

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN CIVIL LIBERTIES UNION OF
MASSACHUSETTS, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF DEFENSE,

Defendant.

C.A. No. 26-13447-PBS

**EXPEDITED BRIEFING
REQUESTED**

PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT

This is a motion for partial summary judgment for an order requiring production of the three records referred by the United States Marine Corps to the U.S. Department of Defense (“DOD”) for determination (the “Referred Records”). These records are:

- Memorandum of August 27, 2025: “Identification of Judge Advocate General Officers and Civilian Attorneys for Potential Detail to the Department of Justice;”
- Memorandum of August 27, 2025: “Potential Department of Defense Support for Immigration Adjudication;” and
- Memorandum of Agreement Between the Department of Justice Executive Office for Immigration Review and the Department of War for the Detailing of Temporary Immigration Judges.

These records are responsive to both FOIA requests at issue in this case. They have already been identified, collected, and segregated for review. They are in the custody of DOD. DOD has never asserted that any FOIA exemption applies to these documents, and there is no evidence that any exemption applies.

These records appear to contain key information concerning the operation of the joint program between DOD and the Department of Justice (“DOJ”) to substitute military personnel into the Immigration Court as Temporary Immigration Judges (“TIJs”), at a time when DOJ is

terminating large numbers of civilian Immigration Judges. The public would benefit from the immediate release of information about this program.

Accordingly, pursuant to Federal Rule of Civil Procedure 56, plaintiff American Civil Liberties Union of Massachusetts, Inc. (“ACLUM”) hereby moves for an order granting partial summary judgment as to these three records. ACLUM respectfully refers the Court to the accompanying memorandum of law, statement of uncontroverted facts, declaration and exhibits thereto, and proposed order, all filed in support of this motion.

ACLUM requests that the Court:

(a) Order DOD to produce the Referred Records to ACLUM in their entirety within three (3) business days after the Court’s order;

(b) Enter a corresponding declaration that the Referred Records are public records under FOIA, and that DOD violated FOIA by failing to produce them in response to ACLUM’s request.

ACLUM is also filing herewith a separate motion to expedite the briefing on this motion for partial summary judgment given the apparently accelerating pace of DOD’s substitution program in Massachusetts. On July 27, yet another longtime, civilian Immigration Judge was reportedly terminated from an Immigration Court in Massachusetts.¹ Two days later, DOJ announced that two military TIJs were being appointed in Massachusetts.² The public would benefit from immediate access to information about this program.

¹ Rachell Sanchez-Smith & Stephanie Brown, *Another longtime immigration judge no longer at Boston court*, WBUR (July 27, 2026), <https://www.wbur.org/news/2026/07/27/boston-immigration-judge-omalley-firings>.

² U.S. Dep’t of Just., Exec. Off. for Immigr. Rev., *EOIR Announces Regional Deputy Chief Immigration Judge, Administrative Law Judge, 37 Immigration Judges, and 4 Temporary Immigration Judges* 13-14 (July 29, 2026),

Dated: August 14, 2026

Respectfully submitted,

/s/ Julian Bava

Jessie J. Rossman (BBO #670685)
Daniel L. McFadden (BBO #676612)
Julian Bava (BBO #712829)
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Counsel for Plaintiff

L.R. 7.1 CERTIFICATION

I hereby certify that counsel for Plaintiff conferred with counsel for the government in a good faith effort to narrow or resolve the relief requested in this motion. No counsel has yet appeared in this case for the government. Counsel for Plaintiff conferred with a representative for the U.S. Attorney's Office for the District of Massachusetts. That attorney indicated that the government will likely oppose this motion.

Date: August 14, 2026

/s/ Julian Bava
Julian Bava

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2026, a copy of the foregoing document will be served on all registered participants through the Court's CM / ECF system. No counsel has yet

<https://www.justice.gov/eoir/media/1454626/dl?inline> (Kai V. Bernal-LeClaire, Commander, U.S. Navy Reserve; Terry M. Meinecke, Lieutenant Colonel, U.S. Army).

appeared for the government. A copy of the foregoing document will therefore also be served on the U.S. Attorney's Office for the District of Massachusetts by electronic mail.

Date: August 14, 2026

/s/ Julian Bava
Julian Bava