

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

**COMMISSION ON JUDICIAL CONDUCT
CASE NO. OE-157
COMPLAINT NO. 2019-22**

IN RE: SHELLEY M. RICHMOND JOSEPH

**REPORT OF HEARING OFFICER TO
THE COMMISSION ON JUDICIAL CONDUCT**

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I. Executive Summary

Seven years ago, a defendant in a Massachusetts criminal proceeding evaded federal immigration authorities by leaving through the back door of the Newton District Courthouse. While the defendant's lawyer later admitted that the escape plan was his idea, he said that (1) he had explained his plan to presiding District Court Judge Shelley M. Richmond Joseph, and (2) she had authorized it—all during a 52-second off-the-record sidebar. The Commission on Judicial Conduct (the “CJC”) subsequently charged Judge Joseph with willfully facilitating the escape and creating the appearance of impropriety and bias, as well as misleading court authorities in the aftermath of the incident, all in violation of various provisions of the Massachusetts General Laws, Chapter 211C § 2(5) and/or the Code of Judicial Conduct. For the reasons set forth below, I find that Judge Joseph did not know about—much less authorize—the escape plan, and did not mislead court authorities following the incident. However, I find that she inadvertently created the appearance of impropriety and bias in two respects: (1) through her communications with the defense counsel and assistant district attorney during the defendant's arraignment, and (2) by unknowingly violating a court rule when she granted the defense counsel's request to go off the record during a discussion regarding the immigration authorities' interest in taking custody of the defendant. I therefore recommend that she receive a reprimand. Moreover, because this proceeding has been public, and to ensure that there is no misunderstanding as to what Judge Joseph is—and is not—being reprimanded for, I recommend that the reprimand be public.

A. Complaint Against Judge Joseph

The CJC has charged Judge Joseph, an Associate Justice assigned to the Boston Municipal Court of the District Court Department, with violations of M.G.L. c. 211C § 2(5) and five separate Rules of the Code of Judicial Conduct. The CJC alleges that Judge Joseph authorized a defense attorney's plan to help his client evade immigration authorities, violated a court rule requiring proceedings to be on the record, created the appearance of impropriety and bias, and misled court authorities about her conduct.

The CJC alleges that through these actions, Judge Joseph:

“engaged in willful judicial misconduct that brought the judicial office into disrepute, as well as conduct prejudicial to the administration of justice and unbecoming a judicial officer, in violation of M.G.L. c. 211C, sec. 2(5), and that she has violated the Code of Judicial Conduct (Supreme Judicial Court Rule 3:09) by failing to comply with the law, in violation of Rule 1.1; by failing to act, at all times, in a manner that promotes public confidence in the independence, integrity, and/or impartiality of the judiciary, and by failing to avoid impropriety, in violation of Rule 1.2.; by failing to uphold and apply the law, and to perform all duties of judicial office fairly and impartially, in violation of Rule 2.2; by failing to perform her judicial duties competently, in violation of Rule 2.5; by failing to cooperate with other judges and court officials in the administration of court business, in violation of Rule 2.5; and by

failing to cooperate and be candid and honest with judicial disciplinary authorities, in violation of Rule 2.16.”¹

B. Judge Joseph’s Response

Judge Joseph denies the charges, stating that she “has committed no misconduct, and certainly no willful judicial misconduct,” that she “attempted at all times to treat the parties before her . . . fairly and in accordance with the law and court policies, and to promote the fair administration of justice and public confidence in the independence, integrity, and impartiality of the judiciary,” and that she “fully cooperated and responded truthfully to the inquiries of her judicial colleagues, supervisors, and judicial disciplinary authorities.”²

C. Summary of Hearing

From June 9 to June 16, 2025, the parties presented evidence through the testimony of 17 witnesses, including Judge Joseph. The hearing began with a viewing of the Newton District Courthouse (“NDC”) on June 9, 2025.

D. Summary of Findings

After presiding over the hearing and weighing the evidence, I now issue this Report and Recommendation (the “Report”), with my findings of fact, conclusions of law, and disciplinary recommendation. A summary of my findings is set forth immediately below, followed by a more in-depth analysis thereafter.

April 2, 2018

On April 2, 2018, Judge Joseph was still a new and inexperienced judge. She had taken her oath of office as a District Court Judge five months earlier, on November 2, 2017. She was the only judge in the NDC that day, and it was her job to hear all scheduled matters.

