

Submitted via www.regulations.gov

September 26, 2026

Sirce E. Owen,
Acting Director,
Executive Office for Immigration Review,
Department of Justice
5107 Leesburg Pike, Suite 2500,
Falls Church, Virginia 22041

Re: Civil Money Penalty for Actions in Contempt of an Immigration Judge's Proper Exercise of Authority, RIN 1125-AB02 or EOIR Docket No. EOIR-26-AB02

Dear Acting Director Owen:

The National Immigration Project submits the following comment in opposition to the Executive Office for Immigration Review's (EOIR) proposed "Civil Money Penalty for Actions in Contempt of an Immigration Judge's Proper Exercise of Authority." The proposed rule is based on a false premise and prioritizes efficiency over due process. The proposed rule is also vague and over broad, unfairly applies to only to respondents, their counsel, and their witnesses, and is unnecessary.

The National Immigration Project is a national nonprofit membership organization that provides support, referrals, and legal and technical assistance to attorneys, community organizations, families, and advocates seeking to advance the rights of noncitizens. The National Immigration Project fights for fairness and transparency in immigration adjudication systems and believes that all noncitizens should be afforded the right to fair adjudications of their claims to remain in the United States. Our attorneys practice in immigration court, before the Board of Immigration Appeals (BIA) and in federal court. Additionally, we provide mentorship to other counsel that appears before EOIR. We are concerned that the purpose of this rule is to instill fear in practitioners and to chill speech that is critical of processes in immigration court which are increasingly hostile to noncitizens. The National Immigration Project strongly opposes this proposed rule.

The Proposed Rule is Based on a False Premise and Seeks Efficiency at the Expense of Due Process

The proposed rule would grant immigration judges (IJs) authority to hold immigration court practitioners in contempt and impose civil fines on them.¹ The preamble states the proposed rule will allow IJs “to control their courtrooms and to protect the adjudicatory system from fraud and abuse.”²

This rhetoric, implying that immigration attorneys are responsible for “fraud and abuse” mirrors the politicized language President Trump used in an early executive order maligning the immigration bar with no evidence:

the immigration bar, and powerful Big Law pro bono practices, frequently coach clients to conceal their past or lie about their circumstances when asserting their asylum claims, all in an attempt to circumvent immigration policies enacted to protect our national security and deceive the immigration authorities and courts into granting them undeserved relief.³

Similarly, under the first Trump administration, then attorney general Jeff Sessions gave a speech to newly inducted IJs, insinuating that immigration attorneys are unethical and “dirty.”⁴ This rule takes that false premise as a starting point and codifies the assumption that immigrants and those who support them lie to the court and engage in abusive behavior.

One of the justifications cited for the proposed rule is that authorizing contempt proceedings against practitioners will allow IJs to “to control the proceedings before them and address and deter conduct that prevents efficient completion of removal proceedings.”⁵ The implication of this rationale is that “efficiency” matters more to EOIR than ensuring that hearings are fair and that noncitizens have a right to a fair hearing. The proposed rule claims a need to deter “delays” and includes “delays” in the same clause as “disrupts, or obstructs the due course of these proceedings.”⁶ The preamble likewise cites deterring “delays” multiple times as a reason that the proposed rule is needed.⁷ Neither the proposed rule nor the preamble acknowledge the legitimate

¹ Proposed 8 CFR § 1003.21 *et seq.*

² 91 Fed. Reg. 47979, 47980 (July 30, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-07-30/pdf/2026-15458.pdf>, citing Memorandum from the Attorney General for the Deputy Attorney General, Assistant Attorney General for Legal Policy, Director of the Executive Office for Immigration Review, and Acting Chief Immigration Judge (Aug. 9, 2006), <https://www.justice.gov/sites/default/files/ag/legacy/2009/02/10/ag-080906.pdf> [<https://perma.cc/V79ET87Q>].

³ The White House, Preventing Abuses of the Legal System and the Federal Court (Mar. 22, 2025), <https://www.whitehouse.gov/presidential-actions/2025/03/preventing-abuses-of-the-legal-system-and-the-federal-court/>.

