UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT

In the Matter of:	
Ronald Salomon,	**DISCIPLINARY CASE # D 2024-0025**
Respondent.	

ON BEHALF OF RESPONDENT:
Pro se
Ronald S. Salomon, Esquire
305 Broadway, Suite 1102
New York, NY 10007

ON BEHALF OF THE GOVERNMENT:
Paul A. Rodrigues, Disciplinary Counsel
Executive Office for Immigration Review
U.S. Department of Justice
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 20530

Toinette M. Mitchell, Disciplinary Counsel
Office of the Chief Counsel
United States Citizenship and Immigration Services
U.S. Department of Homeland Security
5900 Capital Gateway Dr.
Camp Springs, MD 20588

ORDER OF THE ADJUDICATING OFFICIAL

IT IS HEREBY ORDERED that:

[x] 1. The ground under **8 C.F.R. § 1003.102(n)** set forth in the Notice of Intent to Discipline has been established by clear and convincing evidence.

The following disciplinary sanction shall be imposed:

[ ] Practitioner shall be permanently expelled from practice before:
- [ ] The Board of Immigration Appeals
- [ ] The Immigration Courts
- [ ] The Department of Homeland Security
- [ ] All

[x] Practitioner shall be suspended from practice before:
- [x] The Board of Immigration Appeals
- [x] The Immigration Courts
- [x] The Department of Homeland Security

[x] All

For 6 months, effective July 27, 2024.

[ ] Practitioner shall be publically/privately censured

[ ] Other appropriate disciplinary sanction

n/a

Date: Sept 3, 2024 Brett M Parchert

Adjudicating Official - Immigration Judge

APPEAL: DEEMED WAIVED PURSUANT TO SETTLEMENT AGREEMENT

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: **MAIL** (M) PERSONAL SERVICE (P)

TO: [ ] PRACTITIONER [ ] PRACTITIONER'S ATT/REP [ ] DHS/EOIR

DATE:_____ BY: COURT STAFF_____

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

In the Matter of:	
Ronald Salomon,	**DISCIPLINARY CASE # D 2024-0025**
Respondent.	

CHARGE: 8 C.F.R. § 1003.102 (n)

PROSOSED DISCIPLINE: Suspension from practice before the Board of Immigration Appeals (Board), Immigration Courts and the Department of Homeland Security (DHS) for a period of six months

ON BEHALF OF RESPONDENT:
Pro se
Ronald S. Salomon, Esquire
305 Broadway, Suite 1102
New York, NY 10007

ON BEHALF OF THE GOVERNMENT:
Paul A. Rodrigues, Disciplinary Counsel
Executive Office for Immigration Review
U.S. Department of Justice
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 20530

Toinette M. Mitchell, Disciplinary Counsel
Office of the Chief Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
5900 Capital Gateway Dr.
Camp Springs, MD 20588

MEMORANDUM OF DECISION AND ORDER

On June 18, 2024, the Disciplinary Counsel of the Office of the General Counsel for the Executive Office for Immigration Review and the Disciplinary Counsel for United States Citizenship and Immigration Services filed a Notice of Intent to Discipline (NID) Ronald Salomon (Respondent) with the Board of Immigration Appeals (Board) pursuant to 8 C.F.R. §§ 1003.102(n), for violation of a Disciplinary Order by engaging in the unauthorized practice of law. The Disciplinary Counsel also set forth the intent to disbar Respondent from practice before the Board, the Immigration Courts, and the DHS. On August 8, 2024, the Board referred the matter to the Office of the Chief Immigration Judge for the appointment of an Adjudicating Official. The matter was assigned to the undersigned.

On August 29, 2024, the Court received a "MOTION TO APPROVE SETTLEMENT AGREEMENT & ENTER FINAL ORDER" based upon a settlement agreement signed jointly by the parties. In such agreement, Respondent acknowledges that his conduct as described in the

NID constituted a violation of the aforementioned subsection of the regulations. The parties also agree to a six-month suspension of practice before the Board, the Immigration Courts, and the DHS.

The Court finds good cause to grant the motion to approve the settlement. The Court finds the agreement to be a fair resolution of the case, and the Court hopes that Respondent strives to avoid any future violation of the disciplinary-related regulations.

Accordingly, the following orders are hereby entered:

IT IS HEREBY ORDERED that the motion to approve the Settlement Agreement, which is hereby incorporated in its entirety into the instant order, be granted.

IT IS FURTHER ORDERED that the charge under 8 C.F.R. § 1003.102(n) be sustained.

IT IS FURTHER ORDERED that Respondent be suspended from the practice of law before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security for a period of 6 months, effective July 27, 2024.

DATE: Sept 3, 2024

Brett M. Parchert

Brett M. Parchert
Adjudicating Official/Immigration Judge

EOIR - 2 of 2

CERTIFICATE OF SERVICE

THIS DOCUMENT SERVED BY:
MAIL (M) PERSONAL SERVICE (P) **ELECTRONIC MAIL (E)**
TO: (x) RESPONDENT () RESPONDENT'S ATTORNEY (x) DHS (x) EOIR OGC
DATE: 9/3/2024 BY COURT STAFF: CRB

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

In the Matter of	)	
RONALD SALOMON,	)	**Disciplinary Case No. D2024-0025**
Respondent.	)	

SETTLEMENT AGREEMENT

Respondent Ronald Salomon and the Disciplinary Counsel for the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) (hereinafter, the Government) agree that it is in the mutual and best interest of both parties to affect a resolution to the above-captioned case without further litigation. The parties adopt the following terms and conditions of this settlement agreement.

1. In consideration for resolving these proceedings without further litigation:

   a. The Government:

      i. agrees to resolve this matter through the Adjudicating Official imposing on Respondent a six-month suspension from practice before the Board of Immigration Appeals (Board), the Immigration Courts, and DHS, effective July 27, 2024; and

      ii. waives any right to challenge or dispute any matter related to the June 18, 2024 Notice of Intent to Discipline if the Adjudicating Official enters an order that is wholly and exclusively in accordance with the agreed-upon terms of this settlement agreement.

      iii. agrees not to oppose Respondent's motion for reinstatement pursuant to 8 C.F.R. § 1003.107(a), provided that the period of suspension has expired, Respondent establishes by clear and convincing evidence that he meets the definition of attorney as forth in 8 C.F.R. § 1001.1(f), and Respondent has complied with the terms of the suspension, including not engaging in practice as defined in 8 CFR. §§ 1.2 and 1001.1(i), during the suspension period and until Respondent is reinstated to practice.

   b. Respondent:

      i. admits that he engaged in the conduct alleged in the June 18, 2024 Notice of Intent to Discipline and that his conduct violated the Rules of Professional Conduct. Specifically, Respondent acknowledges that he

Respondent's Initials RS

failed to comply with the Board's January 15, 2023 suspension order in D2018-0261;

ii. agrees to resolve this matter with a six-month suspension from practice before the Board, the Immigration Courts, and DHS, effective July 27, 2024. Respondent understands that following the expiration of this suspension period, he must seek reinstatement to practice before the Board, the Immigration Courts, and DHS pursuant to 8 C.F.R. § 1003.107;

iii. understands that should he be reinstated pursuant to 8 C.F.R. § 1003.107 and is later subject to discipline in New York based on the matters at issue in this case, the Government may file a Notice of Intent to Discipline based on such discipline;

iv. waives any right he may have to a hearing or to otherwise challenge or dispute any matter related to the June 18, 2024 Notice of Intent to Discipline if the Adjudicating Official enters an order that is wholly and exclusively in accordance with the agreed-upon terms of this Settlement Agreement;

v. agrees for himself, his successors, and his assigns, to release and forever discharge the U.S. Department of Homeland Security and the U.S. Department of Justice and their officers, agents, and employees, whether in official or individual capacities, from any and all claims, liabilities, actions, causes of action, and rights, known and unknown, arising from the above-captioned case, up to and including the execution of this settlement agreement; and

vi. agrees not to file any administrative or court challenge to this agreement.

2. The parties agree that Respondent's six-month suspension shall commence and be effective as July 27, 2024. Respondent is already subject to an order of suspension by the Board and should not have any pending immigration matters. To the extent Respondent has not already notified clients of his suspension, he should do so in a manner that they understand and maintain records of such notification. During the suspension period and until Respondent is reinstated to practice, Respondent will not engage in the practice, as defined at 8 C.F.R. §§ 1.2 and 1001.1(i).

3. The parties agree that this settlement agreement has no precedential effect. Specifically, no party or person can use, cite, or rely upon this agreement or any of its term(s), including in a judicial or administrative proceeding. Nothing in this agreement, however, precludes either party from filing an action to enforce this agreement in the event of a breach of this agreement.

4. Any fees, costs, or expenses incurred by either party relating to the above-captioned case are solely the responsibility of the party that incurred them.

Respondent's Initials RS

5. The terms set forth constitute the sole agreement between the parties in this matter. The parties agree that prior writings, conversations, communications, perceptions, or impressions cannot form the basis for any inference or conclusions that this settlement agreement extends beyond that which is stated within the four corners of this instrument.

6. This settlement agreement is considered a jointly drafted agreement and cannot be construed against any party as the drafter.

7. Respondent acknowledges that he has carefully read and fully understands all of the terms and conditions of this settlement agreement, and that he is freely and voluntarily entering into this settlement agreement. Respondent declares that he is not subject to coercion or duress, and that he is fully aware of the implications of entering into this agreement. Respondent acknowledges that he has been afforded reasonable time and opportunity to review and reflect upon this agreement, and to seek counsel if he so wished.

The parties, by their signatures below, agree to the terms and conditions in this settlement agreement.

8/27/24
Date

Ronald Salomon
Respondent
305 Broadway, Suite 1102
New York, NY 10007

8/29/2024
Date

Toinette M. Mitchell
Disciplinary Counsel
U. S. Citizenship and Immigration Services
U.S. Department of Homeland Security
5900 Capital Gateway Dr.
Camp Springs, MD 20588-0009
Mail Stop: 2120

8/29/2024
Date

Paul A. Rodrigues
Disciplinary Counsel
Executive Office for Immigration Review
U.S. Department of Justice
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Respondent's Initials RS

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

Ronald SALOMON, D2018-0261

Respondent

FILED
JAN 12 2024

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF EOIR: Paul A. Rodrigues, Disciplinary Counsel
Diane Kier, Associate General Counsel

IN PRACTITIONER DISCIPLINARY PROCEEDINGS
On Appeal from a Decision of the Adjudicating Official

Before: Malphrus, Deputy Chief Appellate Immigration Judge, Clark; Appellate Immigration Judge; Creppy, Appellate Immigration Judge

Opinion by Malphrus, Deputy Chief Appellate Immigration Judge

MALPHRUS, Deputy Chief Appellate Immigration Judge

The respondent has appealed from the August 30, 2021, decision of an Adjudicating Official finding that the respondent is subject to discipline under 8 C.F.R. § 1003.102(g) and imposing a 6 month suspension from the practice of law before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security ("DHS").[1] The Disciplinary Counsel for the Executive Office for Immigration Review ("EOIR") has asked the Board to affirm the Adjudicating Official's decision.[2] We affirm the Adjudicating Official's decision, and we dismiss the respondent's appeal. The respondent's request for oral argument is denied. *See* 8 C.F.R. § 1003.1(e)(7).

I. PROCEDURAL HISTORY

On December 17, 2018, the Disciplinary Counsel for EOIR initiated these disciplinary proceedings by filing a Notice of Intent to Discipline. The Notice of Intent to Discipline charged the respondent with engaging in contumelious or otherwise obnoxious conduct which would

[1] The respondent's motion to extend the page limit for his brief is granted.

