



## Detail

**Complaint Number:** 753

**Immigration Judge:** (b)(6)

**Complaint Received Date:** 04/18/13

**Current ACIJ**  
Bartolomei, Richard J.

**Base City**  
(b) (6)

**Status**  
CLOSED

**Final Action**  
Complaint dismissed because it was disproven

**Final Action Date**  
07/12/13

**Past ACIS:**

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	In-court conduct	DIS (b)(6) and (b)(7) (b)(6) and (b)(7)

**Complaint Narrative:** Complainant felt threatened by Judge when [REDACTED] spoke to her alone about whether the attorney has said to others outside of court.

**Complaint History**

04/22/13 ACIJ asked if to respond  
05/03/13 Database entry created  
07/12/13 Complaint dismissed because it was disproven

# Immigration Judge Complaint Intake Form

**HQ Use Only:**  
complaint #: \_\_\_\_\_  
source: first / subsequent

**Date Received at OCIJ:** \_\_\_\_\_

complaint source type	
<input type="checkbox"/> anonymous	<input type="checkbox"/> BIA <input type="checkbox"/> ___ Circuit <input type="checkbox"/> EOIR <input checked="" type="checkbox"/> DHS <input type="checkbox"/> Main Justice
<input type="checkbox"/> respondent's attorney	<input type="checkbox"/> respondent <input type="checkbox"/> OIL <input type="checkbox"/> OPR <input type="checkbox"/> OIG <input type="checkbox"/> media
<input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.)	
<input type="checkbox"/> other: _____	
complaint receipt method	
<input type="checkbox"/> letter	<input type="checkbox"/> IJC memo (BIA) <input checked="" type="checkbox"/> email <input type="checkbox"/> phone (incl. voicemail) <input type="checkbox"/> in-person
<input type="checkbox"/> fax	<input type="checkbox"/> unknown <input type="checkbox"/> other: _____
date of complaint source	complaint source contact information
(i.e., date on letter, date of appellate body's decision) April 18, 2013	name: (b)(6) & (b)(7)(C)
additional complaint source details (i.e., DHS component, media outlet, third party details, A-number) (See complaint source) (b)(6) & (b)(7)(C) Assistant Chief Counsel—email to (b)(6) & (b)(7)(C)	address: Chief Counsel Department of Homeland Security Office of Chief Counsel (b)(6) & (b)(7)(C)
	email: (b)(6) & (b)(7)(C)
	phone: (b)(6) & (b)(7)(C)
	fax: _____

IJ name	base city	ACIJ
Immigration Judge (b)(6)	(b)(6)	Rico J. Bartolomei
relevant A-number(s)	date of incident	
A(b)(6)	April 17, 2013	
allegations		
The complainant felt threatened by Judge (b)(6) when Judge (b)(6) spoke to her alone about whether the Attorney has said to others outside of court that she could not believe that Judge (b)(6) was going to grant asylum to that "bitch." The Complainant denied ever having made that remark and felt intimidated by Judge (b)(6) bringing it up and then discussing that the best way to deal with complaints was directly.		
nature of complaint		
<input checked="" type="checkbox"/> in-court conduct	<input type="checkbox"/> out-of-court conduct	<input type="checkbox"/> due process <input type="checkbox"/> bias <input type="checkbox"/> legal
<input type="checkbox"/> criminal		
<input type="checkbox"/> incapacity	XX other: Hostile work environment	

[illegible]

## EOIR FOIA Processing (EOIR)

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**From:** Bartolomei, Jr. Rico (EOIR)  
**Sent:** Monday, April 22, 2013 1:25 PM  
**To:** Keller, Mary Beth (EOIR)  
**Subject:** FW:(b) (6) 4/17/2013

FYI—I will be working on this one next.

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**From:** (b)(6) & (b)(7)(C)  
**Sent:** Thursday, April 18, 2013 3:50 PM  
**To:** Bartolomei, Jr. Rico (EOIR)  
**Subject:** RE: (b) (6) 4/17/2013

Thank you Judge.

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**From:** Bartolomei, Jr. Rico (EOIR) [mailto:(b) (6)]  
**Sent:** Thursday, April 18, 2013 3:49 PM  
**To:** (b)(6) & (b)(7)(C)  
**Subject:** RE: (b) (6) 4/17/2013

Good Afternoon (b)(6) & (b)(7)(C)

I appreciate you letting me know of this incident. I am unaware of any type of back story myself. Your advice to your attorney is right on point. I am going to look into it myself. Thank you again for bringing it to my attention. Regards,  
Rico

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**From:** (b)(6) & (b)(7)(C)  
**Sent:** Thursday, April 18, 2013 8:31 AM  
**To:** Bartolomei, Jr. Rico (EOIR)  
**Subject:** FW:(b) (6) 4/17/2013

Good morning Judge,

Wanted to let you know this happened yesterday. Not sure if there is a back story between these two or not but the situation seemed odd to me. I also asked (b)(6) & (b)(7)(C) if the statements the IJ is attributing to her were true and she denied it. I am going to advise (b)(6) & (b)(7)(C) to refrain from off the record conversations with (b) (6) that she feels uncomfortable with. For what it's worth telling any attorney that "things could get ugly" seems overly personal to me.