⁴ EOIR, Attorney General Jeff Sessions Delivers Remarks to the Executive Office for Immigration Review (Oct. 12, 2017), <https://www.justice.gov/archives/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review>. (“We also have dirty immigration lawyers who are encouraging their otherwise unlawfully present clients to make false claims of asylum providing them with the magic words needed to trigger the credible fear process.”)

⁵ 91 Fed. Reg. at 47980.

⁶ Proposed 8 CFR § 1003.22; 91 Fed. Reg. at 47980.

⁷ 91 Fed. Reg. at 47980.

reasons that proceedings may require additional time, including: requiring the Department of Homeland Security (DHS) to meet its burden to establish removability; challenging the sufficiency of the government's evidence; making evidentiary or procedural objections; requesting required oral advisals; seeking continuances to await United States Citizenship and Immigration Services (USCIS) adjudication of applications within its sole jurisdiction that may directly affect the noncitizen's eligibility for relief before the immigration court; seeking counsel; and obtaining necessary evidence and witnesses needed for the noncitizen to meet their burden of proof in immigration court.⁸ Each of these actions may require additional hearing time or result in additional proceedings. But the fact that an action requires additional time does not establish that the respondent has improperly "delayed" the proceeding. These are ordinary litigation activities that are integral to the respondent's participation in the proceedings. The proposed rule would not merely discourage such conduct; it would penalize the conduct that an adversarial adjudicatory system depends upon to produce a lawful result. More than a century ago, the Supreme Court held that noncitizens are entitled to due process prior to deportation,⁹ but this rule may impede the ability of noncitizens and their counsel to take the time they need to develop their case, or risk being held in contempt.

The Complex Adjudication System the Rule Establishes Undermines the Rule's Own Claim That the Purpose Is to Create Efficiency in Court

While the preamble cites the immigration court backlog and need for efficiency as one reason to justify this rule,¹⁰ the proposed rule in fact establishes a complex adjudication system for contempt proceedings which would take resources away from case adjudication. The proposed rule would first require a warning, which could be oral or in writing.¹¹ The warning must detail the behavior and explain how it violates the regulations. The IJ must then give the individual notice that they may respond within 10 days.¹² The IJ would include the warning both in the record of proceedings of the individual litigant, and if the case is referred for civil penalties would create an additional contempt record. Moreover, if the case is transferred from one IJ to another the contempt warning would continue to apply in front of the new judge, while, simultaneously, a contempt warning in front of a specific IJ would also travel across multiple cases.¹³ Thus, if an IJ issues a warning to a practitioner in one case, the practitioner may have contempt proceedings initiated against them in a completely unrelated case.¹⁴

⁸ The BIA recently held in *Matter of A-K-R-*, 29 I&N Dec. 839 (BIA 2026) that the only statutory requirement to allow a noncitizen to secure counsel is that the first court hearing cannot take place in fewer than ten days after service of a Notice to Appear. With that ruling, IJs are likely to limit continuances and noncitizens or counsel who argue the need for more time in a case may be found to be "disrupting" the due course of proceedings under this proposed rule.

⁹ *Ng Fung Ho v. White*, 259 U.S. 276, 284–85 (1922). ("[Deportation] may result also in loss of both property and life, or of all that makes life worth living. Against the danger of such deprivation without the sanction afforded by judicial proceedings, the Fifth Amendment affords protection in its guarantee of due process of law.")

¹⁰ 91 Fed. Reg. 47982.

¹¹ Proposed 8 CFR § 1003.125. Given that an IJ may find a respondent, their counsel or their witness to be "disruptive" during a hearing, it is possible that an "oral warning" will not suffice for the person subject to contempt to understand what the IJ is saying if there is a contentious verbal exchange between the IJ and the individual.

¹² Proposed 8 CFR § 1003.125.

¹³ 91 Fed. Reg. at 47983.