[2] All references to 'the Government" or "Disciplinary Counsel" in this decision refer to the Disciplinary Counsel for EOIR unless otherwise indicated. While the Disciplinary Counsel for DHS has moved to join the Notice of Intent to Discipline filed by the Disciplinary Counsel for EOIR, the Disciplinary Counsel for DHS has not filed a brief on appeal and is not a signatory to the brief filed by the Disciplinary Counsel for EOIR.

constitute contempt of court in a judicial proceeding in violation of 8 C.F.R. § 1003.102(g). The charge was based on the respondent's conduct during master calendar proceedings before Immigration Judge Marie Lurye on September 21, 2018. The Disciplinary Counsel for DHS filed a motion to join the Notice of Intent to Discipline. The respondent filed an answer to the Notice of Intent to Discipline, and this Board referred the matter to the Office of the Chief Immigration Judge for the appointment of an Adjudicating Official.

On June 19, 2019, the Disciplinary Counsel for EOIR filed a motion to amend the Notice of Intent to Discipline and an Amended Notice of Intent to Discipline. The Amended Notice of Intent to Discipline included additional charges against the respondent based on his conduct during a hearing before Immigration Judge Charles Conroy on December 6, 2018. The respondent filed an answer to the Amended Notice of Intent to Discipline on July 16, 2019.

The Adjudicating Official held a hearing on May 20, 2021, and issued a written decision on August 30, 2021. The Adjudicating Official found that, during master calendar proceedings on September 21, 2018, the respondent engaged in contumelious or otherwise obnoxious conduct which would constitute contempt of court in a judicial proceeding in violation of 8 C.F.R. § 1003.102(g) (AO at 11-14). The Adjudicating Official sustained the first portion of the first count of the Amended Notice of Intent to Discipline on the basis of this finding. The Adjudicating Official determined that a 6 month suspension from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS was the appropriate sanction for this violation given the nature of the misconduct and the aggravating and mitigating factors (AO at 17-19). The Adjudicating Official did not sustain the remaining charges, including the charges brought under count two of the Amended Notice of Intent to Discipline or the charge, contained in count one, alleging that the respondent had violated provisions of the Immigration Court Practice Manual and therefore was subject to discipline under 8 C.F.R. § 1003.102 (AO at 14-17).

The respondent has appealed from the Adjudicating Official's decision.

II. ISSUES AND STANDARD OF REVIEW

We review the Adjudicating Official's findings of fact for clear error. 8 C.F.R. 1003.1(d)(3)(i). We review questions of law, discretion and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3)(ii); *see also* 8 C.F.R. § 1003.106(c). Further, in disciplinary proceedings, the Disciplinary Counsels "bear the burden of proving the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline by clear and convincing evidence." 8 C.F.R. § 1003.106(a)(2)(iv).

The parties have not challenged the Adjudicating Official's dismissal of the disciplinary charges that are based on the respondent's conduct during a hearing before Immigration Judge Conroy on December 6, 2018 (Gov't Response Br. at 2, n.1; AO at 15-17). The parties also have not challenged the Adjudicating Official's conclusion that the respondent is not subject to discipline under the preamble of 8 C.F.R. § 1003.102 for his conduct on September 21, 2018 (Gov't Response Br. at 2, n.1 and n.2; AO at 14-15). We therefore deem these issues waived. *See, e.g., Matter of A.J. Valdez and Z. Valdez*, 27 I&N Dec. 496, 496 n.1, 498 n.3 (BIA 2018) (noting

that an issue addressed in an Immigration Judge's decision is waived when a party does not challenge it on appeal).

The key issues on appeal are (1) whether the Adjudicating Official erred in finding that the respondent's conduct on September 21, 2018, qualifies as contumelious or otherwise obnoxious conduct that would constitute contempt of court in a judicial proceeding, and (2) whether a 6 month suspension is the appropriate sanction for this violation. The respondent also argues that his conduct is not sanctionable because it is protected speech under the First Amendment of the United States Constitution. The respondent further contends that the Adjudicating Official and the proceedings violated his right to due process and that the Adjudicating Official was biased and unqualified to preside over the proceedings.

III. SEPTEMBER 21, 2018, CONDUCT PROVIDES BASIS FOR DISCIPLINE UNDER 8 C.F.R. § 1003.102(g)

A. The Adjudicating Official's Factual Findings

The Adjudicating Official's factual findings regarding the events of September 21, 2018, are not clearly erroneous (AO at 3-11; Tr. at 54-241; Exh. 1A. Tab 5-7; Exh. 5, Exh. 6). In addressing the specific charge made in the first part of count one of the Amended Notice of Intent to Discipline, the Adjudicating Official focused on a key portion of that day. the portion starting with the respondent's confrontation of Mrs. Adrianne, the legal assistant, and ending with the respondent's return to the courtroom after speaking with Judge Lurye (AO at 11). The respondent's account in his appellate brief of this segment of the day differs somewhat from the Adjudicating Official's version (Respondent's Br. at 4; AO at 11). For instance, the respondent claims that he asked Mrs. Adrianne if she was racist or antisemitic rather than accusing her of being this way. The respondent also does not mention his raised voice or the aggressive manner in which he approached Mrs. Adrianne (Respondent's Br. at 4; AO at 11).

The Adjudicating Official did not clearly err in finding that the respondent spoke in a raised voice and accused Mrs. Adrianne of being racist and antisemitic rather than asking her if she possessed these characteristics (AO at 11; AO at 5-7, 10; Tr. at 59-64, 105-109, 204-208; Exh. 1A, Tabs 5-7, Exh. 5, Exh. 6). The assistant chief counsel who was present during the incident testified that the respondent walked briskly toward Mrs. Adrianne, spoke in a raised voice, and accused Mrs. Adrianne of racism and antisemitism (AO at 5; Tr. at 56-64). Further, in his answer to the Amended Notice of Intent to Discipline, the respondent did not contest the allegation that he accused Mrs. Adrianne of being racist and antisemitic (AO at 3-4; Exh. 6 at 3). The respondent also admitted in his answer and during his testimony that he did not intend to raise his voice but he acknowledged that others might have perceived the situation differently (AO at 3-4, 10; Tr. at 204-208, Exh. 6 at 3). We accordingly affirm the Adjudicating Official's factual findings regarding this portion of the September 21, 2018, proceeding.

In a more general attack on the Adjudicating Official's factual findings, the respondent argues that the Adjudicating Official relied on hearsay to make his findings (Respondent's Br. 21). The respondent contends that none of the Government's witnesses possessed complete or accurate knowledge of the September 21, 2018, events and that the witnesses testified 3 years after the event

(Respondent's Br. at 21). The respondent also objects to the Adjudicating Official's reliance on Mrs. Adrianne's affidavit when Mrs. Adrianne was not present to testify (Respondent's Br. at 21-22).

The Federal Rules of Evidence do not apply in these proceedings. *See* 8 C.F.R. § 1003.106(a)(2)(v) (indicating that disciplinary proceedings shall be conducted in the same manner as immigration court proceedings); *see also Matter of D-R-*, 25 I&N Dec. 445, 458 (BIA 2011) (stating that the Federal Rules of Evidence are not binding in immigration proceedings and that Immigration Judges have broad discretion to admit and consider relevant and probative evidence), *remanded on different grounds by Radojkovic v. Holder*, 599 F. App'x 646 (9th Cir. 2015). Evidence is admissible if it is probative and its admission is fundamentally fair. *Matter of D-R-*, 25 I&N Dec. at 458.

Under this evidentiary standard, the Adjudicating Official properly admitted the affidavits submitted by the Government and the testimony of the Government's witnesses and weighed the information from these sources against the respondent's testimony and statements. The Government's witnesses were present during the master calendar proceedings on September 21, 2018, and they testified about the portion of the events in which they were participants (AO at 5-8). The witnesses also admitted when they were not present and did not have knowledge of specific portions of the proceedings and they admitted when they did not remember specific details (AO at 5-8). The respondent's challenges to the probative value of the witnesses' testimony therefore are not accurate.

The respondent also does not acknowledge that Mrs. Adrianne and the three Government witnesses wrote their affidavits just days after the September 21, 2018, hearing (Exh. 1A, Tabs 5-8). The Adjudicating Official accordingly did not err in considering or relying upon the affidavits. The affidavits provide the most contemporaneous account of the events of September 21, 2018. Further, while the respondent did not have the opportunity to cross-examine Mrs. Adrianne, this fact does not make her affidavit inadmissible. It instead is a factor the Adjudicating Official must consider in assigning weight to the statement. The Adjudicating Official notably did not quote or cite directly from Mrs. Adrianne's affidavit in his decision. The Adjudicating Official instead weighed all the evidence presented, including the respondent's testimony and written statements, in making his factual findings. As we noted above, the Adjudicating Official's factual findings are not clearly erroneous (AO at 3-11; Tr. at 54-241; Exh. 1A. Tab 5-7; Exh. 5, Exh. 6). In addition, except for the points noted above, the Adjudicating Official's factual findings do not differ from the respondent's version of events in a dispositive way (Respondent's Br. at 2-4; AO at 3-11; Exh. 6).

Based on the foregoing, we affirm the Adjudicating Official's factual findings and we rely on those facts to evaluate the Adjudicating Official's legal determine that the respondent's conduct is sanctionable under 8 C.F.R. § 1003.102(g).

B. Conduct Was "Contumelious or Otherwise Obnoxious"

The attorney discipline regulations do not define "contumelious or otherwise obnoxious." The final rule amending the disciplinary regulations in 2000 states that contumelious or otherwise

obnoxious conduct "will be necessarily extreme and without an acceptable premise." Professional Conduct for Practitioners—Rules and Procedures, 65 Fed. Reg. 39513-01, 39518 (June 27, 2000).

The Attorney General has accepted the definition "haughtily contemptuous or insulting." *Matter of De Anda*, 17 I&N Dec. 54, 61 n.3 (A.G. 1979). Black's Law Dictionary similarly defines "contumelious" as "insolent, abusive, spiteful, or humiliating." CONTUMELIOUS, Black's Law Dictionary (11th ed. 2019). It defines "obnoxious" in the relevant part as "offensive, objectionable." OBNOXIOUS, Black's Law Dictionary (11th ed. 2019). These definitions are consistent with the Adjudicating Official's statements regarding the meaning of the terms (AO at 11). The Adjudicating Official therefore applied the proper legal standard in considering whether the respondent's conduct was contumelious or otherwise obnoxious.[3]

The Adjudicating Official also correctly concluded that the Disciplinary Counsel had provided clear and convincing evidence to establish that the respondent engaged in contumelious or otherwise obnoxious conduct on September 21, 2018. The Adjudicating Official's factual findings establish that, during a pause in master calendar proceedings, the respondent walked briskly up to Mrs. Adrianne and, in a raised voice that could be heard by others in and near the courtroom, accused her of singling him out and being antisemitic (AO at 11). The factual findings also establish that this outburst was not spontaneous; the respondent testified that 30 minutes passed between the time Immigration Judge Lurye asked him about his Notice of Entry of Appearance (EOIR-28) and the time he approached Mrs. Adrianne (AO at 9-10; Tr. at 198). The assistant chief counsel who was present at the time further estimated that there were 20 people in the courtroom when this happened (AO at 12; Tr. at 61-63). This loud, public, calculated, and unfounded accusation in Mrs. Adrianne's place of work constitutes humiliating and abusive conduct (AO at 12). There is clear and convincing evidence in the record to establish that the incident transpired in this way. The Disciplinary Counsel therefore met his burden of establishing, by clear and

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[3] The respondent argues that the charge against him is open-ended, subject to interpretation, and not specifically defined. He contends that there are no objective criteria that are outlined for guidance (Respondent's Br. at 3). To the extent that this argument is a challenge to the validity of 8 C.F.R. § 1003.102(g), we lack jurisdiction to rule on the validity of the regulations we administer. *See, e.g., Matter of Hernandez-Puente*, 20 I&N Dec. 335, 339 (BIA 1991) (finding that this Board lacks jurisdiction to rule on the validity of the regulations). Further, to the extent the respondent is claiming that our application of the regulation cannot be consistent, we disagree. The definitions of "contumelious or otherwise obnoxious" found in various sources are sufficiently consistent to allow adjudicators to evaluate differing factual scenarios on a case by case basis in a consistent manner. We are required to do this often with undefined terms in the Immigration and Nationality Act and the regulations. *See Matter of Ortega-Lopez*, 27 I&N Dec. 382, 384-386 (BIA 2018) (noting that the phrase "crime involving moral turpitude" is not amenable to a clear-cut comprehensive definition that identifies certain offenses to the exclusion of all others and discussing the case by case analysis used to reach consistent rulings).

convincing evidence, that the respondent engaged in contumelious or otherwise obnoxious conduct on September 21, 2018.

