS continues to **not oppose** the respondent’s motion at this time.” *Id.* (emphasis in original). Shortly after the appeal was filed and the DHS filed its non-opposition, on November 26, 2012, the EOIR Office of the General Counsel issued a letter to (b) (6) stating that Judge (b) (6) had filed a complaint against him. Judge (b) (6) decision

denying the motion to reopen serves as Judge (b) (6) complaint. For all the reasons stated in Part I, *supra*, detailing (b) (6) extreme bias and prejudice in (b) (6) handling (b) (6) case, including (b) (6) unsubstantiated allegations of improper conduct against (b) (6) in the denial of (b) (6) motion to reopen, the complaint against (b) (6) is also wholly without merit and is further proof of Judge (b) (6) lack of fitness to sit as a judge.

II. THE IJ HAS MANIFESTED A PATTERN AND PRACTICE OF IMPROPER BIAS AND PREJUDICE AND HAS FAILED TO ACT IN A PATIENT, DIGNIFIED, COURTEOUS OR PROFESSIONAL MANNER FOR SEVERAL YEARS TO LITIGANTS AND ATTORNEYS ALL OVER THE UNITED STATES

Judge (b) (6) actions demonstrate a pattern and practice of improperly denying motions before (b) (6) court and acting in contravention of established policies. (b) (6) has been admonished by the (b) (6) Circuit for denying motions to change venue in analogous cases before. In (b) (6)

(b) (6)

(b) (6) as in the instant case, Judge (b) (6) denied the respondent's motion to change venue without properly considering the factors, subsequently ordered the respondent removed and denied his motion to reopen. There, the (b) (6) Circuit stated (b) (6) "denied (b) (6) Id. at (b) (6)

(b) (6) Similarly, in (b) (6) (unpublished), an asylum case, the (b) (6) Circuit held (b) (6)

(b) (6)

The attached affidavits from other immigration practitioners further confirm that Judge (b) (6) acts in an unprofessional, biased, prejudicial and abusive manner. See affidavits and affirmations, attached as Ex. E. (b) (6) of the (b) (6) wrote that Judge (b) (6) acts in a "sarcastic, arbitrary and vindictive manner" and that (b) (6) shouldn't be on the bench. She had one client with AIDS for whom she filed a change of venue motion with proof of her client's AIDS condition, which the IJ denied, and her client was ordered deported *in absentia*. Eventually the BIA reversed Judge (b) (6) but it took years of unnecessary litigation and great expense to her not-for-profit office. (b) (6) a fully accredited BIA representative with (b) (6) described how she filed an unopposed motion to change venue with Judge (b) (6) for a client with multiple HIV/AIDS related illnesses and financial problems, which the IJ denied. After three change of venue motions, ultimately, the IJ finally changed venue to (b) (6) and he was granted asylum in (b) (6) but not before he was required to travel to (b) (6) in severely poor health and suffer the stress and uncertainty of whether his pro bono lawyers would be able to continue to represent him if his case was not transferred to (b) (6) an (b) (6) attorney, stated in his affidavit that he believes that he and his client were subject to "unreasonable and highly abusive treatment by Judge (b) (6) He described that although Judge (b) (6) granted him a short one week continuance the day before the hearing in lieu of granting a motion to change of venue to (b) (6) he was still required to appear with his client a week later in (b) (6) At that hearing, after the IJ terminated proceedings, two ICE officers

approached his client and took him into custody. (b) (6) in his attached declaration, describes that he recently filed two motions to change venue from (b) (6) to (b) (6) on November 19, 2012. He also filed two alternative motions for a waiver of appearance and for a telephonic hearing, as suggested by one of the (b) (6) Assistant Chief Counsels. The DHS did not respond. Starting on November 30, 2012, until December 11, 2012, the day before the hearing, he contacted the (b) (6) Immigration Court. It was only on December 11, 2012, the day before the hearing, that he discovered by calling the court that the IJ had denied all of his motions, including his motions to appear telephonically. Because they were informed "at the eleventh hour" of the IJ's decisions, his clients were unable to make such last-minute travel plans and were both issued *in absentia* orders. (b) (6), a (b) (6) attorney also submitted an affidavit detailing the facts of a recent case in which Judge (b) (6) refused to grant his change of venue motion and will not allow his client to substitute him as counsel even though (b) (6) client has made clear to Judge (b) (6) that he wishes that (b) (6) represent him.

In conclusion, any reasonable person with knowledge of these facts, coupled with the Immigration Judge's pattern and practice of treating other litigants the same way as (b) (6) (b) (6) would believe that Judge (b) (6) ability to carry out (b) (6) responsibilities with integrity, impartiality and competence is severely impaired. Judge (b) (6) has exhibited a pattern and practice with respect to how (b) (6) treats and adjudicates cases where the non-citizen's only contact with (b) (6) is that they were passing through the (b) (6) area, ICE issued an NTA there, and they are represented by out of town counsel. Because it is apparent that (b) (6) does all he can to make the lives of those non-citizens and their counsel as difficult as possible and hinders their chances of a fair adjudication, coupled with the serious allegations of bias and prejudice in (b) (6) case specifically, Judge (b) (6) should be discharged, or permanently removed from the bench to a non-adjudicatory position, or at a minimum suspended suspension for a significant period of time coupled with a public admonishment. Moreover, we ask for an immediate order recusing (b) (6) from all (b) (6) cases until such time as a decision may be made on the pending complaint and request for permanent recusal.

Very truly yours,

By:

(b) (6)

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Affirmation of (b) (6), Senior Partner at (b) (6)	Exhibit A
Affidavit of (b) (6) Respondent	Exhibit B
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Copy of 1) Judge (b) (6) decisions deferring (b) (6) change of venue motion and ordering (b) (6) ordered removed in absentia received by (b) (6) 2) the cover sheet from the Court for these decisions, and 3) the envelope in which these decisions arrived at (b) (6)	Exhibit D
Affirmations, Declarations, and Affidavits of attorneys and a BIA accredited representative who have appeared before Judge (b) (6)	Exhibit E
• Affidavit of (b) (6)	
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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

-----X
In the Matter of:

(b) (6)

File No.: A (b) (6)

Respondent.

IN REMOVAL PROCEEDINGS

-----X

AFFIRMATION OF (b) (6)

State of (b) (6))

ss:

County of (b) (6)

I, (b) (6), hereby affirm under penalty of perjury that:

1. I am the Senior Partner at the law firm of (b) (6) and I am duly admitted to practice before the EOIR. I am AV-Preeminent rated by Martindale Hubbell, the highest peer review rating for both Ethics and Knowledge, and am listed in Super Lawyers. I am also a frequent lecturer on deportation defense, an active AILA member, and former Trial Attorney (under the Attorney General's Honors Program) for legacy INS. I have been practicing immigration law for over 21 years, since I was first admitted in (b) (6) on December 6, 1991. I am admitted in (b) (6) and all the federal district courts in (b) (6) State in addition to most U.S. Courts of Appeals and the U.S. Supreme Court.
2. I am writing this affirmation to describe the events relating to (b) (6) April 18, 2012, master calendar hearing and the subsequent actions taken by (b) (6) staff, in response to Judge (b) (6) prejudicial and defamatory statements made against (b) (6) attorney, (b) (6) my firm and the DHS in (b) (6) denial of (b) (6) motion to reopen and (b) (6) subsequent complaint based on that denial.
3. As (b) (6) Senior Partner, (b) (6) acted under my direct supervision and instruction; accordingly, he cannot be held personally responsible for any of the alleged misconduct in (b) (6) case.
4. On March 30, 2012 (b) (6) submitted a timely motion to change venue, or in

the alternative, motion for counsel to appear telephonically on behalf of (b) (6) (b) (6). With the motion to change venue, (b) (6) entered his pleadings and submitted proof of his address, an application for cancellation of removal for certain non-permanent residents, a receipt notice for the application.

5. On April 11, 2012 the DHS filed a memorandum of non-opposition to the motion to change venue without having been contacted beforehand by (b) (6) staff.
6. (b) (6) routinely submits motions to change venue in immigration courts across the United States. As in (b) (6) case, when a motion to change venue includes proof of residence, pleadings, an application for relief and filing receipt, and is unopposed by DHS, there is every reason to expect that an Immigration Judge, acting reasonably, will grant it.
7. It is also routine practice at (b) (6) to advise clients that until an Immigration Judge grants a motion to change venue or a motion for continuance, or another motion that would waive their appearance at a hearing, they are required to appear in Immigration Court. We also always advise clients that if they do not appear in Court, they will most likely receive an *in absentia* order.
8. (b) (6) nor I never advised (b) (6) that he did not need to appear for his April 18, 2012 hearing in (b) (6). Under my supervision, (b) (6) advised (b) (6) that it was likely that his motion to change venue would be granted because we had submitted a timely, unopposed change of venue motion and attached proof of address, a relief application as well as the application receipt notice, but that there was also a chance it would be denied, in which case he would be required to appear in person for his hearing. (b) (6) informed us that it would be difficult for him to appear in (b) (6) because of his medical problems; however, we informed him that in the case that the motion was not granted and he did not appear, he would risk being ordered deported *in absentia*.
9. After submitting the motion to change venue and receiving a memorandum of non-opposition from DHS, starting April 13, 2012, our docket clerk (b) (6) made multiple follow up calls to the (b) (6) Immigration Court, up to and including the day before the hearing. Each time, he was informed that the Immigration Judge had not yet made a decision and to call back. I kept checking with (b) (6) to see if he had heard back from the Court.
10. Immediately after speaking to Judge (b) (6) clerk at approximately 2:45 p.m. the day before the hearing (April 17, 2012) (b) (6) informed me that Judge (b) (6) clerk had denied the motion to change venue without any explanation and that (b) (6) was required to appear in person in (b) (6) the next morning.
11. I was very upset about Judge (b) (6) decision. No other immigration judge in the country would have denied a meritorious, unopposed change of venue motion at such a late date and time without at least granting a continuance to allow (b) (6) to

make travel arrangements.

