

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JACQUELINE STEVENS,

Plaintiff,

v.

ERIC H. HOLDER, JR., Attorney
General of the United States, *et al.*,

Defendants.

CIVIL ACTION NO.
1:12-CV-1352-ODE

**FEDERAL DEFENDANTS’ STATEMENT
OF UNDISPUTED MATERIAL FACTS**

COME NOW Federal Defendants (“Defendants”), pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1, and hereby file their Statement of Undisputed Material Facts in support of Federal Defendants’ Renewed Motion for Summary Judgment.

1.

Plaintiff is a professor of Political Science at Northwestern University who attends immigration hearings for the purpose of research to be published in books, magazines, and on her blog. First Amended Complaint (“FAC”) ¶¶ 1-3.

2.

On October 7, 2009, Plaintiff was present as a court observer in the afternoon in Immigration Judge Cassidy’s courtroom at the Atlanta Immigration Court. FAC ¶¶ 22-25.

3.

On October 7, 2009, there were three cases listed for hearing on Immigration Judge Cassidy's afternoon docket. Ex. O – Oct. 7, 2009 Docket; Ex. N – Cassidy Decl'n ¶ 5; FAC ¶¶ 22, 35.

4.

On October 7, 2009, Plaintiff was not a party, family member, or attorney of any respondent whose case was listed among the three cases docketed for that afternoon. FAC ¶ 25; Ex. L – Plaintiff's Trnsc. (61:23-25; 62:1-7; 69:23-25; 70:1-8).

5.

On October 7, 2009, Immigration Judge Cassidy heard two of the three cases listed on his afternoon docket. Ex. N -- Cassidy Decl'n ¶ 6; FAC ¶ 36.

6.

On October 7, 2009, one of the three scheduled cases listed on Immigration Judge Cassidy's afternoon docket was continued to November 4, 2009, at the request of the respondent's attorney. Ex. P – Oct. 7, 2009 Rescheduling Order; Ex. N -- Cassidy Decl'n ¶ 6; FAC ¶ 36.

7.

On October 7, 2009, in one of the two cases heard on Immigration Judge Cassidy's afternoon docket, the respondent scheduled for hearing previously had been convicted of sexual battery of a minor. Ex. Q – Oct. 7, 2009 Hearing #1 Transcript at p. 4 lns. 5-8 (2:00) (On January 6, 2009 . . . [respondent] was convicted of sexual battery. It appears to be a Class A misdemeanor. However, this did involve a minor.); Ex. N -- Cassidy Decl'n ¶ 7.

8.

On October 7, 2009, Immigration Judge Cassidy, on the request of respondent's counsel and out of concern for the respondent's privacy and his protection, closed to the public the hearing involving a respondent who previously had been convicted of sexual battery of a minor. Ex. N -- Cassidy Decl'n ¶¶ 7-8; Ex. Q – Oct. 7, 2009 Hearing #1 Transcript at p. 4 lns. 5-8 (2:00) (On January 6, 2009 . . . [respondent] was convicted of sexual battery. It appears to be a Class A misdemeanor. However, this did involve a minor.).

9.

On October 7, 2009, in the second of two cases heard on Immigration Judge Cassidy's afternoon docket, the respondent requested the hearing be closed to the public. Ex. R-1 – Oct. 7, 2009 Hearing #2 First Transcript at p. 5 lns. 21-22 through

p. 6 lns. 1-6 (Disk 1 Track 2 at :30 - :50) (Q: Because of I've read your application and the potential testimony that may have to be elicited, I felt it important that I speak to you about whether or not you wish this to be an open hearing, a public hearing, or do you wish to have it as a closed hearing?; A: I would prefer it to be a closed hearing.); Ex. N -- Cassidy Decl'n ¶ 9. The respondent sought withholding of removal and protection from torture in his home country. Ex. R-1 – Oct. 7, 2009 Hearing #2 First Transcript at p. 4 lns. 16-18 (Disk 1 Track 1 at 1:02 – 1:10) (If there's anything that you can speak to him in advance of his hearing because he's asked for withholding and [relief under the Convention Against Torture].). The respondent also sought asylum. *Id.* at p. 8 lns. 3-4 (Disk 1 Track 2 at 2:40) (“Exhibit 3 is a statement as to your request for asylum.”); Ex. R-2 – Oct. 7, 2009 Hearing #2 Second Transcript at p. 4 ln. 14 (Disk 2 Track 1 at 3:58); Ex. N -- Cassidy Decl'n ¶¶ 9-10.