The respondent argues that the Adjudicating Official improperly relied on the subjective mental state of Mrs. Adrianne in finding that his conduct was contumelious or otherwise obnoxious (Respondent's Br. at 22-23). We disagree. The Adjudicating Official's conclusion that the respondent's conduct was humiliating and abusive was an objective assessment based on the facts in the record (AO at 11-12). The Adjudicating Official did not cite Mrs. Adrianne's mental state when reaching his conclusion (AO at 12).

The Adjudicating Official also correctly stated that the respondent's subjective belief that Mrs. Adrianne was antisemitic and was singling him out did not excuse the respondent's conduct or lessen its gravity (AO at 12). The respondent argues that he had valid reasons for thinking Mrs. Adrianne was antisemitic and that anyone in his situation would have questioned Mrs. Adrianne's motives (Respondent's Br. at 35). The Adjudicating Official, however, found that the respondent did not have an objectively reasonable basis for assuming Mrs. Adrianne was antisemitic (AO at 12, 18). The Adjudicating Official's finding on this point is not clearly erroneous (AO at 12, 18; Tr. at 109-110, 114, 132-34, 200-4, 237; Exh. 1A, Tabs 5-8).[4] Moreover, even an objectively reasonable belief that Mrs. Adrianne was acting improperly does not excuse the respondent's aggressive and menacing behavior. *See, e.g., U.S. v. Lumumba*, 794 F.3d 806, 815 (2d Cir. 1986) (stating that impropriety on the part of the trial judge cannot justify or excuse contemptuous conduct). The Adjudicating Official accordingly did not err in concluding that the respondent's subjective beliefs about Mrs. Adrianne did not lessen the seriousness of his misconduct or prevent it from rising to the level of contumelious or otherwise obnoxious conduct.

C. Conduct Would Have Been Punishable as Contempt Under Federal Criminal Standard

Under the disciplinary regulations, contumelious or otherwise obnoxious conduct only subjects a practitioner to discipline when the conduct would constitute contempt of court during a judicial proceeding. *See* 8 C.F.R. § 1003.102(g). The Adjudicating Official found that the respondent's conduct on September 21, 2018, obstructed the proceedings and would constitute contempt of court during a judicial proceeding (AO at 12-14). We agree with the Adjudicating Official's conclusion.

The regulation does not specify what contempt standard should apply, but fairness and consistency weigh in favor of applying the federal criminal contempt standard. The federal criminal contempt statute sets forth the federal standard for criminal contempt and states, in pertinent part:

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[4] In his appellate brief, the respondent refers to derogatory statements that Mrs. Adrianne allegedly made to Immigration Judge Lurye about the respondent during an incident that occurred in the summer of 2018 (Respondent's Br. at 2, 35, 38). The evidence of record, however, does not establish that Mrs. Adrianne made these statements. The Adjudicating Official therefore did not clearly err when he did not conclude that Mrs. Adrianne had made derogatory comments (AO at 7, 9-10; Tr. at 109-110, 114, 132-34, 200-4, 237 Exh 1A, Tab 5 and 6).

> A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as--
> **(1)** Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
> **(2)** Misbehavior of any of its officers in their official transactions;
> **(3)** Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.
>
> 18 U.S.C.A. § 401.

Because the respondent is not an "officer" within the meaning of this statute, and because there is no claim that the respondent disobeyed an order of the Immigration Judge, the only relevant provision of the federal criminal contempt statute is 18 U.S.C. § 401(1). To violate this provision, misbehavior must be willful or intentional. *See, e.g., United States v. Seale*, 461 F.2d 345, 368 (7th Cir. 1972) (finding that the minimum requisite intent is defined as a volitional act done by one who knows or should reasonably be aware that his conduct is wrongful); *In re Sealed Case*, 627 F.3d 1235, 1238 (D.C. Cir. 2010) (rejecting the appellant's contention that he did not intend to obstruct the administration of justice and finding his outburst was calculated, egregious, in the presence of, and directed at, the court and that subjective intent was not relevant).

The misbehavior must occur in or near the court. *See United States v. Marshall*, 371 F.3d 42, 46 (2d Cir. 2004) (noting that the statutory language allows summary contempt adjudications for: (i) misbehavior to which the court is an eyewitness or (ii) misbehavior that is outside the court's presence but near enough to obstruct justice); *In re Sealed Case*, 627 F.3d at 137-38 (finding that misbehavior in the courtroom at any time carries the potential to obstruct justice). There also must be an actual obstruction of justice. *In re McConnell*, 370 U.S. at 234 (noting that the argument of a lawyer in presenting a client's case strenuously and persistently cannot amount to contempt of court as long as the lawyer does not in some way create an obstruction that blocks the judge from performing his or her duty).

The respondent argues that his conduct on September 21, 2018, is not sanctionable because it was not directed at a judge and did not occur during court proceedings (Respondent's Br. at 10-11). The respondent's conduct, however, occurred in a courtroom during a brief pause in the proceedings and it was disruptive enough to draw the Immigration Judge back into the courtroom to resolve the situation (AO at 13). The conduct therefore fails within the purview of 18 U.S.C. § 401(1). *See United States v. Marshall*, 371 F.3d at 46. Further, as the Adjudicating Official correctly noted, Mrs. Adrianne is a member of "the court" (AO at 12-13). She was Immigration Judge Lurye's legal assistant during the proceedings on September 21, 2018, and played an active role in carrying out the Immigration Judge's duties during the master calendar proceedings.

The respondent also contends that his conduct did not obstruct the proceedings because it occurred during a recess (Respondent's Br. at 10-11, 34). The Adjudicating Official, however, correctly noted that the respondent's behavior extended the length of the recess and required a supervisor to step away from her duties and fill in for Mrs. Adrianne (AO at 13). The respondent's behavior therefore did obstruct the proceedings, and we uphold the Adjudicating Official's

determination that the behavior would constitute contempt in a judicial proceeding (AO at 12-14). *See, e.g., U.S. v. Peoples*, 698 F.3d 185, 190-91 (4th Cir. 2012) (stating that, to satisfy the obstruction element it suffices if the defendant's conduct interrupted the orderly process of the administration of justice by distracting court personnel from, and delaying them in, completing their duties). We further uphold the Adjudicating Official's conclusion that the Disciplinary Counsel met his burden of establishing, by clear and convincing evidence, that the respondent engaged in contumelious or otherwise obnoxious conduct that would constitute contempt of court in a judicial proceeding in violation of 8 C.F.R. § 1003.102(g).

IV. DUE PROCESS CLAIMS

The respondent argues that he was denied due process because the complaining witness, Mrs. Adrianne, was not available for cross-examination (Respondent's Br. at 19-21). The respondent claims that complaining witnesses must be present to testify in disciplinary proceedings and cites cases that he contends mandate this safeguard (Respondent's Br. at 19-20). The cases the respondent cites, however, do not establish that a complaining witness must appear in person in disciplinary proceedings (Respondent's Br. at 19-20). The cases instead indicate that an individual must be given a hearing and an opportunity to confront the evidence being used to deny him or her admission to the bar. *See, e.g., Willner v. Comm. on Character & Fitness*, 373 U.S. 96, 103-106 (1963) (finding that petitioner was denied due process when he was denied admission to the bar without notice of and a hearing on the grounds for his rejection).[5]

The Disciplinary Counsel provided the respondent with the affidavit of Mrs. Adrianne, the complaining witness, and three other witnesses when the Disciplinary Counsel served the respondent with the Notice of Intent to Discipline (Exh. 1 and 1A). The respondent also had a full hearing at which he was able to present evidence and cross-examine the three witnesses. The Adjudicating Official relied on the three witnesses' account of events, rather than the affidavit of Mrs. Adrianne, to sustain the charge (AO at 11-14). The respondent therefore was not denied an opportunity to confront the evidence against him and he was given ample opportunity to present his own evidence., in compliance with *Wilmer* and the other cases the respondent cites. *Willner*, 373 U.S. at 103-106. *Cf. Matter of De Anda*, 17 I&N Dec. 54, 62 (A.G. 1979) (finding no indication that attorney's procedural rights were violated when attorney was given adequate notice of the charges and the evidence against him and the opportunity for a hearing).

The respondent argues that the absence of Mrs. Adrianne deprived him of an opportunity to ask her a series of questions (Respondents' Br. at 23-25). Mrs. Adrianne's answers to the questions, however, would not affect the Adjudicating Official's decision to sustain the disciplinary charge

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[5] In reaching its conclusion, the Court states that procedural due process "often requires confrontation and cross-examination of those whose word deprives a person of his or her livelihood." *Willner*, 373 U.S. at 103. The use of "often" establishes that confrontation and cross-examination is not always required to provide due process. Further, in this case, the respondent had the opportunity to confront and cross-examine the Government's witnesses, and it was their account of events that provided the primary basis for the Adjudicating Official's decision (AO at 11-14).

because they would not be relevant. The respondent himself acknowledges earlier in his brief that Mrs. Adrianne's subjective view of the respondent's actions and her mental state are not relevant (Respondent's Br. at 22). Mrs. Adrianne's past conduct further is not relevant to the analysis of whether the respondent's behavior, objectively, qualifies as contumelious or otherwise obnoxious. *See, e.g., U.S. v. Lumumba*, 794 F.3d at 815 (stating that impropriety on the part of the trial judge cannot justify or excuse contemptuous conduct).[6]

Based on the foregoing, we dismiss the respondent's claims that he was denied due process in his disciplinary proceedings.

V. FIRST AMENDMENT CLAIM

The respondent additionally argues that he is not subject to discipline for the statements he made to Mrs. Adrianne on September 21, 2018, because his statements constitute protected speech under the First Amendment of the United States Constitution (Respondent's Br. at 11). The respondent maintains that attorneys are not subject to discipline when expressing their opinions in speech or in writing, and he cites several cases in support of his argument (Respondent's Br. at 11-18).

To the extent that the respondent's arguments are a challenge to 8 C.F.R. § 1003.102(g), the regulation granting us authority to sanction attorneys for contumelious or otherwise obnoxious conduct, we lack jurisdiction to consider constitutional challenges to the regulation. *See, e.g., Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) (stating that this Board lacks jurisdiction to rule on the constitutionality of the Act and the regulations). Further, the Adjudicating Official did not sanction the respondent solely on the basis of what he said. The Adjudicating Official instead concluded that the respondent's *conduct* on September 21, 2018, which included his actions, his tone, and his demeanor, when considered in light of all the surrounding circumstances, qualified as contumelious or otherwise obnoxious conduct (AO at 11-12).