12. (b) (6) then informed our client (b) (6) that the motion had been denied. (b) (6) confirmed with (b) (6) that he would not be able to travel to (b) (6) on such short notice given his medical condition and his lack of finances. (b) (6) explained that if he did not appear in Court, he would most likely be ordered removed *in absentia*. (b) (6) expressed that he understood but that he could not go.
13. (b) (6) informed me of his conversation with (b) (6). I then asked a senior associate at the firm, (b) (6) to contact Jill H. Dufresne, Assistant Chief Immigration Judge, in Falls Church, Virginia, who supervises Judge (b) (6) because (b) (6) had spoken to Judge Dufresne's office on a previous case involving Judge (b) (6).
14. According to (b) (6) she informed Ms. Dufresne's office that Judge (b) (6) had denied (b) (6) unopposed change of venue motion at 2:45 that day and that (b) (6) was unable to travel to (b) (6) at such late notice given his medical condition. The woman (b) (6) spoke to suggested that we call the (b) (6) Court Administrator (b) (6) to find out if we could submit a faxed motion for a continuance, or in the alternative, a motion for both counsel and (b) (6) to appear telephonically.
15. (b) (6) called (b) (6) who refused to accept a faxed motion. (b) (6) stated that we were lucky to have received a call regarding the IJ's decision at all. (b) (6) suggested that if (b) (6) were unable to appear in person, that he should attempt to appear telephonically with (b) (6) in our offices the next morning. (b) (6) thought that perhaps that we could explain the circumstances to the Immigration Judge by telephone the next day with our client in our office.
16. Because (b) (6) would not accept a faxed motion, (b) (6) prepared and sent by overnight Federal Express an emergency motion for continuance, or in the alternative a motion for counsel and respondent to appear telephonically in our offices for the hearing.
17. I advised (b) (6) to prepare and file an interlocutory appeal of Judge (b) (6) denial of the motion to change to venue. I supervised (b) (6) on the appeal. The interlocutory appeal was also sent by overnight Federal Express to the BIA and a copy was sent to the IJ with our motion for continuance.
18. (b) (6) appeared at our office early on the morning of April 18, 2012. He sat in our office waiting room all day waiting, visibly physically uncomfortable. (b) (6) and (b) (6) continued to follow up with the (b) (6) Court throughout the day and were informed by the Court clerk that we should wait for Judge (b) (6) to call. However, Judge (b) (6) never called our office to conduct the telephonic hearing.

19. In the late afternoon, (b) (6) discovered by calling the EOIR 1-800# that Judge (b) (6) had ordered (b) (6) removed *in absentia*.
20. I advised (b) (6) to prepare a motion to reopen based on exceptional circumstances, including that (b) (6) failed to appear due to his medical condition and the extremely late notice he received from the Immigration Judge regarding the denial of his motion to change venue. I supervised him on the motion and on May 18, 2012, (b) (6) filed a timely motion to reopen. With the motion, (b) (6) submitted, among other documents, a doctor's letter and an affirmation from (b) (6) attesting to the fact that the Immigration Judge's clerk had not informed (b) (6) that his change of venue motion had been denied until 2:45 pm the day before the hearing in (b) (6).
21. On June 8, 2012, the interlocutory appeal was denied as moot because Judge (b) (6) had already ordered (b) (6) deported.
22. On June 18, 2012 the DHS submitted a motion of non-opposition to (b) (6) motion to reopen.
23. On August 14, 2012 Judge (b) (6) denied (b) (6) motion to reopen in an unprofessional and defamatory manner. Judge (b) (6) levied unsupported allegations of professional misconduct and ethical violations against both (b) (6) and the DHS. Specifically, Judge (b) (6) accused (b) (6) of making a false statement to the Court, i.e., that Judge (b) (6) clerk had informed (b) (6) that (b) (6) motion to change venue was denied, when in fact, Judge (b) (6) had deferred (b) (6) decision and that (b) (6) unilaterally decided that (b) (6) would not appear at his April 18, 2012, hearing.
24. On September 11, 2012 our office submitted a timely appeal of the immigration judge's decision on (b) (6) motion to reopen. The briefing deadline was extended due to (b) (6) I supervised (b) (6) on his appeal of the IJ's denial of his motion to reopen.
25. On November 19, 2012, the DHS filed the "Department of Homeland Security's Response to Appeal" with the Board. In it, the DHS stated, "The Department of Homeland Security, (DHS) **did not oppose** the respondent's Motion to Reopen filed with the (b) (6) Immigration Court dated May 18, 2012. The DHS continues to **not oppose** the respondent's motion at this time." (emphasis in original).
26. Shortly after the appeal was filed and the DHS filed its non-opposition, on November 26, 2012, the EOIR Office of the General Counsel issued a letter to (b) (6) stating that Judge (b) (6) had filed a complaint against him. Judge (b) (6) decision denying the motion to reopen serves as Judge (b) (6) complaint.
27. Nearly a month after the appeal of the motion to reopen was filed, Judge (b) (6) filed a complaint against (b) (6) with the EOIR in the form of (b) (6) decision denying

the motion to reopen.

28. Judge (b) (6) failure to respond to our unopposed motion to change of venue in a timely manner and (b) (6) subsequent denial of our unopposed motion to reopen and (b) (6) most recent outrageous filing of a complaint against (b) (6) has cost my firm much time and money, especially since we are now representing (b) (6) *pro bono*. It has also caused (b) (6) who has serious medical condition, a lot of unnecessary stress. All of this could have been avoided if Judge (b) (6) had acted in a reasonable, competent and professional manner.
29. The EOIR needs to take serious and immediate disciplinary action against Judge (b) (6) for (b) (6) improper conduct. No sitting Judge should be allowed to conduct himself or herself in such a manner. (b) (6) should be discharged or permanently removed from the bench to a non-adjudicatory position and at a minimum, should be suspended and publically admonished. Lastly, (b) (6) should be permanently barred from adjudicating cases where (b) (6) is the counsel of record. (b) (6) defamatory unfounded statements demonstrate that (b) (6) is not capable of impartially adjudicating a case where (b) (6) is entered as counsel. An immediate and interim order should be issued recusing IJ (b) (6) from adjudicating any pending (b) (6) cases, until such time as a decision on our complaint is made.

12/21/12

Date

(b) (6)

AFFIDAVIT OF (b) (6)

A (b) (6)

STATE OF (b) (6))

ss:

COUNTY OF (b) (6)

I, (b) (6), being duly sworn, depose and state:

1. I am a fifty-six year old native and citizen of Jamaica. I arrived to the United States in April 1985, over 25 years ago. I have two U.S. citizen children, born in (b) (6) and both of my parents are lawful permanent residents. I currently live at (b) (6). I have resided in the (b) (6) metropolitan area since my arrival in 1985.
2. My attorneys, (b) (6), assisted in preparing this affidavit; however, the information it contains is all my own. I am not subject to any criminal proceedings. I am willing to testify to the contents of this affidavit.
3. I have a disease called transverse myelitis. It is a neurological disease which affects my nervous system. I am constantly in pain and very tired. The disease affects the whole right side of my body. I used to use a walker to get around and now I use a cane. Sometimes when I wake up the pain is too much and I can't leave my bed for the entire day. I am always at home and am not able to work because of my disease. I rarely leave my home except to see my doctor.
4. I was scheduled for a hearing in immigration court in (b) (6) on April 18, 2012. Before this hearing, (b) (6) submitted a request to have my case transferred to (b) (6) because I have no connections to (b) (6) and have always lived in the (b) (6) metropolitan area since I arrived to the U.S. in 1985. I provided (b) (6) with proof of my (b) (6) address and worked with the paralegal (b) (6) to provide her all of the relevant information for a waiver application that would allow me to stay in the United States based on hardship to my citizen kids and parents who are lawful permanent residents if I left.
5. (b) (6) let me know that after he submitted a request to have my case transferred to (b) (6) (b) (6) that the Department of Homeland Security wrote to the Immigration Judge stating that they agreed to transfer my case to (b) (6).
6. (b) (6) informed me that there was a good chance that my request to move my case to (b) (6) (b) (6) would be granted because the DHS agreed with my request and because I had also filed a waiver application with the Court based on the hardship that my citizen children and parents would suffer if I left.
7. I was also told that if my motion to change venue was not granted, I would have to appear in person in (b) (6) on the day of my hearing. However, I let (b) (6) know that it was going to be very difficult for me to travel to (b) (6) because of my health problems.
8. During the week leading up to the hearing, (b) (6) kept me informed that they still had not heard from the Immigration Judge but that his office was following up with the judge regularly. Due to my poor financial situation and lack of income, I did not want to make travel arrangements to

