

# REPORT OF INVESTIGATION

<b>SUBJECT</b> (b)(6); (b)(7)(C) Immigration Judge (b)(6); (b)(7)(C)		<b>CASE NUMBER</b> 2021-005327	
<b>OFFICE CONDUCTING INVESTIGATION</b> Los Angeles Field Office		<b>DOJ COMPONENT</b> Executive Office for Immigration Review	
<b>DISTRIBUTION</b>		<b>STATUS</b>	
<input checked="" type="checkbox"/> Field Office	LAFO	<input type="checkbox"/> OPEN	<input type="checkbox"/> OPEN PENDING PROSECUTION
<input type="checkbox"/> AIGINV		<input checked="" type="checkbox"/> CLOSED	
<input checked="" type="checkbox"/> Component	EOIR	<b>PREVIOUS REPORT SUBMITTED:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input type="checkbox"/> USA		Date of Previous Report:	
<input type="checkbox"/> Other			

## SYNOPSIS

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Executive Office for Immigration Review (EOIR) Office of General Counsel based on a (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) article (b)(6); (b)(7)(C)  
 (b)(6); (b)(7)(C) The article included reference to a complaint alleging that an unnamed immigration judge on the (b)(6); (b)(7)(C)  
 (b)(6); (b)(7)(C) Immigration Court made inappropriate remarks in court (b)(6); (b)(7)(C) The comments were allegedly made to immigrants who were parties to the proceedings, known as respondents in EOIR proceedings. Specifically, the article referenced a complaint about a judge who allegedly asked a respondent, (b)(6); (b)(7)(C) whether "anyone ever insert(ed) anything into your ass in custody." (b)(6); (b)(7)(C)  
 (b)(6); (b)(7)(C) The EOIR later identified the immigration judge as (b)(6); (b)(7)(C)

The OIG investigation substantiated the allegation that during a hearing (b)(6); (b)(7)(C) asked a respondent the following question, in violation of EOIR's ethical rules applicable to immigration judges: "Did anybody ever insert anything into your ass when you were in custody during those eight hours?" (b)(6); (b)(7)(C)

1 (b)(6); (b)(7)(C)		(b)(6); (b)(7)(C)	
<b>DATE</b>	February 15, 2022	<b>SIGNATURE</b>	(b)(6); (b)(7)(C)
<b>PREPARED BY SPECIAL AGENT</b>	(b)(6); (b)(7)(C)		
<b>DATE</b>	February 15, 2022	<b>SIGNATURE</b>	Digitally signed by ZACHARY SHROYER Date: 2022.02.16 10:41:20 -08'00'
<b>APPROVED BY SPECIAL AGENT IN CHARGE</b>	Zachary Shroyer		

(b)(6); (b)(7)(C)

Regarding the first allegation, the EOIR provided the OIG with an audio recording of an immigration hearing that occurred on (b)(6); (b)(7)(C). A review of the recording by the OIG revealed (b)(6); (b)(7)(C) using the language as alleged. Two witnesses present for the proceeding told the OIG they recalled (b)(6); (b)(7)(C) asking the respondent the question related to "insert[ing] anything into your ass." One of the witnesses told the OIG that, while the use of the word "ass" may have been inappropriate, the substance of the question was not out of context.

(b)(6); (b)(7)(C)

When contacted by the OIG, (b)(6); (b)(7)(C) declined to be interviewed and resigned from his position at the EOIR effective (b)(6); (b)(7)(C). The OIG has the authority to compel testimony from current Department employees upon informing them that their statements will not be used to incriminate them in a criminal proceeding. The OIG does not have the authority to compel or subpoena testimony from former Department employees, including those who retire or resign during the course of an OIG investigation.

The OIG has completed its investigation and all criminal and administrative actions are complete. The OIG is providing this report to the EOIR for its information and to the Department's Office of Professional Responsibility for appropriate action.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The Merit Systems Protection Board applies the same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii).

## DETAILS OF INVESTIGATION

### Predication

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Executive Office for Immigration Review (EOIR) Office of General Counsel based on a (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) article (b)(6); (b)(7)(C).  
(b)(6); (b)(7)(C) The article included reference to a complaint alleging that an unnamed immigration judge on the (b)(6); (b)(7)(C) Immigration Court made inappropriate remarks in court (b)(6); (b)(7)(C). The comments were allegedly made to immigrants who were parties to the proceedings, known as respondents in EOIR proceedings. Specifically, the article referenced a complaint about a judge who allegedly asked a respondent, (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) whether "anyone ever insert(ed) anything into your ass in custody." (b)(6); (b)(7)(C)

### Investigative Process

The OIG's investigative efforts consisted of reviewing a (b)(6); (b)(7)(C) complaint submitted to the EOIR and OIG regarding (b)(6); (b)(7)(C) allegedly improper statements,<sup>2</sup> identifying and interviewing witnesses present during the relevant court hearings and reviewing the audio recordings of the hearings (b)(6); (b)(7)(C)

The OIG's investigative efforts consisted of the following:

Interviews of the following personnel:

(b)(6); (b)(7)(C)

Review of the following:

- Audio recordings of (b)(6); (b)(7)(C) court hearings from the EOIR
- (b)(6); (b)(7)(C)

### Inappropriate Remarks During Immigration Hearing

The information provided to the OIG alleged that (b)(6); (b)(7)(C) in his capacity as an immigration judge, asked a respondent during a court hearing whether "anyone ever insert[ed] anything into your ass in custody."