Moreover, the cases the respondent cites do not establish that the respondent's statements are protected or that remand is required to have the Adjudicating Official make this determination (Respondent's Br. at 11-18). The decision of the Supreme Court of the United States that the respondent cites is not relevant because it deals with a criminal libel statute, not an attorney discipline regulation or proceeding (Respondent's Br. at 12-14). *See Garrison v. Louisiana*, 379 U.S. 64 (1964). Further, the decisions the respondent cites from the United States Court of

[6] To the extent that misconduct on Mrs. Adrianne's part would be relevant to a determination regarding the appropriate sanction, the respondent has not established that questioning of her would produce evidence different from the evidence already in the record. *Cf. Matter of Santos*, 19 I&N Dec. 105, 107 (BIA 1984) (stating that a noncitizen must demonstrate that he has been prejudiced by a violation of a procedural rule or regulation before his deportation proceeding will be invalidated). The sanctions analysis still requires an objective view of the situation, which the evidence of record provides. Further, the Adjudicating Official acknowledged the respondent's subjective belief that he was being targeted on account of his religion as a mitigating factor (AO at 18). The respondent has not shown that questioning Mrs. Adrianne would produce any additional, dispositive information.

Appeals for the Ninth Circuit, Oklahoma, and Colorado represent the minority view regarding the legal standard to apply in determining whether attorney speech is protected (Respondent's Br. at 14-18). This view that has been rejected by a majority of states and by New York, the state in which the respondent's case arises. *See Matter of Holtzman*, 577 N.E.2d 30, 34 (N.Y. 1991) (declining to apply "constitutional malice" standard and applying an objective reasonableness standard to attorney speech); *In re Cobb*, 838 N.E.2d 1197, 1210–14 (Mass. 2005) (considering the standard to be applied when an attorney invokes the First Amendment to defend against a charge that he or she impugned the integrity of a judge, without basis, during a pending case and concluding that a majority of state courts that have considered the question have concluded that the standard is whether the attorney had an objectively reasonable basis for making the statements). The decisions the respondent cites accordingly are not applicable to this case.

In addition, remand for specific consideration of this issue is not warranted given the factual findings the Adjudicating Official has already made. On remand, the Adjudicating Official would have to consider whether the respondent had an objectively reasonable basis for his claim that the legal assistant was racist and antisemitic. *See Matter of Holtzman*, 577 N.E.2d at 33-34. The Adjudicating Official, however, specifically stated that the respondent did not have an objective basis for his assertion (AO at 12, 18). We therefore find no basis for remanding the record for further proceedings to allow the Adjudicating Official to address the respondent's argument on this point.

VI. ALLEGATIONS OF BIAS

We also dismiss the respondent's allegations that the Adjudicating Official is unqualified and biased (Respondent's Br. at 25-26; Notice of Appeal). The respondent has not submitted or cited to evidence to support his claims. Further, the Adjudicating Official would not have been appointed and would have recused himself if he had any of the personal connections to which the respondent alludes (Respondent's Br. at 25-26).[7]

Similarly, we dismiss the respondent's assertions that the witnesses are biased (Respondent's Br. at 26; Notice of Appeal). The respondent has not submitted evidence or cited information in the record to support his allegations. Further, the witnesses testified under oath and there is nothing in the record to impugn their integrity or the truthfulness of their statements. We accordingly dismiss the respondent's claims of bias. *Matter of Santos*, 19 I&N Dec. 105, 107 (BIA 1984) (stating that a noncitizen must demonstrate that he has been prejudiced by a violation of a procedural rule or regulation before his deportation proceeding will be invalidated).

VII. SANCTION

The Adjudicating Official concluded that a sanction of 6 months' suspension from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS was warranted given the respondent's misconduct (AO at 17-19). The respondent argues that, based on cases from New

[7] The Adjudicating Official was appointed and the proceedings were conducted in accordance with the attorney discipline regulations. 8 C.F.R. § 1003.106.

York involving similar conduct, his conduct should not subject him to discipline or suspension (Respondent's Br. at 5-11).

We have already explained why the respondent's misconduct makes him subject to discipline under 8 C.F.R. § 1003.102(g). Further, the Adjudicating Official correctly concluded that suspension was warranted in the respondent's case given the aggravating factors, particularly the respondent's 2016 information admonition for similar misconduct (AO at 18-19; Exh. 1A, Tabs 2-4). *Cf. Matter of Denenberg*, 192 A.D. 3d 76 (N.Y. App. Div. 2020) (suspending attorney for 3 months for offensive remarks made to adversaries and misleading statements made during disciplinary proceedings); *Matter of Dinhofer*, 257 A.D. 2d 326 (N.Y. App. Div. 1990) (suspending attorney for 3 months for calling judge corrupt during telephone conference); *Matter of Delio*, 290 A.D. 2d 61 (N.Y. App. Div. 2001) (imposing public censure on attorney for making disparaging remarks about a judge in a motion where attorney apologized, expressed remorse, cooperated during disciplinary proceedings and had no prior discipline).

The respondent contends that his 2016 admonition should not have been considered because no hearing was held in that case, no witness testimony was taken, and no ruling was made by a judicial body (Respondent's Br. at 26-29). The information admonition, however, resulted from a formal disciplinary investigation in which the Disciplinary Counsel presented the respondent with the complaint against him and gave him the opportunity to respond (AO at 18-19; Exh. 1A, Tabs 2-3). The respondent therefore was afforded due process, and the resulting letter of admonition warned him that the admonition would be considered an aggravating factor in any future disciplinary proceedings (AO at 19; Exh. 1A, Tab 4). Consideration of prior disciplinary violations, including information admonitions, in determining the appropriate sanction further is both proper and standard practice. American Bar Association, Center for Professional Responsibility, Annotated Standards for Imposing Lawyer Sanctions, Second Edition 451 (2019). The Adjudicating Official therefore did not err in considering the 2016 admonition or in finding this prior discipline to be a significant aggravating factor (AO at 18-19).

The respondent also claims that the Adjudicating Official erred in considering his prior disciplinary cases from 2007, 2009, and 2010 in determining the appropriate sanction (Respondent's Br. at 31-32). The respondent asserts that this discipline was on unrelated grounds, the underlying conduct occurred more than 13 years ago, he took remedial action, and there have been no further related charges (Respondent's Br. at 31-32). As we noted above, an Adjudicating Official may consider prior discipline in determining the appropriate sanction for new misconduct. The Adjudicating Official in this case, however, acknowledged the qualifying factors the respondent has raised, and the Adjudicating Official stated that he did not weigh the discipline from 2007 to 2010 heavily in his sanction analysis (AO at 18). We agree with the Adjudicating Official's analysis on this point.

Finally, the respondent contends that he was denied due process because he was not allowed to call individuals who were sitting Immigration Judges, Immigration Court employees, or assistant chief counsel as character witnesses (Respondent's Br. at 29-31). The respondent, however, did submit some letters from character witness, and the Adjudicating Officials considered these letters as evidence of good character (AO at 18). The respondent had the option of requesting subpoenas or submitting written statements from additional character witnesses. His

attorney during his proceedings before the Adjudicating Official even inquired about this option during the March 23, 2021, status conference (Tr. at 18-21). The respondent did not pursue these options. He therefore bears responsibility for any lack of evidence.

Based on the foregoing, we conclude that the Adjudicating Official properly weighed the aggravating and mitigating factors in the respondent's case, and we uphold the Adjudicating Official's conclusion that the respondent should be suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS for 6 months.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is dismissed.

FURTHER ORDER: The Board hereby suspends the respondent from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS for 6 months, effective 15 days from the date of this order.

FURTHER ORDER: The respondent must maintain compliance with the directives set forth in our prior order. The respondent must notify the Board of any further disciplinary action against her.

FURTHER ORDER: The contents of the order shall be made available to the public, including at the Immigration Courts and appropriate offices of DHS.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, the Immigration Courts, and DHS under 8 C.F.R. § 1003.107.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF IMMIGRATION JUDGE

IN THE MATTER OF:	)	
	)	
SALOMON, Ronald	)	**Disciplinary Case No. 2018-0261**
	)	
Respondent	)	
	)	

ON BEHALF OF RESPONDENT
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CHARGES:

8 C.F.R. § 1003.102(g): Engaging in contumelious or otherwise obnoxious conduct, with regard to a case in which he or she is acting in a representative capacity, which would constitute contempt of court in a judicial proceeding.

8 C.F.R. § 1003.102: It is deemed to be in the public interest for an adjudicating official or the Board to impose disciplinary sanctions against any practitioner who falls within one or more of the categories enumerated in this section, but these categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest. To wit: unprofessional, disrespectful, and disruptive conduct toward the Court and its personnel, in violation of Chapter 4.12(c) of the Immigration Court Practice Manual

DECISION AND ORDER IN DISCIPLARY PROCEEDINGS

I. PROCEDURAL HISTORY

On December 17, 2018, Disciplinary Counsel for the Executive Office for Immigration Review ("EOIR") filed a Notice of Intent to Discipline ("NID") against the Respondent, Ronald Salomon, seeking to suspend him from practicing law before EOIR for one year. Exhs. 1-1A. On December 26, 2018, Disciplinary Counsel for the Department of Homeland Security ("DHS") (collectively "Government") filed a motion for reciprocal discipline against the Respondent seeking to suspend him from practicing law before DHS for that same period. Exh. 2. The Respondent filed an answer to the NID on February 12, 2019. Exh. 3. On March 7, 2019, the Board of Immigration Appeals ("Board") ordered that the Respondent's case be referred to an adjudicating official ("Court") for factual findings and legal determinations. Exh. 4. On June 19, 2019, the Government filed an amended NID against the Respondent, charging him with a second disciplinary violation and requesting an eighteen month suspension. Exh. 5. The Respondent filed an answer to the amended NID on July 16, 2019. Exh. 6.

On May 20, 2021, the Court held a hearing regarding this matter. At this hearing, the Court heard testimony from Assistant Chief Counsel Kalenna Lee, Immigration Judge Maria Lurye, a legal assistant at the New York Immigration Court, Carolina Hernandez, and the Respondent. On July 9, 2021, the Government filed a written closing argument with the Court and on July 12, 2021, the Respondent filed a written post-hearing brief. Unmarked Exhs. 1-2.

II. EXHIBIT LIST

Exhibit 1:	Notice of Intent to Discipline, filed December 17, 2018
Exhibit 1A:	Evidence in Support of Notice of Intent to Discipline, Tabs 1-18, filed December 17, 2018
Exhibit 2:	DHS Motion to Join for Reciprocal Discipline, filed December 26, 2018
Exhibit 3:	Respondent's Answer to Notice of Intent to Discipline, filed February 12, 2019
Exhibit 4:	Board of Immigration Appeals Decision Referring Case to Adjudicating Official, dated March 7, 2019
Exhibit 5:	Government's Amended Notice of Intent to Discipline, filed June 19, 2019
Exhibit 5A:	Evidence in Support of Notice of Intent to Discipline, Tabs 19-20, filed June 19, 2019

Exhibit 6:	Respondent's Answer to Amended Notice of Intent to Discipline, filed July 16, 2019
Exhibit 7:	Government's Pre-Hearing Brief and Supporting Evidence, Tabs 1-2, filed May 3, 2021
Exhibit 8:	Evidence in Support of Notice of Intent to Discipline, Tabs 21-23, filed May 3, 2021
Exhibit 9:	Government's Witness List, May 3, 2021
Exhibit 10:	Letters in Support of Respondent's Character[1]
Exhibit 11:	Government's Objection to Respondent's Proposed Evidence, filed May 17, 2021
Unmarked Exhibit 1:	Government's Closing Argument, filed July 9, 2021
Unmarked Exhibit 2:	Respondent's Post-Hearing Brief, filed July 12, 2021

III. SUMMARY OF ALLEGED CONDUCT AND ARGUMENTS

The NID charges the Respondent with two separate disciplinary violations based on two separate incidents before the New York Immigration Court. The first incident occurred on September 21, 2018. On this day, the Respondent was appearing before Immigration Judge Maria Lurye ("Judge Lurye") at a master calendar hearing. Exh. 5 at 2. When he entered the courtroom, the Respondent approached Brooke Adrianne ("Ms. Adrianne"), who was serving as Judge Lurye's legal assistant. *Id.* The Respondent had his Form E-28 in his hand and Ms. Adrianne told him to leave it on her file cart. *Id.* The Respondent did not leave the form with her and then left the courtroom.