(b) (6) until I heard the judge's decision on my motion. I was hopeful that the judge would agree to the transfer because there did not seem like any reason not to and the government had agreed to transfer the case to (b) (6)

9. On the morning of April 17, 2012, (b) (6) still had not heard whether the judge had approved my request to move the court proceedings to (b) (6). He said that his office kept calling the court but had not received a decision. At around 3 pm, I received a call from (b) (6) who told me that Judge (b) (6) did not grant my motion to change venue. He also told me that if I did not appear in (b) (6) the next day that I would likely be ordered deported.
10. I explained to (b) (6) that there was no way for me to travel to (b) (6) because of my medical condition and the last minute notice. Also my financial situation made it even more difficult for me to make last minute travel arrangements. (b) (6) repeated that there is a strong likelihood that I'd be ordered deported if I didn't go. I told him I couldn't go.
11. (b) (6) called me again and told me that if I couldn't appear in person in (b) (6) that I should come to (b) (6) office the next morning in order to attempt to appear over the phone with him because the Judge granted the motion allowing (b) (6) to appear over the phone.
12. On April 18, 2012, I arrived at (b) (6) office early in the morning at 8:30 a.m. Mr. Wolf and other staff kept on checking on me to make sure I was alright. I was very physically uncomfortable waiting and waiting like that.
13. At or around 3:00 p.m., after sitting in (b) (6) waiting room the entire day waiting for the Judge's call, (b) (6) another attorney with (b) (6) let me know that she called the immigration court 1-800 number and found out that I was ordered deported. I couldn't believe that happened to me. I was very upset. I was ordered deported before I was even given the opportunity to present my case to the Judge after waiting all day for (b) (6) to call.
14. I don't understand why the motion to transfer my case to (b) (6) was a problem. Judge (b) (6) did not treat me fairly. Judges should not be allowed to act the way that (b) (6) did.

Dated: December 19, 2012

(b) (6)

(b) (6)

Sworn to before me this

10th day of December

(b) (6)

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W I T N E S S E S

<u>PETITIONER:</u>				RE	RE	V.	
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>CROSS</u>	<u>D.</u>	<u>J</u>

<u>RESPONDENT:</u>				RE	RE	V.	
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>CROSS</u>	<u>D.</u>	<u>J</u>

E X H I B I T S

<u>PETITIONER:</u>			
<u>IDENTIFICATION</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>

<u>RESPONDENT:</u>			
<u>IDENTIFICATION</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

-----X

IN THE MATTER OF:

THE UNITED STATES OF AMERICA,

Petitioner,

Alien No.:

(b) (6)

Vs.

(b) (6)

Respondent.

-----X

April 18, 2012

HELD AT:

(b) (6) IMMIGRATION COURT

(b) (6)

BEFORE:

HONORABLE (b) (6)
Judge

APPEARANCES:

(b)(6) & (b)(7)(C)
U.S. Government

TRANSCRIBER:

(b) (6)

1 THE COURT: Good afternoon, once again.

2 This is the United States Immigration Court, (b) (6),

3 (b) (6) Today's date is Wednesday, April 18th,
4 2012, and I have before me the continuation of the -
5 - proceeding in the Matter of (b) (6)

6 (b) (6) Case number (b) (6) (b)(6) & (b)(7)(C)

7 [phonetic] is here on behalf of the United States
8 Government. The Respondent was scheduled for an
9 appearance this morning, at 9:00. It is now 2:00
10 p.m. in the afternoon. He is failed, or refused, or
11 neglected to appear. (b)(6) & (b)(7)(C) the Court--this is
12 the Court's in absentia docket. Do you wish to
13 proceed in absentia because the Court is going to go
14 forward.

15 (b)(6) & (b)(7)(C): Your Honor, may I just
16 make sure which case are we--

17 THE COURT: This is--I'm sorry--(b) (6)
18 (b)(6) & (b)(7)(C) Your Honor, the Government is
19 not seeking an in absentia order in this--

20 THE COURT: [Interposing] Why not, (b)(6) & (b)(7)(C)
21 (b)(6) & (b)(7)(C) Because I have good reasons to go forward
22 here today, ma'am, with all due respect to the
23 Government.

24 (b)(6) & (b)(7)(C) We're just erring on the side
25 of caution. It does appear that the Respondent has

1 an attorney. He has indicated in correspondence with
2 the Court that the Respondent does have some health
3 issues.

4 THE COURT: There's been medical evidence?

5 (b)(6) & (b)(7)(C) The Respondent may be eligible
6 for--

7 THE COURT: [Interposing] Is there any
8 medical evidence of that, though? I entered an order
9 is this--

10 (b)(6) & (b)(7)(C) [Interposing] No, there is not.
11 There is no documentary evidence--

12 THE COURT: [Interposing] Okay, all right.

13 (b)(6) & (b)(7)(C) --Your Honor, to be clear.

14 THE COURT: Okay. I entered an order on
15 this yesterday, and I will get into that in a moment.
16 In fact, let me address that now, and then, I might
17 be very happy to allow you to continue on or finish
18 what you're saying. But the order that was entered
19 yesterday is as follows. This matter having come on
20 to be considered on the Respondent's motion to change
21 venue, filed through Counsel on March 30th, 2012, and
22 the Court, having duly considered the matter and all
23 the proceedings held heretofore, the Respondent's
24 motion to change venue is hereby deferred, until the
25 day of the master calendar hearing. Further, it is

1 hereby ordered that Counsel's motion to appear
2 telephonically at the master calendar hearing on
3 April 18th, 2012, is hereby granted for Counsel only.
4 That's in bold letters, and that Counsel must be
5 available via landline during the entire course of
6 the hearing. The Respondent is required to appear in
7 court at (b) (6)

8 (b) (6) on the day of the hearing. Done and
9 ordered the 17th day of April, 2012, in (b) (6)

10 (b) (6) Now, there is a rough worksheet in the Court
11 file that also indicates that I handwrote out that
12 order yesterday, saying deferred, not denied, but
13 deferred. The Respondent has failed to show up in
14 court today to address the concerns of the Court.
15 Let me go back and let me address some other matters
16 in the Court file. A motion was filed for a
17 continuance or, in the alternative, to appear
18 telephonically, clocked in January 19th, 2012. The
19 Court entered an order January 30th, 2012, stating
20 this cause having come on to be considered on the
21 Respondent's motion filed through Counsel on January
22 19th, 2012, for a continuance of the master calendar
23 hearing, scheduled on February 1st, 2012, and then, -
24 - there being no opposition thereto and the Court
25 having duly considered the matter and being otherwise

1 fully advised at the premises and all the proceedings
2 - - heretofore, it is hereby ordered that the
3 Respondent's motion be granted, and the matter be
4 rescheduled in the master calendar on April 18th,
5 2012, at 9:00 a.m., at (b) (6)

6 (b) (6) Done and ordered this 30th
7 day of January, 2012, at (b) (6) That was
8 January 30th. Today is April 18th. The Court next
9 received a motion to change venue or, in the
10 alternative, motion to allow Respondent's Counsel to
11 appear telephonically. And I'm going to repeat that,
12 to allow Respondent's Counsel to appear
13 telephonically. That was clocked in March 30th,
14 2012. That is the subject matter of the order that I
15 just made reference to that was signed yesterday
16 that's on the rough worksheet. The motion to change
17 venue was deferred, not denied, even though there's a
18 lawyer's affirmation in here saying it was denied,
19 which is a very serious matter for a lawyer to put in
20 writing because that's incorrect. Now, with all due
21 respect, the Respondent's Counsel was given the
22 courtesy of a phone call yesterday, advising her of
23 the ruling in which the Court arrived at, and the
24 Court staff, with all due respect, is not required to
25 do that, to make phone calls. It would be almost

1 impossible for the Court to do that in every
2 instance, given the 2 to 3,000 motions it gets every
3 year. The Court simply does not have enough person
4 power to make 2 to 3,000 phone calls a year, but did
5 so yesterday. Additionally, Respondent's Counsel
6 also contacted the Court Administrator, who also told
7 her that her client had to appear in court, unless
8 excused, and what her responsibilities were.