According to the EOIR's Ethics And Professionalism Guide For Immigration Judges, Section IX (Acting with Judicial Temperament and Professionalism), which is binding on immigration judges employed by the EOIR, "an Immigration Judge should be patient, dignified, and courteous, and should act in a professional manner towards all litigants, witnesses, lawyers and others with whom the Immigration Judge deals in his or her official capacity, and should not,

<sup>2</sup> (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) That complaint described, among other things, (b)(6); (b)(7)(C) when (b)(6); (b)(7)(C) allegedly made the improper statements referenced in the (b)(6); (b)(7)(C) article, which the OIG investigated in this case.



in the performance of official duties, by words or conduct, manifest improper bias or prejudice.” In a note to this section, the Guide explains that “[t]he test for 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.”

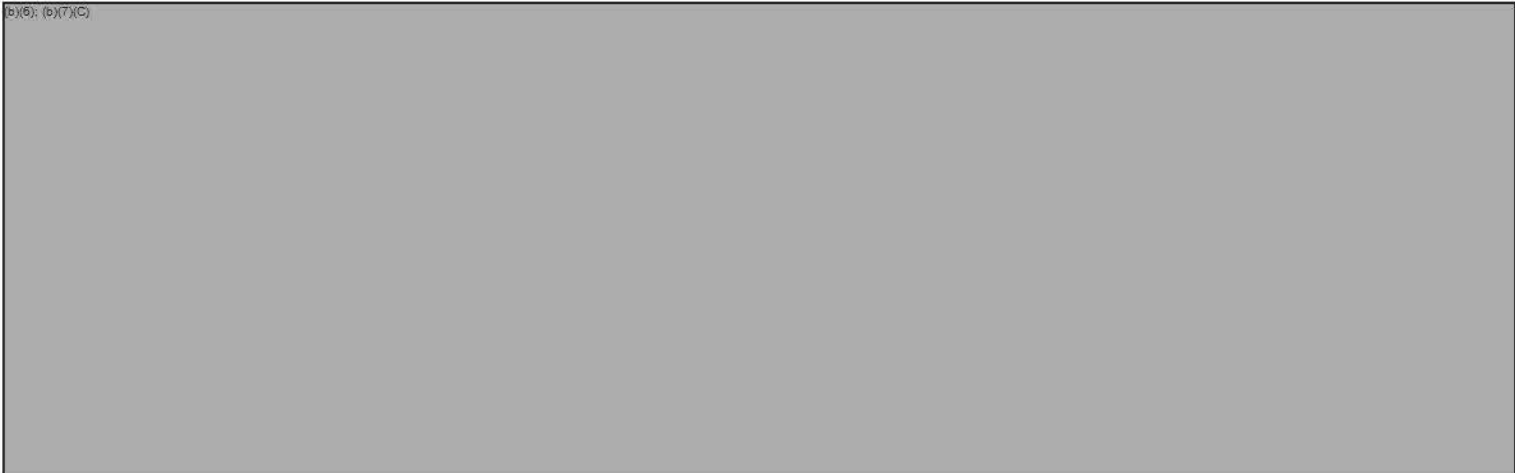
The OIG obtained and reviewed an audio recording from the EOIR of an immigration hearing on (b)(6); (b)(7)(C). In connection with the proceedings, and during his testimony at the hearing, (b)(6); (b)(7)(C) had claimed (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) During the hearing, (b)(6); (b)(7)(C) asked (b)(6); (b)(7)(C) “Did anybody ever insert anything into your ass when you were in custody during those eight hours?” (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) were both present in court on (b)(6); (b)(7)(C) and both acknowledged hearing (b)(6); (b)(7)(C) make that comment during the hearing.

(b)(6); (b)(7)(C) told the OIG that, although the use of the word “ass” may have been inappropriate, she believed the substance of (b)(6); (b)(7)(C) question was not out of context. (b)(6); (b)(7)(C) reported (b)(6); (b)(7)(C) had previously discussed (b)(6); (b)(7)(C) but he never detailed (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) said that during the hearing on (b)(6); (b)(7)(C) began to introduce testimony regarding (b)(6); (b)(7)(C) and she believes that (b)(6); (b)(7)(C) attempted to determine why this testimony had not been introduced previously.

