PUBLISHED

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

MATTER OF:

Beresford A. LANDERS, JR., D2023-0025

Respondent

FILED
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ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF EOIR: Catherine M. O'Connell, Disciplinary Counsel

ON BEHALF OF DHS: Amy S. Paulick, Disciplinary Counsel

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

Before: Malphrus, Chief Appellate Immigration Judge; Creppy, Appellate Immigration Judge; Mullane, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Creppy

CREPPY, Appellate Immigration Judge

The Disciplinary Counsels for the Executive Office for Immigration Review ("EOIR") and the Department of Homeland Security ("DHS") filed a Joint Notice of Intent to Discipline, requesting that the respondent[1] be disbarred from practice before the Board of Immigration Appeals, the Immigration Court, and DHS. The respondent has appealed the Adjudicating Official's August 15, 2024, decision ordering his disbarment. The appeal will be dismissed.

I. FACTUAL AND PROCEDURAL HISTORY

On June 2, 2022, the Supreme Court of Florida suspended the respondent from the practice of law in Florida for 90 days. Based on this suspension, the Disciplinary Counsels for EOIR and DHS sought the respondent's suspension from practice before the Board, the Immigration Courts, and DHS in disciplinary proceeding. *See* 8 C.F.R. §§ 1003.102(e), 1003.103(b) (2025). On October 20, 2022, the Board issued a final order in the proceedings suspending the respondent from practice before the Board, the Immigration Courts, and DHS for 90 days, effective September 8, 2022.

At the end of the 90-day period, the respondent, who had been reinstated to practice in Florida on October 3, 2022, moved the Board for reinstatement. The Disciplinary Counsels opposed the respondent's motion arguing that the respondent had violated the terms of his suspension by

[1] The respondent in this case is an attorney in practitioner disciplinary proceedings.

practicing before United States Citizenship and Immigration Services ("USCIS") in two different cases while suspended. Although the respondent denied practicing before USCIS, the Board denied his reinstatement request based on evidence presented by the Disciplinary Counsels. The respondent remains suspended from practice before the Board, the Immigration Courts, and DHS.

From January 2023 through January 2024, the Disciplinary Counsels for EOIR and DHS received numerous additional complaints that the respondent was continuing to practice law before the Immigration Courts and DHS in violation of his suspension. The Disciplinary Counsels sent the respondent a preliminary inquiry letter asking him to explain alleged pro se filings that were substantially similar to filings the respondent had submitted in other cases prior to his suspension. The respondent denied violating the terms of his suspension. On May 15, 2023, the Disciplinary Counsels filed a Joint Notice of Intent to Discipline with the Board initiating the current proceedings.

The Notice of Intent to Discipline contains 335 factual allegations supporting 52 counts of alleged violations of the Board's suspension order. Based on these violations, the Disciplinary Counsels charged the respondent with the unauthorized practice of law in violation of a disciplinary order of suspension. The Disciplinary Counsels recommend disbarment as the appropriate sanction given the extent of the respondent's violations.

On July 12, 2023, we referred the respondent's case to the Office of the Chief Immigration Judge for the appointment of an Adjudicating Official. The Adjudicating Official received additional evidence, conducted hearings, and issued a decision sustaining the charge in the Notice of Intent to Discipline. The Adjudicating Official found that the Disciplinary Counsels had proven the allegations in the Notice of Intent to Discipline and had linked the respondent to each of the motions and other legal filings described in the allegations. The Adjudicating Official further concluded that the Disciplinary Counsels had established, by clear and convincing evidence, that the respondent had engaged in the unauthorized practice of law by drafting and filing the motions and other legal documents described in the allegations while suspended from practice before the Board, the Immigration Courts, and DHS. Given the extent of the respondent's violations, the Adjudicating Official disbarred the respondent from practice before the Board, the Immigration Courts, and DHS.

The respondent has appealed from the Adjudicating Official's decision. He argues that there is no direct evidence establishing that he engaged in the unauthorized practice of law, and he contends that the circumstantial evidence is not sufficient to establish that he performed acts that qualify as practicing before the Board, the Immigration Courts, and DHS while suspended.[2]

II. ANALYSIS

[2] The respondent made additional arguments in his notice of appeal. However, because the respondent did not renew or further develop these arguments in his brief, we deem them waived. *See Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 190 n.2 (BIA 2018), *aff'd sub nom. Cantareros-Lagos v. Barr*, 924 F.3d 145 (5th Cir. 2019); *see also Abebe v. Mukasey*, 554 F.3d 1203, 1207–08 (9th Cir. 2009) (en banc) (holding that arguments raised in the notice of appeal are waived unless raised in the appellate brief).

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) (2025). A party presents clear and convincing evidence when it "place[s] in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984). We review the Adjudicating Official's findings of fact for clear error, but review questions of law, discretion, and judgment de novo. 8 C.F.R. § 1003.1(d)(3)(i)–(ii) (2025); *see also* 8 C.F.R. § 1003.106(c).

A. Disciplinary Charge

The Disciplinary Counsels charged the respondent with the unauthorized practice of law in violation of the Board's October 20, 2022, order of suspension. The regulations governing proceedings before the Immigration Courts and the Board define "practice" as "exercising professional judgment to provide legal advice or legal services related to any matter before EOIR." 8 C.F.R. § 1001.1(i) (2025).

> Practice includes, but is not limited to, determining available forms of relief from removal or protection; providing advice regarding legal strategies; drafting or filing any document on behalf of another person appearing before EOIR based on an analysis of applicable facts and law; or appearing on behalf of another person in any matter before EOIR.

Id. The regulations distinguish "practice" from "preparation," which "consist[s] solely of filling in blank spaces on printed forms with information provided by the applicant or petitioner that are to be filed with or submitted to EOIR, where such acts do not include the exercise of professional judgment to provide legal advice or legal services." 8 C.F.R. § 1001.1(k).

The regulations governing proceedings before DHS similarly define "practice" as "the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS." 8 C.F.R. § 1.2 (2025). The DHS regulations define "preparation, constituting practice," as

> the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed DHS forms, by one whose remuneration, if any, is nominal and who does not hold himself or herself out as qualified in legal matters or in immigration and naturalization procedure.

Id. (emphasis omitted).

To sustain the disciplinary charge in this case, the Disciplinary Counsels must present clear and convincing evidence that the respondent engaged in acts that qualify as practicing before the Immigration Courts and DHS while suspended.[3] Upon de novo review, we agree with the Adjudicating Official that the Disciplinary Counsels have met their burden of proof. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent does not dispute the Adjudicating Official's factual findings regarding the allegations in the Notice of Intent to Discipline and we discern no clear error. *See* 8 C.F.R. § 1003.1(d)(3)(i). In particular, the Adjudicating Official did not clearly err in finding that the evidence the Disciplinary Counsels provided was sufficient to establish the facts set forth in allegations 1 to 335.

Agreeing with the respondent, the Adjudicating Official also found that the allegations do not specifically state that the respondent prepared or filed the motions and other filings identified by the Disciplinary Counsels in counts 1 to 52.[4] The Adjudicating Official, however, concluded that the Disciplinary Counsels' evidence was sufficient to link the respondent to the filings and to provide clear and convincing evidence that the respondent continued to practice before the Immigration Courts and DHS despite his suspension from practice before these entities. We affirm the Adjudicating Official's decision.

The Adjudicating Official did not clearly err in finding a link between the respondent and the filings discussed in the Notice of Intent to Discipline based on: (1) the pattern of similarities among the legal filings discussed in counts 1 to 52 and between the pre-suspension legal filings from the respondent and the legal filings identified in the Notice of Intent to Discipline; (2) the testimony of the Government's witnesses; and (3) the evidence from the Miami and El Paso Immigration Courts. The Adjudicating Official also did not clearly err in finding that the respondent's statements in response to the preliminary inquiry letter and the Notice of Intent to Discipline corroborated rather than weakened this link.

In assessing the evidence submitted by the Disciplinary Counsels, the Adjudicating Official found the similarities between the allegedly pro se filings striking. Specifically, the Adjudicating Official found that the filings used identical font and language and that several contained the same typographical and grammatical errors. The Adjudicating Official also found that several of the filings were submitted by aliens the respondent represented prior to his suspension. He further found that some of the filings were identical to motions the respondent filed in cases prior to his suspension. Moreover, the Adjudicating Official pointed out that the respondent signed one of the pro se asylum applications included with these filings as preparer even though he was suspended.

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[3] Our October 20, 2022, order was effective as of September 8, 2022, the date we granted the Disciplinary Counsels' petition for immediate suspension. The respondent, accordingly, violated our suspension orders if he practiced before the Immigration Courts or DHS on or after September 8, 2022.

[4] It would have been better practice for the Disciplinary Counsels to have included specific allegations in the Notice of Intent to Discipline stating that the respondent had drafted and filed the motions and other legal documents discussed.

The Adjudicating Official also observed that several of the aliens signed their asylum applications on the same day. The Adjudicating Official did not clearly err in finding that these similarities were sufficient to establish that the respondent prepared the allegedly pro se legal filings.

The respondent asserts that legal arguments and case law are in the public domain and available for anyone to use in legal filings. This fact, however, does not adequately explain how so many different individuals independently obtained the respondent's work product, adapted it for themselves, and then prepared motions and filings in the same font, same format, and with the same typographical errors. Further, as the Adjudicating Official pointed out, many of the individuals using his work product were his former clients prior to his suspension. This fact makes it even less likely that the allegedly pro se aliens found the respondent's work product without the respondent's assistance and then adapted it to their individual cases without the respondent's advice and assistance.

The Adjudicating Official additionally did not clearly err in finding that the manner in which many of the documents were mailed provided further proof of the respondent's involvement. Many of the allegedly pro se motions were sent to the Miami Immigration Court in large boxes with multiple other motions from unrelated cases. The boxes bore the respondent's name as sender. Even one of the filings sent individually to DHS had links to the respondent. The mailing label for the response to a DHS request for additional evidence, which is discussed in count 52 of the Notice of Intent to Discipline, listed the respondent as sender. The response also included an address used by the respondent as the alien's return address.

Finally, the Adjudicating Official did not clearly err in finding that the respondent tacitly admitted he was drafting legal documents despite his suspension. When the Disciplinary Counsels sent a preliminary inquiry asking the respondent about allegedly pro se filings that closely resembled filings he had made before his suspension, the respondent did not deny his involvement with the filings. Rather, he argued, incorrectly, that the Board's suspension order was narrowly tailored and only prevented him from physically appearing before the Board, the Immigration Courts, and DHS. The respondent claimed, again incorrectly, that the Board's order did not prevent him from providing document assistance. The respondent reiterated these arguments in his response to the Notice of Intent to Discipline and chose not to testify during the hearing held by the Adjudicating Official. The Adjudicating Official did not clearly err in interpreting this as an admission that the respondent engaged with clients in a manner that qualified as "practice" under 8 C.F.R. § 1.2 and 8 C.F.R. § 1001.1(i). *See Cooper v. Harris*, 581 U.S. 285, 309 (2017) (stating that under clear error review, reversal is appropriate only when "left with the definite and firm conviction that a mistake has been committed" (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985))); *see also Matter of D-R-*, 25 I&N Dec. 445, 454–55 (BIA 2011) (explaining that an Immigration Judge may make "reasonable inferences from direct and circumstantial evidence of the record as a whole" and "is not required to accept a respondent's assertions, even if plausible, where there are other permissible views of the evidence based on the record"), *remanded sub nom. Radojkovic v. Holder*, 599 F. App'x 646 (9th Cir. 2015).

We disagree with the respondent's claim that the Adjudicating Official did not distinguish practice from preparation in finding that he violated his suspension order. The respondent did

more than "fill[] in blank spaces on printed forms with information provided by the applicant or petitioner" or act as a courier service for former and new clients. 8 C.F.R. § 1001.1(k). The record provides clear and convincing evidence that the respondent drafted motions requiring legal analysis and citation to cases and provided legal advice on strategy. This conduct clearly falls within the definition of "practice" contained in 8 C.F.R. § 1001.1(i) and 8 C.F.R. § 1.2.

The respondent further argues that there is no direct evidence that he prepared or filed the documents discussed in counts 1 to 52. He asserts that the circumstantial evidence in the record is not sufficient to meet the Disciplinary Counsels' burden of showing a disciplinary violation by clear and convincing evidence.

"Depending on its probative value, circumstantial evidence alone may be sufficient to prove a charge in [disciplinary] cases." *Matter of Koden*, 15 I&N Dec. 739, 760 (BIA 1974).[5] In fact, the Supreme Court of the United States has recognized that circumstantial evidence can be sufficient even to prove a charge beyond a reasonable doubt. *See Desert Palace, Inc. v. Costa*, 539 U.S. 90, 100 (2003) (stating, in the context of an employment discrimination lawsuit, that the adequacy of circumstantial evidence extends beyond civil cases and that the Court has "never questioned the sufficiency of circumstantial evidence in support of a criminal conviction, even though proof beyond a reasonable doubt is required"); *Holland v. United States*, 348 U.S. 121, 140 (1954) (stating that circumstantial evidence is no different from testimonial evidence). "[T]he law makes no distinction between the weight or value to be given to either direct or circumstantial evidence." *Desert Palace*, 539 U.S. at 100 (citation omitted); Kevin F. O'Malley et al., *Federal Jury Practice & Instructions, Criminal* § 12:04 (7th ed. 2025) (discussing direct and circumstantial evidence and indicating that no greater degree of certainty is required of circumstantial evidence than of direct evidence).