9 This Court is also carrying two caseloads,
10 both mine and, of course, retired Judge (b) (6)
11 (b) (6) [phonetic], and the Court receives, as I've
12 indicated, 2 to 3,000 motions a year, and makes every
13 effort to rule on each motion and, having either
14 known or should known this, Counsel should have
15 submitted her motions earlier. Nonetheless, the
16 Court still ruled on it yesterday, and it was phone
17 in to her, which, again, the Court staff is not
18 required to do. Additionally, with all due respect,
19 a lawyer cannot unilaterally decide that the client
20 is not to show up and disregard the order of the
21 Court, and that order went out January 30th, advising
22 him to be in court. Again, with all due respect,
23 there is no medical evidence or information showing
24 that the Respondent is unable, from a medical
25 standpoint, to appear in court. And there are two

1 U.S. Court of Appeals cases, I believe, that may
2 address this. That's the (b) (6) [phonetic] and
3 (b) (6) [phonetic] cases. And the Court finds that
4 the way in which Counsel for the Respondent has
5 handled this matter is not acceptable to the Court.
6 The Court further finds that, with all due respect to
7 the Department of Homeland Security, just because the
8 Department of Homeland Security agrees with Counsel
9 on a matter doesn't necessarily bind this Court by
10 which they agree to. Otherwise, there would be no
11 reason for a court to sit. All one would have to do
12 then is go to the Court's office and get a stamp, a
13 grant, and I say that with all due deference and due
14 respect to everybody concerned. So just because
15 there's a stipulation doesn't necessarily mean that
16 the Court is bound by that or has to go along with
17 it. Additionally, nowhere is, in Counsel's motion to
18 continue, clocked in on January 19th, 2012, does it
19 contain or ever refer to the Respondent or his
20 inability to travel, and at no place in the motion,
21 did she request a telephonic for the Respondent.
22 Again, in Counsel's motion clocked in March 30th,
23 2012, did she or he, whichever the case may be, ask
24 for Respondent's appearance to be waived, and again,
25 requested the Court, "to allow Respondent's Counsel

1 to appear telephonically," and did not include the
2 Respondent. The Court has received no documents in
3 support, by the way, of the Respondent being prima
4 facie eligible for this relief. What the Court has
5 received is a relief application, which calls for
6 additional documentation, at page 7, question 64, but
7 none is attached or is included. Even though the
8 Court granted a previous continuance for the
9 attorney--for the attorney who represents the
10 Respondent, granted a previous continuance because
11 they had been retained in January and needed more
12 time to prepare, and they've failed to submit any
13 documentation, attach it to the response to that
14 application, which, in this Court's view,
15 demonstrates statutory eligibility or prima facie
16 eligibility, I should say, nor does it, again,
17 without trying to repetitive, does it contain any
18 information at page 7, paragraph 64, which is called
19 for. Moreover, there is no proof, in the form of
20 plane, bus or train tickets showing the Respondent
21 even intended to come to court. Counsel's motion for
22 a telephonic, again, did not include the
23 Respondent's--a request for the Respondent to appear
24 telephonically. Today, an untimely motion was filed,
25 and again, no exceptional circumstances were set

1 forth, and no medical evidence of one's inability to
2 come to court, but did contain what the Court regards
3 as a incorrect statement in the affirmation, making a
4 representation that this Court denied the motion,
5 when it did no such thing. It deferred the motion
6 because the Court has questions. That's the
7 procedure that the Court routinely uses. I'd also
8 like to, with all due respect, kindly address the
9 case or a series of cases that may be analogous, and
10 that -- versus (b) (6), at (b) (6). And
11 in that case, there was an in absentia order of
12 removal, which they were addressing, and stated that
13 it may be rescinded by motion, if the alien
14 demonstrates that the failure to appear was because
15 of exceptional circumstances.

16 8 U.S.C. 1229(a)(b)(c)1. The decision goes
17 on to state that congress has narrowly defined
18 exceptional circumstances as circumstances such as
19 serious illness of the alien, or a serious illness or
20 death of a spouse, child or parent of the alien, but
21 not including less compelling circumstances beyond
22 the control of the alien. I again cite 8 U.S.C, and
23 this time, it's 1229a(E)1, and following (b) (6)
24 (b) (6) in the next paragraph, they say that the
25 Respondent had the burden of establishing exceptional

1 circumstances warranting rescission, and they cite

2 (b) (6)

3 which is a (b) (6) Circuit case, and go on to state the
4 statute's plain language in the case that this is a
5 difficult burden to meet, citing (b) (6)

6 (b) (6), describing

7 identical exceptional circumstances language under
8 1229a(E)1, one's predecessor at 8 U.S.C. 1252b(F)2.

9 And the next paragraph to that decision, it goes on
10 to essentially state that a Respondent asserted his
11 motions to reopen, but he did not attend his hearing
12 because he had filed two motions to change the venue
13 of his removal proceedings from (b) (6) to (b) (6)

14 The Courts have roundly rejected this argument;
15 however, because the mere submission of a motion for
16 a change of venue does not excuse an alien's failure
17 to appear. And they cite (b) (6)

18 (b) (6), applying 8 United States
19 Code 1252b. Also cited, (b) (6)

20 (b) (6), and in parenthesis, it says,
21 the mere filing of a motion to change venue not
22 reasonable cause for absence at deportation hearing
23 under 8 U.S.C. 1252b. They also cite (b) (6)

24 (b) (6) upholding
25 an in absentia hearing under 8 U.S.C. 1252b, despite

(b) (6)

1 the Petitioner's motion for change of venue. They
2 also cite a (b) (6) Circuit case in that decision.
3 One moment, please. Let me stand corrected. Again,
4 I'd like to cite (b) (6)

5 (b) (6) and that is the (b) (6) Circuit 1989 case. It says
6 same, then (b) (6)

7 (b) (6) applying 8 U.S.C. 1252b and noting, mere
8 submission of a motion for change of venue is not
9 reasonable cause for failure to appear at a hearing.
10 By the way, the (b) (6) case is a (b) (6)
11 Circuit case, and that's at (b) (6)

12 It says, in paren., (b) (6) Circuit 1994, end of
13 paren., applying 8 U.S.C. 1252b. So the Court does
14 not find exceptional circumstances for excusing the
15 Respondent's appearance in court today, nor was it
16 requested. The Court is now looking at the I-213 - -
17 deportable alien that the Government has handed up,
18 and at page three, it says miscellaneous call in.

19 Then it says (b) (6) claims to be suffering from
20 transverse myelitis, a spinal disease, for which he
21 receives therapy on a weekly basis. The next
22 sentence, it says, (b) (6) otherwise claims and
23 appears to be in good physical health and does not
24 require medication prescribed to him by a doctor.
25 Well, again, there is nothing from a doctor who is

(b) (6)

1 showing that there is any inability to travel under
2 the (b) (6) or (b) (6) cases that I've seen.
3 There are not exceptional circumstances for failing
4 to appear. Respondent had notice well in advance of
5 being here today. Counsel was twice given permission
6 to appear telephonically, and twice failed, refused
7 or neglected to include the Respondent, and
8 furthermore, was given a continuance to prepare for
9 today, and the statutory--excuse me, the relief
10 application for relief is not complete, and that's
11 why the Court deferred the motion to change venue
12 until today, so it could get an answer to that, which
13 it routinely does in many, many cases. So the
14 Court's going to be proceed in absentia, with all due
15 respect. Now, the Court wishes to also note again
16 the affirmation of Counsel here, which is incorrect.
17 That's the affirmation that was contained in the
18 untimely submission that came to the Court's office
19 this morning, the Clerk's office, that clocked in at
20 April 18th, which is today, at 10:15, while the Court
21 was in session with other cases. Did you receive
22 that, (b)(6) & (b)(7)(C)?

23 (b)(6) & (b)(7)(C): No, Your Honor.

24 THE COURT: You haven't received that at
25 all, that motion?

1 (b)(6) & (b)(7)(C) No, Your Honor.

2 THE COURT: This is going to be denied,
3 also, the Respondent's motion for a continuance or,
4 in the alternative, for both Counsel and Respondent
5 to appear telephonically, and I say that, with all
6 due respect, it was untimely being filed, and
7 certainly, you haven't had a chance to respond to it,
8 but today is the date that was scheduled for his
9 hearing, and I do not find good cause shown or
10 exceptional circumstances, as required under the Act
11 to be shown, for failing to appear. So with all due
12 deference to everyone, those are the reasons. Now,
13 again, I want to note that my worksheet is here in
14 the Court file, indicating that I ruled on this
15 yesterday, and the order was typed yesterday and was
16 signed, and it was phoned to Counsel. There is no
17 proof that Counsel's client ever intended to come
18 here. There's no proof--I have no proof that there's
19 any medical reason for him not appearing, and the
20 Court needed the Respondent here, and wanted the
21 Respondent here, and routinely expects Respondents to
22 show up in court. And just because there was the
23 permission to appear telephonically does not excuse,
24 with all due respect, Counsel for the Respondent.
25 And I'm not trying to be difficult with anybody. I'm

1 just ruling as I deem necessary and appropriate,
2 under the circumstances. And again, just because the
3 Department of Homeland Security chooses not to object
4 to--or does not wish to proceed, I don't find a good
5 cause from the Department for that reason, with all
6 due respect, unless I've missed something, though.
7 Is there a reason, other than what you've already
8 stated to me?

9 (b)(6) & (b)(7)(C): No, Your Honor. We were erring
10 on the side of caution.

11 THE COURT: Well, what caution would that
12 be, if I can ask?

13 (b)(6) & (b)(7)(C): The Respondent, as I indicated
14 previously, does have Counsel, which has represented,
15 though not substantiated, that there were health
16 issues for which the Respondent could not appear
17 today.

18 THE COURT: There was no medical--

19 (b)(6) & (b)(7)(C): [Interposing] We're just erring
20 on the side of caution--

21 THE COURT: [Interposing] But that has--

22 (b)(6) & (b)(7)(C): --and giving the Respondent the
23 benefit of the doubt and Counsel--

24 THE COURT: [Interposing] Okay. But hasn't
25 that happened--

1 (b)(6) & (b)(7)(C): --the benefit of the doubt that
2 they would be able to substantiate that claim.

3 THE COURT: All right. But hasn't that
4 happened thousands of other times, where a person
5 does not--

6 (b)(6) & (b)(7)(C): [Interposing] Yes, Your Honor.
7 Absolutely.