10.

On October 7, 2009, in the second of two cases heard on Immigration Judge Cassidy's afternoon docket, Immigration Judge Cassidy closed the hearing to the public. Ex. N -- Cassidy Decl'n ¶ 10; Ex. R-1 – Oct. 7, 2009 Hearing #2 First Transcript at p. 5 lns. 21-22 through p. 6 lns. 1-6 (Disk 1 Track 2 at :30 - :50).

11.

On April 19, 2010, Plaintiff was present as a court observer for the morning and afternoon dockets in Immigration Judge Cassidy's courtroom at the Atlanta Immigration Court. FAC ¶¶ 41-42, 46, 51-52.

12.

On April 19, 2010, Plaintiff observed the morning hearings held before Immigration Judge Cassidy in his courtroom at the Atlanta Immigration Court. FAC ¶¶ 41-42, 45.

13.

On April 19, 2010, Immigration Judge Cassidy heard the sole case scheduled on his afternoon docket. Ex. S – April 19, 2010 Docket; Ex. N – Cassidy Decl'n ¶ 11; FAC ¶ 46-49.

14.

On April 19, 2010, the sole case Immigration Judge Cassidy heard on his afternoon docket involved a *pro se* respondent who claimed fear of torture if returned to his country of origin. Ex. T – April 19, 2010 Hearing Transcript at p. 3 lns. 5-7 (Track 1 at :24) (“This case was set down for hearing on a Convention Against Torture request.”)/p. 6 lns. 17-19 (Track 1 at 4:21) (“The only form of relief

that I believe you're eligible for is under the Convention Against Torture.")(Track 1 at 1:16); Ex. N -- Cassidy Decl'n ¶ 13; Ex. R-R (93:7-8).

15.

On April 19, 2010, the sole respondent who appeared before Immigration Judge Cassidy during the afternoon docket requested that his hearing be closed from the public. Ex. T – April 19, 2010 Hearing Transcript at p. 3 lns. 20-22 through p. 5 ln. 1 (Track 1 at 1:04 - 2:32) (Q: Now, the cases normally with a few exceptions such as asylum are open hearings and the public can be here. However, the authority that's found at 8 C.F.R. 1003.27(b) provides that for purposes of protecting witness, parties, or in the public interest an Immigration Judge may limit attendance or hold closed hearings. Now, since this is your hearing, and no one else's, if you would prefer to have this as a closed hearing without the public sitting in, I will certainly adhere to your request. . . . If you'd prefer to have this hearing in private I will honor your request, if you wish [a visitor in court that day, Plaintiff] to sit in during these hearing, I will certainly allow it.; A: I'd rather do it in private.); Ex. N -- Cassidy Decl'n ¶ 11; Ex. C (48:9-12).

16.

On April 19, 2010, in the course of the hearing for the sole respondent who appeared before Immigration Judge Cassidy during the afternoon docket, the

respondent disclosed that he “social[ized] with some gay – gay people” and had safety concerns with returning to his home country given his “social life.” Ex. T – April 19, 2010 Hearing Transcript at p. 12 lns. 12-13 (Track 3 at 1:09); Ex. N – Cassidy Decl’n ¶ 12; Ex. C (48:9-12). He applied for relief under the Convention Against Torture. Ex. T – April 19, 2010 Hearing Transcript at p. 3 lns. 6-7 (Track 1 at :25); p. 6 lns. 18-19 (4:21); Ex. N – Cassidy Decl’n ¶ 13.

17.

On April 19, 2010, in the sole hearing held before Immigration Judge Cassidy during his afternoon docket, Immigration Judge Cassidy closed the hearing to the public. Ex. N -- Cassidy Decl’n ¶ 13; Ex. M – Smith Determination Letter; Ex. C – Smith Trnsc. (48:7-25; 49:1-10).

18.