Circumstantial evidence of similarities in allegedly pro se filings and suspended counsel's involvement in the mailing of documents to the Immigration Courts and DHS can constitute clear and convincing evidence that counsel practiced law in violation of a disciplinary order of suspension. As we explained above, the evidence in this case connects the respondent to 52 separate filings allegedly made by pro se aliens while the respondent was suspended from practice before the Immigration Courts and DHS, and the respondent did not deny his involvement in the preparation of these filings. Based on these factual findings, we agree that the Disciplinary Counsels' evidence, even though circumstantial, constitutes clear and convincing evidence that the respondent violated his suspension by continuing to practice before the Immigration Courts and

[5] It has long been held and accepted that charges of professional misconduct may be established by circumstantial evidence. *E.g.*, *Utz v. State Bar*, 130 P.2d 377, 379 (Cal. 1942). The regulations governing disciplinary proceedings before the Board further state that disciplinary hearings "shall be conducted in the same manner as Immigration Court proceedings as is appropriate." 8 C.F.R. § 1003.106(a)(2)(v). Circumstantial evidence is admissible in immigration proceedings conducted before Immigration Judges, and Immigration Judges may rely on circumstantial evidence to determine if a party has met its burden of proof. *See, e.g.*, *Matter of D-R-*, 25 I&N Dec. at 454–56 (upholding an Immigration Judge's findings that were based on reasonable inferences drawn from direct and circumstantial evidence of the record as a whole).

DHS. *See Colorado v. New Mexico*, 467 U.S. at 316 (defining clear and convincing evidence). We accordingly sustain the disciplinary charge against the respondent.

B. Sanction

The respondent does not specifically challenge the Adjudicating Official's choice of sanction. The Adjudicating Official engaged in a comprehensive analysis and considered all relevant factors in determining the appropriate sanction for the respondent's misconduct. We affirm the Adjudicating Official's conclusion that disbarment is the appropriate sanction in this case. *See Matter of K. Gupta*, 28 I&N Dec. 653, 657 (BIA 2022) (finding that the attorney's "knowing and repeated disregard" for a prior order of suspension and his false "claim on notices of entry of appearance that he was not subject to any order restricting his right to practice law . . . [were] serious violations that undermine the integrity of the legal system" and that disbarment was the appropriate sanction).

The respondent's extensive and knowing violations of our October 20, 2022, order suspending him from practice before the Board, the Immigration Courts, and DHS strike at the heart of the legal system. He continued to violate our order for months after we denied his request for reinstatement based on his conduct and after he received the Disciplinary Counsel's preliminary inquiry letter notifying him that his actions appeared to constitute disciplinary violations. The respondent has not identified any factors mitigating his serious misconduct. We therefore uphold the Adjudicating Official's determination that disbarment is the appropriate sanction in this case.

ORDER: The respondent's appeal is dismissed.

FURTHER ORDER: The Board hereby disbars the respondent from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS, effective immediately.

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 him.

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

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

IN THE MATTER OF Beresford A. Landers, Jr. Respondent.	)	File No. D2023-0025 IN PRACTIONER DISCIPLINARY PROCEEDINGS Date: August 15, 2024

ON BEHALF OF RESPONDENT:

William Folsom, Esq.
Attorney for Respondent

ON BEHALF OF EOIR & DHS:

Paul A. Rodrigues, Esq.
Disciplinary Counsel

Catherine M. O'Connell, Esq.
Associate General Counsel

FINAL ORDER AND DECISION OF THE ADJUDICATING OFFICIAL

The Disciplinary Counsel for the Executive Office for Immigration Review (Disciplinary Counsel or government) seeks to disbar Mr. Beresford A. Landers, Jr. (respondent or Mr. Landers) from the practice of law before the Immigration Courts, the Board of Immigration Appeals (Board), and the Department of Homeland Security (DHS).[1] For the reasons stated below, this Court agrees that disbarment is the appropriate sanction for the respondent given his continued

[1] Because disciplinary hearings are to be conducted "in the same manner as Immigration Court proceedings as is appropriate[,]" at times, this Court will cite to regulations that govern the practice before the Immigration Court in removal proceedings. 8 C.F.R. § 1003.106(a)(2)(v).

practice before the Immigration Court and DHS even while he was under a suspension order from the Board.

I. BACKGROUND AND PROCEDURAL HISTORY

Beresford A. Landers, Jr. is an attorney licensed to practice law in the State of Florida. This case has a lengthy procedural and litigation history prior to this Court's appointment as the Adjudicating Official. In the interest of completeness and clarity, it is important to provide the entirety of this procedural history. Moreover, this background will help explain this Court's disciplinary decision.

On June 2, 2022, the Supreme Court of Florida suspended the respondent from the practice of law for 90 days, pursuant to a "conditional guilty plea and consent judgment for discipline[.]" (Exh. 2 at 1275-76.) Just over two months later, the Disciplinary Counsel along with its counterpart in the DHS filed a joint notice of intent to discipline (NID) based on the respondent's Florida suspension order. (*Id*. at 1277.) Disciplinary Counsel and the DHS sought reciprocal suspension and noted that as of the date of the filing of the NID the respondent had not notified the government of his suspension order from the practice of law by The Florida Bar.[2] (*Id*.)

On September 6, 2022, the Board issued its decision suspending the respondent from practice before it, the Immigration Courts, and the DHS "pending final disposition of this proceeding." (*Id*. at 1281.) Less than a month after the Board's September 2022 decision, the respondent filed a motion to be reinstated because his suspension from The Florida Bar was completed. (*Id*. at 1284-87.) The DHS and Disciplinary Counsel objected to the request to reinstate, arguing that the respondent is not eligible to be reinstated because the Board did not issue a final order and that any order would not cover the suspension period. (*Id*. at 1291-92.) On October 20, 2022, the Board issued its final order, suspending the respondent from "practice before the Board of Immigrations Appeals, the

[2] It appears that the Florida bar refers to itself as "The Florida Bar." https://www.floridabar.org/. This Court will, therefore, refer to it in the same manner in this order.

Immigration Courts, and the Department of Homeland Security . . . for 90 days, effective September 8, 2022." (*Id*. at 1294.) This final order was issued, in part, because no response to the NID was filed and thus the respondent was precluded from requesting a hearing on the NID. (*Id*.)

Four days after the Board issued its final order, the respondent filed an untimely opposition to the government's motion. (*Id*. at 1296-1300.) The respondent argued that he was never served a copy of the NID by certified mail or personal delivery. (*Id*. at 1298.) Accordingly, the respondent requested to be reinstated. On October 28, 2022, the respondent filed a motion to set aside the Board's October 20 order suspending him from practice. (*Id*. at 1305-1308.) In his motion, the respondent, once again, argued that he was not served the NID, and thus he could not seek a hearing on the NID. (*Id*. at 1307.) On the merits, the respondent argued that his suspension order should be set aside because his suspension from The Florida Bar has already caused financial hardship, and any additional suspension would continue that hardship. (*Id*. at 1308.)

On December 5, 2022, the Board issued another decision, therein addressing the respondent's motion to set aside and his argument that he was not served the NID. (*Id*. at 1325-26.) The Board rejected all the arguments advanced by the respondent. First, it concluded that the respondent had failed to demonstrate exceptional circumstances to excuse his lack of response to the NID. (*Id*. at 1326.) Second, the Board found that the respondent was not deprived of his due process rights because there was sufficient evidence to demonstrate that he was properly served the NID. (*Id*.) Third, the Board was not persuaded that setting aside the suspension order was appropriate even though the respondent was no longer suspended by The Florida Bar. (*Id*.) (citing *Matter of Rosenberg*, 245 I&N Dec. 744, 746 (BIA 2009) (holding that being in good standing in a state bar, but suspended to practice in the Ninth Circuit, is not a basis to set aside the Board's suspension order). The Board was also unmoved by the financial or client hardship that may result from the Board's suspension order. (*Id*. at 1327) (citing *generally Matter of Kronegold*, 25 I&N Dec. 157, 162 (BIA 2010) ("financial hardship that accompanies suspension from the practice of law was in itself adequate to establish grave

injustice, then almost any attorney whose livelihood was based on his legal practice could avoid similar reciprocal discipline"). Finally, the Board rejected the respondent's motion on the merits of his request to be reinstated. It concluded that Mr. Landers' motion to reinstate merely reiterated his due process arguments discussed above. As such, the motion to reinstate was denied. (*Id*. at 1327.)

On December 8, 2022, the respondent filed a second motion to reinstate with the Board. (*Id*. at 1329-31.) Attached to this motion was a letter of good standing from The Florida Bar. (*Id*. at 1333.) In the motion, the respondent argued that he is no longer suspending from practice by The Florida Bar and that his 90-day suspension from practice before the Board, the Immigration Courts, and the DHS expired one day before his motion was filed. (*Id*. at 1329-30.) On December 14, 2022, the government and DHS filed a joint response, opposing the respondent's reinstatement. (*Id*. at 1335-38.) The government and DHS argued that despite the Board's order suspending the respondent from practice, the respondent "has practiced in matters before United States Citizenship and Immigration Services (USCIS), a component of DHS." (*Id*. at 1338.) To support its argument, the government and DHS provided evidence of a notice of entry of appearance filed by the respondent before his suspension, a request for evidence (RFE) issued by USCIS, and the respondent's response to the RFE. (*Id*. at 1340-71.) The government and DHS asserted that the respondent submitted a response to the RFE during his suspension from practicing before DHS and while the respondent was suspended from practicing law by The Florida Bar. (*Id*. at 1338 and n.3.)

On February 14, 2023, the Board issued its decision denying the respondent's motion to reinstate. (*Id*. at 1379.) The Board concluded that it was "not persuaded by the respondent's claims that he did not violate [its] order of suspension by practicing before DHS." (*Id*. at 1380.) As such, pursuant to the regulations, the Board concluded that it must deny the motion to reinstate. (*Id*.) (citing 8 C.F.R. § 1003.107(a)(3)). It further held that the respondent's suspension shall run for an "additional 90 days[]" from the date of the Board's order. (*Id*. at 1380-81.)

While the Board's February 14, 2023 decision was pending, the government received a number of complaints from Assistant Chief Immigration Judge (ACIJ) Jaime Diaz regarding the respondent's continued practice before the Immigration Court. (*Id*. at 1383-87.) ACIJ Diaz forwarded a complaint from Immigration Judge Nathan Herbert to the Fraud and Abuse Prevention Program regarding Judge Herbert's suspicion that the respondent was drafting motions for respondents in immigration proceedings. (*Id*. at 1383-86.) Judge Herbert provided samples of motions filed by Mr. Landers prior to his suspension and concluded that the motions that purport to be filed by *pro se* respondents "bear the hallmarks of [*sic*] Mr. Lander's motions." (*Id*. at 1384.) Judge Herbert stated that the sample motions filed before any suspension contain a section labeled "Certificate of Conferral," "which was a common feature in Mr. Landers' pre-suspension filings but not filings by other practitioners." (*Id*. at 1493) Judge Herbert noted other similarities filed by Mr. Landers prior to his suspension. For example, Judge Herbert concluded that the alleged "*pro se* motions resembled Mr. Landers' motions in style and formatting (e.g., font, page layout, spacing)." (*Id*.)

On February 1, 2023, the government sent Mr. Landers a preliminary inquiry letter, detailing three instances where individuals who the respondent represented prior to his suspension filed motions that appear to be drafted by the respondent. (*Id*. at 1389-90.) The inquiry letter requested a "substantive response within 15 days of the letter by mail or email[.]" (*Id*. at 1390.) Mr. Landers timely filed his response, arguing that he did not violate the terms of his suspension because the Board's order merely precludes his practice *before* the Board, the Immigration Courts, and the DHS. (*Id*. at 1392.) He further asserted that the Board's order does not "extend to the practice of law, generally, nor, seemingly, to the practice of immigration law, specifically."[3] (*Id*. at 1392.)

On the same day the government received Mr. Landers' response to the preliminary inquiry letter, it received a second complaint from ACIJ Diaz. (*Id*. at

[3] Mr. Landers raised other arguments in his response to the government's preliminary inquiry letter. (Exh. 2 at 1393-95.) Those arguments will be addressed in the section of this order where Mr. Landers' defenses to the NID are addressed.

1385.) It appears that an investigation began by Disciplinary Counsel to determine the extent, if any, of further alleged violations of Mr. Landers' suspension order. That investigation apparently revealed six additional instances of filings purportedly drafted by the respondent while he was suspended from practice by the Board. (Exh. 1 at 6.) The DHS informed Disciplinary Counsel on April 11, 2023, of a filing with the DHS connected with Mr. Landers. (*Id*.) As a result of various complaints and the government's own investigation, on May 15, 2023, the Disciplinary Counsel filed a NID with the Board. (Exh. 1.) In the NID, the government made 335 factual allegations to support its 52 counts of alleged violations of the Board's suspension order (*Id*.) Based on these alleged violations, the Disciplinary Counsel charged the respondent with the unauthorized practice of law in violation of a disciplinary order of suspension. (*Id*. at 86-87) (citing 8 C.F.R. § 1003.102). The Disciplinary Counsel recommended disbarment due to Mr. Landers' repeated violations of the Board's suspension order. (*Id*. at 88.)

Mr. Landers filed a response to the NID. (Exh. 3.) In his response, he globally denied all the factual allegations in the NID and stated that he was only precluded from practicing before the Board, the Immigration Courts, and the DHS. (*Id*. at 1 and 21.) Citing to a District of Columbia Court of Appeals decision (*Loving v. IRS*, 742 F.3d 1013) (D.C. Cir. 2014)), the respondent asserted that the practice before an entity requires an appearance before that entity. (*Id*. at 9.) And because the Board's order did not specify the parameters of its suspension order, the respondent argued that he was only precluded from physically appearing before the three named entities in the Board's suspension order.[4] (*Id*.)

