

REPORT OF INVESTIGATION

SUBJECT		CASE NUMBER	
(b)(6); (b)(7)(C) Immigration Judge (b)(6); (b)(7)(C)		2021-005326	
OFFICE CONDUCTING INVESTIGATION		DOJ COMPONENT	
Dallas Field Office		Executive Office for Immigration Review	
DISTRIBUTION		STATUS	
<input checked="" type="checkbox"/> Field Office    DFO		<input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED	
<input checked="" type="checkbox"/> AIGINV		PREVIOUS REPORT SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input checked="" type="checkbox"/> Component    EOIR		Date of Previous Report:	
<input type="checkbox"/> USA			
<input type="checkbox"/> Other			

SYNOPSIS

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

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

For the purposes of this investigation, the OIG only reviewed allegations that IJ (b)(6); (b)(7)(C) made inappropriate comments, (b)(6); (b)(7)(C) directed towards respondents. (b)(6); (b)(7)(C)

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

The OIG investigation substantiated the allegation that (b)(6); (b)(7)(C) made inappropriate comments directed towards respondents during court proceedings, in violation of EOIR policy and DOJ's zero tolerance policy on harassment (specifically, harassment based on sexual orientation). (b)(6); (b)(7)(C)

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

DATE	January 4, 2024	SIGNATURE	(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)			
PREPARED BY SPECIAL AGENT		SIGNATURE	Cloey Chaney Pierce
DATE	January 4, 2024		
Cloey C. Pierce			
APPROVED BY SPECIAL AGENT IN CHARGE		Digitally signed by Cloey C. Pierce Date: 2024.01.04 10:03:22 -06'00'	

The OIG reviewed official transcripts from (b)(6); (b)(7)(C) court hearings from (b)(6); (b)(7)(C). The OIG requested all available transcripts regarding (b)(6); (b)(7)(C) from EOIR; however, the only available transcribed court proceedings regarding (b)(6); (b)(7)(C) were the Appeal Hearing transcripts between these dates. The OIG's review of the transcripts did not reveal any inappropriate comments by (b)(6); (b)(7)(C).

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

The OIG interviewed three witnesses who provided firsthand accounts of inappropriate comments made by (b)(6); (b)(7)(C) during court proceedings. One witness told the OIG that during court proceedings, (b)(6); (b)(7)(C) described their client as being "bat shit crazy" and that (b)(6); (b)(7)(C) described another client, who was a lesbian, as "a one stop shop." A second witness said (b)(6); (b)(7)(C) questioned whether a respondent was sexually assaulted for any possible reason other than her status as an indigenous woman with a disability. The third witness told the OIG that (b)(6); (b)(7)(C) made a comment during court proceedings asserting that black females should be expressing their trauma in certain ways.

During multiple compelled OIG interviews, (b)(6); (b)(7)(C) admitted that, after a respondent had left the courtroom, he told the respondent's attorney that the client exhibited unusual behavior in court, that they may be "crazy", and that he requested a health evaluation. (b)(6); (b)(7)(C) denied ever telling an attorney that their client was "bat shit crazy," or saying that to anyone as an IJ. (b)(6); (b)(7)(C) also admitted to saying that a respondent was being harassed by their persecutor because of their physical appearance. (b)(6); (b)(7)(C) denied referring to a Honduran National, who was also a lesbian, as a "one stop shop," and added that he had never utilized that term. (b)(6); (b)(7)(C) said he could not recall ever stating that black women or women from Africa should be expressing and reacting to trauma in a certain way. (b)(6); (b)(7)(C)

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

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

The OIG only investigated the allegations that (b)(6); (b)(7)(C) made inappropriate comments, (b)(6); (b)(7)(C) directed towards respondents (b)(6); (b)(7)(C).

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

The OIG has completed its investigation and is providing this report to EOIR for its review and any action it deems appropriate.

The OIG is providing this report to the Department's Professional Misconduct Review Unit for appropriate action.