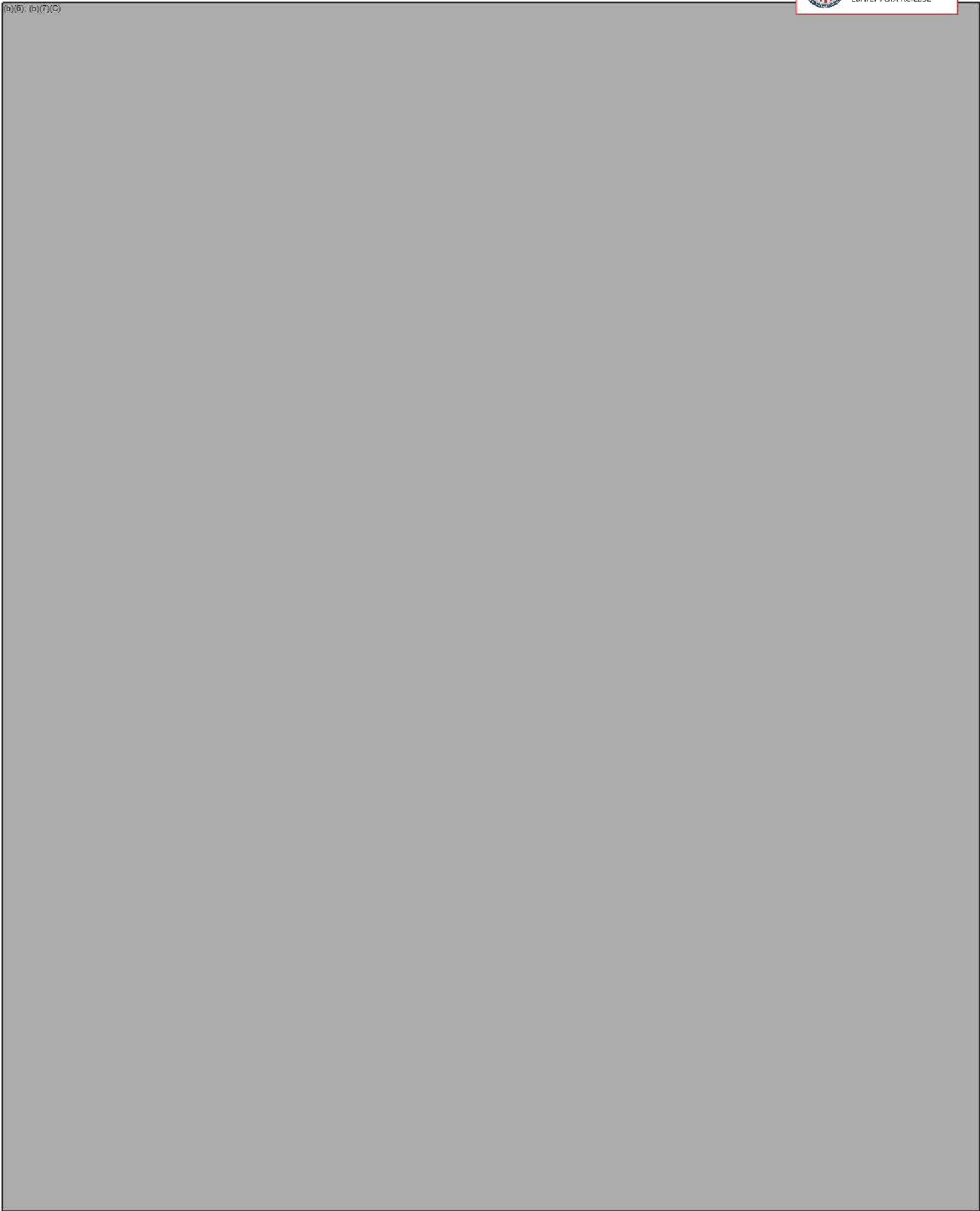
The OIG attempted a compelled interview of (b)(6); (b)(7)(C) on (b)(6); (b)(7)(C). He agreed to reschedule the interview for the following day after he asked for time to consult with an attorney. The OIG agreed to (b)(6); (b)(7)(C) request, and the compelled interview was scheduled for (b)(6); (b)(7)(C). However, (b)(6); (b)(7)(C) resigned from his position with the EOIR on (b)(6); (b)(7)(C) shortly before his scheduled compelled interview. The OIG has the authority to compel testimony from current Department employees upon informing them that their statements will not be used to incriminate them in a criminal proceeding. The OIG does not have the authority to compel or subpoena testimony from former Department employees, including those who retire or resign during the course of an OIG investigation.

### OIG’s Conclusion

The OIG investigation concluded that (b)(6); (b)(7)(C) asked the respondent during a court hearing whether “anybody ever insert[ed] anything into your ass when you were in custody during those eight hours”, as alleged in the predicate material. Two witnesses recalled (b)(6); (b)(7)(C) asking the question and an audio recording of the hearing contained the question. (b)(6); (b)(7)(C) use of that language to ask the question—specifically the word “ass”—constituted administrative misconduct in violation of the Ethics And Professionalism Guide For Immigration Judges, Section IX, which requires, among other things, that immigration judges “should be patient, dignified, and courteous, and should act in a professional manner towards all litigants.”



(b)(5); (b)(7)(C)





(b)(6); (b)(7)(C)