¹⁴ *Id.*

Then, if the IJ believes the practitioner has continued to engage in contemptuous conduct, they would initiate a civil penalty process which will require the use of significant EOIR resources. The individual facing contempt would be served a Civil Monetary Penalty (CMP) notice which must include data about the individual against whom contempt is sought as well as the case in which the alleged contemptuous behavior occurred.¹⁵ EOIR will create a new Record of Proceeding for the contempt proceeding. While the proposed rule states that general concepts of due process apply, it also says that the individual is not entitled to all of the protections under the Administrative Procedures Act.¹⁶ The individual then has 30 days to respond before the Chief Immigration Judge or their designee issues a written decision determining whether the legal standard laid out in these new rules have been met and setting a monetary amount for the contempt.¹⁷ If the Chief Immigration Judge finds the individual in contempt, the individual may then appeal that decision to the Board of Immigration Appeals.¹⁸ That appeal will cost \$675¹⁹ and must be served on EOIR's general counsel.²⁰ The BIA will issue a simultaneous briefing schedule and then make a decision on the contempt.²¹ Once the contempt order becomes final, failure to pay will result of suspension from EOIR practice for practitioners.²²

While it is a net positive that the rule includes procedural safeguards for those who face contempt, this complex adjudication system undermines an alleged primary purpose of the rule to increase efficiency before EOIR. The rule can only be seen to increase efficiency in that the fear of being held in contempt and having to fight proceedings on one's own behalf will have a chilling effect on practitioners who may be frightened to fully litigate cases on behalf of their clients.

The Conduct Proscribed by the Proposed Rule Is Impermissibly Vague and May Encompass Conduct That Is Not "Contemptuous"

The proposed rule states that it will "only" cover five specified behaviors.²³ Each of these proposed rules is problematic.

First, 8 CFR § 1003.124(b)(1) would allow an IJ to hold practitioners in contempt for "the repeated failure to appear or to appear in a timely manner, including by telephone or by video-conferencing, for scheduled hearings or pre-hearing conferences, without good cause." On its face, this proposed rule sounds reasonable, but in practice EOIR has been shuffling its dockets, speeding up some cases with almost no notice, scheduling counsel to appear for multiple individual hearings on a compressed timeline,²⁴ and scheduling noncitizens for mega master

¹⁵ Proposed 8 CFR § 1003.125-27.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Proposed 8 CFR § 1003.128.

¹⁹ 91 Fed. Reg. 47986.

²⁰ Proposed 8 CFR § 1003.128.

²¹ *Id.*; Proposed 8 CFR § 1003.3.

²² Proposed 8 CFR § 1003.129.

²³ *See* 8 CFR § 1003.124(b).

²⁴ Ximena Bustillo, *Immigration courts fast-track hearings for Somali asylum claims*, NPR, Feb. 9, 2026, <https://www.npr.org/2026/02/09/nx-s1-5707217/somali-asylum-cases-rescheduled>.

hearings,²⁵ seemingly for no purpose other than to generate in absentia removal orders. The challenge practitioners face in keeping up with ever-changing dockets may lead to missing court appearances. Counsel already face the consequences for failing to appear, including the possibility of having ineffective assistance of counsel complaints filed; there is no need to hold counsel in contempt as well.

The second ground for contempt, is “(2) Repeated failure to comply with Immigration Judge orders to timely file pleadings, applications, pre-hearing statements, evidentiary submissions, or any other filings, without good cause.” Complying with court orders is again, complicated by the extreme docket shuffling EOIR has engaged in. For example, one author of this comment is aware of an attorney who recently had their individual hearing accelerated from being many months in the future to being less than two weeks in the future. As a result, it was impossible to comply with the 30-day evidentiary filing rule in the Immigration Court Practice Manual. Adding the possibility of contempt to the other consequences of not complying with an impossible deadline would be patently unfair. Moreover, this provision of the rule is not restricted to practitioners. Thus, pro se individuals, most of whom are not fluent in English, could also face monetary fines for not complying with a court order that they may not understand or have the ability to comply with.