When he came back, Judge Lurye asked him to approach the bench and to hand her the Form E-28. *Id.* The Respondent told her that Ms. Adrianne indicated that he could submit the form when his case was called. Ms. Adrianne then told Judge Lurye that she told him to place the form in her cart. *Id.*

At a point during the master calendar hearing, Judge Lurye took a break and stepped away from the bench. After she left the courtroom, the Respondent "walked briskly" towards Ms. Adrianne and, "in a raised voice," called her racist and anti-Semitic and accused her of "tattle-telling." *Id.* at 3. Judge Lurye heard a commotion and saw Ms. Adrianne leaving through the back of the courtroom. Judge Lurye asked the Respondent and Assistant Chief Counsel Kalenna Lee ("ACC Lee") to speak with her in private. The Respondent asserted that Ms. Adrianne was anti-

[1] This exhibit does not contain a filing stamp.

Semitic and that she wanted to demonstrate her power. *Id.* Judge Lurye told the Respondent to return to the courtroom and wait for his case to be called. *Id.* Ms. Adrianne was crying and appeared visibly shaken as a result of this incident. *Id.* She did not return to court and another legal assistant filled in for the remainder of the master calendar hearing. *Id.*

In response to this allegation, the Respondent avers that Ms. Adrianne told him that he could hand in his Form E-28 when his case was called. Exh. 6 at 2. The Respondent admits that he approached Ms. Adrianne to express his displeasure but that he did not intend to raise his voice. From his perspective, he was not being "overly loud" but admitted that others may have a different perspective regarding his demeanor. *Id.* He did not intend to act "obnoxiously or uncivilly." *Id.*

The Respondent's frustration stemmed from a prior incident between himself and Ms. Adrianne. During this previous encounter, Ms. Adrianne informed Judge Lurye that he had taken a handful of Form E-28's from the courtroom. The Respondent took these forms because he knew that he would use them eventually. *Id.* at 6. Ms. Adrianne followed the Respondent out of the courtroom and "grabbed his arm and tried to take the forms from his hand." *Id.* at 6.

Based on the incident of September 21, 2018, the Government charged the Respondent with two separate disciplinary violations, including under 8 C.F.R. § 1003.102(g) for engaging in contumelious or otherwise obnoxious conduct, with regard to a case in which he is acting in a representative capacity, which would constitute contempt of court in a judicial proceeding and under the preamble to 8 C.F.R. § 1003.102 for violating Chapter 4.12(c) of the Immigration Court Practice Manual.

The second incident described in the complaint occurred on December 6, 2018 before Immigration Judge Charles Conroy ("Judge Conroy"). During this case, the Respondent was representing an applicant for adjustment of status. Judge Conroy had previously ordered the Respondent to submit all documents at least thirty days before his client's December 6, 2018 hearing. Exh. 5 at 4. On November 7, 2018, the Respondent filed a Form I-601A waiver, a Form I-864, and other country conditions evidence. *Id.* at 4-5. There was no motion for an untimely filing and Judge Conroy marked them for identification but did not admit them as evidence. *Id.* at 5. Following this ruling, the Respondent and Judge Conroy argued as to whether the documents were untimely and whether the applicant would be proceeding with her previously filed Form I-589. *Id.* at 5-7. Judge Conroy ruled that there was no adjustment of status application before the Court, even though the application had been filed six months earlier. Judge Conroy further ruled the asylum application abandoned and ordered the applicant removed. *Id.* at 7.

The Respondent explained that the situation was exacerbated by a harsh ruling precluding his client from adjusting her status. Exh. 6 at 7. He also notes that DHS counsel did not object to the admission of the documents. *Id.* He knows that lawyers should not argue with Immigration Judges and that lawyers should not raise their voices; however, he was worried about his client's rights and her ability to proceed on the merits of the claim. *Id.* at 7-8.

Based on this incident, the Government charged the Respondent with the same two disciplinary violations, first under 8 C.F.R. § 1003.102(g), for engaging in contumelious or otherwise obnoxious conduct, with regard to a case in which he or she is acting in a representative

capacity, which would constitute contempt of court in a judicial proceeding and second, pursuant to the introductory paragraph of 8 C.F.R. § 1003.102 for violating Chapter 4.12(c) of the Immigration Court Practice Manual.

IV. TESIMONIAL SUMMARY

A. Testimony of Assistant Chief Counsel Kalenna Lee

Kalenna Lee is an Assistant Chief Counsel ("ACC") with Immigration and Customs Enforcement ("ICE"). She has worked as an ACC since June 2015. ACC Lee was assigned to Judge Lurye's courtroom on September 21, 2018. Upon arriving in the courtroom and setting up her files, she noticed immigration attorneys lining up to check in. She recalls seeing the Respondent stepping up to the table to check in. Ms. Adrianne told him that there was a new court policy requiring attorneys to sign in on a piece of paper. Previously, attorneys would hand in their Form E-28's when their case was called. The Respondent was holding a green Form E-28 while signing in. She does not know what was discussed because her table was too far away to hear anything. She does not know whether Ms. Adrianne told him to hand her the Form E-28 or put it in the cart. The Respondent was not being disruptive or loud.

After Judge Lurye started the master calendar hearing, Ms. Adrianne approached and spoke to her. Judge Lurye then called the Respondent to the bench. ACC Lee does not know what was discussed because they were talking very quietly. She does not recall Ms. Adrianne being a part of this conversation and it was a short discussion. She does not know whether Judge Lurye asked the Respondent for his Form E-28. She does not recall seeing the Respondent give Judge Lurye his Form E-28. She did not recall him being disruptive at this point. Judge Lurye sometimes calls up attorneys to her bench to have conversations and so she did not think anything was unusual at that time.

During a break in the master calendar hearing, Judge Lurye left through a door behind Ms. Adrianne's desk. ACC Lee was working at her table when she heard the gate separating the gallery from the rest of the courtroom slam shut. She then witnessed the Respondent walking very quickly towards Ms. Adrianne's desk. In a raised voice, he asked her why she felt the need to tell Judge Lurye about their exchange. He told Ms. Adrianne that she was always picking on him and that it was not the first time that she had taken issue with something that he did. He also accused her of being anti-Semitic.[2] She does not recall hearing any profanity. She does not recall Ms. Adrianne responding to him and she appeared to be working with her files and ignoring him. She then turned around and walked out of the courtroom through the back door. She estimates that the entire interaction lasted between three and five minutes.

The Respondent remained in the courtroom and spoke in a raised voice insisting that Ms. Adrianne had been targeting him. He was not talking to anyone in particular. There were roughly twenty people in the gallery at this time. During the interaction, they were looking up and toward the front of the courtroom.

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[2] Respondent is readily identifiable as Jewish as he wears a yarmulke at all times.

Judge Lurye came in and asked to speak to the Respondent in private. Respondent complied. Judge Lurye then called ACC Lee to the back hallway. When she came through the door, the Respondent was explaining that Ms. Adrianne refused to take his Form E-28 because she was too busy and that he did not understand why she even told Judge Lurye about this. There appeared to be a disagreement as to whether the Respondent had refused to cooperate with Ms. Adrianne's request. The Respondent said that Ms. Adrianne was picking on him because she was anti-Semitic. At the time, ACC Lee did not know why he made this accusation. ACC Lee was not aware that there had been another incident between the Respondent and Ms. Adrianne which had led to another Jewish lawyer mistakenly being called to task by Judge Lurye based on reporting by Ms. Adrianne to Judge Lurye and identification of that lawyer as Jewish. Judge Lurye told Respondent to calm down and said that it was inappropriate to make these comments without proof.

After roughly five minutes, they all returned to the courtroom. ACC Lee thinks that a different legal assistant stepped in to finish the master calendar hearing and she did not witness any further exchanges between Ms. Adrianne and the Respondent. In total, from when the Respondent approached Ms. Adrianne to when court ultimately resumed, was about twenty minutes. She saw Ms. Adrianne come into the courtroom after the master calendar hearing. She appeared upset and shaken up.

ACC Lee had never seen the Respondent act in a disruptive manner in the past or raise his voice to a legal assistant or be reprimanded by a judge for uncivil conduct.

B. Testimony of Immigration Judge Maria Lurye

Judge Lurye has been an Immigration Judge at the New York Immigration Court since 2017. Prior to becoming an Immigration Judge, she worked as an ACC. Ms. Adrianne was her legal assistant prior to her retirement. She considers Ms. Adrianne to be part of the court's staff.

On September 21, 2018, Judge Lurye was presiding over a master calendar hearing. Ms. Adrianne informed her that the Respondent had not given her his Form E-28. Ms. Adrianne's affidavit indicates that she left a post it note on top of the file indicating that she needed to get it from the Respondent when his case was called. She does not know whether the post-it note was still on the file when his case was called. She asked the Respondent to approach the bench and to give Ms. Adrianne the Form E-28. The Respondent told her that he did not think that he was permitted to leave the E28 in the basket. The Respondent then provided the Form E-28 to her.

Judge Lurye recalled that the master calendar hearing had not yet begun when she asked the Respondent to approach the bench. Ms. Adrianne's affidavit indicates that the master calendar hearing was already underway when the Respondent approached her to sign in. It would not be unusual for Judge Lurye to call a lawyer up to the bench before a hearing but it would be unusual for her to do so in the middle of a master calendar hearing.

She did not hear the discussion between the Respondent and Ms. Adrianne when he checked-in nor did she hear what Ms. Adrianne told him. At the time, Ms. Adrianne was requesting that people sign in on a piece of paper. Ms. Adrianne preferred this method because it

allowed her to keep track of the order for the master calendar hearing. Lawyers sometimes gave their Form E-28's to the Judge when the case was called.

At some point during the hearing, Judge Lurye decided took a break and left the courtroom. When she closed the door behind her, she heard a commotion. She could not hear what was being said but recalled that it was loud. She reentered the courtroom and Ms. Adrianne rushed out. The Respondent then told her that Ms. Adrianne was racist and anti-Semitic.

She asked the Respondent and ACC Lee to come with her to the back hallway. She asked the Respondent to calm down. The Respondent told her that he was upset that Ms. Adrianne told on him about not turning in the E28 by placing it in the cart. Judge Lurye told him that he needed to be courteous and stay calm. She did not feel unsafe at any point during this interaction. He then went back into the courtroom.

Sometime later, Ms. Adrianne came into the hallway crying. Judge Lurye told her not to return and a supervisor finished the master calendar hearing. When Judge Lurye returned to the bench, an attorney told her that Ms. Adrianne had done nothing wrong.

After the hearing, Ms. Adrianne wrote her an e-mail explaining that she was upset and that she felt unsafe leaving to go home. She did not specifically state that she felt like the Respondent would follow her out of the building.

The Respondent's conduct was disruptive because it delayed proceedings and resulted in another legal assistant having to finish the master calendar hearing. She is not aware of Ms. Adrianne having issue with any other attorneys. She has not witnessed an attorney acting in this manner during her time as an Immigration Judge.