The Medina-Perez Case

One of the cases over which Judge Joseph presided—*Commonwealth v. Medina-Perez*—was unusual because it involved three distinct matters. First, the Commonwealth, represented by Assistant District Attorney (“ADA”) Shannon Jurgens, had charged defendant Jose Medina-Perez with two misdemeanor drug offenses. Second, the Commonwealth had also charged Mr. Medina-Perez with being a fugitive from justice in connection with an outstanding and unrelated criminal warrant from Pennsylvania. Finally, an immigration official from the United States Immigration and Customs Enforcement agency (“ICE”) was present in the NDC that day in relation to a detainer and warrant that ICE had issued for Mr. Medina-Perez’s detention and deportation in the event that he were to be released from custody on the state criminal charges.

¹ Formal Charges at 1-2.

² Judge Joseph Response to Formal Charges (“Response”) at 1.

Both the Pennsylvania fugitive warrant and the ICE detainer involved a serious identity question and relied on the same evidence—an alleged biometric match (i.e., a fingerprint)—to identify Mr. Medina-Perez. Mr. Medina-Perez’s lawyers would challenge that alleged match and argue throughout the day that he was not the person who was the subject of either the Pennsylvania fugitive warrant or the ICE detainer.

The Presence of ICE

During the morning session, a plain-clothed ICE officer was sitting in Judge Joseph’s courtroom, waiting to take custody of Mr. Medina-Perez if he were released on the state charges. Over the lunch recess, the court clerk told Judge Joseph that an ICE officer was present in the courtroom and that Judge Mary Elizabeth Heffernan—the First Justice of the Newton District Court who managed courthouse administration—had a practice of excluding ICE officers from her courtroom.

Because Judge Joseph had never heard of such a practice and was concerned about its propriety, she spent a significant portion of her lunch break attempting to assess whether it violated any law or policy. Through her research, Judge Joseph learned about the “Lunn Policy,” which the Executive Office of the Trial Court had issued on November 10, 2017, in response to the July 24, 2017, Supreme Judicial Court (“SJC”) decision in *Lunn v. Commonwealth*, 477 Mass. 517, 78 N.E.3d 1143 (2017). The Lunn Policy provided protocols on how court personnel should address the presence of ICE officials in Massachusetts courts. During the lunch recess, Judge Joseph had much of the Lunn Policy—which was four single-spaced pages—read to her over the phone. The Lunn Policy explained, *inter alia*, that ICE officers should take custody of individuals subject to detainers in the lockup area of the courthouse. Newton District Court personnel appear not to have known about this requirement. In fact, it appears that Judge Joseph’s work over the lunch recess resulted in her being the only court official in the NDC who was familiar with it. None of the other court personnel, including the court clerk, the NDC chief court officer, ADA Jurgens, or First Justice Heffernan (who was not in the courthouse that day) were aware of it. At the same time, in consultation with counsel in the District Court administrative office, Judge Joseph concluded that First Justice Heffernan’s practice of excluding ICE officers from the courtroom itself did not violate the Lunn Policy or any other law or rule. She therefore told the clerk that she would abide by the First Justice’s practice, which resulted in the ICE officer’s exclusion from the courtroom.

The Afternoon Session

The *Medina-Perez* case took several turns at the commencement of the afternoon session. A new, privately retained defense attorney, David Jellinek, appeared on behalf of Mr. Medina-Perez, replacing Elizabeth Bostwick, the bar advocate (a public defender) who had been representing him in the morning. Even before Mr. Medina-Perez had been brought into court from the lockup area, Attorney Jellinek immediately requested a sidebar, which Judge Joseph granted. At the outset of the sidebar, Judge Joseph raised the topic of ICE, having just spent much of the lunch recess considering whether the ICE officer should be permitted in the courtroom. However, after she stated, “so it’s my understanding that ICE is

here . . . ,” Attorney Jellinek interrupted her to discuss the Pennsylvania fugitive charge.³ ADA Jurgens then responded to Attorney Jellinek by revealing that she had reversed her position on the identity issue with respect to that charge. Although she had maintained throughout the morning that Mr. Medina-Perez was the subject of the Pennsylvania fugitive warrant, she stated, without explanation, “I don’t think it’s him.”⁴ After learning from Attorney Jellinek that the ICE officer nonetheless remained adamant that Mr. Medina-Perez was the subject of the ICE detainer—notwithstanding that it was based on a fingerprint match, just like the Pennsylvania warrant—Judge Joseph proposed the possibility of giving Attorney Jellinek, who was new to the case, additional time to further investigate the matter. Given the lateness of the hour—it was already almost 3:00 p.m., and court staff typically leave by 4:30 p.m.—Judge Joseph asked counsel whether it might make sense to continue the matter until the next day, which would mean that Mr. Medina-Perez would remain in state custody overnight.