The third ground for contempt is, “(3) Disorderly or abusive behavior or language in and around the courtroom and before the Immigration Judge or abusive language in any filing with the court.” This ground would apply to all individuals, practitioners, respondents, and witnesses, and there is no requirement that the behavior occur repeatedly. While the language in the regulation implies that this rule would only apply to yelling or using profanities, the preamble suggests that individuals could be held in contempt for language which is far more measured. The preamble says the definition “includes, but is not limited to, behavior or language that impugns the integrity of the court[or] unfairly maligns the competence or impartiality of the presiding Immigration Judge. . .”²⁶ This extremely broad interpretation of covered expression likely violates a noncitizen’s and their counsel’s First Amendment right to expression as well as their right to fully develop the record in their case. Under 8 USC § 1252(b)(9), all issues on appeal arising from removal proceedings are consolidated into a petition for review. “Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section.” As a result of this “zipper clause,” any issues that a litigant in removal proceedings wishes to raise must be raised through a petition for review. Thus, if a litigant believes that an IJ is biased and files a motion for the IJ to recuse themselves, the respondent or respondent’s counsel could be found in contempt of the court under this rule.

Likewise, if respondent’s counsel believes there are systemic problems with the current immigration court adjudication system, pursuant to 8 USC § 1252(b)(9), the means to bring those issues before the federal court is through a petition for review. Thus, respondent’s counsel has an ethical obligation to make a record about procedural or substantive defects occurring in

²⁵ Ximena Bustillo, *Immigration courts are using a new tactic to speed up deportations*, NPR, May 26, 2026, <https://www.npr.org/2026/05/26/nx-s1-5830474/trump-immigration-courts-mega-masters>.

²⁶ 91 Fed. Reg. at 47981.

immigration court within each individual removal proceeding, as well as systemic failures. The proposed rule could subject counsel to contempt if, for example, they point out that recently hired IJs may exhibit bias because they predominantly have backgrounds in prosecution,²⁷ or if counsel questions the experience and/or legality of the appointment of military attorneys as IJs.²⁸ The executive branch should not hold contempt authority over immigrants' counsel to prevent them from litigating their clients' rights in federal court.

The fourth ground for contempt is:

(4) Knowingly or recklessly making a false statement of material fact or law or offering false evidence. For attorneys and representatives, such conduct includes failing to take appropriate remedial measures after receiving notice of the falsity, or when the attorney or representative reasonably should have known of the falsity, of either a previous statement of material law or fact or previously offered material evidence.

The proposed rule further states, “(b) Action and inaction. Both actions and inactions may constitute contemptuous conduct if they satisfy the requirements of paragraph (a) of this section.” This proposed rule imposes new duties on counsel which may conflict with their state bar’s ethical rules. As noted in footnote 9, this section of the contempt rule imposes greater liability on counsel than the disciplinary rule found at 8 CFR § 1003.102(c) which requires remedial measures only for “false evidence.” While the footnote states that this change corrects an “oversight,” neither the proposed rule nor the preamble acknowledge the challenges in keeping up with immigration law. Since the start of this administration, there have been more than 150 precedential decisions issued by the BIA and the attorney general.²⁹ Many of these decisions have overturned longstanding precedent. Holding attorneys, or pro se respondents, in contempt for their inability to keep up with near-daily changes in the law would be fundamentally unfair.

In addition to the BIA’s systemic revision of immigration law, there is near-constant litigation on changes in immigration law which, again, can make the law different from day to day and from circuit to circuit. For example, it is common for litigants to cite regulations that were published under the first Trump administration which never came into effect because of litigation.³⁰ Under the proposed rule, counsel for respondents or respondents could face contempt for misciting enjoined regulations even while IJs and DHS counsel would face no penalty for doing so.

²⁷ Nate Raymond, *Trump Administration Brings on Record New Class of Immigration Judges*, REUTERS, May 21, 2026, <https://www.reuters.com/legal/government/trump-administration-brings-record-new-class-immigration-judges-2026-05-21/>.

²⁸ New York City Bar Association, *Condemning the Use of Military Lawyers as Temporary Immigration Judges* (Jan. 15, 2026) <https://www.nycbar.org/reports/condemning-the-use-of-military-lawyers-as-temporary-immigration-judges/>. “A JAG attorney’s “legal and ethical obligations to follow orders make it challenging to provide a truly fair hearing to the immigrants in their courtroom,” especially given the unambiguous pro-deportation agenda of President Trump, the Commander-in-Chief.” [internal citations omitted.].