She knows that there was a disagreement between the Respondent and Ms. Adrianne in the past about the Respondent removing a stack of Form E-28's from the courtroom. At the time, there was a paper shortage at the New York Immigration Court. No other legal assistant ever told her about someone taking too many forms but it was not unusual for a legal assistant to warn an Immigration Judge that they were running low on them. She does not recall whether this incident was brought up when they were in the hallway but testified that the Respondent might have mentioned it.

When the Respondent's case was called, he did not act disrespectfully towards her or the substitute legal assistant. They had a small conversation about the incident and he told her that he was a little "high strung." She does not recall the Respondent acting in a disrespectful manner in the past. He did not make any personal attacks against her while they were talking in the hallway.

C. Testimony of Carolina Hernandez

Carolina Hernandez ("Ms. Hernandez") is a legal assistant at the New York Immigration Court. She has worked there for about fourteen years. She worked as an acting supervisor for roughly a year.

Ms. Hernandez was the acting supervisory legal assistant on September 21, 2018. On that day, Ms. Adrianne came to her crying and upset. Ms. Adrianne told her that she had an unpleasant interaction with the Respondent. At the time, Ms. Hernandez was running reports for her unit. She told Ms. Adrianne to calm down and that she would take over the master calendar hearing. When she walked toward the courtroom, she saw Judge Lurye, the Respondent, and ACC Lee talking. She then proceeded to walk into the courtroom. She spent about an hour filling in for Ms. Adrianne.

The Respondent ultimately completed his case. Ms. Hernandez observed the Respondent acting in a calm manner. Her declaration indicates that he attempted to make light of the situation. She explained that he was making facial expressions and raising his eyebrows. Judge Lurye told the Respondent that he needed to be pleasant with the legal assistants. Her affidavit indicates that the Respondent told Judge Lurye that Ms. Adrianne was "high strung."

The Respondent was never disrespectful towards her and she never witnessed him being disrespectful to any other legal assistants.

D. Testimony of the Respondent

The Respondent is licensed to practice law in the state of New York. After his admission to the bar, he worked with another practitioner for a year before opening his own law firm. At his firm, he practiced bankruptcy law and immigration law. He has been practicing immigration law since 1992. He estimates that he has handled roughly 10,000 cases in his career.

The Respondent was disciplined by the state of New York in March 2007 for neglecting some of his cases. He was informally admonished by EOIR in 2009 for neglecting cases between 2007 and 2008. He was admonished by EOIR again in 2010 for neglecting cases before 2005. He was suspended by the Second Circuit in 2010 for neglecting his cases. He was also censured by the EOIR Disciplinary Committee in 2010 for neglecting cases and failing to file briefs. The Respondent implemented systems within his practice to address these issues.

In 2016, the Respondent was admonished by EOIR for a conversation that he had with a legal assistant at the Memphis Immigration Court. This was the first time that he was disciplined for his behavior with court staff. The Respondent explained that he was representing a client living in New York. He had applied for asylum in Memphis before receiving Temporary Protected Status. The Respondent later filed a motion to recalendar along with a motion to change venue with the Memphis Immigration Court. He received a hearing notice order him to appear in Memphis but nothing regarding his motion to change venue.

When he called the Memphis Immigration Court, no one answered and so he left a message. He then called five or six more times and left messages explaining the situation. When he finally reached a legal assistant, he told her that there was a motion to change venue pending that had not been ruled on. The legal assistant told him that it was with the Immigration Judge and that he had to wait for a ruling. The Respondent also learned during this conversation that the Memphis Immigration Court did not have the file for the case. She told him that he could file a motion with the Memphis Immigration Court but the Respondent told her that it was not possible for him to do so because he was leaving for vacation that evening. He called his client and told him that they

might have to appear in Memphis. He returned from vacation and was informed that the Immigration Judge granted the motion to change venue.

During this interaction, he was frustrated by the prospect of flying to Memphis just to have his case postponed due to a missing file. He was not rude or angry on the phone with the legal assistant. He only wanted to find out what was happening with his case. The legal assistant was not interested in helping him and told him that he had to "deal with it."

EOIR Disciplinary Counsel sent the Respondent a complaint explaining the charge against him. In his written answer, the Respondent admitted to the facts stated in the complaint. The Respondent received an admonition and he was advised that future conduct could result in formal disciplinary proceedings.

The Respondent admitted that he probably used a tone that he should not have used. When he traveled to Memphis for a hearing several months later, he apologized to the legal assistant and the court administrator. This apology was after disciplinary action had been initiated against him.

On September 21, 2018, the Respondent was in court before Judge Lurye. Lawyers usually wait for the door to open and then hand the legal assistant a Form E-28 or provide the case number. Lawyers then sit down and wait for the case to be called. The Respondent arrived after the hearing was already in progress. He approached Ms. Adrianne with his Form E-28. In Judge Lurye's courtroom, individuals signed their names on a clipboard, as opposed to handing in a Form E-28 or providing the case number. Generally, if a lawyer does not have a Form E-28 filled out, it is handed in when the case is called along with the other evidence.

When the Respondent entered the courtroom, the hearing was underway and Ms. Adrianne was dealing with files. He waited by her table until she acknowledged him. He went to check in and was given the clipboard. He signed in and waited for her to take it back. He estimates that he waited two or three minutes. Ms. Adrianne told him to place the clipboard in the cart, which he did. He was still holding his Form E-28 and asked Ms. Adrianne what he should do with it. His understanding was that Ms. Adrianne told him to hand it in later. He did not refuse to give it to her. He then left the courtroom.

When he returned, Judge Lurye called him up to the bench. He found this to be unusual. The lawyers in the courtroom stopped what they were doing and looked toward the front of the room. Judge Lurye told him that according to Ms. Adrianne, he was being uncooperative and refused to give her his Form E-28. The Respondent was stunned. Judge Lurye asked for the Form E-28 and told him to return to his seat. As he walked back, several lawyers asked him if something was wrong. He was extremely embarrassed and offended. He then waited for his case to be called.

While the Respondent was waiting, he recalled a prior incident during which Ms. Adrianne reported him to Judge Lurye for taking a stack of Form E-28's. On that prior occasion, Ms. Adrianne followed him out of the courtroom and told him that he had taken too many E-28 forms. The Respondent testified that Ms. Adrianne lunged toward him to grab them out of his hand. He told her that he needed them for his other cases. He returned to the courtroom and while he was waiting, an attorney, who also was wearing a yarmulke, was asked to approach the bench. Judge

Lurye told this attorney that he had taken too many Form E-28's. Ms. Adrianne told Judge Lurye that it was "another Jewish lawyer." When his case was ultimately called, Judge Lurye told him that he had taken too many forms. He told Judge Lurye that he would not take so many in the future. This prior incident with Ms. Adrianne was in his mind after being reprimanded by Judge Lurye about not turning in his E-28 in the fashion that he supposedly had been instructed.

About a half hour later, Judge Lurye left the bench to take a break. The Respondent approached Ms. Adrianne and in a raised voice, asked her why she reported him and told her that it was not right. He accused her of anti-Semitism. He admits that he did not have any proof to substantiate this accusation and agreed that it was a false accusation. The Respondent stated in a letter to the EOIR Disciplinary Counsel that her actions were based on anti-Semitism. He explained that he changed his stance after he sent the letter and thought more about it. He realized that he did not have any proof of his allegation of anti-Semitism. He also stated in his letter that the complaint was filed by Ms. Adrianne in order to cause the Respondent harm. He knows that he should have handled the situation differently and that he probably should have voiced his concerns to the judge. However, in the heat of the moment, he acted in this manner. He estimates that the entire incident lasted less than a minute.

Judge Lurye called the Respondent into the back hallway. The Respondent told her that Ms. Adrianne should not have mentioned the incident and that it was the second time that something like this had happened. He described himself as emotional and agitated. She asked him to calm down and after he did, he returned to the courtroom and took his seat.

He did not intend to make Ms. Adrianne cry. He admitted that he acted uncivilly towards her. He was frustrated by the circumstances. He did not see Ms. Adrianne after this incident. If a similar situation happened in the future, he would speak to the Judge or a supervisor.

The Respondent also had an incident with Judge Conroy on December 6, 2018. On that day, the Respondent was representing a client who initially filed an application for asylum. She then became eligible to adjust her status and the Respondent had filed an application for adjustment of status with the New York Immigration Court approximately six months earlier. Therefore, on December 6, 2018 there was an approved Form I-130 and a pending Form I-485 in the record. There was a thirty day call-up date in order to file the Form I-864 and the Form I-601. He filed them on November 7, 2018. He maintains that these documents were filed on the thirtieth day and that they were timely.

At the hearing, Judge Conroy marked the evidence and DHS did not make any objections. Judge Conroy then refused to admit these two documents because they were untimely. The Respondent and Judge Conroy began to argue as to whether these documents were in fact timely.

The Respondent kept arguing with Judge Conroy because the Form I-485 and Form I-130 were in the record and Judge Conroy was insisting that there was no adjustment application to adjudicate. The Respondent believed that Judge Conroy was wrong on the law and was frustrated because his client had been waiting for a merits hearing to adjust status.

The Respondent tries to be a zealous advocate for his clients. He knows that he should not argue with judges. He did not intend to be disrespectful. He offered to attend an anger management program to allay any concerns regarding his future conduct.

V. ISSUES PRESENTED

The Respondent's case presents several issues including: (1) whether his conduct could be considered contumelious or otherwise obnoxious; (2) if so, would this conduct constitute contempt of court in a judicial proceeding; (3) is punishment warranted under the unremunerated section of the regulations for a violation of Chapter 4.12(c) of the Immigration Court Practice Manual; and (4) what sanctions are appropriate if a violation is found.

VI. SUMMARY OF THE LAW AND LEGAL ANALYSIS

A. Findings Related to September 21, 2018 Incident

1. Charges Pursuant to 8 C.F.R. § 1003.102(g)

The Respondent is charged with violating 8 C.F.R. § 1003.102(g) for engaging in contumelious or otherwise obnoxious conduct, with regard to a case in which he is acting in a representative capacity, which would constitute contempt of court in a judicial proceeding. For the following reasons, the Court will sustain this charge and finds that the Respondent's September 21, 2018 conduct violated this regulation.

The Court finds that the core facts of what occurred between the Respondent and Ms. Adrianne are not in dispute. As testified to by all parties, when Judge Lurye left the bench to take a break, the Respondent left his seat in the gallery and approached Ms. Adrianne. In a raised voice, he accused her of singling him out and of being anti-Semitic. The Respondent was speaking loud enough for IJ Lurye to hear the commotion from the back hallway. ACC Lee, who was sitting at counsel's table, estimates that the interaction lasted three to five minutes, while the Respondent testified that it was less than a minute. When Judge Lurye spoke to the Respondent in the hallway, he again accused Ms. Adrianne of singling him out and of being anti-Semitic. After the Respondent calmed down, he returned to the courtroom and the hearing proceeded without incident.

The Court first finds that the Respondent's conduct was obnoxious and contumelious. Merriam-Webster's Dictionary defines obnoxious as disgustingly objectionable or highly offensive and contumelious as insolently abusive and humiliating.[3] The Court finds that the Respondent's conduct fits squarely within these definitions as walking briskly towards someone in their place of work, speaking in an agitated and raised voice, and accusing them of anti-Semitism

[3] Found at https://www.merriam-webster.com/dictionary/obnoxious; https://www.merriam-webster.com/dictionary/contumelious.

is insolently abusive and humiliating. During his testimony, the Respondent admitted that he did not have proof to substantiate his claims of anti-Semitism but recalled a prior incident during which he was singled out by Ms. Adrianne and a separate Jewish attorney was mistakenly blamed. Regardless, unfounded accusations of prejudice is abusive behavior which humiliates the person who is being accused. Respondent's subjective belief of a person's anti-Semitic motives is a harsh judgment and an attorney should not make such an accusation without a firm objective basis.The humiliating nature of this conduct is magnified by the fact that Ms. Adrianne was in her place of work and performing her official duties as a legal assistant and were raised publicly in a harsh and confrontational manner. ACC Lee estimated that there were roughly twenty people in the courtroom when this incident occurred. This would likely include other attorneys, respondents, and opposing counsel. Given that these accusations were loud and in a public setting, the Court finds that the humiliating and abusive nature was amplified.