The Off-the-Record Sidebar

At this point, Attorney Jellinek asked to go off the record, which Judge Joseph agreed to do, as she was not aware of District Court Special Rule 211, which prohibits going off the record except in limited circumstances not relevant here. Notably, Attorney Jellinek was also not aware of Special Rule 211, nor were Judge Joseph’s courtroom clerk or ADA Jurgens, and, as a result, neither voiced any concern with Attorney Jellinek’s request. Judge Joseph, Attorney Jellinek, and ADA Jurgens then had a 52-second, off-the-record discussion during which Attorney Jellinek and ADA Jurgens were standing less than two feet apart.

The principal charges in this matter are centered around one critical factual question: what was said during this off-the-record portion of the sidebar. As the CJC’s Counsel stated in her opening: the facts in this matter “are mostly undisputed”; the “one central dispute [concerns] what was said during the 52-second off the record discussion at side bar.”⁵

Attorney Jellinek claims that he told Judge Joseph and ADA Jurgens that (1) he wanted Mr. Medina-Perez to be allowed to go to the lockup area, and (2) the reason for his request was to enable Mr. Medina-Perez to leave the building through the back door of the courthouse so that he could avoid the ICE officer who was waiting to take custody of him in the courthouse lobby. Attorney Jellinek further claims that Judge Joseph authorized his plan. Judge Joseph denies that Attorney Jellinek informed them of his escape plan and that she approved it. Rather, she maintains that Attorney Jellinek asked that she permit Mr. Medina-Perez to go to the lockup area with him and the interpreter so that they could speak further, which she thought was an eminently reasonable request under the circumstances given all the issues Mr. Medina-Perez was confronting at the time.

³ Ex. G (Transcript of April 2, 2018, proceeding in *Commonwealth v. Medina-Perez*) at APP040.

⁴ *Id.* at APP041.

⁵ Tr. 7:20-23.

ADA Jurgens—who was the only other participant in this three-person sidebar, and who both parties agree was credible—fully corroborates Judge Joseph’s position that Attorney Jellinek did not tell them that he wanted Mr. Medina-Perez to be able to leave through the back of the courthouse to avoid the ICE officer. Rather, she recalled Judge Joseph asking something to the effect of “what could we do” and Attorney Jellinek responding by simply saying, in essence, that he’s “all set,” or he has “a plan,” or “I’ve got it under control,” without providing any further explanation, and then asking “if his client could be brought downstairs to speak with him.”⁶ In fact, unbeknownst to both Judge Joseph and ADA Jurgens, during the lunch recess, Attorney Jellinek had approached Court Officer Wesley MacGregor (whom he had gotten to know over the years while working in the NDC) and devised a plan for Mr. Medina-Perez to escape out of the sallyport exit of the courthouse (i.e., the back door which is used to transport individuals who are in custody) if Attorney Jellinek could arrange for Mr. Medina-Perez to return to the lockup area after his arraignment.

In addition to being refuted by both Judge Joseph and ADA Jurgens, I find that Attorney Jellinek’s claimed disclosure of his plan to them is implausible for several reasons, including (1) doing so would have significantly jeopardized his plan due to their obligation to uphold the law, and (2) all he needed to do to accomplish his plan was get permission for Mr. Medina-Perez to return to the lockup area, a completely reasonable request under the circumstances. First, it was certainly understandable that he would want to speak with his client in the lockup area following this court appearance—particularly while an interpreter was available—given that there were several matters they would want to discuss. Second, it was not uncommon for defendants to retrieve their property from the lockup area after being released from state custody.