²⁹ <https://www.justice.gov/eoir/volume-29>.

³⁰ See Victoria Neilson, *The Death to Asylum Regulations Continue to Harm Asylum Seekers Even Though They Are Enjoined*, THINK IMMIGRATION (Dec. 9, 2022) <https://www.aila.org/blog/the-death-to-asylum-regulations-continue-to-harm-asylum-seekers-even-though-they-are-enjoined>.

Furthermore, the proposed rule could subject an attorney to contempt for “failing to take appropriate remedial measures” after their client made a false statement. While most states require counsel to engage in remedial measures if they know that false evidence was offered, not every state does. For example, under California’s legal ethics rules “remedial measures” do not include “disclosure of client confidential information.”³¹ Thus counsel would need to navigate different legal standards for their state bar and for immigration court.

The proposed rule imposes penalties if the practitioner was not aware of any false statement but “reasonably should have known” and further permits sanctions both for action and inaction. The preamble does not explain when a practitioner should reasonably know when a statement is false or when evidence may not be what it purports to be, nor does it explain what kind of inaction could lead to contempt against a practitioner. Counsel has a duty to provide zealous representation to their clients but this rule subjects counsel to potential sanctions for undefined inaction in determining whether a client has been untruthful, putting counsel at odds with the client they are representing. The rule further conflicts with some state ethics rules. The “reasonably should have known” standard is substantially lower than the “actual knowledge” requirement in the American Bar Association Model Rules of Professional Conduct, which form the basis for most state ethics rules.³²

Finally, the proposed rule could result in a contempt finding for “(5) Willfully misleading, misinforming, threatening, or deceiving any person (including a party to a case or an officer or employee of the Department of Justice), concerning any relevant matter relating to a case.” Again, the preamble provides no examples of what behavior might fall under this section of the rule. It is not clear either whether the word “Willfully” only modifies “misleading” or whether it modifies every word in the section. The scope of “willfully” matters because there could be circumstances where counsel, or a respondent “misinform[s]” the court of a fact inadvertently, but not willfully. Since the proposed rule does not explain what behavior is covered by this section, it may put counsel and respondents at risk for innocent mistakes.

Finally, the preamble specifies that the contempt can occur “in the court waiting room, hallway, or at the filing window.”³³ Given that Immigration and Customs Enforcement (ICE) itself has disregarded a federal court order to make arrests in immigration court hallways,³⁴ the one-sidedness of this provision—applying to respondents, their counsel and witnesses but not to government employees is particularly evident. It is difficult to imagine any action in courthouse hallways or waiting rooms that is more disruptive to fair adjudications in the immigration court than arresting noncitizens who are attending their court hearings, yet the only people who might be subject to contempt and fines are those who protest such arrests in the hallways. This

³¹ California, Rules of Professional Conduct § 3.3, comment 5,

<https://www.calbar.ca.gov/sites/default/files/portals/0/documents/rules/Rules-of-Professional-Conduct-3.pdf>.

³² See ABA Model Rule 1.0(f), 3.3 & cmt. [8]; for state professional code language modeled on the ABA language, see also Washington state, Rules of Professional Conduct §3.3, comment 8,

https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_03_03_00.pdf. (Under Washington state rules, a “lawyer’s reasonable belief that evidence is false does not preclude its presentation to the trier of fact.”).

³³ 91 Fed. Reg. at 47982.

³⁴ Erik Uebelacker, *ICE Makes Arrests at NYC Immigration Court Despite Court Ban*, COURTHOUSE NEWS SERVICE, July 17, 2026, <https://www.courthousenews.com/ice-makes-arrests-at-nyc-immigration-court-despite-court-ban/>.

proposed rule would infringe on the First Amendment rights of respondents, their counsel, and their witnesses and should be withdrawn.