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

## DETAILS OF INVESTIGATION

### Predication

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

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

For the purposes of this investigation, the OIG only reviewed allegations that (b)(6); (b)(7)(C) made inappropriate comments, (b)(6); (b)(7)(C) directed towards respondents. (b)(6); (b)(7)(C)

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

### Investigative Process

The OIG's investigative efforts consisted of the following:

Interviews of the following (b)(6); (b)(7)(C) personnel:

- (b)(6); (b)(7)(C)
- (b)(6); (b)(7)(C) Immigration Judge

Interviews of the following personnel:

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

Review of the following:

- Complaint dated (b)(6); (b)(7)(C) submitted to the EOIR and OIG outlining (b)(6); (b)(7)(C) alleged inappropriate behavior
- Court hearing transcripts of appeals hearings from (b)(6); (b)(7)(C) court, (b)(6); (b)(7)(C)

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

### Made Inappropriate Comments About Respondents

The information provided to the OIG alleged that (b)(6); (b)(7)(C) made inappropriate comments directed towards respondents.

EOIR's Ethics and Professionalism Guide for Immigration Judges, Section IX (Acting with Judicial Temperament and Professionalism), states, "an Immigration Judge should be patient, dignified, and courteous, and should act in a professional manner towards all litigants, witnesses, lawyers and others with whom the Immigration Judge deals in his or her official capacity, and should not, in the performance of official duties, by words or conduct, manifest improper bias or prejudice." In a note to this section, the Guide explains, "the test for appearance of impropriety is



whether the conduct would create in the mind of a reasonable person with knowledge of the relevant facts the belief that the Immigration Judge's ability to carry out his or her responsibilities with integrity, impartiality, and competence is impaired."

Attorney General Policy Memorandum #2015-04 – Prevention of Harassment in the Workplace, dated October 9, 2015, states in part: "The Department of Justice will maintain a zero tolerance work environment that is free from harassment (including sexual harassment) based on sex, race, color, religion, national origin, gender identity, age, disability (physical or mental), genetic information, status as a parent, sexual orientation, marital status, political affiliation, or any other impermissible factor..."

Harassing conduct is defined as any unwelcome verbal or physical conduct that is based on any of the above-referenced characteristics when this conduct explicitly or implicitly affects an individual's employment; unreasonably interferes with an individual's work performance; or creates an intimidating, hostile, or offensive work environment.

To enforce this zero tolerance policy, the Department will treat harassing conduct as misconduct, even if it does not rise to the level of harassment actionable under Title VII of the Civil Rights Act of 1964, as amended. The Department will not wait for a pattern of offensive conduct to emerge before addressing claims of harassment. Rather, the Department will act before the harassing conduct is so pervasive and offensive as to constitute a hostile environment. Even where a single utterance of an ethnic, sexual, racial, or other offensive epithet may not be severe enough to constitute unlawful harassment in violation of Title VII, it is the Department's view that such conduct must be prevented whenever possible through awareness, robust policies and effective and appropriate follow-up, investigation, and enforcement of the zero tolerance policy."

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

In an OIG interview (b)(6); (b)(7)(C) said that, in (b)(6); (b)(7)(C) he witnessed (b)(6); (b)(7)(C) describe an (b)(6); (b)(7)(C) client as being "bat shit crazy" during a mental health competency hearing. (b)(6); (b)(7)(C) said that, after making fun of the respondent, (b)(6); (b)(7)(C) looked around the courtroom as if expecting everyone to smile and laugh and think that (b)(6); (b)(7)(C) comment was funny. (b)(6); (b)(7)(C) could not recall if this occurred while (b)(6); (b)(7)(C) was on the record (being recorded) during the proceeding but recalled this occurred sometime in the summer of (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) also said that in approximately (b)(6); (b)(7)(C) represented a lesbian client from Honduras and that (b)(6); (b)(7)(C) mistakenly wrote on the record that (b)(6); (b)(7)(C) client was bi-sexual. (b)(6); (b)(7)(C) also said that, when he corrected (b)(6); (b)(7)(C) regarding his mistake about the client's sexual identification, (b)(6); (b)(7)(C) responded that his client must be a "one-stop shop."

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

In an OIG interview, (b)(6); (b)(7)(C) stated that, between (b)(6); (b)(7)(C) she participated in approximately three individual hearings and numerous Master Calendar Hearings before (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) however, (b)(6); (b)(7)(C) stated that (b)(6); (b)(7)(C) does make "off the wall" comments during hearings. (b)(6); (b)(7)(C) provided an example and stated that in a (b)(6); (b)(7)(C) hearing, (b)(6); (b)(7)(C) questioned whether a sexual assault occurred on an indigenous immigrant woman with a disability. (b)(6); (b)(7)(C) said (b)(6); (b)(7)(C) questioned whether such an assault had been motivated by her status as an indigenous woman with a disability and requested corroborating evidence as to why she was sexually assaulted.