Back on the Record

After the brief off-the-record discussion, Attorney Jellinek and ADA Jurgens left the sidebar and, upon returning to the respective counsel tables, explained in open court and on the record why they each did not believe there was sufficient evidence tying Mr. Medina-Perez to the Pennsylvania fugitive warrant. ADA Jurgens then moved to dismiss the fugitive charge. Judge Joseph agreed, dismissed the charge, and arraigned Mr. Medina-Perez on the two outstanding misdemeanor drug charges. Attorney Jellinek also asked to be allowed to speak with his client and the interpreter in the lockup area, where he believed Mr. Medina-Perez had property to retrieve. Judge Joseph said “[t]hat’s fine. Of course” and agreed to allow Attorney Jellinek and the interpreter to accompany Mr. Medina-Perez to the lockup area “to further interview him.”⁷

At this juncture, Judge Joseph’s clerk told her that the ICE officer wanted to visit the lockup area. Judge Joseph responded, “[t]hat’s fine,”⁸ having just learned about the Lunn

⁶ Tr. 236:10-13.

⁷ Ex. G at APP042-43.

⁸ Ex. G at APP043.

Policy, which specifically states that ICE officers should take custody of defendants being released from state custody in the lockup area. However, in keeping with the First Justice's practice of excluding ICE agents from the courtroom itself, as well as the Lunn Policy's directive that ICE officers shall not be permitted to take custody of anyone in a courtroom, Judge Joseph also noted that the ICE officer cannot come in "here"—meaning the courtroom—adding, "[b]ut he's been released on this," referring to Mr. Medina-Perez's release from state custody.⁹

Appearance of Impropriety and Bias During the Afternoon Session

While there is no credible support for Attorney Jellinek's claim that Judge Joseph was aware of or complicit in his escape plan, as set forth in greater detail in this Report, certain of her statements and actions during the afternoon session in the *Medina-Perez* matter (which lasted, in total, less than seven minutes) nonetheless created the appearance of impropriety and bias. This included, for example, her agreeing to Attorney Jellinek's request to go off the record during a discussion relating to ICE, and her then asking him something to the effect of "what could we do" in relation to the possibility of ICE taking custody of Mr. Medina-Perez. This appearance concern is best illustrated by ADA Jurgens' reaction to what had transpired during the proceeding. While she fully corroborates Judge Joseph's position that Attorney Jellinek did not disclose his escape plan to them during the brief off-the-record discussion, she also testified that, overall, she found the sidebar (both on and off the record) to be "weird or sketchy," and that the ICE-related discussion made her "uncomfortable."¹⁰

Post-Arraignment Events

After the court proceeding ended, the clerk told the ICE officer that he had to stay in the courthouse lobby and could not go to the lockup area—even though Judge Joseph had just told him that it was "fine" for the ICE officer to go to the lockup area, as long as he did not enter the courtroom itself.

Notably, in the NDC there were several ways to access the downstairs lockup area without needing to enter the courtroom itself and go through the courtroom dock:¹¹ (1) from the Probation Department, which adjoins the lockup area on one side and is near the public stairwell on the other side, (2) from a separate secure stairwell on the opposite side of the public stairwell that connects the lockup area to both upper floors, and (3) from outside, through a sallyport door, which opens from the lockup area onto an outdoor fenced area at the back of the courthouse, where the sheriff's department frequently parks vans. With the help of court personnel, the ICE officer could have gone to the lockup area using any of these separate routes.

After the court proceeding, ADA Jurgens left the courtroom and spoke with the ICE officer in the courthouse lobby. Both ADA Jurgens and the ICE officer expected Mr.

⁹ *Id.*

¹⁰ Tr. 313:23-314:1; 233:4-5; 236:8-16.

¹¹ The courtroom dock is a glass-enclosed space where a criminal defendant is held during court proceedings.

Medina-Perez to exit through the courtroom door into the courthouse lobby, and ADA Jurgens proceeded to wait in the lobby with the ICE officer for Mr. Medina-Perez to appear. Notably, ADA Jurgens thought Mr. Medina-Perez would be coming through the courtroom door even though she had just been at the sidebar where Attorney Jellinek claims he had revealed his plan to both Judge Joseph and ADA Jurgens to have Mr. Medina-Perez escape through the back of the courthouse.