In the afternoon hearings held on October 7, 2009, and April 19, 2010, Immigration Judge Cassidy closed his courtroom to the entire public and, aside from EOIR employees, the only persons allowed to remain in the courtroom were counsel for those respondents who were represented and family and friends who were present and approved by the respondents. Ex. N – Cassidy Decl’n ¶ 19; Ex. B – Smith Trnsc. 87:14-22; Ex. E – Cassidy email.

19.

Plaintiff does not challenge the validity of regulations that guide whether immigration hearings warrant closure. FAC ¶ 47; Ex. J – Plaintiff’s Trnsc. (45:6-8).

20.

Plaintiff has never been told she is banned from the Atlanta Immigration Court, Ex. L (134:8-10); has returned to the Atlanta Immigration Court since the events described in the FAC on April 19, 2010, *id.* (134:11-14); and has not tried to observe hearings before Immigration Judge Cassidy since the events described in the FAC, *id.* (137:13-15)

21.

A procedure exists at Defendant Executive Office for Immigration Review (“EOIR”) for investigating complaints against Immigration Judges. *See* Ex. A – EOIR Immigration Judge Complaint Investigation Procedure; *see also* Ex. E – EOIR Immigration Judge Complaint Investigation Flowchart; Plaintiff’s Exhibits 42 and 43 to Keller Trnsc.

22.

On April 27, 2010, Plaintiff submitted an administrative complaint to Defendant Smith addressing Plaintiff’s claim that she had been unlawfully excluded

from Immigration Judge Cassidy's courtroom on April 19, 2010. Ex. G– Plaintiff's Administrative Complaint; Ex. M – Smith Determination Letter.

23.

As the Assistant Chief Immigration Judge responsible for receiving, reviewing, and monitoring the investigation of complaints about Immigration Judges, Defendant Keller was responsible for ensuring EOIR addressed and completed its investigation of the April 27, 2010 administrative complaint about Immigration Judge Cassidy's immigration hearing closure on April 19, 2010. Defendant Keller assigned Plaintiff's administrative complaint to Defendant Smith. Ex. B – Keller Trnsc. (25:25; 26:1-4, 17-20); Ex. C – Smith Trnsc. (10:14-16; 12:18-25); Ex. C – Keller Decl'n ¶ 4.

24.

As the Assistant Chief Immigration Judge responsible for the Atlanta Immigration Court at the time Plaintiff filed her April 27, 2010 administrative complaint about Immigration Judge Cassidy's immigration hearing closure on April 19, 2010, Defendant Smith was responsible for investigating the complaint as he had supervisory responsibility over Immigration Judges at the Atlanta Immigration Court at that time. Ex. F – Smith Decl'n ¶ 3; Ex. B – Keller Trnsc. (25:25; 26:1-4, 17-20); Ex. C – Smith Trnsc. (10:14-16; 12:18-25).

25.

Once the investigation was assigned to Defendant Smith, Defendants Keller and Defendant Smith coordinated as the investigation progressed up until the investigation concluded and a final determination issued. Ex. B – Keller Trnsc. (47:1-15) (Q: In connection with this investigation of Ms. Stevens’ complaint, did you receive any questions from Judge Smith as to how he should handle the investigation? A: I recall discussing it with him, but I don’t recall him asking me specific questions about how he should proceed.); (96:22-25, 97:1-4) (Q: Okay. But if Smith decides that EOIR management action is not required, it doesn’t get to you, correct? A: No, it gets – yes, it does get to me in the sense that I am apprised of the fact that the case has been resolved and how it’s been resolved and that it goes into the database. It doesn’t go to me for approval, but I’m aware of it.); Ex. C – Smith Trnsc. (46:24-25, 47:2-15) (Q: After the communication of the 19th and the 20th, what was the next time you heard of or from Ms. Stevens? A: Judge Keller at one point told me that – and by E-mail, I believe, that Professor Stevens had complained to her. And that was followed up again on May 3rd by a telephone call to Judge Keller. And then Judge Keller referred the matter to me as the ACIJ, I believe, on May the 11th.”); 55:12-16 (Q: Other than the people we have just mentioned, did you speak with anybody else about the events of April 19th or 20th? A: I spoke with

Judge Keller. We are required to coordinate with her as the assistant chief immigration judge for conduct and professionalism. So I regularly coordinated with her to get her advice and counsel.).

26.