On July 12, 2023, the Board issued a decision forwarding the record to the Office of the Chief Immigration Judge for the appointment of an Adjudicating

[4] Just like Mr. Landers' response to the preliminary inquiry letter, he provided many more defenses to argue he is not in violation of the Board's suspension order. (Exh. 3.) These arguments, like those raised in Mr. Landers' response to the preliminary inquiry letter, will be addressed in the next section of this order.

Official.[5] (Exh. 5.) This Court was appointed an Adjudicating Official (AO) on July 26, 2023. (Exh. 6.) On August 2, 2023, this Court issued an order for a pretrial conference to discuss motions deadlines, the possibility of a resolution short of a hearing, and any other matters the parties wished to discuss. (Exh. 7). Several topics were discussed at the September pretrial conference, including a resolution short of a hearing, the time needed for a hearing on the merits (if one was needed), and potential deadlines to file briefs. (Exh. 9.) Another pretrial hearing was scheduled for October 24, 2023, to give the parties an opportunity to discuss the resolution of the case short of a hearing. (*Id*.)

At the October 2023 hearing, the parties notified the Court that the case could not be resolved short of a trial. As such, the case was scheduled for a hearing and several deadlines were ordered in the case. (Exh. 10.) A list of proposed exhibits was also provided to the parties, and a deadline to object to the proposed exhibits was issued. (*Id*.) The case was originally scheduled to be heard on January 26, 2024 (*Id*.), but a motion to continue was filed, which included a request to extend all deadlines, by the respondent's counsel because there was an unexpected death in counsel's family. (Exh. 14.) The motion was granted, an order detailing new deadlines was issued, and the parties were requested to meet and confer on their availability to schedule the case to a new hearing date. (Exh. 15.) After the parties provided the Court with their availability, the Court scheduled the case for a hearing to be heard on February 28, 2024. (Exh. 15A.)

At the first pre-trial conference in September 2023, this Court notified the parties that all times in its orders are based on Arizona time. Because Arizona does not observe daylight savings time, the parties were instructed to make sure to appear at the correct time indicated in the Court's order. Despite this

[5] In the NID, the Disciplinary Counsel and the DHS sought to impose reciprocal discipline against the respondent, meaning that any disciplinary decision made in this case should equally apply to practice before the DHS. On a related note, it appears that there is a scrivener's error in the Board's order stating that there are 53 counts in the NID rather than 52 counts. (Exh. 5 at 1.) This Court will proceed to analyze the factual allegations and counts as detailed in the NID.

admonition, when the merits hearing commenced on February 28, 2024, the respondent and his counsel were not present. In accordance with the regulations, this Court conducted the hearing in the respondent's absence. *See* 8 C.F.R. 1003.106(a)(3) (requiring an adjudicating official to "proceed and decide the case in the absence of a practitioner" who requested a hearing). The government called three witnesses, the evidentiary record was closed, and the government begin its closing argument when the respondent and his counsel appeared on the Court's WebEx platform some 45 to 50 minutes late. The Court notified the government of the appearance of counsel and the respondent. The parties were given an opportunity to discuss how they would like to proceed amongst themselves and with each other.

After a short recess, the government requested that the Court only allow for closing arguments because the respondent failed to timely appear at his hearing. The respondent argued that he believed he was early to the hearing and made a mistake as to the time the hearing was to begin. Alternatively, the respondent sought a continuance. The request for a continuance was denied because the respondent's tardiness did not amount to good cause to continue the case. Over the government's objection, this Court reopened the evidentiary record, went over the proposed exhibits to give the respondent an opportunity to object, and requested that the witnesses appear again to be cross examined by the respondent.[6]

The government's request to proceed only to closing arguments was overruled because in the Ninth Circuit, this Court cannot proceed in immigration proceedings with an *in absentia* order of removal, if the Court is still on the bench.[7]

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[6] The respondent objected to the admission of Exhibits 9-16 on hearsay grounds. An analysis of that objection is detailed in the next section of this order.

[7] As noted above, disciplinary proceedings are to be conducted "in the same manner as Immigration Court proceedings as is appropriate[.]" 8 C.F.R. § 1003.106(a)(2)(v). Moreover, this Court is "bound to follow the precedent of th[e] Board, the Attorney General, and the circuit court of appeals with jurisdiction over the geographic region where a case occurs." *Matter of Garcia*, 28 I&N Dec. 693, 695 (BIA 2023) (citations omitted). Even though the parties were appearing from

See Jerezano v. INS, 169 F.3d 613, 615 (9th Cir. 1999) (reasoning that an alien[8] who is late to a hearing and not present at the time his case is called but arrives while the judge is still on the bench, cannot be ordered removed in his absence). By analogy, this Court found that the reasoning in *Jerezano* applied to the respondent's case. Like the respondent in *Jerezano*, the respondent "did appear but he was late, not so late, however, that" the Court was no longer on the bench. *Id*. To preclude the respondent from presenting a case and cross examining the government's witnesses seemed unduly "harsh and unrealistic to treat as a nonappearance a litigant's failure to be in the courtroom at the precise moment his case [was] called." *Id*. Otherwise, the Court would "unreasonably deprive[] [the respondent] of his due process right to a full and fair hearing." *Id*. (citation omitted).

After the case was reopened, the respondent was given an opportunity to cross examine the government's witnesses, to present his own witness(es) or file additional documentary evidence, and to make a closing argument. At the conclusion of the hearing, the parties were notified that the Court would issue a written decision.

II. DEFENSES ADVANCED IN RESPONSE TO NOTICE OF INTENT TO DISCIPLINE

The respondent advanced several defenses to the NID in his brief filed with the Board. (Exh. 3.) Those arguments are as follows: (1) his 90-day suspension

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Washington D.C. (the government) and Florida (the respondent), and this Court was sitting in Phoenix, Arizona, when the hearing was conducted, "the controlling circuit law in Immigration Court proceedings for choice of law purposes is the law governing . . . where jurisdiction vests and proceedings commence upon the filing of a charging document, and will only change if an Immigration Judge subsequently grants a change of venue to another Immigration Court." *Id*. at 703 (citing 8 C.F.R. §§ 1003.14(a) and 1003.20(a)). That means that Ninth Circuit law applies, where appropriate, because venue was changed to this Court when it was appointed the Adjudicating Official. *See* 8 C.F.R. § 1003.106(a)(2)(v).

[8] "Alien" is defined under the Act as "any person not a citizen or national of the United States." INA § 101(a)(3). The use of this term or any derivation of it in this order refers to this definition under the Act.

and the Board's denial to set aside his suspension only precluded him from physically practicing before the Board, the Immigration Courts, and the DHS; (2) the DHS induced him to violate the Board's order when it requested more evidence during his suspension period for a client he represented before his suspension by the Board; (3) he cited to the Immigration Court Practice Manual to support his assertion that he was not physically practicing before the Immigration Court because it states that an alien is considered unrepresented when he has not hired new counsel and his prior counsel has been suspended; (4) he distinguished the definition of practice in the regulations as irrelevant because the Board's suspension order did not cite to the regulations for the definition of practice; and (5) he argued that the government's reading of the Board's order violates the Tenth Amendment to the United States Constitution.

III. EVIDENCE PRESENTED

The disciplinary hearing commenced on February 28, 2024, and concluded on the same day. This Court has considered all the evidence of record, even if not explicitly mentioned in this order. The following documents were admitted into evidence.

A. DOCUMENTARY EVIDENCE

Exhibit 1	Notice of Intent to Discipline, pages 1-90
Exhibit 2	Government's Initial Exhibits, pages 1-1491
Exhibit 3	Respondent's Response to Notice of Intent to Discipline
Exhibit 4	Respondent's Initial Exhibits, pages 1-34
Exhibit 5	Board of Immigration Appeals Decision to Appointment Adjudicating Official
Exhibit 6	Letter Appointing this Court Adjudicating Official
Exhibit 7	Pre-trial Scheduling Order, dated August 2, 2023
Exhibit 8	Government's Pre-trial Hearing Brief, pages 1-15
Exhibit 9	Pre-trial Conference Order, dated September 22, 2023

Exhibit 10	Hearing Notice, Deadlines, and Filing Requirements, dated October 24, 2023
Exhibit 10A	Government's Witness List
Exhibit 11	Government's Supplemental Exhibits, pages 1492-1769
Exhibit 12	Government's Pre-Hearing Brief in Support of Disciplinary Charge and Sanction, dated November 27, 2023
Exhibit 13	Government's Second Supplemental Exhibits, pages 1770-1822
Exhibit 14	Respondent's Motion for Extension of Time and Continuance
Exhibit 15	Amended Order: Hearing Notice, Deadlines, and Filing Requirements, dated December 22, 2023
Exhibit 15A	Hearing Notice Scheduling Disciplinary Hearing
Exhibit 16	Government's Third Supplemental Exhibits, pages 1823-1904

Written objections related to Exhibits 1-8 were initially required to be made no later than January 19, 2024, but the deadline was extended to February 20, 2024. (Exh. 10; Exh. 15.) No written objections were filed by the court-imposed deadline. The respondent objected to the admission of Exhibits 9-16, arguing they are hearsay. The rules of evidence do not apply in immigration hearings. *Sanchez v. Holder*, 704 F.3d 1107, 1109 (9th Cir. 2012) (citation omitted). The "sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair." *Id*. (citations omitted). No argument was raised regarding the probative nature (or lack thereof) of the proposed exhibits, nor was there any argument that admission of the documents would be fundamentally unfair. The objection was, therefore, denied.[9]

[9] Neither party was given an opportunity to object to the admission of Exhibit 15A because it was only added by the Court while drafting this order. Either party may file a written objection to Exhibit 15A within 15 days of the service of this order. Failure to abide by the Court-imposed deadline shall result in the Court finding that any objection is waived. 8 C.F.R. § 1003.31(c).

B. TESTIMONIAL EVIDENCE

The government called three witnesses—the Honorable Assistant Chief Immigration Judge Jaime Diaz, the Honorable Immigration Judge Nathan Herbert, and the Court Administrator for the Miami Immigration Court, Mr. Jorge Rodriguez. The respondent did not testify, he did not present any witnesses, nor did he submit any additional documentary evidence.

IV. THE DISCIPLINARY HEARING AND FINDINGS OF FACT

A. CREDIBILITY

The provisions of the REAL ID Act of 2005 apply to this case because the NID was filed on or after May 11, 2005. *See Matter of S-B*, 24 I&N Dec. 42 (BIA 2006). Whether a witness testifies credibly depends on factors such as the witness's "demeanor, candor, and responsiveness [and] the inherent plausibility of the . . . . witness's account, the consistency between the . . . witness's written and oral statements . . . the internal consistency of each such statement, the consistency of such statements with other evidence of record . . . and any inaccuracies or falsehoods in such statements." INA § 208(b)(1)(B)(iii); *see also Kin v. Holder*, 595 F.3d 1050, 1055 (9th Cir. 2010); *Shrestha v. Holder*, 590 F.3d 1034, 1040-43 (9th Cir. 2010). These factors are to be weighed in light of the totality of the circumstances. INA § 208(b)(1)(B)(iii).

The trier of fact may also consider "any other relevant factor." *See Shrestha*, 590 F.3d at 1040. An Adjudicating Official may consider any evidence in the record that provides a "legitimate articulable basis to question the [witness'] credibility." *Singh v. Holder*, 638 F.3d 1264, 1272 (9th Cir. 2011). A basis to question a witness's credibility exists if there is evidence in the record that demonstrates that the witness has a "history of dishonesty." *Sarvia-Quintanilla v. INS*, 767 F.2d 1387, 1392 (9th Cir. 1985).

An adverse credibility determination, however, must be reasonable and take into consideration the individual circumstances of the witness. *Shrestha*, 590

F.3d at 1041. The Court "should recognize that the normal limits of human understanding and memory may make some inconsistencies or lack of recall present in any witness's case." *Id.* at 1044-45.

This Court observed all witnesses who testified and compared their testimony with the other record evidence. Based on this observation and comparison, this Court concludes, that the witnesses all testified credibly. The testimony of each witness was consistent with their own affidavits, internally consistent, and consistent with the other record evidence.

B. FINDINGS OF FACT

In his response to the NID, the respondent globally denied all factual allegations and the charge.[10] (Exh. 3.) Based on this denial, this Court is obligated to determine whether the government met its burden to establish the factual allegations in the NID. 8 C.F.R. § 1003.106(a)(iv) (stating that the government bears the burden by clear and convincing evidence). After a careful review of all the testimonial and documentary evidence, this Court concludes that the government has met its burden of proof by clear and convincing evidence related to all 335 factual allegations in the NID.

Factual allegations 1-4 deal with the request for and granting of a 90-day suspension of the respondent by the Board. (Exh. 1 at 9-10.) Those allegations are proven by the Board's orders and by the respondent's own response to the NID. (Exh. 2 at 1270-82, 1294-95); (Exh. 3 at 9-12) (the respondent details the procedural history of his suspension by The Florida Bar, the Board's suspension, and his various motions to set aside or reinstate). The remainder of the factual allegations related to specific counts in the NID are addressed below. For the sake of clarity and conciseness, the Court will group similar counts and factual allegations

[10] Despite the respondent's denial of all factual allegations, his response to the NID and preliminary inquiry letter do admit to some of the factual allegations. In finding the factual allegations have been proven, this Court relies on testimonial and documentary evidence, and the respondent's admissions.

together when analyzing whether the government has met its burden of proof. An Appendix has also been compiled to further highlight the Court's analysis and it will be cited to throughout this decision. (App. at 1-27.)