Thanks,

(b)(6) & (b)(7)(C)  
Chief Counsel  
U.S. Department of Homeland Security  
Immigration and Customs Enforcement

(b)(6) & (b)(7)(C)

**From:** (b)(6) & (b)(7)(C)  
**Sent:** Wednesday, April 17, 2013 12:03 PM  
**To:** (b)(6) & (b)(7)(C)  
**Cc:** (b)(6) & (b)(7)(C)  
**Subject:** (b)(6) 4/17/2013

(b)(6) & (b)(7)(C) and (b)(6) & (b)(7)(C)

Today after court recessed, (b)(6) excused the interpreter and told the interpreter that (b)(6) needed to talk to me privately. (b)(6) told me that (b)(6) knows that people in our office talk about (b)(6) in our office and say bad things and that information gets back to (b)(6). (b)(6) told me that (b)(6) heard last week that after a hearing I came back to my office and complained that (b)(6) was "going to give asylum to this bitch." The case (b)(6) was referring to is A(b)(6) was not upset that I was upset with (b)(6) trying to find a way to grant the alien asylum because as (b)(6) puts it, "it's (b)(6) job", but (b)(6) was upset that (b)(6) heard I made a disparaging remark about an alien (b)(6) told me not to trust the people in my office; that not everyone agrees with what I say and other ICE employees report information back to (b)(6)

(b)(6) expressed (b)(6) concern that when DHS attorneys have problems with (b)(6), we go to (b)(6) headquarters superiors. (b)(6) said that they have a zero tolerance policy right now (I'm not sure what they are not tolerating – (b)(6) did not expand on this.) (b)(6) said that (b)(6) always keeps (b)(6) mouth shut and does not complain about DHS attorneys, but if (b)(6) were to, (b)(6) could talk to our headquarters and it would come all the way down the chain. (b)(6) told me that (b)(6) was not threatening me, but it felt very threatening. (b)(6) explained that (b)(6) could report me for saying disparaging remarks about the alien, but (b)(6) wouldn't do that. (b)(6) said (b)(6) does not want to create a toxic courtroom, but things could get ugly. (b)(6) also explained that (b)(6) problem is not just with me, but other DHS attorneys as well.

The entire conversation lasted approximately 5 minutes and I did not say anything in response. I left the courtroom feeling threatened.

(b)(6) & (b)(7)(C)  
Assistant Chief Counsel  
Office of Chief Counsel  
U.S. Department of Homeland Security  
Immigration and Customs Enforcement  
(b)(6) & (b)(7)(C)

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MEMORANDUM

June 21, 2013

TO: Judge Bartolomei

FROM: Judge (b) (6)

RE: E-mail complaint from (b)(6) & (b)(7)(C) A (b) (6)

Please find here my response to the complaint from ACC (b)(6) & (b)(7)(C) regarding the matter of (b) (6).

This is a removal hearing for a female respondent who has been in the United States since 1989. She is the mother of 8 children 7 of whom are U.S. citizens. She was arrested at the (b) (6) POE on 10/14/12 for trying to smuggle a child into the United States using a birth certificate of one of her children. The document she used for herself was a Puerto Rican birth certificate with "Void" stamped all over the front of the document. I sustained a 212(a)(7) charge and the relief filed was a 240A(b). It took some time to clarify the respondent's criminal record. I found that she had a CIMT, a 530.5(a) identity theft and was ineligible for 240A(b) relief. The respondent then expressed a fear of returning to Guatemala and (b) (6) agreed to continue to represent her on a 589 as his continued representation would be pro bono.

I started the merits hearing in this case on April 11, 2013. (b)(6) & (b)(7)(C) was the attorney for the government; (b) (6) is representing (b) (6). Following three and a half hours of testimony that included facts related to acts of physical and sexual violence in Guatemala at the age of 14 and a history of domestic violence, including the kidnapping of two of the respondent's children when they were 3 and 5 year old, by their father, an LPR deported for drug trafficking, it became clear to me that (b) (6) is, and has been, suffering from some form of depressive disorder for many years. Although I was convinced that she was competent, the testimony raised a number of issues regarding whether or not respondent might be eligible for benefits under the VAWA or 240A(b)(2). We did some assessment of those issues on the record but I requested additional information for follow up.