The Court also finds that this conduct would represent contempt of court in a judicial proceeding. The United States Court of Appeals for the Second Circuit ("Second Circuit") notes that contemptuous conduct falls into three general categories including, "(1) refusal to obey a proper court order or proper court procedures; (2) disrespectful remarks to the court, opposing counsel, or other parties; and (3) excessive or repetitive argumentation or other willful delay of the proceedings." *United States v. Lumumba*, 794 F.2d 806, 809 (2d Cir. 1986)[4]. There is no indication that the Respondent disobeyed a court order during the September 21, 2018 incident. However, the Court finds that the Respondent's conduct falls squarely within the second enumerated category of contemptuous behavior. As discussed above, the remarks towards Ms. Adrianne were abusive and humiliating. Given that the Court has previously found that the Respondent acted in an obnoxious or contumelious manner, it also finds that these remarks were disrespectful.

The Respondent cites to several cases describing contemptuous conduct that occurred in the presence of a judge and in open court. Unmarked Exh. 2 at 18-20. Based on these cases, the Respondent argues that contemptuous conduct must be in the presence of a judge or while court is in session. However, the Court finds that these cases do not preclude a finding of contempt for conduct that is out of the presence of a judge or while court is in recess. The Court notes that the first and third categories articulated by the Second Circuit reference disobeying the commands of a judge or describes conduct that would generally happen while court is in session. *Lumumba*, 794 F.2d at 809. However, the second category, is broader and only describes remarks to various parties including opposing counsel, other parties, or the court itself. *Id.* Notably, it does not include any language that limits when the conduct need occur. The Court finds that the juxtaposition of this broader prohibition on disrespectful remarks with conduct generally occurring within the confines of a judicial proceeding suggests that the Second Circuit could have limited the rule but chose not to do so.

Furthermore, the Court finds that legal assistants, and in this particular case, Ms. Adrianne, are members of the court. Legal assistants serve essential functions for EOIR and in many instances, act as intermediaries between the public and Immigration Judges. The Court finds that it would be nonsensical to exclude legal assistants from this rule. By excluding legal assistants,

[4] The Court is applying Second Circuit precedent to the conduct of the Respondent because the events and participants were all in the Second Circuit.

individuals would be able to circumvent contempt findings by acting unprofessionally abusive to a judge's support staff instead of towards the specific judge. The Court finds that such a rule would counter the underlying premise of contempt findings, which is to encourage civility among all parties and ensure a civil courtroom atmosphere. Therefore, the Court finds that the Respondent's comments directed towards Ms. Adrianne were directed generally towards "the court." *See id.*

The Second Circuit admits that when dealing with this sort of conduct, it is difficult to identify the line between disrespectful remarks and contemptuous behavior. The court explains that "while such remarks or insults should be discouraged so as to preserve a rational thought process in the courtroom...it is sometimes difficult to draw a line between a comment that is merely disrespectful and one that should be punished as contemptuous for obstructing and imminently threatening the administration of justice...." *Lumumba*, 794 F.2d at 811. While cognizant of the fact that Immigration Courts may be tense at times and the Respondent's ethical obligation to advocate for his clients, the Court finds that his conduct crossed the line and threatened the administration of justice.

The Respondent's conduct obstructed and threatened the administration of justice in three distinct ways. Initially, the Respondent's disrespectful comments towards Ms. Adrianne disrupted Judge Lurye's master calendar hearing. Upon hearing the commotion in the courtroom, Judge Lurye had to put her master calendar hearing on hold to address the situation. Because of the Respondent's conduct, Ms. Adrianne was unable to continue with the master calendar hearing and Ms. Hernandez had to step away from her role as a supervisor and assist. In total, ACC Lee estimates that roughly twenty minutes passed from the time that the Respondent first confronted Ms. Adrianne to when the hearing ultimately resumed. While this may not appear to be an extraordinarily long among of time, the Respondent's conduct nonetheless imminently threatened the administration of justice with his actions.

Second, the Respondent employed a loud voice and confrontational tone which has no place in courtroom environs. In doing so, the Respondent used his status as an attorney as leverage to verbally assault and humiliate a court staff member publicly.

Finally, the Respondent's conduct also threatened the administration of justice by publically accusing a court employee of anti-Semitism without an objective basis. Such accusations in front of other practitioners and DHS counsel raises the specter of prejudice against an entire group and seeks to undermine the agency's stated mission to fairly, expeditiously, and uniformly interpret and administer the immigration laws of the United States. EOIR cannot effectively function if the public believes that its employees are biased against individuals based on a protected ground. As the Respondent ultimately admitted during his testimony, he did not have evidence to substantiate these allegations. As a result, the Court finds that publically accusing a member of the court of anti-Semitism without objective foundation and only upon subjective belief represents an imminent threat to the administration of justice.

Based on the above, the Court sustains the first count of the complaint and finds that he is in violation of 8 C.F.R. § 1003.102(g) as having engaged in contumelious or otherwise obnoxious

conduct, with regard to a case in which he is acting in a representative capacity, which would constitute contempt of court in a judicial proceeding.

2. Charges Pursuant to 8 C.F.R. § 1003.102

The Respondent is also charged generally under 8 C.F.R. § 1003.102; however, the Court will not sustain this charge. The Government maintains that it is in the public interest to impose disciplinary sanctions on the Respondent based on his unprofessional, disrespectful, and disruptive conduct toward the Court and its personnel. Exh. 5 at 4. This charge is not factually distinct from 8 C.F.R. § 1003.102(g), but appears to represent a more expansive charge related to his conduct.

The cited paragraph of the Government's charged regulation is the preamble to the listed grounds of discipline. 8 C.F.R. § 1003.102. This section of the regulations is entitled "Grounds," and provides that "...it is in the public interest....to impose sanctions against any practitioner who falls within *one or more of the categories enumerated* in this section..." but notes that the categories are not exclusive. (emphasis added). The plain language of this paragraph explains that the regulations seek to impose sanctions based on the violations set forth at 8 C.F.R. §§ 1003.102(a)-(u). These grounds are detailed, specific, and numerous and provide clarity so that disciplinary authorities can state the allegations and point to what provisions of law or conduct have been violated. Perhaps more importantly, the precise grounds for discipline enable a respondent to understand the charges against them to more ably defend against a precise allegation. *See United States v. Stock*, 728 F.3d 287 (3rd Cir. 2013) (an indictment is not sufficient if it fails to charge an essential element of the offense); *United States v. Rankin*, 870 F.2d 112 (3rd Cir. 1989) (a valid charge must contain the elements of the offense to be charged, sufficiently apprise the defendant of what he must be prepared to defend and permits him to invoke double jeopardy).[5]

Admittedly, the regulation includes a catch-all provision stating that the enumerated "...categories do not set forth the exclusive grounds for which disciplinary sanctions may be imposed in the public interest." Furthermore, the Government is not solely relying on the language of the preamble as a ground for discipline. In the NID, the Government alleges that the Respondent violated Chapter 4.12(c) of the Immigration Court Practice Manual.("ICPM"). Exh. 5 at 4. Chapter 4.12 is entitled "Courtroom Decorum" and covers topics such as proper attire, how to address the Court, and whether minors are required to attend hearings. However, the Court still finds that the Government's "hook" does not create a disciplinary violation such that it would be in the public interest to impose sanctions.

There are only two sections which appear to relate to the Respondent's conduct. The first, Chapter 4.12(c) entitled "Conduct," states "All persons appearing in the Immigration Court should respect the dignity of the proceedings. No food or drink may be brought into the courtroom, except as specifically permitted by the Immigration Judge. Disruptive behavior in the courtroom or waiting area is not tolerated." The second, Chapter 4.12(c)(ii), entitled "Representatives," states "Attorneys and other representatives should observe the professional conduct rules and regulations

[5] While the standard for a criminal indictment may not be fully applicable in this disciplinary proceeding, there is sufficient overlap in the detrimental restriction of liberty (loss of freedom and loss of livelihood) as well the public humiliation inherent in both processes. Therefore, in the absence of other clear guidance, this Court finds the language on the validity of indictments a useful tool in assessing whether a disciplinary charge is viable.

of their licensing authorities. Attorneys and representatives should present a professional demeanor at all times."

While noting that these two sections relate to the Respondent's behavior before the New York Immigration Court, the Court finds that it is not in the public interest to discipline him based on such broad pronouncements of court conduct. The first section cited by the Government prohibits disruptive behavior as it relates to "all persons appearing in the Immigration Court." The Court finds that this section does not create any sort of rule or ethical obligation, but generally indicates how all persons in the courtroom and the waiting areas are expected to act. Additionally, the section regarding professional demeanor does not adequately point to a specific violation for which sanctions should be imposed. The Immigration Court Practice Manual indicates that lawyers should maintain a "professional demeanor" but again, such a vague provision lacks the specificity upon which a disciplinary charge may lie. Therefore, the Court finds that these sections do not establish an obligation or a rule, against which the Respondent could properly defend himself. As the Respondent points out, there is a different chapter of the Immigration Court Practice Manual entirely devoted to attorney discipline, which lists substantially more specific conduct. *See* Unmarked Exh. 2 at 23. However, the Respondent isn't charged under this section and instead, is alleged to have violated more general standards of courtroom decorum which lack the specificity of a proper disciplinary charge. The Court finds that the existence of a separate ICPM chapter devoted to attorney discipline means that the drafters of the ICPM did not intend the general decorum rules to constitute a separate basis for discipline.

The Government cites to several cases in which it has imposed discipline under the preamble of 8 C.F.R. § 1003.102. Exh. 7 at 16. However, these case are not applicable to the instant matter. The cited cases concern conduct such as removing the President's photograph from the Immigration Court lobby, recording information from a government computer, or practicing law without having lawful immigration status. *Id.* at 16-17. These cases generally describe conduct that does not have a reasonable analogue to the enumerated regulations found in 8 C.F.R. §§ 1003.102(a)-(u) and denote *specific* conduct. In this case, the Respondent's conduct reasonably fits within the enumerated ground, 8 C.F.R. § 1003.102(g). As a result, the Court finds that it is not in the public interest to sanction him based on a violation of the broad preamble of the regulation when he could also be, and was, charged with violating a specific enumerated section of the regulation.

Therefore, because there are other sections under which the Respondent's conduct could be penalized, and given the broad language used in these particular chapters of the Immigration Court Practice Manual, the Court finds it is not in the public interest to punish him under 8 C.F.R. § 1003.102 and the charge will not be sustained.

B. Findings Related to December 6, 2018 Incident

1. Charges Pursuant to 8 C.F.R. § 1003.102(g)

For his conduct on December 6, 2018, the Respondent is again charged under 8 C.F.R. § 1003.102(g) for engaging in contumelious or otherwise obnoxious conduct, with regard to a case in which he is acting in a representative capacity, which would constitute contempt of court in a judicial proceeding. The Court finds that during the December 6, 2018 hearing, the Respondent

did not engage in contumelious or otherwise obnoxious conduct that would constitute contempt of court and as a result, the Court does not sustain this charge. The Court has listened to the audio record of the December 6, 2018 hearing and read the transcript of this proceeding. Exh. 5 at 5-7. When the Court considers the Respondent's conduct in this matter, it does not find that he crossed the line from zealously advocating for a client and into the realm of contemptuous conduct.