The Proposed Rule Applies Only to One Party—Respondents and their Counsel and Witnesses—in Unfairly Punitive Ways

Instead of applying to both respondent and DHS, this proposed rule allows IJs to hold only respondents, and their counsel and witnesses in contempt. This one-sided approach is inconsistent with the broad contempt authority Congress authorized in 1996. Section 240(b)(1) authorizes an IJ to sanction “any action (or inaction)” in contempt of the judge’s proper exercise of authority. Nothing in the statutory language limits that authority to respondents, their counsel, or their witnesses, or excludes DHS and its representatives from its reach.

Subsequent congressional consideration of the provision further supports an even-handed understanding of that authority. In 2018, Judge Ashley Tabaddor, then President of the National Association of Immigration Judges, testified before the Senate that misconduct by *both* DHS and private attorneys had long hindered the efficient and fair adjudication of cases, reflecting the understanding that the contempt authority was intended to address misconduct by both sides. She identified failures by both private counsel and DHS attorneys to appear, comply with court orders, and meet court-imposed deadlines as examples of the problems that contempt authority was intended to address.³⁵

Other documented examples illustrate the problems that can arise when DHS counsel or government witnesses engage in conduct that affects the fair and efficient adjudication of proceedings. In some cases, representations by DHS employees have been found to contain significant inaccuracies and falsehoods, leading federal district judges to question the reliability of government evidence and representations.³⁶ Yet the proposed rule would give IJs punitive authority over respondents, their counsel, and their witnesses while providing no comparable authority over DHS counsel or government witnesses.

By having the IJ be the person who initiates contempt proceedings against the respondent, their counsel, or their witness, but not against DHS counsel or government witnesses, the rules place the IJ in the role of prosecutor against the defense side and the defense side only. IJs cannot be fair and neutral when they are only empowered to initiate these punitive proceedings against only one side.

In addition to allowing IJs to hold practitioners in contempt, the proposed rule would also allow IJs to hold respondents and respondents’ witnesses in contempt and impose monetary fines.³⁷

³⁵ Statement of Judge A. Ashley Tabaddor, President National Association of Immigration Judges Before the Senate Judiciary Committee, Border Security and Immigration Subcommittee Hearing on “Strengthening and Reforming America’s Immigration Court System” at 4 (April 18, 2018), <https://www.judiciary.senate.gov/imo/media/doc/ICC24AAF-5056-A066-60CE-28E88732F627/04-18-18%20Tabaddor%20Testimony.pdf>.

³⁶ See *Almeida De Sousa v. Wesling*, No. CV 26-13761-BEM, 2026 WL 2676623, at *6 (D. Mass. Sept. 11, 2026) (questioning the reliability of ICE’s representations and uncorroborated Forms I-213 after finding repeated inaccuracies and falsehoods, and declining to apply a presumption of regularity to ICE).

³⁷ 91 Fed. Reg. at 47981.

Significantly, and unlike other courts with contempt authority, the proposed rule would specifically exclude “current employees or contractors of the Federal government acting in their official capacity.”³⁸ Thus, one set of rules would apply to noncitizens, their counsel, and their witnesses, while counsel for the government, and even witnesses and contractors for the government would be completely excluded from this rule. Although EOIR falls under the Department of Justice, an entirely different agency, DHS appears in immigration court on behalf of the government, and presumably witnesses for the government would also likely be DHS employees. Making contempt authority applicable to one litigant but not the other creates the appearance that the IJ is aligned with DHS. While the preamble states that this structure of exempting DHS counsel from discipline by the IJ mirrors the existing disciplinary rules, that logic makes no sense since this contempt authority is different from disciplinary rules and there is no analogous contempt authority that DHS imposes on its employees. Furthermore, the disciplinary rules found at 8 CFR § 1003.102 apply to practitioners, not to respondents or respondents’ witnesses. It is especially egregious to exempt DHS witnesses and contractors from the contempt authority IJs would hold over respondents and their witnesses, given that there have been recent documented instances of Immigration and Customs Enforcement employees lying even in federal court.³⁹

One of the reasons a noncitizen could be held in contempt is, “(2) Repeated failure to comply with Immigration Judge orders to timely file pleadings, applications, pre-hearing statements, evidentiary submissions, or any other filings, without good cause.” While the “without good cause” section of the proposed rule could mitigate the harm, there is no definition of what “repeated failure” means. As noncitizens are increasingly subjected to detention, it is often more difficult for them to comply with IJs’ orders since detained noncitizens, especially those without counsel, often do not have the ability to communicate with people who can assist in preparing their applications.⁴⁰ Noncitizens who are unable to comply with an IJ’s order to submit evidence already face possible pretermission or denial of their applications, potentially subjecting a detained noncitizen to monetary fines for being unable to procure documents on an IJ’s timeline would be unreasonable and unfairly punitive.

