

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, 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.

1.

Plaintiff is a United States citizen and is a university professor of Political Science whose work involves, among other things, attending immigration hearings at the Atlanta Immigration Court. First Amended Complaint (“FAC”) ¶¶ 1-3.

2.

Federal Defendant William Cassidy is an Immigration Judge at the Atlanta Immigration Court and is employed by the Executive Office for Immigration Review (“EOIR”). *Id.* ¶ 9. His duties include adjudicating immigration cases scheduled for hearing at the Atlanta Immigration Court. *Id.*

3.

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. *Id.* ¶¶ 22-25.

4.

On October 7, 2009, there were three cases listed for hearing on Immigration Judge Cassidy's afternoon docket. Ex. B -- 10/7/09 Docket; Ex. A -- Cassidy Decl'n ¶ 5; FAC ¶¶ 22, 35.

5.

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.

6.

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

7.

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. C – Rescheduling Order; Ex. A -- Cassidy Decl'n ¶ 6; FAC ¶ 36.

8.

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. D – Transcript of 10/7/09 Hearing #1 from DAR 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. A -- Cassidy Decl'n ¶ 7.

9.

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. A -- Cassidy Decl'n ¶¶ 7-8.

10.

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. E-1 – Transcript of 10/7/09 Hearing #2 from DAR 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. A -- Cassidy Decl'n ¶ 9. The respondent sought withholding of removal and protection from torture in his home country. Ex. E-1 – Transcript of 10/7/09 Hearing #2 from DAR 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. E-2 – Transcript of 10/7/09 Hearing #2 from DAR at p. 4 ln. 14 (Disk 2 Track 1 at 3:58); Ex. A -- Cassidy Decl'n ¶¶ 9-10.

11.

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. A -- Cassidy Decl'n ¶ 10.

12.

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.

13.

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.

14.

On April 19, 2010, Immigration Judge Cassidy heard the sole case scheduled on his afternoon docket. Ex. F -- 4/19/10 Docket; Ex. A – Cassidy Decl'n ¶ 11; FAC ¶ 46-49.

15.

On April 19, 2010, the sole case Immigration Judge Cassidy heard on his afternoon docket involved a respondent who claimed fear of torture if returned to his country of origin. Ex. G – Transcript of 4/19/10 Hearing from DAR 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."); Ex. A -- Cassidy Decl'n ¶ 13.

16.

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. G – Transcript of 4/19/10 Hearing from DAR 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. A -- Cassidy Decl'n ¶ 11.

17.

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 was concerned with returning to his home country given his “social life.” Ex. G – Transcript of 4/19/10 Hearing from DAR at p. 12 lns. 12-13 (Track 3 at 1:09); Ex. A – Cassidy Decl’n ¶ 12. He applied for relief under the Convention Against Torture. Ex. G at p. 3 lns. 6-7 (Track 1 at :25); p. 6 lns. 18-19 (4:21); Ex. A – Cassidy Decl’n ¶ 13.

18.

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. A -- Cassidy Decl’n ¶ 13; Ex. H – Smith Letter.

19.

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.

20.

On April 27, 2010, Plaintiff submitted an administrative complaint to Federal Defendant Smith addressing, among other issues, Plaintiff’s claim that she had been

unlawfully excluded from Immigration Judge Cassidy's courtroom on April 19, 2010. Ex. H – Smith Letter.

21.

On June 3, 2010, Federal Defendant Smith responded to Plaintiff's April 27 complaint letter. ("I inquired into the circumstances raised in your complaint. . . . My inquiry revealed that you were permitted to attend hearings that afternoon. Judge Cassidy asked you leave the courtroom because he needed to inquire of a *pro se* respondent whether the respondent wished to have the hearing closed to the public. Judge Cassidy told you that after speaking with the respondent in the case, if he deemed it appropriate, he would permit you to return. After talking with the respondent, the judge deemed it appropriate under 8 Code of Federal Regulations, Section 1003.27, to exclude the public from that hearing. My review of the nature of that case reveals that was appropriate. . . . The second matter you raised pertained to Judge Cassidy ordering a security officer to have you removed from the building. My inquiry does not reveal that to be substantiated, and there is no indication that the judge ordered your removal from the building. Ms. Marion



Crosby, then a legal assistant, did tell you that the hearing was closed.”); Ex. H – Smith Letter; Ex. A – Cassidy Decl’n ¶ 15.

Dated: January 25, 2014

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: January 25, 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: January 25, 2014

By: /s/ Christopher W. Hollis  
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