In an OIG interview, (b)(6); (b)(7)(C) told the OIG that she had worked with (b)(6); (b)(7)(C) stated that she has never heard (b)(6); (b)(7)(C) refer to respondents as being "bat shit crazy" or make any disparaging comments directed toward African female respondents with regards to trauma (b)(6); (b)(7)(C)

OIG conducted two compelled interviews of (b)(6); (b)(7)(C) requested that the first interview not be recorded unless he could have a copy of the recording at the conclusion of the interview, therefore the OIG did not record the interview. (b)(6); (b)(7)(C) second interview was recorded.

During his initial compelled OIG interview, (b)(6); (b)(7)(C) admitted that he once described a respondent as "crazy" to the government attorney when requesting a psychological evaluation. (b)(6); (b)(7)(C) explained that the government had a duty to ensure the respondent, who was proceeding *pro se*, was capable of representing himself. (b)(6); (b)(7)(C) could not recall whether the respondent was a male or female. (b)(6); (b)(7)(C) stated that he used the term "crazy" in a medical sense to request the evaluation.

In a second compelled OIG interview, (b)(6); (b)(7)(C) again denied telling an attorney that their client was "bat shit crazy" and stated he has never said it to anyone else while serving as an Immigration Judge. (b)(6); (b)(7)(C) stated that he could not recall ever stating that black women or women from the Congo or Africa should be expressing and reacting to trauma in a certain way, but admitted he might use a witness's response as a tool to assess their credibility. (b)(6); (b)(7)(C)

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

The OIG's review of the available transcripts of (b)(6); (b)(7)(C) court hearings did not reveal any inappropriate comments made by (b)(6); (b)(7)(C)



## OIG's Conclusion

Based upon information provided by numerous witnesses, including certain detailed accounts provided by eyewitnesses, the OIG concluded that (b)(6); (b)(7)(C) made inappropriate comments directed towards certain respondents, in violation of EOIR's Ethics and Professionalism Guide for Immigration Judges, Section IX (Acting with Judicial Temperament and Professionalism) and in violation of the Department's zero tolerance policy on harassment (specifically harassment based on sexual orientation). (b)(6); (b)(7)(C)

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

Specifically, the OIG found that, at the very least and by his own admission, (b)(6); (b)(7)(C) referred to the respondent in official proceedings as "crazy." Even if he did not use the term "bat shit crazy" to refer to the respondent as alleged, it was still inappropriate. We credited the testimony of the witness who first told us about the incident that (b)(6); (b)(7)(C) comment was intended as a joke – which would clearly qualify as inappropriate – because of the detail with which the witness recalled the incident. The OIG did not credit (b)(6); (b)(7)(C) explanation for his use of the term "crazy," given his inability to recall the incident in as much detail as the witness and given that the word "crazy" is not a medical term or a diagnosis.

The OIG also substantiated the allegations that (b)(6); (b)(7)(C) referred to a lesbian respondent as a "one stop shop" while under the impression she was bi-sexual and questioned the credibility of a black female respondent because she did not express the effects of sexual trauma in a certain way. Although the OIG was unable to identify specific court hearing transcripts where (b)(6); (b)(7)(C) made these comments, the OIG did interview witnesses who explained that they witnessed Abbott's comments firsthand. The OIG found these witnesses to be credible because they presented firsthand, detailed accounts of the incidents. While (b)(6); (b)(7)(C) denied making either comment, he did acknowledge that he might use a victim's response in a situation such as that presented by the black female respondent to assess her credibility. The complainant in this particular allegation was the respondent's attorney who recalled the incident in detail due to the negative emotional impact (b)(6); (b)(7)(C) comments caused the attorney and the respondent and (b)(6); (b)(7)(C) ultimate decision to have the respondent deported. For this reason, the OIG found the complainant's statements to be credible. In both cases, the OIG deemed (b)(6); (b)(7)(C) comments to be inappropriate and unprofessional. The "one stop shop" comment was an unnecessary and crude commentary on the respondent's sexual orientation and therefore violated the Department's zero tolerance policy on harassment based on sexual orientation. (b)(6); (b)(7)(C) comment about expecting respondents who have suffered sexual trauma to respond in certain ways to that trauma could potentially invalidate authentic responses by such victims. While an immigration judge must assess a respondent's credibility, and an examination of the authenticity of a respondent's reaction to trauma may play a role in that assessment, requiring certain types of responses and/or invalidating others goes beyond such an assessment.

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

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

