

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
NEW YORK, NY

-----X
In the Matter of:

[REDACTED]
In Removal Proceedings

File No.: [REDACTED]

-----X
DECLARATION OF CARY M. JENSEN

I, Cary M. Jensen, being first duly sworn, hereby depose and say:

1. I am Senior Counsel and Director of the International Services Office (ISO) at the University of Rochester, a private educational institution founded in 1850. I have been at the University of Rochester for fourteen years and have served as Director of the ISO for the past eleven. Our office provides immigration advice and support for over 2,000 international students and scholars who study and work at the University. I am a U.S. citizen. I submit this declaration in support of the motions to suppress and terminate.
2. My office address is 209 Morey Hall, P.O. Box 270446, Rochester, NY 14618-0446.
3. The U.S. Border Patrol opened an office in Rochester, New York in 2004 around the time that a private high-speed ferry service between Rochester and Toronto was launched. This fast ferry venture failed in less than three months. The fast ferry was revived in 2005 by the City of Rochester but by year's end had permanently closed. However, the Rochester Border Patrol station did not close, in fact, it has grown at an exponential rate.

4. Since 2006 staff in my office have personally witnessed and received many reports from international students and scholars of an increased presence of Border Patrol Agents (BPAs) in and around Rochester. BPAs can be seen regularly at various transportation hubs, parks, downtown, shopping malls and other public spaces.
5. The increased presence of BPAs in Rochester has become a growing concern to staff in my office since many of our international students and scholars are increasingly being stopped and questioned while traveling locally and domestically. No one on our staff (some of whom have worked in this field for more than 25 years) nor any of our colleagues at other local institutions had heard of this happening before in Rochester.
6. What is particularly worrisome is the fact that some BPAs seem to be unfamiliar with the immigration documents authorizing international students, scholars and their guests to be in the U.S.
7. There appears to be a significant disconnect between the Border Patrol and the U.S. Citizenship and Immigration Services (USCIS) in how they view the validity of certain immigration documents and statuses. In fact, I am aware of several individuals who have been detained and placed in removal proceedings even though they had valid USCIS documentation or timely-filed change-of-status or renewal applications pending.
8. I first saw this occur approximately three years ago when an undergraduate student from Pakistan was detained by BPAs while traveling on a Trailways bus from Rochester to Albany. Since he was traveling domestically, he did not think that he needed to carry his immigration documents with him, but simply had his student photo ID, which had always been sufficient previously. When detained, he tried to explain to the BPAs that his family had a pending asylum application that permitted him to remain in the U.S. and

attend school full time. However, he was told by the BPAs "Tell it to the judge" and was subsequently held for two weeks at a detention facility until he and his family had an opportunity to appear before an immigration judge and prove that they indeed had an application pending.

9. The University of Rochester students, scholars and guests who have been stopped recently by BPAs have been from Pakistan, Mexico, Japan, China and Germany. Only one of the 10 or more who have been detained recently would be considered Caucasian.
10. My office has had periodic contact with the local and regional Border Patrol offices to learn about their activities in order to better assist our students. In April of 2008 I, along with other international student administrators, met with representatives from the Border Patrol's Buffalo Sector headquarters in Grand Island, New York to understand the increase in inspections and change in policy. During that visit we met with Stuart Woodside, Assistant Chief Patrol Agent and Gregory Barbagallo, Patrol Agent in Charge of the Buffalo station. It is my understanding from this visit and subsequent interactions that the increased enforcement efforts are not necessarily due to the passage of a new regulation or a new law, but are rather the natural (and unintended?) consequence of a dramatic increase in the number of agents and from internal changes of policy and practice that have lead to enforcement of previously ignored provisions like 18 USC 1304(e), which requires all aliens 18 or older to carry an alien registration certificate or receipt card or face misdemeanor charges.
11. During this meeting, we were told that while there were currently 30 of a certain class of BPA between Buffalo and Watertown, there would eventually be 300. We were also informed at this meeting that transportation checks were a major part of the current

enforcement activities, with over half (1160) of the total apprehensions (1900) in the Buffalo Sector over the last six-to-seven months (from October 2007 through April 2008) had been made at transportation terminals (5 from the airports, 5 from the boat terminals, 357 from the trains and train stations, and 793 from the buses and bus stations).

12. During this meeting one of the Border Patrol officials spoke about the right for people to refuse to answer questions during "interior" document checks (with different rules applying at the ports of entry). He said that technically if someone walked away from an agent when being asked for documents, that the agent would not have grounds to detain them, unless the agent had a reasonable suspicion based on articulable facts that the person is illegal. But he also acknowledged that virtually all of the new officers are being trained on the southern border where the common assumption is that everyone stopped is undocumented. He further acknowledged that whether or not there is "reasonable suspicion" is a subjective judgment call and that many of the agents are quick to make that determination. This conversation left me with the impression that an alien's right to walk away ("remain silent") at a transportation check, while theoretically allowed and maybe even constitutionally protected, would be an unadvisable risk, especially in the current enforcement environment.

13. In May of 2008 I visited the Rochester Border Patrol office with other members of my staff. We met with Adrian Cotsworth, Patrol Agent in Charge at the time. He expressed pride in the fact that his office produces the most detentions and issues the most Notices to Appear within the region. He also explained that there were initially four BPAs in the Rochester Border Patrol Station, that currently there were seven, and that the goal was to eventually have up to twenty or twenty-one BPAs.

14. In a recent telephone conversation with an agent in the Rochester Border Patrol station (in preparation for a professional conference presentation I was giving on the effect of heightened Border Patrol activities on international students) I was told that there are currently twenty-seven agents at the Rochester station, not including an information officer. I was surprised to learn this since I was told in May 2008 that there were only seven agents. It is also surprising given that there is no port of entry within the Rochester station's jurisdiction, which is 54 linear miles of U.S. Canadian border on Lake Ontario.
15. It is my understanding and impression that when detained, alien males are sent to the Batavia Detention Facility, while alien females are sent to county jails in the region.
16. The recent growth in immigration questioning in public places and on domestic transportation by Border Patrol is personally troubling; it has diminished the City of Rochester's long-standing reputation as a welcoming place for internationals; and it has directly and negatively impacted dozens of our international students, scholars and visitors and created a tangible chilling effect for hundreds.

Executed on: December 16, 2009
Rochester, New York


CARY M. JENSEN