8 THE COURT: --show up in court, and the
9 lawyer's been given a telephonic, and the Court still
10 proceeds in absentia because it doesn't find it
11 appropriate under the circumstances, and the Court is
12 merely going by, and I would ask you to tell me, if
13 you recall this, is going by what is recorded under
14 the statute, that exceptional circumstances have to
15 be shown, and now, the Court is not convinced that
16 there is persuasive evidence of that, so.

17 (b) (6): Yes, Your Honor. Absolutely,
18 and we would, you know, defer to your judgment at
19 this time.

20 THE COURT: Okay. All right. Having said
21 that, then, the Court does note--and the Court is--I
22 want to parenthetically also note, the Court, I
23 think, and everybody knows that the Court is very
24 sympathetic with medical conditions, often does,
25 certainly, express that sympathy and concern, but

1 there are certain minimal requirements that are
2 expected, and the Court does not find that these are
3 meritorious, and they have not been substantiated.
4 So in looking at the totality of the circumstances
5 that have occurred here, this is the basis for the
6 Court's ruling today. Now, the Court also notes, in
7 the motion to change venue, clocked in March 30th, at
8 paragraph three, the Respondent admitted all of the
9 allegations and conceded removal. He claims to be at
10 least seeking cancellation of removal - - non
11 permanent residence, and has attached 42B, but again,
12 as I've stated, the Court had questions of him, and
13 that's why I deferred on it until now, and if--unless
14 the Respondent shows up in court, the Court does not
15 go forward with a telephonic hearing, in the absence
16 of the Respondent, which is required, and he has not
17 been excused from attending today's hearing, with all
18 due respect. The Court does not want to be
19 redundant, but the relief application which the Court
20 is looking at here is insufficient or is deficient,
21 as the Court has noted above, in that there is no
22 additional documentation attached to it, or included
23 in it. And in particular, at page 7, paragraph 64,
24 it calls for additional information and it's not
25 there for the Court to predicate the statutory

1 eligibility on him, and in looking at the totality of
2 the circumstances and the aggregate, the Court will
3 proceed in absentia. Transcriber, this is the oral
4 decision of the Court. Jurisdiction was established
5 in this case by the issuance of a noticed appearance
6 for this process by the Respondent putting exhibit
7 number one in - - proceedings, herein. Furthermore,
8 notice of today's hearing and that it was to be
9 conducted on this date was, likewise, given to the
10 Respondent, wherein, the Respondent had an
11 opportunity to be present and has failed or neglected
12 to appear, or refused to appear. No exceptional
13 circumstances have been demonstrated to the Court by
14 the Respondent of his absence. Therefore, these
15 proceedings are being conducted in absentia.
16 Furthermore, the Respondent has admitted the - -
17 allegations by and through his Counsel of Record, as
18 set forth and contained in the notice to appear.
19 Therefore, removal has been established, as charged.
20 All pending applications are hereby deemed abandoned
21 and dismissed for lack of prosecution. And it's the
22 order and judgment of the Court that the Respondent
23 is hereby removed and deported on the charges, as set
24 forth and contained in the notice to appear. And
25 again, (b)(6) & (b)(7)(C), with all due respect to everyone

(b) (6)

1 concerned, this is the decision of the Court. And
2 again, with all due respect, this is my judgment on
3 the matter. And the Court has a copy of yesterday's
4 order that has gone out or should have gone out to
5 you, or will be given to you, and as well as Counsel,
6 who was notified of it yesterday, as well as a copy
7 of the in absentia order that was just ordered. Is
8 there anything further, (b) (6) that you would
9 like to add today, ma'am?

10 (b) (6) No, Your Honor. Thank you.

11 THE COURT: Okay. One moment, please.
12 Thank you very much. All right. We're adjourned.

13 [OFF THE RECORD]

14 [ON THE RECORD]

15 THE COURT: Okay. (b) (6) thank you
16 very much for coming back up. The Clerk just brought
17 something to my attention. I just wanted to add
18 something else, by way of the delineation to the oral
19 decision the Court rendered--

20 (b) (6) [Interposing] Yes, Judge.

21 THE COURT: --with reference to this matter.
22 Madam Clerk, (b) (6) [phonetic], who needs to
23 add something to the record. (b) (6) could
24 you tell me about your conversation yesterday with
25 Counsel?

1 (b) (6): Yes. I contacted Attorney
2 (b) (6), to advise him that his motion for the
3 telephonic appearance was granted for him only, and
4 that the Respondent was required to appear in court.

5 THE COURT: Okay.

6 (b) (6): And I also advised the
7 Attorney that his motion for a change of venue was
8 deferred until the day of the hearing.

9 THE COURT: Okay, very well.

10 (b) (6): The Attorney continued to
11 request that I ask for your consent to allow the
12 Respondent to appear in his office, in which--

13 THE COURT: [Interposing] Okay. He asked
14 you to communicate with me directly, without
15 communicating with the Department of Homeland
16 Security?

17 (b) (6): That's correct. And I
18 advised the Attorney that the Judge had made his
19 ruling on the motion, and they were as they stand.

20 THE COURT: Very well. There appears
21 something in the statement from Counsel, though, with
22 reference to that conversation. Is that conversation
23 correct, as he stated it in the package that came
24 today?

25 (b) (6): No, it's not correct.

1 THE COURT: Okay. What paragraph are you
2 referring to that's not correct, if you could tell
3 us, please?

4 (b) (6): I'm referring to page three
5 of the untimely filed Respondent's motion for a
6 continuance or, in the alternative, for both Counsel
7 and Respondent to appear telephonically. It's on
8 page three, paragraph number four, where the Attorney
9 indicates that the Immigration Judge was unable to
10 provide an explanation as to why the motion to change
11 venue was denied, which I did not tell him it was
12 denied. I told him that it was deferred. And he
13 also states that the undersigned then requested that
14 she ask the Immigration Judge if he would allow
15 Respondent to appear telephonically. She responded
16 that she was unable to, and confirmed again that
17 Respondent was required to appear in (b) (6) And my
18 reply was that the Judge had made the rulings on his
19 motion, and they were as they stand, and that the
20 Respondent was to appear in court for his master
21 calendar hearing on April 18th.

22 THE COURT: Okay. (b) (6), this is what
23 the Court wanted to incorporate into its oral
24 decision, and the Court notes that, and by the way,
25 parenthetically, that further examination of the

1 Court file indicates he is 56 years old. I believe
2 that's all the Court Clerk had to add to this, and I
3 wanted to make sure, in the interest of clarifying
4 the record, what that conversation contained. Is
5 there anything further, however, you'd like to add or
6 that's - - ?

7 (b)(6) & (b)(7)(C) No, Your Honor. Thank you.

8 THE COURT: Thank you, again. Again, this
9 is done with all due respect to all parties
10 concerned. Have a good day again.

11 [END OF HEARING]

(b) (6)

C E R T I F I C A T E

I, (b) (6), certify that the foregoing transcript of proceedings in the United States of America v. (b) (6) (b) (6), Alien No. (b) (6) was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Signature:

(b) (6)

Date: December 13, 2012

(b) (6)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

(b) (6)

(b) (6)

12 APR 23 AM 11:02

(b) (6)

IN THE MATTER OF

(b) (6)

FILE A (b) (6)

DATE: Apr 18, 2012

UNABLE TO FORWARD - NO ADDRESS PROVIDED

ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
P.O. BOX 8530
FALLS CHURCH, VA 22041

XX ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT

(b) (6)

* OTHER:

*Copy of Order Deferring Charge of Thru
Apparatus & Granting Telephonic appearance for
Counsel only.*

(b) (6)

COURT CLERK

IMMIGRATION COURT

FF

CC: (b)(6) & (b)(7)(C), ESQ., ASSISTANT CHIEF COUNSEL

(b) (6)

(b) (6)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

(b) (6)

IN THE MATTER OF:

(b) (6)

DATE: Apr 18, 2012

CASE NO. A (b) (6)

RESPONDENT IN REMOVAL PROCEEDINGS

DECISION

Jurisdiction was established in this matter by the filing of the Notice to Appear issued by the Department of Homeland Security, with the Executive Office for Immigration Review and by service upon the respondent. See 8 C.F.R. § 1003.14(a), 103.5a.

The respondent was provided written notification of the time, date and location of the respondent's removal hearing. The respondent was also provided a written warning that failure to attend this hearing, for other than exceptional circumstances, would result in the issuance of an order of removal in the respondent's absence provided that removability was established. Despite the written notification provided, the respondent failed to appear at his/her hearing, and no exceptional circumstances were shown for his/her failure to appear. This hearing was, therefore, conducted in absentia pursuant to section 240(b)(5)(A) of the Immigration and Nationality Act.

[XX] THE RESPONDENT ADMITTED BY AND THROUGH COUNSEL THE FACTUAL ALLEGATIONS IN THE NOTICE TO APPEAR AND CONCEDED REMOVABILITY. I FIND REMOVABILITY ESTABLISHED AS CHARGED. THE COURT'S FINDING OF FACTS AND CONCLUSIONS OF LAW WERE MADE ORALLY IN ITS DECISION ON THE RECORD.

[] The Department of Homeland Security submitted documentary evidence relating to the respondent which established the truth of the factual allegations contained in the Notice to Appear. I find removability established as charged.