The Proposed Rule Is Unnecessary

Assuming that IJs have just cause to discipline respondents’ counsel, IJs already have the authority to refer attorneys and accredited representatives for disciplinary proceedings, as the preamble makes clear.⁴¹ That disciplinary system reaches much of the same conduct identified in the proposed rule, including conduct that would constitute contempt of court, frivolous behavior,

³⁸ *Id.*

³⁹ See, for example, Kyle Cheney and Josh Gerstein, *Judge Mulls Contempt over DHS’ Patently False’ Allegation in Deportation Case*, POLITICO, May 4, 2026, <https://www.politico.com/news/2026/05/04/ice-detention-case-contempt-hearing-00905610>; Sergio Martínez-Beltrán, *DOJ Admits ICE Courthouse Arrests Relied on Erroneous Information*, NPR, Mar. 26, 2026.

⁴⁰ See Zachary Manfredi and Joseph Meyers, *Isolated and Unreachable: Contesting Unconstitutional Restrictions on Communication in Immigration Detention*, 95 N.Y.U. L. Rev. 130 (2020).

⁴¹ 91 Fed. Reg. at 47980.

conduct prejudicial to the administration of justice, repeated failures to appear without good cause, and failures to act with reasonable diligence and promptness.⁴²

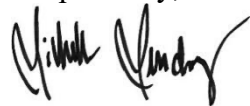
EOIR's own records demonstrate that the system is actively used to impose significant professional consequences. EOIR's July 2026 data showed that approximately 46 practitioners received immediate suspension or final disciplinary action in 2025 and 37 practitioners received such action in 2026 through July 13.⁴³ EOIR acknowledges that the proposed civil money penalty would reach a broader group than EOIR's professional-conduct rules, but its reliance on the existing disciplinary figures demonstrates that EOIR already has an active mechanism for addressing many of the forms of misconduct covered by the proposed rule.⁴⁴

Given that these disciplinary proceedings can lead to suspension from practice before EOIR, a powerful tool to rein in any unethical or contemptuous behaving in their courtrooms already exists. Yet EOIR has not identified a gap in the existing mechanisms available to address attorney and accredited representative misconduct that requires the creation of an additional civil-penalty system. This begs the question: why is EOIR issuing this proposed rule now? EOIR itself describes the proposed civil money penalty as an "exceptional tool" that should be "rarely invoked."⁴⁵ Immigration counsel are genuinely concerned that the proposed rule is intended to intimidate them from providing zealous advocacy to their clients at a time when the odds are stacked against them.

Conclusion

This proposed rule will have a chilling effect on the immigration defense bar. The needless intimidation of defense lawyers may promote efficiency in immigration proceedings, but the price will be justice for the immigrant community. EOIR should withdraw this proposed rule in its entirety. Please do not hesitate to contact Michelle N. Méndez at michelle@nipnl.org if you have any questions or need any further information.⁴⁶

Respectfully,



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⁴² EOIR, Attorney Discipline Fact Sheet (Nov. 2023), https://www.justice.gov/d9/2023-11/attorney_discipline_fact_sheet.pdf.

⁴³ EOIR, *List of Currently Disciplined Practitioners* (Sept. 21, 2026), <https://www.justice.gov/eoir/list-of-currently-disciplined-practitioners>.

⁴⁴ 91 Fed. Reg. at 47986.

⁴⁵ *Id.* at 47982.

⁴⁶ Victoria Neilson, Managing Attorney, and Rebecca Chavez, Staff Attorney, authored this comment with contributions from Michelle N. Méndez, Legal Director.