I closed by expressing my concern about the respondent but stated that if there were no alternative grounds for seeking relief from removal outside the administrative process I was prepared to complete testimony and make findings of fact and conclusions of law on the I-589. I put the case on a reset master calendar to get a status review done and schedule the case to complete the merits hearing.

I left the bench. Within 10 minutes (b) (6) came into my office and told me that she had just had a conversation with an individual who works in the same office area as (b)(6) & (b)(7)(C) who reported that when (b)(6) & (b)(7)(C) returned from court she made a comment overheard by at least this ICE employee to the effect that "I can't believe she is going to try and find a way to grant that bitch asylum."

I was concerned that (b)(6) & (b)(7)(C) was making prejudicial remarks about a respondent whose case she was prosecuting. I did not think it was necessary to request additional action to verify the facts or file a complaint. I decided to handle the matter by advising (b)(6) & (b)(7)(C) informally, of the information given to me with the cautionary note that she should keep her

thoughts to herself if she found (b) (6) personally distasteful. I did just that on April 17. After court had adjourned I asked (b)(6) & (b)(7)(C) if I could have a word with her. I explained to her that certain information had come to my attention. I explained to her that she should not assume that everything that she and her colleagues may say that disparages any particular respondent or me is not repeated to others; that she should not assume that everyone working for ICE agrees with remarks made by government counsel about a respondent or about me.

I had no idea that (b)(6) & (b)(7)(C) was upset about or thought I was trying to give asylum to the respondent. I never suggested that it was “my job” to find a way to grant asylum. I was more interested in being advised if there were alternative forms of relief available to the respondent that did not include asylum. I made clear, nonetheless, that if the I-589 were the only relief available I would certainly make findings and conclusion on that application. I was most concerned about a possible 240A(b)(2) or VAWA application and wanted additional evidence regarding conditions in Guatemala as femicide is recognized as a continuing and growing problem there.

I did use the term “zero tolerance” referring not only to EOIR but DHS positions on misconduct. Nevertheless, I made clear that I was talking to her about the matter because I was not going to take any formal action. I did not tell (b)(6) & (b)(7)(C) that I was *not* threatening her; in fact, I went out of my way to make clear that I was speaking to her informally because I was not addressing a formal complaint. I did, however, want her to know that I took the matter seriously.

I never told (b)(6) & (b)(7)(C) that I had problems with other DHS attorneys. I did tell her that comments made about me personally by her colleagues were oftentimes repeated to me; that I never acted on those. I explained that I had no interest in creating a toxic environment at CCA by filing complaints against government lawyers particularly when comments repeated to me were personal and did not affect the respondents whose cases I was hearing. In fact, I told (b)(6) & (b)(7)(C) that the only reason I decided to discuss the matter with her was because the comment attributed to her was made about a respondent whose case we had not completed.

I never used the phrase “things could get ugly.” It was my purpose from the outset not to make a big deal about this; to keep it informal, as a cautionary tale. I never “chat” with DHS counsel off the record and have no qualms or fears letting the record speak for itself. Had I been interested in taking any actions on this matter I certainly would not have had a private conversation with (b)(6) & (b)(7)(C) about it.

I have no desire to take this matter any further because I don’t think it is necessary. (b) (6) does not want to involve the ICE officer who communicated (b)(6) & (b)(7)(C) comment to her. I was never interested in making a formal complaint; it is unfortunate that (b)(6) & (b)(7)(C) misinterpreted both the meaning and the spirit of my comments to her; that her e-mail misstates the facts almost entirely.

Finally, when this case came before me on a reset master calendar on May 22 I gave (b)(6) & (b)(7)(C) some background on the case. (b) (6) had additional documents to file and was awaiting a response on a FOIA request. (b)(6) & (b)(7)(C) said he had a conversation with (b)(6) & (b)(7)(C) who had told him that the case was completed; that I was publishing a written decision on the merits. I

explained to (b)(6) & (b)(7)(C) that I had not completed the case; that it was continued for additional review and evidence. I explained that I had no idea why (b)(6) & (b)(7)(C) thought the case had been completed. I scheduled dates for the final submission of evidence, giving (b)(6) & (b)(7)(C) until July 8 to file any objections she might have to (b) (6) evidence, and/or the hearing date scheduled to complete the case. The May 22 hearing is on DAR.

I have been critical of (b)(6) & (b)(7)(C) lack of case preparation, her failure to make citation to specific cases when she is briefing a legal issue, and her practice of making definitive statements of the law that have no legal basis. I have put these observations on the record whenever they come up and did, some time ago, express to (b)(6) & (b)(7)(C) as a senior chief counsel that Ms. (b)(6) & (b)(7)(C) did not, in many instances, have a grasp of the immigration law required for courtroom practice. None of this is personal, I have no personal relationship with (b)(6) & (b)(7)(C) it is ultimately a matter of professional training and proper decorum.