I further find that the respondent's failure to appear and proceed with any applications for relief from removal constitutes an abandonment of any pending applications and any applications the respondent may have been eligible to file. Those applications are deemed abandoned and denied for lack of prosecution. See Matter of Pearson, 13 I&N Dec. 152 (BIA 1969); Matter of Perez, 19 I&N Dec. 433 (BIA 1987); Matter of R-R, 20 I&N Dec. 547 (BIA 1992).

ORDER: The response contained in the No

cc: (b)(6) & (b)(7)(C) E

(b) (6)

RE: (b) (6)

File: A (b) (6)

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☒ DHS

DATE: 4/19/12 BY: COURT STAFF (b) (6)

Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other

C1

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT

(b) (6)

IN THE MATTER OF

IN REMOVAL PROCEEDINGS

(b) (6)

Case No. A (b) (6)

RESPONDENT

ON BEHALF OF RESPONDENT

ON BEHALF OF DHS

(b) (6)

(b)(6) & (b)(7)(C) Esq.

Assistant Chief Counsel

(b)(6) & (b)(7)(C)

ORDER OF THE U.S. IMMIGRATION JUDGE

This matter having come on to be considered on the Respondent's motion to change venue filed, through counsel, on March 30, 2012, and the Court having duly considered the matter and all the proceedings held heretofore; Respondent's motion to change venue is hereby **DEFERRED** until the day of the Master Calendar hearing.

FURTHER, IT IS HEREBY ORDERED that counsel's motion to appear telephonically at the Master Calendar hearing on April 18, 2012, is hereby granted for **Counsel only** and that Counsel must be available via land line during the entire course of the hearing. The Respondent is required to appear in Court at (b) (6) on the day of the hearing.

DONE and ORDERED this 17th day

(b) (6)

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: ☐ ALIEN ☐ ALIEN C/O CUSTODIAL OFFICER
☒ ALIEN'S ATT/REP ☐ DHS

Date: 4/18/12 BY: COURT STAFF (b) (6)
Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other

(b) (6)

My name is (b) (6) I am a member of the Bar of the (b) (6)
(b) (6) I have practiced before the immigration courts on a full time basis since 1985.

I have had two cases before Judge (b) (6) where (b) (6) refused to change venue and I think one recent case where (b) (6) granted the motion. In the first such case for a man eligible for then suspension of deportation, I took the unusual step of going with my client to (b) (6) from (b) (6). It meant I had to have to spend the night in a hotel and was away from my office for two whole days. Even though both my client and I (and his witnesses for his case) all lived in (b) (6) Judge (b) (6) refused to change venue. (b) (6) told me (b) (6) had heard the (b) (6) courts were "busy". This was many years ago. I believe I filed a complaint with the Office of the Chief Judge about this case but cannot find the file at the present time.

The second case followed. This client not only lived in (b) (6) where his father through whom he was eligible to adjust lived, but also he was HIV positive, he actually had an AIDS diagnosis at the time. Obviously 9 hours on an overnight bus was very harmful to his health so I advised him not to go, sending a change of venue with proof of my client's AIDS condition from his health provider in (b) (6). Judge (b) (6) denied this change of venue as well and ordered my client deported in absentia. I attach some of the documents from that case. Eventually the BIA reversed (b) (6) but it took years of unnecessary litigation and great expense to my office which is a thinly funded not for profit.

From my face to face interactions with this Judge, I believe (b) (6) acts in a sarcastic arbitrary and vindictive manner. (b) (6) should not be on the bench.

(b) (6)

Dec. 14, 2012

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

(b) (6)

File A (b) (6)

June 7, 2006

In the Matter of

(b) (6)

Respondent

)
)
)
)
IN REMOVAL PROCEEDINGS

CHARGE:

APPLICATION:

ON BEHALF OF RESPONDENT:

Pro se

ON BEHALF OF DHS:

(b)(6) & (b)(7)(C) Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

Jurisdiction was established in each of the cases by the issuance of a Notice to Appear or order of the document as evidence in the record of proceedings herein. Furthermore, notice of today's hearing that it was to be conducted on this date was likewise given to the respondents and they had opportunity to be present, but have failed, refused or neglected to appear. No reasonable cause has been amassed. The Court by the respondent's actions therefore these proceedings are being conducted.

The only other explanation is by virtue of pleadings that have been submitted by their attorneys, but the attorneys

JLP

have failed to appear. It is incumbent upon all parties to appear if there's a denial of a motion to change venue or if it has not yet been ruled upon.

Having said that, no other reasonable cause has been amassed, the Court, therefore, these proceedings are being conducted in absentia. Accordingly, I do find that removal has been established as charged. All pending applications are hereby deemed abandoned and dismissed for lack of prosecution and it's the order and judgment of the Court that the respondents are hereby removed and deported from the United States on the charges set forth and contained in their respective Notices to Appear

(b) (6)

CERTIFICATE PAGE

I hereby certify that the attached proceeding
before (b) (6) in the matter of:

(b) (6)

A (b) (6)

(b) (6)

was held as herein appears, and that this is the original
transcript thereof for the file of the Executive Office for
Immigration Review.

Jessica L. Pineda

Jessica L. Pineda (Transcriber)

Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

March 3, 2007
(Completion Date)

U.S. DEPARTMENT OF JUSTICE
OFFICE OF THE IMMIGRATION JUDGE

IN RE:

(b) (6)

A (b) (6)

AFFIDAVIT OF RESPONDENT IN SUPPORT OF
MOTION TO RESCIND *IN ABSENTIA* ORDER

I, (b) (6), an adult, make the following statement under penalty of perjury:

1. I did not attend my removal hearing held in (b) (6) on June 7, 2006 because I was then and am now under medical treatment because I am HIV positive. My T-cell count was especially low at the time of the hearing and I was told not to travel. (See attached letter from the clinic where I go.)
2. My father, a U.S. citizen, filed an I-130 for me and I am eligible for adjustment of status. I entered the United States in 1985, have never left, and am therefore eligible for the benefits of INA section 245i. I understand that my father's income is too low to provide the necessary financial support but my sister, a U.S. citizen, and my brother, a LPR, will help meet those requirements. They both live in (b) (6).
3. Because it would still be a health risk for me to travel and a hardship for my financial sponsors to take the two days off from work necessary as well to appear in (b) (6) I am asking the court to rescind the order of removal against me and to change venue of my case to where I have always lived, (b) (6).

(b) (6)

(b) (6)

June 23, 2006

(b) (6)

Re: (b) (6)

(b) (6)

To whom it may concern:

(b) (6) has been a patient at the SCIS clinic since September 2005. (b) (6) is currently being treated for AIDS with a CD4 count of 144, hyperlipidemia and mild anemia. His current treatments include Trizivir, Kaletra, Bactrim and Tricor. As with all people with T-cell count below 200 (b) (6) is at risk for opportunistic infections. I recognize the importance of (b) (6) keeping his court dates, however if at all possible please provide him a venue which requires minimal travel and minimal exposure large numbers of people or crowds where transmission of communicable diseases is more efficient, as both of these could negatively impact his already weakened immune system.

(b) (6)

(b) (6)

I, (b) (6) declare under the penalty of perjury, pursuant to 18 USC. sec. 1546, that the following is true and correct:

1. Since September 2008, I have been employed by (b) (6) as a Board of Immigration Appeals Fully Accredited Representative. Immigration Equality is a national non-profit organization located in (b) (6) that focuses on lesbian, gay, bisexual, transgender, and HIV immigration issues including asylum. We run a national pro bono asylum program in which we match low-income asylum seekers with volunteer attorneys to represent them.
2. I conduct intake interviews with potential clients to determine their eligibility to receive services through our pro bono asylum program. I also represent clients in removal proceedings before the Executive Office of Immigration Review. Prior to joining the legal team at (b) (6) I was a fully accredited representative with (b) (6) (b) (6) located in (b) (6)
3. In September 2008, I met with (b) (6) who came to our office seeking services because he feared he would be removed from the United States back to his native El Salvador. He had been detained by Immigration and Customs Enforcement officers near (b) (6) when he had recently traveled to see his relatives. At the time of our meeting, (b) (6) had not been issued a notice to appear in immigration court.
4. After completing the intake process, we accepted his case into our pro bono asylum program because he was beaten by police officers and community members in El Salvador and feared this would happen again if he was forced to return. We therefore filed an application for asylum with the (b) (6) Service Center. We believed that the (b) (6) Asylum office had jurisdiction over his case because (b) (6) had not been issued a notice to appear in immigration court. We received a receipt for the application and (b) (6) was scheduled for an asylum interview on November 12, 2008.
5. However, on or about October 15, 2008, the (b) (6) Immigration court issued (b) (6) a notice to appear. He was scheduled for a master calendar hearing on January 16, 2009, at 9am before immigration judge (b) (6). Our office agreed to assist (b) (6) to file a change of venue motion because he was in poor health and traveling to immigration court in (b) (6) would be a hardship for him.
6. (b) (6) was suffering from multiple HIV/AIDS related illnesses including: an extremely low T-cell count, thrush anemia, severe fatigue, and complications related to cytomegalovirus (CMV). At the end of June 2008, he was hospitalized for approximately one month due to worsening lung functions and complications from infections. He was under the care of his primary care physician, (b) (6) MD, at (b) (6) Hospital. (b) (6) physician was concerned about his traveling to (b) (6) because his extremely low T-cell count made him susceptible to infections that his body could not easily fight.
7. Additionally, (b) (6) was living in (b) (6) with his life partner, (b) (6) (b) (6) who was also his primary care giver. (b) (6) was not able to work due to his

health problem and relied on his life partner for financial support. At the time, (b) (6) was concerned about his health and his partner's ability to work to provide their financial support. He believed that traveling to (b) (6) would create further hardships for the couple.