1. Counts 1-5

The government alleged that Mr. Landers represented each of the aliens listed in Counts 1, 2, 4 and 5 prior to any suspension order issued by the Board. (Exh. 1 at 10-14.) While each alien's case was pending, the respondent was suspended from the practice before the Board, the Immigration Courts, and the DHS. (*Id*.) In Counts 1 and 2, the Disciplinary Counsel alleged that two of the respondent's clients filed separate *pro se* motions to terminate their proceedings without prejudice because they become lawful permanent residents (LPR). (*Id*. at 10-11.) In addition, the NID alleged that the motions had five subsections and a block quote stating the ways an alien may obtain LPR status. Both motions stated that the respective aliens obtained their LPR status through the Cuban Adjustment Act. (*Id*.; App. at 2.)

Counts 4 and 5 relate to two separate aliens, but the motions are identical. (Exh. 1 at 12-16.) Each motion requested termination of proceedings because the individuals claimed they were eligible to adjust status under the Cuban Adjustment Act. (*Id*.) Each motion also had the same section titles, with the same typographical errors, such as a misnumbered subsection and improper citation. (*Id*.) The motions even had the same language italicized. (*Id*. at 13-15; App. at 3.)

To support the allegations listed in Counts 1 and 2, the government submitted documentary evidence. (Exh. 2 at 1-30, 42-59, and 61-84.) This evidence alone supports a finding that the allegations have been proven by clear and convincing evidence. More specifically, these allegations only state that an entry of appearance was filed by the respondent, that a motion to terminate was filed in each case, and an order either granting or denying the motion was issued. (*Id*.) They do not specifically allege that the respondent himself filed any of the motions (or that he assisted in the filing of these motions) while he was suspended from practice by the Board. Nevertheless, the government has certainly linked the

respondent to these filings for several reasons. First, the aliens listed in Counts 1, 2, 4, and 5 were represented by the respondent before the Board's suspension order. Second, and perhaps most convincing, is that the motions are identical to motions filed by the respondent prior to his suspension. (*Compare* Exh. 2 at 1-30, 42-59, and 61-84, *with* Exh. 2 at 1410-85.) Not only are the font, language, and arguments identical, but so is the misspelling of "Immigration" as "Immingration," and the same punctuation errors. (*Id*.; App. at 1-3.)

Similarly, Counts 4 and 5 are supported by the documentary evidence. (Exh. 2 at 42-84; App. at 3.) Once again, the government only alleged that a notice of appearance was filed, that a motion to terminate was filed, and that an order was issued by an Immigration Judge for each motion. (Exh. 2 at 42-84.) Even though the Disciplinary Counsel did not allege that the respondent was responsible for the filing of the motions to terminate, it, once again, has linked the motions to the respondent.

For Count 3, the respondent had not represented this alien prior to his suspension by the Board. (Exh. 1 at 12.) Nevertheless, the alien referenced in Count 3 filed the exact same motion, with the same font, style, language, misspellings, and punctuation errors detailed in Counts 1, 2, 4, and 5. (*Id*.; App. at 1-3.) In addition to this obvious connection to the respondent, this motion was sent to the Miami Immigration Court in a box of 14 other allegedly *pro se* filings, via United States Postal Service Priority Mail, with a tracking number. (Exh. 2 at 1398.). The sender information was handwritten with Mr. Landers' name and return address. (*Id*.; App. at 5.)

2. Counts 6-10

Counts 6-10 allege that Mr. Landers was counsel of record for each of the aliens listed in the NID prior to the Board's suspension order. (Exh. 1 at 16-24.) After the Board issued its suspension order, all five aliens filed the same motion to terminate proceedings, with identical language, style, formatting, and font. (*Id*.) A copy of the notice of appearance, the Board suspension order, and the motions to terminate were provided by the Disciplinary Counsel and are part of the record.

(Exh. 2 at 86-221.) This documentary evidence fully supports the factual allegations detailed in Counts 6-10 of the NID. (App. at 3-4.)

3. Counts 11-37

Counts 11-19 allege that on April 3, 2023, the Miami Immigration Court received 17 *pro se* filings via United States Postal Service Priority Mail. (Exh. 1 at 24-40; App. at 5-8.) Counts 20-28 allege that on April 10, 2023, the Miami Immigration Court received 14 *pro se* filings via the United States Postal Service. (Exh. 1 at 41-57; App. at 9-12.) Counts 29-37 allege that four days after receiving the April 10 box of motions, the Miami Immigration Court received a box of 13 *pro se* motions via the United States Postal Service. (Exh. 1 at 57-74; App. at 13-16.) Each batch of *pro se* motions contained identical filings for different aliens, seeking to terminate proceedings to pursue adjustment of status under the Cuban Adjustment Act. (Exh. 1 at 57-74.) The filings had the same font, style, language, and identical errors. The boxes displayed Mr. Landers' name as the sender and an address apparently associated with the respondent. (*Id*.; App. at 5-16.) Of the 26 counts, Mr. Landers previously represented seven aliens (Counts 13-15, 20, 22, 30, 34) prior to his suspension; the remainder of the aliens he did not previously represent.

Like the counts discussed above, the documentary evidence supports the government's allegations listed in Counts 11-37. (Exh. 2 at 223-815.) The documents show that Mr. Landers previously represented seven aliens, that each box of *pro se* motions had the respondent's name as the sender, and that the same motion was filed in each of the alien's cases. (*Id*.) In addition, the declaration written by Court Administrator Mr. Jorge Rodriguez and his testimony further support the allegations in the NID related to Counts 11-37. (*Id*. at 1397-1399.) In his declaration, Mr. Rodriguez detailed when he received each box of motions, providing the United States Postal Service tracking number, and the contents of each box. (*Id*.) Mr. Rodriguez's testimony was consistent with his declaration. To be sure, he admitted that he cannot say whether the respondent mailed the motions that are detailed in his declaration, nor has any alien who supposedly

filed the motions stated that the respondent actually prepared them or filed them. Nevertheless, Mr. Rodriguez's declaration and testimony were corroborated by documentary evidence regarding the manner the Court received the box of motions. (*Id*. at 1400-1408; App. at 5-16.)

4. Counts 38-51

Counts 38-51 are like the counts discussed above, except for the motions that were filed, and the boxes that were sent to the Miami Immigration Court. (Exh. 1 at 74-85.) Counts 38-43 are based on motions contained in a box received by the Miami Immigration Court on April 3, 2023, along with 17 other *pro se* motions. (*Id*. at 74-78; App. at 16-26.) All these motions were labeled as "Notice of Filing," indicating that the respective aliens were filing their applications for asylum, withholding of removal, and protection under the Convention Against Torture (Form I-589). (Exh. 1 at 74-78.) Like the batch of boxes discussed above, the sender information had Mr. Landers' name, and all of the motions were identical, down to the exact same font, spelling error of "fling," failure to properly cite to the regulations (it stated the alien was filing "pursuant to 8 C.F.R." without a reference to a section), and a grammatical error stating that the alien "moves file [*sic*] the following for filing." (*Id*. at 74-78; App. at 16-26.) Counts 44-51 are largely the same allegations as Counts 38-43, with two exceptions—(1) the date the box of motions was received by the Court and (2) Counts 50 and 51 were motions to file a Form I-589 and a motion to terminate. (Exh. 1 at 78-85.) The documentary evidence submitted by the Disciplinary Counsel proves these allegations as well. Once again, the allegations do not specifically state that the respondent prepared, drafted, or sent the motions. They only detail the facts of when the motions were received, how they were received, and the substance of the motions. (*Id*. at 74-85.) Those facts are supported by the documentary evidence which unequivocally proves the allegations in the NID. (Exh. 2 at 817-1228; App. at 16-26.)

5. Count 52

The remaining count alleges that on January 3, 2023, USCIS mailed a RFE to an alien who was previously was represented by Mr. Landers. (Exh. 1 at 86; Exh.

2 at 1361-66.) On January 23, 2023, USCIS received an envelope via United States Postal Service Priority Mail that contained a response to the RFE. (Exh. 2 at 1252, 1367–70; App. at 27.) The response itself was labeled as a "*pro se*" filing. However, on the envelope used to mail the response, the sender information displayed Mr. Landers' name and address. (Exh. 2 at 1252.) Moreover, the response's cover-letter purports to be written by the alien himself, but it reads as if a third party wrote it. (*Id*. at 1249) (the letter repeatedly refers to the alien in the third person or "the above-referenced individual" when it is signed by the alien). The documentary evidence, once again, proves these allegations. (*Id*. at 1230-1249.)

C. CONNECTING THE RESPONDENT TO THE ALLEGATIONS IN THE NOTICE OF INTENT TO DISCIPLINE

As noted throughout the discussion thus far, none of the allegations on their own allege that the respondent prepared, drafted, or filed, in his name, motions with the Board, the Immigration Courts, or the DHS. Instead, the government seeks to demonstrate that the respondent indeed did draft and file the documents alleged in Counts 1-52 of the NID. In so doing, the government argues that based on a pattern of similarities between pre-suspension and post-suspension motions, Mr. Landers' statements in response to a preliminary inquiry letter, and his response to the NID, it has proven that the respondent indeed did draft and file the documentation alleged in Counts 1-52. (App. at 1-27.) The government has met its burden well beyond the clear and convincing evidence standard required by the regulations.

"Clear and convincing evidence" is defined as "proof which requires more than the preponderance of the evidence standard applied in most civil cases, but less than the beyond a reasonable doubt standard used in criminal cases." *Matter of Patel*, 19 I&N Dec. 774, 783 (BIA 1988) (citing *Addington v. Texas*, 441 U.S. 418, 425 (1979)). This standard of proof is certainly lower than "the clear, unequivocal, and convincing standard applied in deportation and denaturalization proceedings because it does not require that the evidence be unequivocal or of such a quality as to dispel all doubt." *Id*. (citing *Addington*, 441 U.S. at 432.) In the context of

immigration cases, clear and convincing evidence is defined as "that degree of proof though not necessarily conclusive, which will produce in the mind of the court a firm belief or conviction, or as that degree of proof which is more than a preponderance but less than beyond a reasonable doubt." *Id*. (citing *Matter of Carrubba*, 11 I&N Dec. 914, 917 (BIA 1966)).

The evidence unequivocally demonstrates that Mr. Landers filed the motions and notices detailed above. To be sure, there is no direct evidence of this finding, which the respondent argued at his disciplinary hearing, cuts severely against the government's burden of proof. Direct evidence, however, is not required to prove a fact in any court in the country, and immigration courts are no different. The party with the burden of proof may satisfy its burden with direct or circumstantial evidence. *See Khudaverdyan v. Holder*, 778 F.3d 1101, 1106 (9th Cir. 2015); *see also Matter of J-B-N & S-M-* 24 I&N Dec. 208, 211 (BIA 2007). In accessing evidence, a judge may make "reasonable inferences from the totality of the record" in making its findings. *Matter of D-R-*, 25 I&N Dec. 445, 453 (BIA 2011). Such inferences must be reasonable, taken from "direct or circumstantial evidence of the record as a whole, not on speculation." *Id*. at 454. Obviously, "rank speculation and conjecture cannot be substituted for objective and substantial evidence." *Id*. (citations and internal quotation marks omitted). Inferences, however, are "not a suspicion or a guess. It is a reasoned, logical decision to conclude that a dispute fact exists on the basis of another fact that is known to exist." *Id*. (citation omitted). Judges may use inferences so "long as it is supported by the record facts, or even a single fact, viewed in light of common sense and ordinary experience." *Id*. (citation omitted). Factfinders routinely draw "inferences from direct and circumstantial evidence" and doing so is a "necessary task of any factfinder[.]" *Id*.

As noted above, the evidence unequivocally demonstrates that the respondent did indeed draft and assist his clients to file motions and other documents with the Court while he was suspended. While the evidence is circumstantial, it is so powerful that it borders on nearly direct evidence of Mr. Lander's actions. This is based on different reasons, but the conclusion is the

same—the government has met its burden to demonstrate that the respondent did indeed draft, prepare, and, at times, mail motions/documents to the Immigration Court and the DHS. He did this even though his name is not on any of the pleadings or filings at issue.

For Counts 1-5, the respondent represented each alien in these counts prior to his suspension order. While each client's case was pending, the respondent was suspended from practice before the Board, the Immigration Courts, and the DHS. In each of these cases, the motions filed after Mr. Landers was suspended are identical. In Counts 1 and 2, the aliens requested that their cases be terminated because they obtained LPR status. (Exh. 1 at 10-11.) The motions in both cases are identical to each other, except the identifying information related to the respective aliens such as the alien's age and name. (Exh. 2 at 1-9 and 17-25.) In addition, the motions are identical to motions previously filed by Mr. Landers himself. (*Compare id*., *with id*. at 1409-89; App. at 1-3.) It strains credulity to conclude that these motions were not drafted by the respondent, or, at a minimum, that he did not provide the template of the motion to be filed by his clients. Not only is the language in the pre-suspension motions identical to the motions filed by his clients while Mr. Landers was suspended, but the font is also identical. Moreover, when one motion was incorrectly rejected by the Court because the alien was represented by the respondent, the new motion was identical to the last with a footnote that reads "Respondent [meaning the alien] requests the court to file this motion pro se as her attorney of record has not been instated to practice before the Executive Office for Immigration Review." (Exh. 2 at 10 n.1.) To believe that the alien in Count 1 discerned the rules that apply regarding filings filed by her when her counsel is under a suspension order requires this Court to suspend all logic and rational inferences from the facts. *Matter of D-R-*, 25 I&N Dec. at 453 (stating that inferences may be drawn by a judge so long as they are "supported by the record facts, or even a single fact, view in light of common sense and ordinary experience"); *see Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1024 (9th Cir. 2023) ("Immigration law can be complicated, especially because courts have manufactured a byzantine and ever-increasing maze of procedural and

substantive standards that are difficult for everyone—asylum-seekers, immigration officials, and courts alike—to navigate."); *see also Castro-O'Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1987) ("With only a small degree of hyperbole, the immigration laws have been termed 'second only to the Internal Revenue Code in complexity.' A lawyer is often the only person who could thread the labyrinth.") (citation omitted).