Six minutes and three seconds after the court proceeding ended, Court Officer MacGregor opened the back door of the courthouse and let Mr. Medina-Perez outside. Before Mr. Medina-Perez left, Attorney Jellinek spoke with him and the interpreter in the lockup area. Other than Mr. Medina-Perez being unshackled, nothing else appears to have taken place in the lockup area during this time. Attorney Jellinek claims that his discussion with Mr. Medina-Perez and the interpreter only lasted approximately 15 to 30 seconds. The interpreter estimates that the discussion was a couple of minutes. For some unknown reason, it was Attorney Jellinek, rather than Mr. Medina-Perez, who took Mr. Medina-Perez's property out of the lockup area.

Meanwhile, upstairs in the courthouse lobby, ADA Jurgens was wondering what was going on. After waiting for some time, she asked the NDC's witness advocate to go to the lockup area to see what was taking so long. The witness advocate did so, and then returned to inform ADA Jurgens and the ICE officer that he did not see Mr. Medina-Perez anywhere in the lockup area.

Shortly thereafter, ADA Jurgens saw Attorney Jellinek walking through the lobby of the courthouse with Mr. Medina-Perez's property bag. At this point, ADA Jurgens came to realize what had likely happened, and she reproached Attorney Jellinek, telling him that she knew what he had done and that she thought it was wrong. Attorney Jellinek smiled and walked away without saying anything. He did not attempt to defend himself or suggest that he was surprised by ADA Jurgens' criticism given that he had (allegedly) explained his plan to her and Judge Joseph during the off-the-record portion of the sidebar.

Attorney Jellinek then walked to the parking lot, where he encountered Attorney Bostwick. Attorney Jellinek told her that he was pleased that he had gotten Mr. Medina-Perez to avoid ICE by having him leave through the back of the courthouse. In response, Attorney Bostwick did not mince words, telling him that she thought his actions amounted to obstruction of justice. Again, as with his encounter with ADA Jurgens, Attorney Jellinek did not say anything about his discussion with Judge Joseph and ADA Jurgens at the sidebar or suggest in any way that Judge Joseph had known about—much less authorized—his plan.

The next day, April 3, 2018, Attorney Jellinek approached First Justice Heffernan to discuss what had happened. Attorney Jellinek testified on direct examination that his conversation with First Justice Heffernan was very brief, that he told her what had happened the day before in no great detail, and that she said she already knew about it. He had previously told the CJC's Counsel, in December 2024, that he had advised First Justice Heffernan that there was an issue with Mr. Medina-Perez's identity and that he had been let out the back door. First Justice Heffernan does not corroborate either iteration by Attorney Jellinek. They both agree, however, that he did not tell her that he had devised the escape

plan with Court Officer MacGregor, that he had told Judge Joseph about his plan, or that Judge Joseph had approved it. Rather, Attorney Jellinek claimed during his testimony that none of that “seem[ed] relevant”—it was not “part of the core facts.”¹²

Judge Joseph Was Not Complicit in Attorney Jellinek’s Plan for Mr. Medina-Perez To Leave Through the Back Door of the Courthouse

The CJC principally relies on Attorney Jellinek to prove its most serious charge in this matter, asking that I find by clear and convincing evidence that during an off-the-record sidebar discussion that lasted less than one minute, Attorney Jellinek informed Judge Joseph and ADA Jurgens of his plan for Mr. Medina-Perez’s escape, after which Judge Joseph voiced her immediate approval. However:

- 1) Both ADA Jurgens and Judge Joseph deny that any such exchange occurred;
- 2) ADA Jurgens even went to the courthouse lobby immediately after the proceeding and waited with the ICE officer for Mr. Medina-Perez to return from the lockup area and walk through the front door of the courtroom into the lobby, thereby making it quite clear—through her actions just minutes after the sidebar—that Attorney Jellinek had not just conveyed to her and Judge Joseph his escape plan during that sidebar;
- 3) Attorney Jellinek had multiple encounters with other lawyers and court personnel later that day and thereafter in which he did not in any way implicate Judge Joseph in what had just transpired. For example, when ADA Jurgens pieced together that Mr. Medina-Perez had likely been let out the back of the courthouse and confronted Attorney Jellinek, he did not respond that he had literally just told Judge Joseph *and ADA Jurgens herself* that this was his plan. Rather, he was silent, smiled, and walked out of the courthouse. Then, minutes later, in the courthouse parking lot, Attorney Bostwick accused Attorney Jellinek of obstruction of justice (having just learned from him that he had arranged for Mr. Medina-Perez to leave the courthouse without ICE apprehending him). Yet again, Attorney Jellinek did not say anything in response to suggest that Judge Joseph had known about or approved of his plan;
- 4) Just that afternoon, Judge Joseph had demonstrated the sort of care and diligence she would apply to *anyone’s* proposed course of action relating to ICE—even if the source of such action was the First Justice of the Newton District Court herself. Specifically, Judge Joseph spent much of the nearly two-hour lunch recess researching whether the First Justice’s practice of not allowing ICE officials in the courtroom was permissible under the law and court policy;
- 5) Near the end of the proceeding, Judge Joseph explicitly—and without the slightest hesitation—authorized ICE to go to the lockup area, where she was also permitting Mr. Medina-Perez, Attorney Jellinek, and the interpreter to go (and where the Lunn

¹² Tr. 83:1-15.

Policy mandated that ICE take custody of individuals being released from state custody);

- 6) Attorney Jellinek's testimony on a significant number of issues in this matter was inconsistent, unsupported, and/or implausible; and
- 7) Attorney Jellinek had, and has, a strong motive to falsely implicate Judge Joseph.

For these and other reasons set forth in this Report, including in Section III.F wherein I set forth in greater detail my overall assessment of Attorney Jellinek's credibility and reliability (pages 85-90), I do not make the finding of Judge Joseph's complicity in Attorney Jellinek's escape plan that the CJC proposes.

Judge Joseph's Conversations with District Court Officials

Over the course of the next month, court personnel investigated the Medina-Perez incident. Judge Joseph met with several supervisory judges: initially First Justice Heffernan, then the Regional Administrative Justice ("RAJ"), and finally the Chief Justice of the District Court together with the RAJ. The CJC argues that (1) Judge Joseph fell short of her duty to be candid with these supervisory judges by failing to volunteer certain information, including that she had gone off the record during the *Medina-Perez* proceeding, and that she had been complicit in his escape, and (2) Judge Joseph falsely denied that she knew about his escape or had anything to do with it when asked by Chief Justice Dawley.

That Judge Joseph did not raise with the First Justice the fact that a portion of the *Medina-Perez* proceeding was off the record is understandable, however, given that (1) at the time of their discussion on April 4, 2018, Judge Joseph was still not aware of the rule prohibiting off-the-record discussions, and throughout her 25-year career to that point she had often seen judges go off the record, (2) the off-the-record portion of the sidebar had been less than a minute, and (3) the off-the-record discussion had not raised any notable issue from Judge Joseph's perspective because Attorney Jellinek had not, in fact, disclosed his escape plan during the discussion.

For these reasons, it is also not surprising that when speaking with the RAJ during an informal lunch at some point within a couple of weeks of her conversation with the First Justice, Judge Joseph did not note to the RAJ that she had approved the defense attorney's request to go off the record. Indeed, the RAJ initiated the discussion with Judge Joseph precisely because she was already aware that a portion of the proceeding had been off the record, and she wanted to give Judge Joseph a copy of Special Rule 211, educate her about that specific rule, and explain to her the importance of proceedings being on the record.

Finally, there is a simple reason why Judge Joseph did not tell the First Justice, the RAJ, or the Chief Justice that she was aware of, or in any way complicit in, Mr. Medina-Perez's escape: because she was not.

E. Summary of Findings and Conclusions as to Violations

The CJC alleges that Judge Joseph's violations of M.G.L. c. 211C § 2(5) and the Code of Judicial Conduct essentially fall into four categories: (1) willfully authorizing Mr. Medina-Perez's escape, (2) knowingly or negligently violating District Court Special Rule 211 by permitting a portion of the *Medina-Perez* proceeding to be conducted off the record, (3) willfully failing to be candid and forthcoming in her meetings with supervisory judges, and (4) creating the appearance of impropriety and bias through her conduct on April 2, 2018.

First, I find that Judge Joseph did not willfully authorize Mr. Medina-Perez to return to the lockup area for the purpose of evading ICE, and therefore that she did not violate M.G.L. c. 211C § 2(5) or Code of Judicial Conduct Rules 1.1, 1.2, 2.2, or 2.5 through such alleged conduct.