8. In November 2008, I assisted (b) (6) file a change venue with Immigration Judge (b) (6) (b) (6) because his poor health and his partner's inability to travel to (b) (6) created hardships for him. I included a three page sworn statement from (b) (6) MD, providing detailed information about his poor health and her concerns that traveling to (b) (6) would pose difficulties because of his weakened immune system and severe fatigue. (b) (6) was also concerned that his condition would worsen because his body would not be able to easily fight infections or handle the stress and fatigue from the trip.
9. I also included a statement from his life partner advising that traveling would pose a severe hardship because he was (b) (6) care giver and he provided the couple's financial support.
10. On or about December 3, 2008, we received the Department of Homeland Security's response to (b) (6) change of venue motion stating that the office of Assistant Chief Counsel did not oppose the motion.
11. By this time our office had placed (b) (6) case with attorneys in the (b) (6) office of (b) (6) a firm that participates in our pro bono asylum program. The pro bono attorneys assigned to his case were aware that the change of venue motion was pending and that (b) (6) had severe health problems.
12. On or about December 12, 2008, we received notice that Judge (b) (6) denied the change of venue motion. We notified (b) (6) so that he knew that he would need to travel to (b) (6) for his scheduled master calendar hearing on January 16, 2009.
13. (b) (6) pro bono attorneys were concerned that he would not be able to make continued appearances in (b) (6) and filed a second change of motion request, which was also denied by immigration judge (b) (6).
14. Because (b) (6) health continued to deteriorate, his pro bono attorneys filed a third request for a change of venue and, finally, Judge (b) (6) granted the motion (b) (6) case was transferred to the (b) (6) immigration court.

15. Ultimately, (b) (6) was granted asylum in October 2010, but not before he was required to travel to (b) (6) in severely poor health and suffer the stress and uncertainty of whether his pro bono lawyers would be able to continue to represent him if his case was not transferred.

Date: December 12, 2012

(b) (6)

BIA Fully Accredited Representative

(b) (6)

(b) (6)

AFFIDAVIT

(b) (6) upon oath duly sworn deposes and states as follows:

1. I am an attorney duly licensed to practice law in the State of (b) (6)
2. I am a member of the bar of the State of (b) (6)
3. I primarily concentrate my legal work in the area of immigration law.
4. I have represented clients in various immigration proceedings, including removal proceedings, throughout the country.
5. I recently representing a client in removal proceeding then-pending before Immigration Judge (b) (6) in (b) (6) and believe that my client and I were subjected to unreasonable and highly abusive treatment by Judge (b) (6) as follows:
 - a. I filed a Motion to Change Venue approximately 2 months prior to the first master hearing scheduled in that case. The motion was based on the fact that the Respondent resided, and all the evidence and witnesses were located in (b) (6)
 - b. The DHS has filed its notice of non-opposition to the Respondent's motion, yet the motion was denied by Immigration Judge (b) (6)
 - c. Subsequently, having received the client's records under the Freedom of Information Act, I concluded that the Immigration Court lacked jurisdiction over my client's case, and that he may be eligible for adjustment of status.
 - d. Based on such finding, I filed, 3 weeks prior to the first master hearing, a Motion to Terminate Removal Proceedings or, in the alternative, Renewed Motion to Change Venue or, in the alternative, Motion for Continuance.
 - e. The Motion for Continuance specifically stated that it was filed to accommodate the undersigned counsel, a solo practitioner, who was scheduled to attend the American Immigration Lawyers Association continued legal education conference scheduled for the date of the hearing.
 - f. The DHS has filed its notice of non-opposition to the Respondent's motion for continuance.
 - g. Immigration Judge (b) (6) failed to rule on all three motions until the day before the hearing. The undersigned counsel called the immigration court several times, yet it was only on the afternoon of the day immediately preceding the date of a hearing that a clerk from the immigration court informed us that Judge (b) (6) agreed to grant a "short continuance."
 - h. On the scheduled date of a hearing, Immigration Judge (b) (6) issued an order granting the out-of-state Respondent and his counsel a 1-week continuance. The order issued stated on its face in bold letters "Both Respondent and Attorney are to Appear in (b) (6) per Judge (b) (6)"
 - i. At the continued hearing a week later, Judge (b) (6) terminated removal proceeding.
 - j. Immediately following this hearing, in Judge (b) (6) courtroom, two ICE agents, apparently invited by (b) (6) Honor, approached my client and took him into custody.

(b) (6)

DECLARATION OF (b) (6)

I, (b) (6) hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge and information and if called upon I would so testify:

1. I was recently retained by two Respondents in filing of a Motion to change venue from (b) (6) to (b) (6)
2. I filed a motion to change venue in each case with the immigration court in (b) (6) on November 19, 2012 presided by the judge (b) (6)
3. ICE trial unit is allowed ten(10) days to file a response, but none was filed.
4. Starting on November 30, 2012 I contacted the court staff to inquire about a ruling by the above judge, and were told that the motions are pending the judge's ruling, and I should call back the next morning.
5. I called the court staff again and was told to call back in the afternoon regarding the ruling, and this continued to December 11, 2012 at 3:00 PM.
6. I contacted the ICE trial attorney (b) (6) who advised me that judge (b) (6) is reluctant and would rarely grants the change of venue motions, but will grant a waiver of appearance, and for a telephonic hearing.
7. Based on this information I also filed a Motion to waive appearance, and for Telephonic hearing in both cases.
8. In Motion to Change Venue after complying with all regulations and the laws in that regard, I explained to the court that my clients are Iranian nationals, and returning Lawful Permanent Residents of U.S..
9. I also explained that my clients lack of command of English language, as well as unavailability of bilingual local counsel, and the fact that all witnesses in the case including

the Respondent's parents are residents of the (b) (6) area, and financially unable to bear the expenses of traveling to (b) (6) to attend their respective master hearings.

10. In anticipation of a denial of motion to change venue, and in the alternative I filed two motions for waiver of appearance, requesting a telephonic hearing for the hearings set for December 12, 2012 at 9:00 AM.
11. ICE did not file an answer with the court regarding these motions rendering them UNOPPOSED and ripe for a ruling as of November 29, 2012.
12. On December 11, 2012 at 3:00 PM call to the court I was advised that the judge (b) (6) has just denied all of my unopposed motions in both cases.
12. On December 12, 2012 I inquired and was informed that Judge (b) (6) has issued in absentia orders of removal in both cases.
13. Judge (b) (6) chose to deny my motions on the eleventh hour rather than timely, allowing a meaningful opportunity to discuss all ramifications and preparation by the clients.
14. Judge (b) (6) disregarded the common practice in immigration courts nationwide, and refused to call my office for a telephonic hearing.
15. Judge (b) (6) decision was unreasonable in light of the laws and regulations, arbitrary and capricious, disregarding the due process of law afforded to my clients.
16. In my view Judge (b) (6) actions are not justified nor serves any legitimate governmental interests.

Dated 12/13/2012

Signed

(b) (6)

SUBSCRIBED AND SWORN TO BEFORE ME on this date the 3rd day of

December, 2012. To certify which witness my hand and seal of office

NOTARY PUBLIC IN

(b) (6)

AFFIRMATION OF

(b) (6)

STATE OF (b) (6)

S.S.:

COUNTY OF (b) (6)

I, (b) (6) depose and affirm as follows:

1. I am attorney at law duly licensed to practice in the State of (b) (6)
2. I have been practicing immigration law in (b) (6) for over 17 years. I have three offices, including my principal office, located at (b) (6)
(b) (6)
3. My office was retained to represent (b) (6) before the Immigration Court in (b) (6). Immigration Judge (b) (6) is the judge assigned to the matter. After our office appeared telephonically for the first Master Calendar hearing, a second Master Calendar hearing was scheduled for November 19, 2012.
4. On or about October 15, 2012, I attempted to file a Motion to Change Venue from (b) (6) because both my client's residence and my offices are located in (b) (6) and it would be unduly burdensome for us to travel to (b) (6). The Motion was rejected by the clerk's office.
5. On or about October 25, 2012, I received a Notice of Rejected Filing due to an error committed by a former employee listing himself as the primary attorney on the matter.
6. On or about October 27, 2012, I received the Response from DHS not opposing my Motion to Change Venue. On the same day, my office filed an Amended Motion to Change Venue, as well as a Motion to Substitute Counsel.
7. On or about November 6, 2012, one of my staff members, (b) (6) called the court to check the status of the Amended Motion to Change Venue and Motion to Substitute Counsel. Court Clerk (b) (6) stated that she would reject the Motion to Change Venue as I was not listed as the primary attorney, but she would forward the Motion to Substitute Counsel to IJ (b) (6). Subsequently, staff members from my office called nearly everyday to inquire about the status of the Motion to Substitute Counsel but were told by the court clerks that no decision had been made by IJ (b) (6).
8. On or about November 19, 2012, my client, (b) (6) travelled from (b) (6) to (b) (6) and appeared alone at the Master Calendar hearing, along with a Motion to Change Venue. (b) (6) stated that IJ (b) (6) would not accept his Motion to Change Venue because it purportedly did not comply with the rules

and regulations of the court. A new Master Calendar hearing was scheduled for June 3, 2013.