The Court finds that the entire interaction between the Respondent and Judge Conroy lasted just under three minutes. The Court finds that there was clearly a disagreement between Judge Conroy and the Respondent regarding whether the documents were timely filed. Judge Conroy indicated that the documents were untimely and as a result, they would not be admitted as evidence. Exh. 5 at 5. The Respondent interpreted the rules differently and continues to believe that he filed his evidence on the thirtieth day and that by extension, they were timely.

What followed was a back and forth between the Respondent and Judge Conroy. The Court finds that the Respondent's conduct could not be described as obnoxious or contumelious. The Respondent's actions were not disgustingly objectionable or highly offensive. The Court further finds that his comments were not overly abusive or otherwise humiliating. The Respondent did not insult Judge Conroy or use any form of harsh or inappropriate language. The Court finds that the Respondent, while arguing with Judge Conroy, did not raise his voice or otherwise act in a disrespectful manner. The Court notes that on one occasion, the Respondent began to talk over Judge Conroy. Judge Conroy asked the Respondent to let him finish his thought and at this point, the Respondent stopped talking and let him finish. It is not uncommon for courtroom arguments to become heated. However, it takes more offensive behavior to cross the line between heated, and even bordering on uncivil demeanor, to become contemptuous. In this case the brevity of the interchange, the respect the Respondent demonstrated by stopping when directed to do so, the lack of a raised voice and the lack of any offensive language reflect a heated dispute, but not one that came close to crossing the line into contemptuous conduct.

Further, at no point did the Respondent fail to disobey an order given by the Immigration Judge. *See Lumumba*, 794 F.2d at 809. Judge Conroy never ordered the Respondent to move on and drop the issue. In the end, when Judge Conroy ultimately told the Respondent that he was finding both applications withdrawn or abandoned, the Respondent stopped arguing. Judge Conroy then recessed and returned after a brief recess to render an oral decision was during which the Respondent remained silent, accepting the ruling of the Court.

The Court also finds that the Respondent's arguments were not excessive or repetitive. *See id.* The Respondent insisted that his documents had been filed within the thirty day call-up period and while he reiterated that argument several times, these arguments were not so excessive as to warrant a finding that he was making repetitive arguments or trying to delay the proceedings. During the course of the Respondent's argument, he attempted to provide additional information such as procedures generally followed by the Board in the hope of making Judge Conroy understand his point and admit the evidence. Exh. 5 at 5. Furthermore, the Respondent testified that Judge Conroy insisted that there was no Form I-485 to adjudicate when the record reflects that there was an application in the file. Exh. 5 at 7. While Judge Conroy may have been referring to the fact that the Respondent could not go forward on this application because it was incomplete, the Court finds it reasonable for the Respondent to continue to note that there was an application

in the file upon which to proceed. Judge Conroy could have heard the adjustment application but denied it for lack of a needed waiver of inadmissibility and I-864. Respondent was actually correct when he asserted that there was an application in the file, contradicting the Judge who said there was not. Respondent acted zealously on behalf of his client to assert to the judge that there was an application, in the file upon which the Court could proceed.

Ultimately, the Court finds that the Respondent's actions did not cross the line into contemptuous behavior. The interaction between the Respondent and Judge Conroy, while unfortunate and perhaps ill-advised, is the kind of disagreement that sometimes arises while litigating in Court. Sometimes, in the course of zealously advocating for a client, lawyers engage in arguments with the Court. However, a couple of minutes of disagreement between court and counsel that is not marked by raised voices or verbal abuse does not cross the line into contemptuous conduct and therefore does sustain a charge under 8 C.F.R. § 1003.102(g).

2. Charges Pursuant to 8 C.F.R. § 1003.102

The Respondent was also charged under the preamble of 8 C.F.R. § 1003.102, for being in violation of Chapter 4.12(c) of the Immigration Court Practice Manual. However, as noted above, the Court does not find that it is in the public interest to impose sanctions based on such broad pronouncements of courtroom conduct. The Court finds that the guidelines set forth in this part of the practice manual are too vague to form the basis of disciplinary charges, especially given the fact that more specific rules exist in the practice manual's section regarding attorney discipline. Therefore, the Court incorporates its above analysis in finding that it is not in the public interest to discipline the Respondent for a violation under Chapter 4.12(c) of the Immigration Court Practice Manual.

C. Imposition of Sanctions

The Government has proven by clear and convincing evidence that the Respondent violated 8 C.F.R. § 1003.102(g) based on his September 21, 2018 interaction with Ms. Adrianne. It is therefore in the public interest for the Court to impose the appropriate sanction for this violation.

In analyzing the Respondent's conduct and his potential sanction, the Court looks to both case law as well as the ABA Standards for Imposing Lawyer Sanctions ("ABA Standards"). The Respondent points out that according to the case law, conduct of this nature generally results in a public censure. Unmarked Exh. 2 at 30. Therefore, the Court finds that this is a good starting point in considering the appropriate disciplinary sanctions against the Respondent.

The Court finds that there are several aggravating factors present in the Respondent's case, of which the most significant is Respondent's prior disciplinary violations. The Respondent has been disciplined in the past for several different reasons. For example, in March 2007, the Respondent was admonished by the New York Supreme Court for neglecting several clients. Exh. 1A, Tab 11. On January 28, 2009, EOIR Disciplinary Counsel informally admonished the Respondent for frivolous behavior and for making false statements in six immigration cases. Exh. 1A, Tab 12. He was again informally admonished on May 10, 2010 for frivolous behavior and other violations in four different immigration cases. Exh. 1A, Tab 13. The Respondent was then

censured by the New York Supreme Court on October 28, 2010. Exh. 1A, Tab 15. On October 14, 2010, the Second Circuit suspended the Respondent from practicing law for three months for neglecting his clients and in a decision imposing non-identical discipline, the Board suspended him for six months. Exh. 1A, Tabs 14, 16.

Furthermore, on April 12, 2016, the Respondent received a private informal admonition based on his interaction with a legal assistant at the Memphis Immigration Court. The Respondent was charged with violating 8 C.F.R. § 1003.102(g) after speaking to the legal assistant in a raised voice while discussing a pending motion before the Memphis Immigration Court. Exh. 1A, Tab 4. In the letter sent to the Respondent, he was warned about the need to act respectfully towards EOIR employees and that "future misconduct...will result in formal disciplinary charges being filed against him." *Id.*

In mitigation, the Court finds that the Respondent expressed remorse for his actions regarding both the incident with Ms. Adrianne and Judge Conroy. The Respondent testified that he acted uncivilly and that if a similar situation were to arise in the future, he would either address the court administrator or the judge. He further testified that he knows it is unwise and inappropriate to argue with Immigration Judges. Additionally, the Respondent apologized to the legal assistant and the court administrator at the Memphis Immigration Court. The Respondent testified that this apology occurred after he was informed about a potential disciplinary violation. Therefore, while the Court notes his apology, it finds that such an apology would have held more weight had it been before he became aware of possible sanctions. The Court also notes that there are several letters in the record, filed on the Respondent's behalf, attesting to his professionalism and good character. *See* Exh. 10.

The Court further finds that the Respondent likely had a subjective belief that he was being singled out by Ms. Adrianne. The Respondent explained that he and Ms. Adrianne had a prior incident during which Ms. Adrianne told him that he could not take so many Form E-28's. When Ms. Adrianne told Judge Lurye about this incident, there was a miscommunication and another Jewish lawyer was accused of taking them. Subjectively, this planted the seed in the Respondent's mind that there might be bias against him because of his religious faith. The Court does not find that there was an objective basis for this inclination as there are myriad other explanations other than anti-Semitism. However, the Court notes his subjective mindset as mitigation and evidence that in the moment, he likely believed that he was being targeted because he was Jewish. However, given that he later admitted that these allegations did not have a factual basis, the Court will not give this fact considerable mitigating weight.

When analyzing the Respondent's conduct and both his aggravating and mitigating factors, the most significant factor to be considered is his prior disciplinary record. While the Court recognizes that the Respondent was previously suspended and received reciprocal discipline for neglecting clients, it finds that this particular conduct does not weigh heavily in its discussion of appropriate sanctions. The Court finds that these incidents occurred more than decade ago and that they were for engaging in conduct that is very different than his current charges. The Court finds that neglecting cases does not relate to his actions with Ms. Adrianne. Furthermore, the Respondent testified that he implemented safeguards and systems into his legal practice to avoid any further violations. Indeed, in 2016 the Respondent was given an admonition for mistreating

court staff in Memphis. Given that the Respondent has not had any further allegations against him regarding these issues, it must assume that these systems ameliorated the issue. His prior disciplinary record of neglecting clients was not considered an aggravating factor on that occasion. The Court infers that Disciplinary Counsel found the prior events differed qualitatively from his 2016 behavior and therefore were not a basis to increase sanction beyond a reprimand. As a result, the Respondent's prior suspensions for neglecting clients does not factor heavily into the Court's decision.

However, the Respondent's 2016 informal admonition is extremely relevant. The Respondent was charged with violating the same regulation based on his conduct with a legal assistant at the Memphis Immigration Court. In both instances, the Respondent was accused of raising his voice and acting uncivilly with the Immigration Court's administrative staff. In his response to the initial allegations, the Respondent wrote that "the most important take-away from this complaint, is that I must be more sensitive to the fact that employees of the immigration authorities must always be treated respectfully and professionally, regardless of how frustrating the process may be. I will be guided by that understanding in the future." Exh. 1A, Tab 3 at 18. In his informal admonishment, EOIR Disciplinary Counsel warned him about the need to act civilly toward court staff and that future misconduct could result in disciplinary proceedings and that the admonishment would be considered an aggravating factor in any sanctions imposed. Exh. 1A, Tab 4. Therefore, the Court finds that the Respondent was put on notice of the fact that he must act respectfully and civilly towards court staff. Nonetheless, roughly two and a half years later, the Respondent again acted in an abusive fashion toward court staff. Therefore, because the Respondent had been previously found to have violated these regulations, was warned about the consequences of repeating the conduct, and did so temporally proximate to the Memphis infraction, the Court finds a public censure is an inadequate sanction and suspension is warranted.

Furthermore, the Section 6.22 of the ABA Standards recommends that a suspension is warranted when "a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding." Because the Respondent was on notice of his obligation to act civilly with EOIR staff, the Court finds that he knew that he was violating a rule. The Respondent's conduct further caused Ms. Adrianne to feel unsafe in her place of work and limited her ability to perform her job functions for that day. Exh. 1A, Tab 5.

Therefore, the last question before the Court is to determine how long of a suspension is warranted given the Respondent's conduct and the attendant circumstances. In the amended NID, the Government requests that the Respondent be suspended for eighteen months. Exh. 5 at 10. However, considering that the Court did not sustain the second count in the amended NID, it finds that a term of suspension of that length is not warranted. In the initial NID, based solely on the September 21, 2018 incident with Ms. Adrianne, the Government sought a one year suspension. Exh. 1 at 6. According to the Section 2.3 of the ABA Standards, a suspension should generally be no shorter than six months and no longer than three years. While the Court notes the Government's reasons for requesting a one-year suspension, it finds that a six month suspension would be an appropriate sanction considering all of the circumstances in this case. Therefore, after considering the facts of the case and the Respondent's mitigating factors, the Court believes that it is in the public interest to suspend him from practicing before the Government for six months.

Accordingly the following order shall enter:

ORDER

It is hereby **ORDERED** that the Respondent be **SUSPENDED** for six (6) months.

August 30, 2024
Date

Steven A. Morley
Immigration Judge
Adjudicating Official