Much like Counts 1-2, Counts 4-5 have identical motions filed in those cases and the aliens were also previously represented by the respondent prior to his suspension by the Board.[11] (Exh. 2 at 43 and 62.) The motions in these counts request termination under the Cuban Adjustment Act so that the aliens may seek adjustment of status with the DHS. (*Id*. at 45-49 and 65-69.) Once again, the font is identical as is the content of the motions, including typographical and grammatical errors. (App. at 3.) In addition, the headings and subheadings in both motions are identical. The motions have the same errors such as citing to a Board precedential opinion as "Matter of Coronado Acevedo, 28 i&n dEC. 648 (A.G. 2022)[,]" and the same grammatical error of referring to a decision as decisions. (*Id*. at 48 and 68; App. at 3-16.) Once again, the logical inference for this Court to draw is that Mr. Landers, who represented these aliens prior to his suspension, prepared the motions to terminate and provided them to his clients to file as *pro se* litigants. To conclude otherwise, would require this Court to find that it is an amazing coincidence that aliens previously represented by the same suspended attorney filed the same motion in their cases, with the same errors, and the same font. Instead, this Court finds that it is not a coincidence, but rather compelling and overwhelming evidence, boarding on direct evidence, that the respondent himself was involved with drafting and advising his clients to file the

[11] Throughout this order the Court refers to identical motions or filings, but each filing is specific to the alien who is the subject of the motion or filing. Unless stated otherwise, the use of the term "identical motions" or "identical filings" does not include the name of the alien, the alien's A-number, or the specific facts related to the alien. Instead, these terms are used to refer to the identical nature of the substance of the motion itself, the font, and the errors in the filings or motions.

specific motions to terminate detailed in Counts 3-4. (App. at 2-3.) As such, this Courts finds that no coincidence would explain the exact similarities between the motions. *See Ker v. State of Cal.*, 374 U.S. 23, 36 (1963) ("To say that this coincidence of information was sufficient [to conclude that the respondent wrote the motions] is to indulge in understatement.")

Count 3 is similarly connected to Mr. Landers, even though he did not represent the alien referenced in this count prior to his suspension. (Exh. 2 at 33-35.) Nevertheless, this motion is identical to the motions filed in Counts 1 and 2, which, as noted above, are connected to the respondent by virtue of his prior representation, the identical font, and the same exact language in the motions. (*Compare id*. at 1-9 and 17-25, *with* 33-36; App. at 2.) Not only would it defy logic to find that these motions were not drafted and prepared by the respondent, but it requires this Court to ignore obvious signs that point only towards the conclusion that Mr. Landers is responsible for the drafting and filing of these motions.

Similarly, Counts 6-10 relate to aliens who were represented by the respondent prior to his suspension. (Exh. 2 at 87, 101, 155, 178, and 200.) Once again, the same motion to terminate proceedings as discussed in Count 3 above was filed in Counts 6-10. These motions are clearly drafted and written by Mr. Landers because they have the same font, headings, arguments, and errors. (*Id*. at 89-93, 104-09, 158-64, 181-87, and 202-07; App. at 3-4.) In addition, all the aliens are the respondent's prior clients, which creates a near irrebuttable logical inference that the motions were drafted by the respondent.

Counts 11-37 provide near certain proof that Mr. Landers drafted and filed the motions related to these counts. Between April 3, 2023, and April 14, 2023, the Miami Immigration Court received three boxes of motions, one with 17 purported *pro se* filings, another with 14 purported *pro se* filings, and a last box of 13 purported *pro se* filings. (App. at 5, 9, and 13.) All the boxes contained identical filings for different aliens seeking to terminate their proceedings to seek adjustment of status under the Cuban Adjustment Act before the DHS. Mr.

Landers previously presented seven aliens (Counts 13-15, 20, 22, 30, and 34) prior to his suspension. Nevertheless, all the filings had the same font, headings, and citation and grammatical errors discussed in Counts 4-5 above. (Exh. 2 at 224-30, 240-46, 277-83, 328-34, 362-68, 400-06, 413-19, 443-49, 475-81, 492-98, 506-12, 523-29, 534-40, 548-54, 563-69, 578-84, 594-600, 609-15, 639-45, 651-57, 668-74, 684-90, 699-705, 717-23, 768-74, 785-91, and 802-08.) Tellingly, each motion was also 6 pages long. To top it off, Mr. Landers' name appears as the sender of all of three boxes of purported *pro se* filings.[12] (*Id*. at 1397-98; App. at 5, 9, and 13.)

Similarly, Counts 38-51 involve motions sent in various batches, and each box sent by Mr. Landers contained filings purporting to be *pro se* filings. Once again, the similarity in the filings demonstrates that the respondent drafted the documents to be filed by the respective alien detailed in Counts 38-51. All the motions were notifying the Court that the alien was filing applications for asylum, withholding of removal, and protection under the Convention Against Torture. (Exh. 2 at 818-19, 834-35, 860-61, 886-87, 914-15, 942-43, 980-81, 1029-30, 1053-54, 1075-76, 1099-1100, 1128-29, 1153-54, and 1196-97; App. at 16-26.) Each motion had the same font, verbiage, length, and errors such as "fling," failure to provide a section number for a citation to the regulations, and grammatical error of "moves file the following for filing." (*See supra* § IV(B)(4).) Moreover, the respondent signed that he helped prepare at least one application for the respective alien, which is tantamount to an admission that he was representing this alien while he was suspended.[13] (Exh. 2 at 828.) For several other applications, the aliens signed

[12] The respondent argued at his hearing that mailing documents to the Court cannot constitute practice before the Immigration Court. On its face such an argument seems persuasive, but that is not the only evidence connecting the respondent to the practice before the Immigration Court or DHS. Mailing filings is merely one piece of a pattern of overwhelming evidence connecting these filings to Mr. Landers and his practice before the Immigration Court and DHS while under a suspension order.

[13] The declaration of the preparer of a Form I-589 states as follows:

> I declare that I have prepared this application at the request of the person named in Part D, that the responses provided are based on all information

their applications on the same day. (*Id*. at 844, 924, 952, and 1163.) To find this is a mere coincidence would require this Court to suspend disbelief bordering on the absurd. This Court is not willing to make such a leap of faith, nor is it required to. *See Matter of D-R-*, 25 I&N Dec. at 455 (reasoning that Immigration Judges need not credit the explanations provided by a witness or party).

Count 52 is also connected to the respondent. In this count, the respondent represented the alien before DHS prior to his suspension. (Exh. 2 at 1231-34.) The alien was seeking adjustment of status to a LPR (*Id*. at 1235-46), but after the respondent's suspension the DHS requested additional evidence before it could decide on the merits of adjustment of status application. (*Id*. at 1247-48). A response was filed, purportedly by the alien, providing the requested information to the DHS. (*Id*. at 1249-50.) Not only was this information sent by Mr. Landers (*Id*. at 1252), but the alien's filing lists the respondent's address as the alien's return address. (*Id*. at 1251-52; App. at 27.)

There is certainly more than just the above analysis and inferences to connect Mr. Landers to the motions, filings, or response for a request for evidence. The respondent himself responded to the government's preliminary inquiry letter and NID. In each of these responses, Mr. Landers tacitly admitted to drafting and sending the documents discussed in Counts 1-52. The Court will first address the respondent's response to the preliminary inquiry letter and then his reply to the NID.

> of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in his or her native language or a language he or she understands for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form 1-589 may also subject me to civil penalties under 8 U.S.C. 1324c and/or criminal penalties under 18 U.S.C. 1546(a).

(Exh. 2 at 828.) Signing this declaration is strong direct evidence that the respondent practiced before the Immigration Court in violation of the Board's suspension order. (App. at 18.)

On February 1, 2023, the government sent an inquiry letter to the respondent, detailing three instances of alleged practice in violation of the Board's suspension order. (Exh. 2 at 1389-90.) On February 15, 2023, the respondent filed his response. (*Id*. at 1392-95.) In his response, the respondent was careful not to deny his involvement with the drafting, mailing, or advising the aliens in the counts discussed above. Instead, he argued that he "carefully reviewed" the suspension order, concluding that he was only suspended from "practice *before* the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security ("DHS") for 90 days[.]" (*Id*. at 1392) (emphasis in original). He further argued that the Board's order "was narrowly tailored and limited solely to [his] practice alone, *before*, or in front of, those Courts, directly in those forums themselves." (*Id*.) For the respondent, the Board's suspension order did not preclude him from practicing law generally or immigration law specifically. (*Id*.) The respondent also argued that his clients "as a matter of law, have the right to due process, fundamental fairness, and an opportunity to be heard." (*Id*.) Nowhere in his responses did the respondent explicitly deny that he wrote the motions in question.[14] The arguments advanced by Mr. Landers remove any doubt that may exist about his connection to the motions and filings that are the subject of the NID.

Mr. Landers response to the NID further cements this Court's conclusion that he practiced before the Immigration Court and DHS while under the Board's suspension order. The first eight and a half pages of Mr. Landers' response is

[14] In the respondent's response to the NID, the respondent did make global denials of all allegations. (Exh. 3 at 21.) These global denials were only made after the respondent wrote 21 pages making many of the same arguments and arguing against the claim that he violated the Board's suspension order. He further argued that helping former or new clients without physically practicing before the Board, Immigration Courts, or DHS, did not violate the suspension order. He cited to the regulations on professional conduct before the DHS and Immigration Courts, but not the regulations related to his suspension order. With that sleight of hand, the respondent failed to address the language in the regulations that defines the "practice before" the Board, Immigration Courts, or DHS. Each of these arguments separately and cumulatively support this Court's conclusion that the respondent is indeed connected to each of the filings that are the subject of the NID.

direct quotes from the regulations, emphasizing that the regulations discuss "practice before" the Board, Immigration Courts, and DHS. Eventually, the respondent makes his arguments to support his tacit admission that assisting aliens to file documents with the Immigration Court is not "practicing before" the Court. For the respondent, the phrase "practicing before" is narrow and only means that a suspended practitioner may not physically appear before any entity that is the subject of the Board's suspension order. (*Id*. at 10.) Relying on *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014), the respondent argues that "[a]bsent *conjecture aliunde* or any notice to the contrary, the ordinary meaning applied [to the term practice before], and there was no extraordinary suspension beyond that, that extended to practice of immigration law *en toto* before the Board, the Immigration Courts, and DHS, especially when it was not during an investigation, adversarial hearing, or other adjudicative proceeding." (*Id*. at 9.) Because the Board's order did not explicitly prohibit the respondent from "practicing law," the respondent claims that any work he did in response to the DHS request for information did not violate the Board's suspension order. (*Id*. at 11.) He even went so far as to claim that the government itself "solicited and was an accessory to" his practicing before the DHS when it requested additional evidence from his client during Mr. Landers' suspension period. (*Id*.)

The respondent's hodge-podge approach to defending his actions misses the mark. Rather than make any argument that he did not actually practice in violation of the governing regulations, and thus his suspension order, he obfuscates the rules and asserts that the Board's suspension order only precluded him from physically appearing before the listed entities. On its face, these arguments fail to fully appreciate the import of his response—namely, that it almost unequivocally demonstrates his connection to the filings alleged in the NID. Regardless of how any of his conduct is characterized under the definition of "practice before," the issue here is whether the conduct occurred at all, and Mr. Landers' definitional gymnastics ultimately constitute an admission that indeed it did.

Additionally, the respondent was on notice related to the scope of the regulations and the Board's suspension order in December 2022. In the government's response to Mr. Landers second request to be reinstated, it detailed Mr. Landers' representation before the DHS as a basis to deny his request to be reinstated. (Exh. 2 at 1338.) The Board agreed, concluding that Mr. Landers appeared to have violated the Board's suspension order based on his actions. (*Id*. at 1380-81.) This statement from the Board should have given Mr. Landers pause regarding his actions.

In the end, the identical formatting, font, spelling and grammatical errors, all point to an identical *modus operandi* of the respondent. (App. at 1-16, 19-27.) Evidence of a *modus operandi* provides strong, nearly unequivocal proof, that an individual has acted in concert with his prior behavior. When an individual acts in a "highly distinctive pattern" it is not outside of the bounds of logic or reason to conclude "that the same person committed" the same acts. *Kipp v. Davis*, 971 F.3d 939, 957 (9th Cir. 2020). This is exactly what occurred in the case before this Court. The similar pattern in all the motions and the return address for many of the motions bearing Mr. Landers' name, demonstrate a pattern that cannot be ignored. (App. at 5, 9, 13.) The respondent drafted the motions discussed above and he mailed many of them to the Immigration Court. Based on the foregoing, this Court concludes that the government has established by clear and convincing evidence all the facts listed in the NID and has connected each of them the respondent.

V. THE DISCIPLINARY HEARING

Mr. Landers disciplinary hearing commenced on February 28, 2024, and was concluded on the same day. As noted above, the respondent nearly failed to appear because he was almost an hour late to his hearing. The respondent, and his counsel, stated that they were confused by the time difference, but this Court made clear that the start time was based on Arizona time. By the time Mr. Landers appeared at the hearing, all the testimony was taken. Over the government's

objection, the Court reopened the case to allow the respondent to cross-examine the witnesses against him.