9. On or about December 5, 2012, I received an Order Denying the Motion to Substitute Counsel.
10. Despite numerous calls and attempts to allow my client to be represented by his attorney of choice and to have his immigration court proceedings take place at a site beneficial to him and his attorney, the efforts were thwarted by IJ (b) (6) for no judicially sound reason. As mentioned above, DHS did not oppose the Motion to Change Venue, and IJ (b) (6) has not found that either the court or the government would be prejudiced by changing venue. In addition, the respondent in the matter has informed IJ (b) (6) in writing, as well as verbally at his last master calendar hearing, that he wants me to represent him in the proceedings. IJ (b) (6) has refused to allow my client to exercise his constitutional right to be represented by the attorney of his choice.

I declare under penalty of perjury that the foregoing content is true and correct to the best of my ability.

Dated: December 19, 2012

(b) (6)

Moutinho, Deborah (EOIR)

From: Dufresne, Jill (EOIR)
Sent: Wednesday, February 13, 2013 11:22 AM
To: Moutinho, Deborah (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: FW: (b) (6) update

Good morning, Deborah,

I spoke to Judge (b) (6) this morning about the (b) (6) complaint. The actual complaint will be forwarded to (b) (6) today, Fed Ex. (b) (6) was given two weeks to respond – until February 27.

If you require additional information, pls let me know.

Jill Dufresne.

From: Keller, Mary Beth (EOIR)
Sent: Wednesday, February 13, 2013 11:08 AM
To: Dufresne, Jill (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: (b) (6) update

Jill,
Just making sure that since we have now given the (b) (6) complaint to the IJ, Deborah has this tracking information from our discussions–
Please let her know the dates and status, i.e., when you sent it and when any response is due.

I think the complaint number is 707 Deborah –

Tx.

mtk

MaryBeth Keller

Assistant Chief Immigration Judge
703-305-1247

(b) (6)

February 26, 2013

Dear Judge Dufresne (Jill),

I am responding to the complaint of December 21, 2012, from Attorney (b) (6) (b) (6) the complaint was forwarded to me on February 14, 2013. I would like to point out that my decision to deny a motion to reopen (dated August 14, 2012) in the underlying case is currently on appeal, and the attorney's conduct at the underlying hearing (which I conducted in absentia) is the subject of a pending inquiry by Jennifer Barnes. I had forwarded my decision on the motion to reopen to Ms. Barnes on September 13, 2012 (drafted one week earlier). I am attaching hereto my transmittal letter to her, the decision, and her initial reply. The decision sets out in great detail what happened at (and prior to) the in absentia hearing, as well as my reasons for denying the motion to reopen.

With respect to the content of Attorney (b) (6) complaint, I categorically deny any bias or prejudice in my handling of this matter, or any failure to act in a patient, dignified, courteous or professional manner – either in the case or, as claimed, towards the firm of (b) (6) or “for several years to litigants and attorneys all over the United States.” *My decision to refer my decision to Ms. Barnes was solely the result of my concern over Attorney (b) (6) (Attorney (b) (6) associate) conduct and not in connection with the appeal of my denial of the motion to reopen – I had drafted this letter a week prior to its being sent out.* Although Attorney (b) (6) is unhappy with my decision and handling of this case, his complaint has no merit, and the issue of my ruling should be left to the appeal process.

The underlying issue in this case is my application of this Court's rules and procedures in handling motions, specifically motions for changes of venue and motions to appear telephonically. The (b) (6) Court receives a tremendous number of motions, usually resulting from respondents being released from detention while under the jurisdiction of the (b) (6) Court as well from the extensive non detained docket. I work very hard to ensure that any case I change venue on is sufficiently clear for the next Court to proceed. Thus, I usually require pleadings and evidence of eligibility for relief, along with any necessary applications. I allow attorneys to appear telephonically for these purposes, so long as the respondent is present (unless a motion has been filed and granted excepting the respondent's appearance as well). None of my rulings are issued with any kind of bias or disregard for the parties' legitimate concerns.

Attorney (b) (6) and the other attorneys whose affidavits are attached to his complaint have identified this adherence to the rules of Court as somehow exhibiting “bias” or “prejudice” – again, this is completely unfounded. I do understand and take into consideration attorneys' and respondents' particular circumstances in ruling on such motions, along with other considerations, such as the interests of opposing counsel and judicial economy. With respect to the claims of the other attorneys, these appear to be isolated instances in which attorneys were unhappy with my rulings; in one of the cases

mentioned, the attorney has been subject to disciplinary action by the Office of the General Counsel and even failed to appear after the OGC action. The other attorneys either failed to appear or failed to identify case numbers, precluding me from verifying their complaints and addressing their merits. (Please see attached: Decision of August 14, 2012, and my letter to Jennifer Barnes along with Ms. Barnes' initial reply.)

I trust that this answers any questions you may have. Should you need anything further, please don't hesitate to contact me.

(b) (6)



U. S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2500

Falls Church, Virginia 22041

May 23, 2013

(b) (6)

COPY

Dear (b) (6)

This is in response to your letter, received by the Office of the Chief Immigration Judge on March 15, 2013, in which you seek clarification about a number of issues regarding your complaint against Immigration Judge (b) (6)

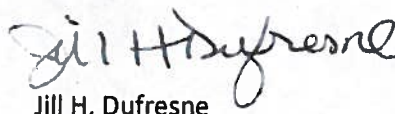
The OCIJ Procedure for Handling Complaints against Immigration Judges, as summarized on EOIR's website, encompasses an internal investigation of the complaint by an ACIJ, with a referral to the Justice Department's Office of Professional Responsibility (OPR) if the complaint is deemed to fall within OPR's jurisdiction. However, if the complaint is determined to be meritorious, but not to fall within OPR's jurisdiction, the ACIJ will determine the appropriate action to be taken in consultation with the ACIJ for Conduct and Professionalism and, oftentimes, the Employee and Labor Relations Unit in EOIR's Office of the General Counsel. This action may include non-disciplinary corrective action or formal discipline.

The OCIJ Procedure for Handling Complaints against Immigration Judges does not invoke use of the APA; the complainant is not put on notice as to the judge's response; and there is no formal disciplinary hearing to determine the merits of the complaint.

OCIJ has investigated the allegations set forth in your complaint. We are in the process of addressing the procedural irregularities of concern to OCIJ. We will not be referring this complaint to OPR. If you continue to believe that you have evidence of professional misconduct that may fall within OPR's jurisdiction, you are free to contact that office directly.

Thank you for bringing your concerns to our attention. I hope that you have found the above information helpful.

Sincerely,


Jill H. Dufresne

Assistant Chief Immigration Judge

Actions for processing complaints against IJs
(actions in blue are possible resolutions)

(b) (6)

Initial Processing
<ul style="list-style-type: none"> • source initiated communication • EOIR received communication from source • EOIR sent communication to source • EOIR requested additional information from source • additional information requested from source was received at EOIR • complaint referred to ACIJ • complaint re-opened • alleged conduct occurred • OCIJ consulting with ELR

date 12/21/15 against Judge

(b) (6)

OPR/OIG Processing	
OPR Processing	OIG Processing
<ul style="list-style-type: none"> • complaint referred to OPR • OPR declined to investigate or closed without further action • OPR finding <ul style="list-style-type: none"> ◦ professional misconduct (intentional, reckless disregard) ◦ no professional misconduct (poor judgment, mistake, IJ acted appropriately) • OPR recommendation <ul style="list-style-type: none"> ◦ recommended discipline ◦ other – [details] • OPR action referred to ACIJ 	<ul style="list-style-type: none"> • complaint referred to OIG • OIG referred complaint back to EOIR for management action • OIG issued report • other OIG action – [details] • OIG action referred to ACIJ

Complaint Dismissed or Concluded		
Complaint Dismissed	Complaint Concluded	Other
<ul style="list-style-type: none"> • frivolous • merits-related • allegations disproven • allegations cannot be substantiated • failure to state a claim 	<ul style="list-style-type: none"> • corrective action already taken • intervening event made action unnecessary (IJ termination, IJ termination during trial period, IJ resignation, IJ retirement, other) 	<ul style="list-style-type: none"> • merged into another complaint • resolved per another complaint

Management Action	
Corrective Action	Disciplinary Action
<ul style="list-style-type: none"> • oral counseling • written counseling • training • performance-based action (PIP) • other – [details] • corrective action occurred date(s) 	<ul style="list-style-type: none"> • discipline proposal (suspension, removal, other) • discipline decision (reprimand, suspension, removal, other) • discipline imposed date(s)

date 1/13/16

Subsequent Action
<ul style="list-style-type: none"> • challenge filed (grievance, arbitration, EEOC, MSPB, other) • subsequent decision (reversed, upheld, mitigated) • subsequent decision imposed date(s)

Miscellaneous Action
<ul style="list-style-type: none"> • none of the above – [details]