In the course of investigating Plaintiff's administrative complaint concerning April 19, 2010, Defendant Smith reviewed the digital audio recording of the hearing record. Ex. C – Smith Trnsc. (47:22-25; 48:1).

27.

In the course of investigating Plaintiff's administrative complaint concerning April 19, 2010, Defendant Smith obtained a statement from Defendant Cassidy, the Immigration Judge overseeing the April 19, 2010 hearing at issue in Plaintiff's complaint. Ex. C – Smith Trnsc. (47:19-11); Ex. H – Cassidy email.

28.

In the course of investigating Plaintiff's administrative complaint concerning April 19, 2010, Defendant Smith spoke with Officer Jackson, the lead contract security guard on duty at the Atlanta Immigration Court on April 19, 2010. Ex. C – Smith Trnsc. (53:12-17, 62:5-6, 22-25); Ex. I – Smith/Long emails.

29.

In the course of investigating Plaintiff's administrative complaint concerning April 19, 2010, Defendant Smith spoke with and obtained a statement from Defendant Long, Atlanta Immigration Court Administrator, including obtaining information Long received from Federal Protective Services, the agency responsible for building security at the Atlanta Immigration Court. Ex. C – Smith Trnsc. (45:2-7, 19-22); Ex. I – Smith/Long emails.

30.

In the course of investigating Plaintiff's administrative complaint concerning April 19, 2010, Defendant Smith obtained a statement from Marion Crosby, assistant to Defendant Long. Ex. C – Smith Trnsc. (45:17-19; 47:17-18; 107:6-11); Ex. J – Crosby email.

31.

In the course of investigating Plaintiff's administrative complaint concerning April 19, 2010, Defendant Smith obtained a statement from Britney Luckey, Atlanta Immigration Court Student Intern, Ex. C – Smith Trnsc. (50:15; 62:7-11); Ex. K – Luckey statement.

32.

A dialogue between contract security guards working on April 19, 2010 and the guards' "Megacenter" dispatching/reporting telephone number indicates that Immigration Judge Cassidy ordered Plaintiff's removal from the building housing the Atlanta Immigration Court. FAC ¶ 55; Ex. U – Megacenter Dialogue.

33.

Officer Jackson, the lead security guard present on April 19, 2010, confirmed that, while Immigration Judge Cassidy ordered Plaintiff's removal from *his courtroom*, security personnel were in fact responsible for initiating and effecting Plaintiff's removal from the *building housing the Atlanta Immigration Court*. Ex. C – Smith Trnsc. (51:18-25-52:1-3; 53:12-17); Ex. I – Smith/Long emails.

34.

Immigration Judge Cassidy never told Plaintiff that he was ordering her from the building housing the Atlanta Immigration Court, Ex. L – Plaintiff's Trnsc. (88:9-11); Ex. H – Cassidy email, and Immigration Judge Cassidy did not ask anyone to remove Plaintiff, Ex. H – Cassidy email.

35.

On June 3, 2010, Defendant Smith responded to Plaintiff's April 27 administrative complaint. Ex. M – Smith Determination Letter.

36.

In his response to Plaintiff's administrative complaint, Defendant Smith found that, "because [Immigration Judge Cassidy] needed to inquire of a *pro se* respondent whether the respondent wished to have the hearing closed to the public," it was "appropriate" for Immigration Judge Cassidy to close the hearing. *Id.*

37.

In his response to Plaintiff's administrative complaint, Defendant Smith also found there that, based on his "inquiry . . . there is no indication that [Immigration Judge Cassidy] ordered your removal from the building [housing the Atlanta Immigration Court]." *Id.*

Dated: October 15, 2014

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the documents to which this certificate is attached have been prepared with one of the font and point selections approved by the Court in Local Rule 5.1C for documents prepared by computer.

Dated: October 15, 2014

By: /s/ Christopher W. Hollis
CHRISTOPHER W. HOLLIS
U.S. Department of Justice

CERTIFICATE OF SERVICE

This is to certify that I have this day filed electronically via the Court's CM/ECF system the attached Federal Defendants' Statement of Undisputed Material Facts, including serving a copy upon the following counsel via the Court's CM/ECF system:

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Dated: October 15, 2014

By: /s/ Christopher W. Hollis
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U.S. Department of Justice