As noted above, this Court has already found that the factual allegations in the NID have been established, and that those allegations have been connected to Mr. Landers. The question remains whether the respondent violated the sole charge against him. The Court's findings are detailed below, to include the defenses raised by the respondent.

A. FINDINGS RELATED TO VIOLATIONS OF PROFESSIONAL CODE OF CONDUCT

The government charged the respondent with violating his prior disciplinary order by engaging in the unauthorized practice of law in violation of 8 C.F.R. § 1003.102. (Exh. 1 at 86.) Towards that end, Mr. Landers is alleged to have practiced law even though he was suspended from the practice before the Board, Immigration Courts, and DHS. (*Id*.) The government stated in the NID that while the respondent was under the Board's suspension order he "prepared, drafted and filed 39 motions to terminate, and 14 notices of filing of asylum applications and the associated" applications with the Immigration Court. (*Id*. 86-87.) In addition, in the last count of the NID, the government stated that the respondent engaged in practice before the DHS by providing additional evidence in support of an application pending before the DHS. (*Id*. at 87.) As noted above, this Court has concluded that the factual allegations are all sustained, and that the government has connected all the filings alleged in the NID to the respondent.

The remaining issue is whether Mr. Landers engaged in the practice of law in violation of the Board's suspension order. This Court concludes that the respondent did indeed practice in violation of the Board's order. Practice is defined slightly different under the pertinent regulations related to the DHS and the Immigration Courts. Practice before the DHS means "the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS." 8 C.F.R. § 1.2. The definition of practice also

includes acts labeled "preparation." Under the regulations, "preparation constituting practice" includes the "study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers," excluding the functions of a notary public "or services consisting solely of assistance in the completion of blank spaces on printed DHS forms[.]" *Id*.

The regulations related to practice before the Board and Immigration Courts are nearly identical to the definition for practice before the DHS. In particular, the term practice means "the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application or petition on behalf of another person or client before or with DHS, or any immigration judge or the Board." 8 C.F.R. § 1001.1(i).

These definitions clearly cover the conduct described above. The respondent drafted legal motions, after analyzing his clients' cases, and caused to be filed those motions or applications with the Immigration Court. Such conduct falls squarely within the definition of practice before the entities he was forbidden from practicing in accordance with the Board's suspension order.

The respondent has repeatedly argued that the Board's suspension order only precluded him from physically practicing before the Board, the Immigration Courts, and the DHS. He has further argued that under *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014), the phrase "practice before" has its ordinary meaning. He also claims that his clients who he represented prior to his suspension are entitled to representation and due process. He additionally asserts that the DHS itself was involved with conspiring to have him engage in the practice before it when it requested more evidence in a case while the respondent was suspended. Mr. Landers also argued that the government's reading of the Board's order violates the Tenth Amendment to the United States Constitution. Finally, Mr. Landers argued at the disciplinary hearing that there is no evidence to suggest he violated his suspension order. He claims no client was called to confirm that he prepared, drafted, or mailed the motions or documents that are the subject of the NID. He

argued that it is possible that all the aliens in the cases cited in the NID could have obtained the motions or filings from online sources and there is no evidence who mailed the documents to the Immigration Court or DHS. In the end, the respondent argued there is no direct actual evidence to demonstrate that he was responsible for violating his suspension order. All the respondent's arguments are without merit.

First, the fact that the DHS may have requested additional evidence while the respondent was suspended, does not mean that it was conspiring against the respondent.[15] Lawyers have a myriad of responsibilities, and among those are the duty to follow court orders, even if another entity requests information from the attorney in violation of that order. Without such a system, courts would cease to function properly. The respondent's claim that the DHS was complicit in his practice is beyond the pale. Shirking responsibility for one's actions and blaming another entity for the respondent's own clear violation of the Board's order is inconsistent with the noble calling of the practice of law. "The law is not a business[]—it is a profession, a noble one, with standards in certain respects different from those applicable to business, which standards it is the duty of the bar to uphold." *State ex. Rel. Florida Bar v. Murrell*, 740 So. 2d 221, 226 (Fla. 1954) (*en banc*).

Similarly, lawyers must make a concerted effort to understand the meaning of court orders, rather than attempt to thwart them by parsing words. This is particularly true since words and their meanings are the lifeblood of an attorney's work. Nearly every statute or regulation has defined meanings, particularly for the most salient and operative words. It is counsel's duty to determine what the words mean in a Court order, particularly when the order impacts his ability to conduct legal business. Rigorous adherence to court orders is even more

[15] This statement should not be taken to mean that this Court believes that the DHS conspired against the respondent to catch him in the practice before the DHS when it was aware of his suspension order. Instead, the Court is merely pointing out the absurdity of the argument. The blame for violating a court order does not lie with another party. Rather, it is incumbent on the subject of the order to ensure he is complying with its mandate.

paramount when counsel is on notice that his actions likely violated a Court order. (Exh. 2 at 1380-81) (detailing the likelihood that responding to a request for evidence from the DHS during his suspension period). Counsel cannot borrow the language from a case that is inapplicable to a statute or regulations in question and assume that the word means the same thing, which is what the respondent's reliance on *Loving* does.

In *Loving*, the Court of Appeals for the District of Columbia was confronted with interpreting a statutory phrase allowing the Internal Revenue Service (IRS) to "regulate the practice of representatives of persons before the Department of Treasury[.]" 742 F.3d at 1016. Among other things, the Court reasoned that the statute in question addressed the "practice . . . *before the Department of Treasury*." *Id*. at 1017 (ellipses and emphasis in original). Mr. Landers focuses on the Court's decision that states such terminology "ordinarily refers to practice during an investigation, adversarial hearing, or other adjudicative proceeding." *Id*. at 1018 (citing examples); (Exh. 3 at 11.) The respondent fails to cite to the beginning of the sentence on which he relies, which are the operative words in the opinion and the one reason this Court rejects the relevance of the *Loving* case. Those words are "[a]lthough the exact scope of 'practice before' a court or agency *varies depending on the context*[.]" *Id*. at 1018. Those words help explain the *Loving* Court's analysis of the term "practice before." This is because the Court was trying to discern the meaning of "practice before" the IRS when the words were not defined under the governing statute. *Id*. at 1016. Moreover, as indicated above, *Loving* had nothing whatsoever to do with the regulatory definition of "practice before" the Board, the Immigration Courts, or the DHS. Those regulations make clear that Mr. Landers' drafting or providing advice to his clients on how to apply for relief or to seek dismiss of a case fit squarely within the regulatory definition of "practice before."

The operative word in the regulations governing the respondent's suspension order is not "before," but "practice." It is the term "practice" that does most of the work in the regulations. And this term, unlike in *Loving*, is specifically defined. For purposes of the Board's suspension order, the term "practice" is defined in the regulations in two places—8 C.F.R. sections 1.2 and 1001.1(i).

Section 1.2 provides that practice "means the act or acts of any person appearing in any case, *either in person or through the preparation of filing of any brief, or other document, paper, application, or petition on behalf of another person or client* before or with the DHS." (emphasis added). Under this definition, Mr. Landers' actions fit squarely within the definition of practice. But that is not all. The DHS regulations further extend the term practice to conduct that is "preparation constituting practice." Practice, therefore, also includes "the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers[.]" *Id*. It, however, excludes the "lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed DHS forms," so long as any "remuneration, if any, is nominal" and that the person "does not hold himself or herself out as qualified in legal matters or in immigration and naturalization procedure." *Id*.

The regulations governing the Board and Immigration Courts are largely the same. For the Immigration Courts, the regulations define practice as "exercising professional judgement to provide legal advice or legal services related to any matter before EOIR [i.e., Executive Office for Immigration Review]." 8 C.F.R. § 1001.1(i). Before the Board and Immigration Courts, practice "includes, but is not limited to, determining available forms of relief from removal or protection; providing advice regarding legal strategies, drafting or filing any document on behalf of another person appearing before EOIR based on an analysis of applicable facts and law[.]" *Id*. It obviously also includes "appearing on behalf of another person in any matter before EOIR." *Id*. Read in its entirety, these regulations all encompass Mr. Landers' conduct. He clearly was involved in the drafting and mailing of documents for former and new clients before the Immigration Courts based on the identical nature of the filings, the identical font, the identical grammatical and citation errors, and the fact that many of the filings had his name as the sender.

The respondent quips that mailing does not constitute the practice of law. True enough, but if that is all the respondent did then his argument would be much more persuasive. Those are not the facts of this case, however. The

respondent did more than act as a courier service for his former and new clients—he drafted motions, which required legal analysis and citation to cases, and those motions had the same font, errors, and arguments in each case. Making arguments, with citations to case law, falls comfortably within the ambit of the definition of practice in the regulations. He obviously helped fill out forms (e.g., asylum applications), he provided legal advice when his clients filed motions to terminate because they obtained LPR status or so that they could seek adjustment of status with the DHS. Finally, he also provided advice on the proper legal strategy to employ, such as seeking dismissal to file for adjustment of status before the DHS.

It matters not that there is no direct evidence to support the government's allegations in the NID. No court, including Immigration Court, requires direct evidence for the party bearing the burden of proof to meet that burden. *See Matter of D-R-*, 25 I&N Dec. at 454 (noting that an Immigration Judge may rely on direct or circumstantial evidence). Even a defendant charged with a criminal offense can be convicted on circumstantial evidence alone. "Circumstantial evidence is often as convincing to the mind as direct testimony, and often more so." *Thompson v. Bowie*, 71 U.S. 463, 473 (1866). In this case, a "number of concurrent facts, like rays of the sun, all converging to the same centre, may throw not only a clear light but a burning conviction; a conviction of truth more infallible than the testimony even of two witnesses directly to a fact." *Id*. All totaled, the respondent repeatedly ignored the Board's suspension order by practicing before the Immigration Courts and once before the DHS. Mr. Landers would have the Court engage in rank speculation regarding the source of the aliens' filings, rather than the obvious answer that he was involved with the drafting and filing of these documents. In the law, as in life, often Occam's razor best explains things, namely the simplest most obvious answer is usually the correct one. In this case, it is obvious, that the respondent was indeed the source of the documents filed and finding that is the case is the obvious conclusion to draw. If the ground is wet outside, it is a fair and logical inference to conclude that it has rained. Here too, the obvious logical inference in this case is that Mr. Landers violated his suspension order 52 times.

Mr. Landers final argument relates to his assertion that the government's reading of the Board's suspension order violates the Tenth Amendment to the United States Constitution. (Exh. 3 at 20.) It is unclear what the respondent means by this argument. Courts are not required to "manufacture arguments for [a party], and a bare assertion does not preserve a claim[.]" *Birdsong v. Apple, Inc*., 590 F.3d 955, 959 (9th Cir. 2009). Generally, "[p]refunctory, undeveloped arguments without discussion or citation to pertinent legal authority are waived." *Mahaffey v. Ramos*, 588 F.3d 1142, 1146 (7th Cir. 2009). This is because "[j]udges are not like pigs, hunting for truffles buried in briefs." *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991). In the end, the "art of advocacy is not one of mystery." *Independent Towers of Washington v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003). "Our adversarial system relies on the advocates to inform the discussion and raise issues to the Court." *Id*.

In any event, the Court will attempt to address the respondent's argument. This Court surmises that Mr. Landers is arguing the Tenth Amendment precludes the Board from suspending him from the practice of immigration law because such power rests solely with the states. (*Id*.) Assuming that is the respondent's argument, it relies on a false premise, namely that the United States Constitution precludes the federal government from imposing its own standards to practice before it. *See Matter of Rosenberg*, 24 I&N Dec. 744 (BIA 2009) (holding that being a member in good standing of a state bar does not mean that the attorney is automatically authorized to practice before the Board, the Immigration Courts, and the DHS); *Matter of Krivonos*, 24 I&N Dec. 292 (BIA 2007) (holding that a reinstated attorney for the State Bar of New York did not possess the required qualifications under the regulations to be reinstated to practice before the Board, the Immigration Courts, and the DHS).

Furthermore, the Tenth Amendment does not preclude federal agencies from imposing their own rules and regulations to appear before them. To be sure, the Tenth Amendment provides that the "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. Amend. X. But Mr. Landers cites

to no authority supporting his claim that the Tenth Amendment is violated under the definition of practice discussed above. Congress has authorized the Attorney General to "establish such regulations … to be necessary for carrying out this section." INA § 103(g)(2). Pursuant to this authority, the Attorney General promulgated regulations related to the practice before the Board and the Immigration Courts. 8 C.F.R. § 1001.1(i). With such a Congressional mandate, clearly the federal courts and agencies may determine those who are qualified to practice before them. *See Sperry v. Florida ex rel. the Florida Bar*, 373 U.S. 379, 385 (1963) (noting that a state cannot override who is qualified to appear before a federal court). Federal courts have the inherent "power to control admission to its bar[.]" *In re Rudder*, 100 F.4th 582, 584 (5th Cir. 2024) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-46 (1991)). "Indeed, requiring a minimum level of competence protects not only the [client] but also his or her adversaries and the court from poorly drafted, inarticulate, or vexatious claims." *Id*. (citation and internal quotation marks omitted). Other Circuit Courts of Appeals have concluded that forfeiture of a professional license does not violate the Tenth Amendment. *See United States v. Dicter*, 198 F.3d 1284 (11th Cir. 1999) (loss of medical license did not violate Tenth Amendment); *United States v. Singh*, 390 F.3d 168 (2nd Cir. 2004) (citing *Dicter* and concluded the same). In any event, this Court does not have the authority to second-guess the Attorney General's promulgation of regulations, even if on an alleged ground of constitutional error. *See Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2020) ("An Immigration Judge is without authority to disregard the regulations, which have the force and effect of law.") (citation omitted).

B. DISCIPLINARY SANCTIONS ARE APPROPRIATE IN THIS CASE

The regulations only require disciplinary sanctions if a practitioner has engaged in "criminal, unethical, or unprofessional conduct, or . . . frivolous behavior[.]" 8 C.F.R. § 1003.101(a). Disciplinary sanctions may be imposed "against any practitioner" if the adjudicating official "finds it to be in the public interest." *Id*. An adjudicating official may disbar a practitioner from the "practice before the Board and the Immigration Courts or the DHS, or before all three authorities[.]" 8 C.F.R. § 1003.101(a)(1). A practitioner may be "suspended,

including immediate suspension," from any of the above three listed authorities. 8 C.F.R. § 1003.101(a)(2). An adjudicating official may issue a "[p]ublic or private censor" or any "other disciplinary sanctions as the adjudicating official or the Board deem appropriate." 8 C.F.R. § 1003.101(a)(3), (a)(4).

The regulations do not define when it is in the public interest to sanction a practitioner. Disciplinary sanctions, however, must be imposed if a practitioner "engaged in criminal, unethical, or unprofessional conduct, or frivolous behavior" as defined in the regulations. 8 C.F.R. § 1003.101(a). There is no guidance in the regulations regarding the type or length of sanction that should be imposed, even in circumstances that mandate a sanction. This Court, therefore, looks to Florida disciplinary cases and the American Bar Association (ABA) as instructive and persuasive authority in determining whether to impose sanctions and the appropriate sanction to impose.[16]

C. MULTI-FACTOR ANALYSIS TO DETERMINE APPROPRIATE SANCTION

In determining the appropriate sanction, this Court considers the American Bar Associations (ABA) standards for imposing lawyer sanctions. *See Matter of Gupta*, 28 I&N Dec. 653, 657 (BIA 2022). The ABA standards, however, are not to be strictly adhered to, but rather used as a framework or guideline in assessing the appropriate sanction. *See id*. In the end, the primary purpose of any discipline imposed is to serve the public interest and not to punish the attorney. 8 C.F.R.

[16] This Court previously indicated in this order that it is bound by decisions of the Board, the Attorney General, and the Ninth Circuit Court of appeals based on the choice of law case law. *See Matter of Garcia*, 28 I&N Dec. 703. While that is true and remains correct, it does not mean that this Court may not rely on other legal sources as persuasive authority. In addition, the regulations only require that this Court adopt the procedures of immigration proceedings as is appropriate, which means that the Court is to adopt those procedures when it is proper to do so. Because Board precedent holds that the standards to be used in assessing the appropriate sanction to impose in disciplinary proceedings includes the ABA standards, this Court is bound to review those standards when determining the appropriate sanction. *Matter of Gupta*, 28 I&N Dec. 653, 657 (BIA 2022). In addition, for this Court, cases from the United States Supreme Court and the State Bar of Florida, the state that licenses Mr. Landers to practice law, are equally persuasive given the dearth of opinions discussing attorney discipline based on the facts of this case.

§§ 292.3(a)(1), 1003.102; *see generally Matter of Solomon*, 16 I&N Dec. 388, 408 (BIA 1977; A.G. 1977) (Appleman, concurring).

The totality of the respondent's conduct as discussed in detail above, compels this Court to order disciplinary sanction against him. In summary, the respondent repeatedly engaged in practice before the Immigration Courts and once before DHS. He continued to do so even though he was asked to explain his behavior in a preliminary inquiry letter sent by the government and even after the Board concluded that Mr. Landers likely practiced before the DHS while suspended. Mr. Landers' conduct demonstrates that it is in the public interest to sanction him. The ABA standards require a weighing of several factors to determine whether to sanction an attorney. (ABA Standard 3.0). Those factors are "(1) the duty violated, (2) the lawyer's mental state, (3) the actual or potential injury caused by the lawyer's misconduct, and (4) the existence of aggravating and mitigating circumstances." *Id*.

In summary, the Court will assess the respondent's history of prior disciplinary actions or warnings, the number and types of proven ethical violations and its effect on the court, his personal circumstances and experience as an attorney, and weighing the aggravating and mitigating factors in the respondent's case. In weighing all these factors, this Court concludes that disbarment is appropriate.

1. <u>The Duty Violated</u>

The duty violated by Mr. Landers strikes at the core principles of our judicial system. At a minimum, lawyers must follow Court orders and they should not be in the business of finding ways to skirt or circumvent those orders. When lawyers ignore Court orders, the system comes to a grinding halt, and the public cannot be confident in the entire judicial system. To conclude that the duty violated was anything less than a serious breach of trust would be to minimize the public perception and the effect on the Court system. "Lawyers are essential cogs in the machine of justice. When lawyers refuse to obey court orders . . . they fail to

perform their function and thereby jeopardize the fair and efficient administration of justice." *People v. Efe*, 475 P.3d 620, 640 (Colo. O.P.D.J. 2020).

Without adherence to Court orders and particularly suspension orders, our adversarial system will decay and become nothing more than anarchy. One can imagine a whole host of examples of the chaos that would ensue if lawyers failed to adhere to Court orders. For example, Court orders would be mere suggestions and individuals would stop relying on the legal system to resolve disputes. Without an intact and functional legal system, society begins to devolve into vigilante justice and anarchy ensues. Allowing lawyers to brazenly violate suspension orders strikes at the core of an adversarial system and the inherent power of courts to police the actions of those who appear before them. *See Rojo v. Rojo*, 84 So.3d 1259, 1262 (Fla. Dist. Ct. App. 2012) (the purpose of contempt powers is to ensure compliance with court orders).

In his defense, Mr. Landers claims that the parameters of his suspension were unclear. He focused on the language in the order that stated "before" rather than the word "practice." As noted above, any rudimentary research into the issue would have made clear that the respondent's actions constituted practice before the Immigration Courts and DHS. Mr. Landers claim is no different than a claim of deliberate ignorance, in a clear attempt to give himself a defense in the event he was caught practicing before the Immigration Court or DHS. *See United States v. Heredia*, 483 F.3d 913, 919 (9th Cir. 2007). This is not a scenario where the Board was hiding "elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001). In other words, the Board's opinion and the accompanying regulations are clear regarding the meaning of "practice before" and the Mr. Landers' claims to the contrary do not alleviate his obligation to discern the meaning of his duties and responsibilities based on the issued suspension order. This is particularly true given the Board's decision denying his request to be reinstated, and it should have been solidified by the preliminary inquiry letter sent by the government. In both instances, Mr. Landers was certainly put on notice that his claimed interpretation of the suspension order was wrong. Despite these clear warnings, Mr. Landers continued his total disregard of the Board's

suspension order. Such actions flout the Board's suspension order and constitute a significant aggravating factor.

2. The Respondent's History of Prior Disciplinary Actions or Warnings

Mr. Landers has a history of formal disciplinary suspensions against him. First, he was suspended from the practice of law by The Florida Bar for 90 days. (Exh. 2 at 1259-68.) That decision was issued on June 2, 2022, but was not effective for 30 days from the date of the order. (*Id*. at 1267-68.) The basis of this suspension was that Mr. Landers engaged in a conflict of interest when a trial court in Miami-Dade County "granted a motion to disqualify [him] after determining [Mr. Landers] had assisted the wife in filing a *pro se* petition for dissolution of marriage in West Palm Beach and then later appeared as counsel for the husband" in the same dissolution matter. (*Id*. at 1261-62.) Following the issuance of the June 2, 2022 suspension order, Mr. Landers had an affirmative duty to notify the Board and DHS of his suspension from the practice of law before The Florida Bar within 30 days of the suspension order. 8 C.F.R. §§ 1003.1003(c) and 292.3(c)(4). He failed to do so. Rather than notify the Board, Immigration Courts, or DHS, of his suspension, the Disciplinary Counsel had to file a motion for the immediate suspension of the respondent's practice before these three entities. (*Id*. at 1272.) This motion was not filed until August 9, 2022, just over a month after The Florida Bar suspension was in effect. (*Id*.)

Second, the respondent was sent a preliminary inquiry letter on February 1, 2023. (*Id*. at 1389-90.) In its letter, the government sought an explanation for three incidents in October and December 2022, which suggested that the respondent was violating the Board's suspension order. (*Id*. at 1390.) In each of those incidents, the government alleged that the respondent represented the individuals in the listed cases prior to his suspension. (*Id*.) It further stated that the filings in each of the cases "bear substantially similar formatting and contain substantially similar or identical language." (*Id*.) One motion (a motion to change venue) "is virtually identical to motions [Mr. Landers'] submitted in other cases prior to [his]

suspension." (*Id*.) For the government, except for the motion to change venue, the other filings "contain legal arguments and do not appear to have been drafted by *pro se* individuals." (*Id*.) Finally, the proposed orders submitted with the motions "are identical to each other and to filings submitted by [Mr. Landers] in other cases prior to [his] suspension." (*Id*.)

Third, Mr. Landers was also on notice of the Board's reading of the regulations. Just two weeks after the government sent its preliminary inquiry letter, the Board issued a decision denying Mr. Landers request to be reinstated. (Exh. 2 at 1380.) That denial was, in part, because the Board reasoned that Mr. Landers failed to reconcile the evidence of his practicing before the DHS during his suspension period alleged by the Disciplinary Counsel. (*Id*.)

Despite this clear notice that his actions were inconsistent with the Board's suspension order, the respondent did not attempt to clarify why the government believed he was violating the suspension order. Instead, he doubled down and filed a lengthy response, which effectively admitted to engaging in the alleged activity (namely, drafting motions while under a suspension order) and he asserted that his actions were proper because the Board's order only limited him from practicing *before* the Board, the Immigration Courts, and the DHS. (*Id*. at 1392-95.) Citing the Immigration Court Practice Manual, the respondent argued that any filings by a suspended practitioner are to be rejected and deemed a defective filing. (*Id*. at 1392) (citing Imm. Ct. Prac. Manual at Ch. 2.3(c)). Since no filings were rejected, the argument goes, the respondent asserted he did not practice *before* the Immigration Courts. (*Id*.) Mr. Landers asserted that filings submitted by his clients while he was suspended are considered *pro se* filings and thus, "regardless of formatting, the language, the quality, or the sophistication of the materials [his clients] filed, directly, or on their own behalves [*sic*]," he did not practice before the Immigration Court during his suspension. (*Id*.).

These actions and arguments demonstrate a total disregard of the Board's suspension order and the government's attempts to obtain information related to the filings. The response is dripping with sarcasm and is unnecessarily

argumentative. Had the respondent taken responsibility for his actions or sought clarity from the government regarding the scope of the suspension order, this Court suspects that no NID would have been filed. Instead, the respondent found it best to explain his behavior in a way that is inconsistent with the definition in the regulations.

Despite the preliminary inquiry letter and the Board's denial of the reinstatement request, Mr. Landers continued to fail to comport his behavior with the rules governing his suspension. In fact, he filed 17 filings on April 3, 2023, 14 filings on April 10, 2023, and thirteen filings on April 14, 2023. (Exh. 2 at 1397-99.) To put it bluntly, Mr. Landers was neither deterred by any inquiry made by the government, nor did he attempt to seek guidance or clarification. He was not even swayed by the Board's decision denying his request to be reinstated. Generally, Courts take "very seriously every attorney's obligation to completely and timely respond to Bar inquiries." *Florida Bar v. Altman*, 294 So.3d 844, 848 (Fla. 2020). This includes a requirement to be forthright, honest, and responsive to such inquiries. *See id*. (reasoning that, among other things, an attorney's minimization of her culpability in response to an inquiry letter can weigh in favor of disciplinary sanctions). Inquiries from an attorney's state bar, like inquiries from agencies before which an attorney practices, should be addressed professionally and without resort to sarcastic and abrasive language. Rather than respond in a professional manner, Mr. Landers continued to represent aliens and practice before the Immigration Court in violation of the Board's suspension order. Given the respondent's disciplinary history, and his actions in this case, this factor weighs heavily against him.

3. <u>The Number and Type of Proven Ethical Violations and Its Effect on the Court</u>

As noted above, the government has charged the respondent with violating one rule of professional conduct before the Immigration Court and the DHS in 52 separate counts. (Exh. 1.) Those violations have been proven by the government through the mountain of evidence submitted by Disciplinary Counsel and as

discussed in detail above. "While it is correct to say that the number of proven ethical transgressions is an important factor in determining the proper sanction . . . it would be a mistake to conclude that a relatively small number of such established events will predictably result in a" particular sanction. *In re Hankin*, 296 A.D.2d 238, 240, 745 N.Y.S.2d 169 (2002).

To be sure, the government has not charged the respondent with violating many ethical rules, but the manner Mr. Landers violated his suspension order is egregious. The respondent treated the Board's suspension order as a game that he believed he could circumvent by cleaver lawyering. Unfortunately, Mr. Landers failed to fully research the definition of "practice before" the Board, the Immigration Courts, and the DHS. In so doing, he failed to comply with the Board's order and was unwilling to seek guidance when a preliminary inquiry letter was issued.

Moreover, the respondent's conduct was a flagrant disregard of the Board's suspension order. His actions were calculated to circumvent the rules and to slyly continue to practice even though he was prohibited from doing so. The American judicial system relies on lawyers to follow the rules set forth by the governing Court before which they practice. Without such reliance, Courts would cease to exist because lawyers would ignore the rules governing the practice of law without fear of sanction, consequences, or repercussions. The judicial system would become a free-for-all without any sense of decorum or dignity. In the end, such a system would likely collapse of its own weight.

A "basic proposition" of the judicial system is "that all orders and judgements of courts must be complied with promptly." *Maness v. Meyers*, 419 U.S. 449, 458 (1975). The remedy to correct an order a party believes is in error "is to appeal, but, absent a stay, he must comply promptly with the order pending appeal." *Id*. In fact, the "orderly and expeditious administration of justice by the courts requires that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings." *Id*. at 459 (citation and internal quotation marks

omitted). Rather than comply with the Board's suspension order or seek clarification from the government when he received the preliminary inquiry letter, the respondent continued his actions steadfast in his violation of the suspension order. This factor weighs heavily against the respondent.

4. The Respondent's Personal Circumstances and Experience as an Attorney

Mr. Landers is an experienced attorney and has been admitted to practice law since 2004. (Exh. 2 at 1263.) Other than the disciplinary actions discussed above, the Court has no evidence of any other disciplinary actions taken against the respondent. While the respondent's seemingly minimal disciplinary record weighs in the respondent's favor, his lengthy experience also demonstrates that he should know better. Nearly two decades of experience means that the respondent is well-aware of his ethical obligations to follow court orders. At a minimum, Mr. Landers should have investigated the rules when he received the preliminary inquiry letter. Rather than do so, he filed a disrespectful, preachy defense of his actions, which, in the end, was not grounded in the law. As discussed in more detail below, the apparent lack of an extensive disciplinary record does not weigh in Mr. Landers' favor.

5. The Existence of Aggravating and Mitigating Circumstances

There are several aggravating and mitigating factors in this case. The aggravating factors include—(1) the numerous, multiple, and repeated violations of the Board's suspension order, including 52 separate violations; (2) the flagrant nature of the violations; and (3) the respondent's refusal to acknowledge his misconduct or to investigate whether his actions violated the Board's suspension order.

Moreover, his response to the preliminary inquiry letter is further evidence of his unwillingness to correct his behavior. Mr. Landers clearly does not believe his actions are ever wrong. His response was not contrite, nor did it evince someone willing to learn from his mistake or to educate himself on whether his

actions did indeed violate the Board's order. "Membership in the bar is a privilege burdened with conditions. An attorney is received into that ancient fellowship for something more than private gain. He becomes an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." *In re Synder*, 105 S.Ct. 2874, 2880-81 (1985) (citation, internal brackets, and quotation marks omitted). The power of being a member of the bar and an officer of the court cannot be understated. These dual roles provide attorneys the "singular power[] that others do not possess; by virtue of admission, members of the bar share a kind of monopoly granted only to lawyers." *Id*. at 2881. A "lawyer can cause persons to drop their private affairs and be called as witnesses in court, and for depositions and other pretrial process that, while subject to the ultimate control of the court, may be conducted outside courtrooms." *Id*. This license "granted by the court requires members of the bar to conduct themselves in a manner compatible with the role of courts in the administration of justice." *Id*. Mr. Landers failed to take the Board's suspension order seriously and he further compounded his error when he failed to take stock of his actions after the preliminary inquiry letter was issued.

The respondent's lengthy record as an attorney is a mitigating factor in his case. On its face, his limited disciplinary history is also a mitigating factor, but, as indicated below, his disciplinary history is also an aggravating factor.

While it may appear that two formal disciplinary proceedings are a mitigating factor, practicing before the Immigration Courts and DHS while under an order of suspension is an ethical lapse that is appalling and a grievous violation of one's professional responsibility. Generally, disciplinary sanctions are increased if a respondent has a prior disciplinary record. *See The Florida Bar v. Bosecker*, 259 S0.3d 689, 700 (Fla. 2018) (reasoning that prior precedent provides that the Florida Supreme Court "considers the respondent's previously disciplinary history and increases the discipline where appropriate"). Mr. Landers' actions demonstrate a total disregard for Court orders and a willingness to ignore them at his own will, which militates against his minimal prior disciplinary history.

Despite the significant and weighty mitigating factors, the aggravating factors in the respondent's case are repeated, egregious, and substantial, and they far outweigh the mitigating factors in his case. The respondent repeatedly violated the Board's suspension order, even after receiving a preliminary inquiry letter. Rather than seek further clarification or guidance from Disciplinary Counsel, the respondent tried to thread the needle in his reading of the governing regulations. Frankly, he even failed to cite to the governing regulations and definitions of "practice" in his attempt to justify his actions. Such behavior is unacceptable and cannot be tolerated by any court. *In re Dyer*, 931 N.Y.S 2d 585, 586-88 (2011) (stating that, among other things, remedial measures are a factor to consider when issuing disciplinary sanctions).

In the end, the respondent has failed to take responsibility for his actions, or his behavior after receiving the preliminary inquiry letter. Rather, he continued his conduct unabated. Even though the respondent has been an attorney for over two decades, he has failed to recognize that his failure to take responsibility and his continued deflection of blame, is even more reason to exact a severe sanction for his actions.

D. THE APPROPRIATE SANCTION

As noted above, the regulations give this Court no guidance on the type or length of sanction that it should impose, even in circumstances that mandate a sanction. From the broad language in the regulations, this Court concludes that it has wide discretion to fashion an appropriate sanction based on the factors discussed above.

In determining the appropriate sanction, this Court bears in mind the purpose of attorney discipline, which is three-fold. *The Florida Bar v. Dupee*, 160 So. 838, 853 (Fla. 2015). First, "to protect the public from unethical conduct without undue harshness towards the attorney[.]" *Id*. Second, "to punish misconduct while encouraging reformation and rehabilitation[.]" *Id*. Third, "to deter other lawyers from engaging in similar misconduct." *Id*. (citation omitted). The

overarching purpose of disciplinary sanctions is to sanction an attorney if it is "in the public interest to do so." 8 C.F.R. § 1003.102(a)

In considering the entire record and the factors discussed above, this Court concludes that disbarment from the practice before the Immigration Courts, the Board, and the DHS is appropriate. In fashioning an appropriate sanction, this Court weighs the factors discussed above and finds that the respondent's conduct and his inability to accept responsibility for his actions requires such a harsh sanction. Moreover, the issued sanction is appropriate because of the respondent's repeated failure to abide by the Board's suspension order even after he was issued a preliminary inquiry letter notifying him of his failure to comply. *See The Florida Bar v. D'Ambrosio*, 25 So.3d 1209, 1219 (Fla. 2009) ("Court does not hesitate to disbar attorneys who continue to engage in the practice of law while suspended") (citing cases). Indeed, the clear "violation of any order or disciplinary status that denies an attorney the license to practice law generally is punishable by disbarment." *Id*. at 1219-20 (citation omitted).

The ABA standards also support disbarment. "Standard 8.1 of the American Bar Association's Standards for Imposing Lawyer Sanctions states that disbarment 'is generally appropriate when a lawyer . . . intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession.'" *Matter of Gupta*, 28 I&N Dec. at 656-57 (citation omitted). The sanction of disbarment is particularly appropriate because "flaunting a previous court order serves the fundamental goals of maintaining the integrity of the court as well as protecting the public, the primary purpose of disciplinary sanctions." *Id*. at 657 (citation omitted). Indeed, "courts uniformly impose disbarment on attorneys who continue to practice while suspended because lawyers who have violated prior disciplinary orders exhibit a basic disrespect for the court and its authority." *Id*. (citation and internal quotation marks omitted).

While this Court is not bound by the ABA standards, they are persuasive in this case. *Id*. Mr. Landers violated the Board's suspension order 52 times, and did

so by preparing, drafting, and filing motions to terminate, notices of filing asylum applications and the associated applications, and even responded to a request for evidence from the DHS. Not only does the sheer number of times he violated the Board's suspension order cry out for a severe sanction, but his actions after the Disciplinary Counsel issued a preliminary inquiry letter also demonstrates that Mr. Landers should be disbarred. The preliminary inquiry letter warned Mr. Landers that he was practicing in violation of the Board's suspension order. Mr. Landers paid no mind to the warning. Instead, he wrote a lengthy defense of his actions, claiming that he was only suspended from practicing literally before the three entities discussed in the suspension order. He was wrong and failed to even conduct basic research into the issue. This repeated and willful violation of the Board's suspension order is compelling evidence to support an order of disbarment.

The respondent failed on all fronts to live-up to his role and responsibility as an attorney, burdened with the privilege of membership in the bar. He failed to conduct himself in the manner commensurate with the role of courts to administer justice. He also failed to recognize the scope of the Board's suspension order and ignored the warning issued in the form of the government's preliminary inquiry letter. Such behavior is inexcusable and warrants a severe sanction. No attorney would dream to act in this manner before any other court in the country, let alone repeatedly do so. *See Matter of De Anda*, 17 I&N Dec. 54, 58-59 (BIA 1979) (concluding that an attorney's failure to appear twice before an Immigration Judge would result in contempt in any state or federal court and thus a 6-month suspension was appropriate). It should not be tolerated in Immigration Courts either. Immigration proceedings are serious and could result in banishment of an individual from the United States. Depending on the scenario, that banishment may be for life. *Delgadillo v. Carmichael*, 332 U.S. 388, 391 (1947) ("Deportation can be the equivalent of banishment or exile.") Attorneys cannot be allowed to ignore suspension orders and attempt to make an end-run around the rules. This is particularly true in an area of law that is complex, dynamic, and ever changing.

See Nunez-Reyes v. Holder, 646 F.3d 684, 688 (9th Cir. 2011) (citing cases that demonstrates the complexity of immigration law).

Moreover, an attorney should not be entrusted with analyzing cases for clients when he himself does not bother to do the necessary research, investigation, and follow-up to determine the reach of his own disciplinary case. It is even more jarring that Mr. Landers acted in such a manner with no regard for his clients' best interests. While Mr. Landers was far from polite in his explanation for disregarding the Board's suspension order, "[f]louting a court's command in a polite, respectful, and subdued manner has been found to be the essence of obstruction the administration of justice." *United States v. Thoreen*, 653 F.2d 1332, 1340 (9th Cir. 1981) (citation and internal quotation marks omitted). The legal profession is more than just billing clients and making arguments to advance a client's interest. "Lawyers do indeed occupy professional positions of responsibility and influence that impose on them duties correlative with their vital right of access to the courts." *Application of Griffiths*, 413 U.S. 717, 729 (1973).

To ensure fairness in any adversarial proceeding, hearings "must be conducted in an atmosphere of respect, order, decorum and dignity befitting its importance[,]" otherwise such proceedings would devolve into a free-for-all, without any solemnity towards the serious nature of the proceedings. *Matter of Cohen*, 370 F.Supp. 1166, 1174 (S.D.N.Y. 1973). Any person who is to appear before a tribunal will certainly be worried, concerned, and overwhelmed by his legal troubles. Immigration proceedings are no different and may even be more daunting for a foreign national, who does not speak the language, and may not understand the proceedings. Such individuals should be confident in the counsel they hire to help then through the maze of the United States legal system, particularly one that is as complex and daunting as immigration law. Like the Internal Revenue Code, immigration law can be an "impenetrable labyrinth." *Escobar-Grijalva v. INS*, 206 F.3d 1331, 1335 (9th Cir. 2000). To allow an attorney to continue to practice before a court when he is unwilling to follow the rules in his own case, flies in the face of the public interest. This is particularly true given the potential drastic consequences that can befall an alien in immigration proceedings.

"While once there was only a narrow class of deportable offenses and judges wielded broad discretionary authority to prevent deportation, immigration reforms over time have expanded the class of deportable offenses and limited the authority of judges to alleviate the harsh consequences of deportation. The 'drastic measure' of deportation or removal . . . is now virtually inevitable for a vast number of [aliens] convicted of crimes." *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010).

In circumstances like those discussed above, it is only proper to disbar an attorney who does not act in concert with this noble profession. Mr. Landers knowingly and repeatedly violated the Board's suspension order even after being warned not to do so. These are "serious violations that undermine the integrity of the legal system." *Matter of Gupta*, 28 I&N Dec. at 657. Sometimes the "power of disbarment is necessary for the protection of the public in order to strip a man of the implied representation by courts that a man who is allowed to hold himself out to practice before them is in 'good standing' so to do." *Theard v. United States*, 354 U.S. 278, 281 (1957). In the end, this Court, therefore, concludes that disbarment is the appropriate sanction in accordance with the applicable regulations.

Accordingly, the Court enters the following Orders:

IT IS HEREBY ORDERED that all factual allegations have been proven by clear and convincing evidence;

IT IS FURTHER ORDERED that all of the allegations related to violations of the professional code of conduct in Counts 1-52 are **ADOPTED**;

IT IS FURTHER ORDERED that the respondent shall be disciplined for his violations of the professional code of conduct before the Immigration Courts, the Board of Immigration Appeals, and the Department of Homeland Security; and

IT IS FURTHER ORDERED that the respondent shall be disbarred from the practice of law and appearing before the Immigration Courts, the Board of

Immigration Appeals, and the Department of Homeland Security in accordance with the governing regulations.

_____

Munish Sharda
Adjudicating Official
Immigration Judge

APPEAL RIGHTS: Both parties have the right to appeal the decision of the Adjudicating Official in this case. Any appeal must be received by the Board of Immigration Appeals within thirty calendar days from the date of service of this decision.

CERTIFICATE OF SERVICE

THIS DOCUMENT SERVED BY: MAIL (M) PERSONAL SERVICE (P) VIA ELECTRONIC MAIL (E)
TO: ( ) ALIEN (E) ALIEN'S ATTORNEY (E) DHS
DATE: August 15, 2024 BY COURT STAFF: Charlene Brown