Second, I find that Judge Joseph unintentionally violated Special Rule 211 by granting Attorney Jellinek's request to go off the record, but in doing so did not violate M.G.L. c. 211C § 2(5) or Code of Judicial Conduct Rules 1.1, 1.2, 2.2, or 2.5.

Third, I find that Judge Joseph was candid and forthcoming in her meetings with the supervisory judges, and therefore that she did not violate M.G.L. c. 211C § 2(5) or Code of Judicial Conduct Rule 2.16.

However, I find that Judge Joseph unintentionally created the appearance of impropriety and bias, in violation of Code of Judicial Conduct Rule 1.2, by (1) making statements during the sidebar that could be misinterpreted to suggest that she was biased against ICE, and (2) granting Attorney Jellinek's request to go off the record during a discussion regarding ICE's interest in taking custody of Mr. Medina-Perez. In reaching this conclusion, I credit ADA Jurgens' testimony that, overall, she found the sidebar (both on and off the record) to be "weird or sketchy," and that the ICE-related discussion made her "uncomfortable."¹³

F. Disciplinary Recommendation

In light of my findings and conclusions, I recommend that Judge Joseph receive a public reprimand stating, in essence, as follows:

Judge Shelley M. Richmond Joseph is hereby publicly reprimanded for having inadvertently created the appearance of impropriety and bias through her communications with the defense counsel and assistant district attorney during a defendant's arraignment, and for unknowingly violating a court rule by granting the defense counsel's request to go off the record during a discussion regarding immigration authorities' interest in taking custody of the defendant. For the avoidance of doubt, because the record does not support a finding that Judge Joseph engaged in any intentional misconduct—including (1) authorizing the defense

¹³ Tr. 313:23-314:1; 233:4-5; 236:8-16.

counsel's plan to enable the defendant to evade immigration authorities, or (2) misleading court authorities when discussing her actions on the day of the defendant's arraignment—she is not being reprimanded for any such alleged conduct.

I do not recommend that there be any period of monitoring associated with this proposed reprimand, nor do I recommend that Judge Joseph be assessed the costs incurred by the CJC for its investigation or the hearing.

II. Procedural History

A. Federal Charges and CJC Complaint

The U.S. Attorney's Office for the District of Massachusetts investigated the events of April 2, 2018. Attorney Jellinek, the admitted architect of the plan to have Mr. Medina-Perez evade ICE by leaving through the back door of the NDC, was given immunity in exchange for his cooperation.¹⁴ On April 25, 2019, the grand jury returned a four-count indictment charging both Judge Joseph and Court Officer MacGregor with (1) conspiracy to obstruct justice; (2) aiding and abetting the obstruction of justice; and (3) aiding and abetting the obstruction of a federal proceeding; and separately charging Court Officer MacGregor with perjury for allegedly testifying falsely before the grand jury.¹⁵

On May 16, 2019, the CJC initiated a complaint against Judge Joseph in relation to the same incident (docketed as Complaint Number 2019-22), but thereafter stayed its proceeding in light of the pending criminal case.¹⁶

On September 22, 2022, the U.S. Attorney's Office moved to dismiss the charges against Judge Joseph pursuant to an agreement in which she stipulated to certain facts and agreed to formally refer herself to the CJC and cooperate in its investigation into the underlying events.¹⁷ On the same day, the U.S. Attorney's Office announced that it had entered into a deferred prosecution agreement with Court Officer MacGregor.¹⁸

¹⁴ Tr. 86:23-25; Ex. AA (November 8, 2018, Proffer Letter and January 17, 2019, Immunity Letter from United States Attorney Andrew Lelling to Attorney Jellinek's attorney, Robert Peabody) at 3-4.

¹⁵ Indictment, *United States v. Joseph*, No. 19-cr-10141, ECF No. 1 (D. Mass. April 25, 2019); Formal Charges ¶ 39; Response ¶ 39.

¹⁶ Formal Charges at 1.

¹⁷ Ex. M (Federal Motion to Dismiss, with Agreement and Statement of Facts) at APP156-64; Formal Charges ¶ 39; Response ¶ 39.

¹⁸ Ex. M at APP165-69.

On December 22, 2022, at the CJC’s request, the SJC appointed retired Superior Court Chief Justice Judith Fabricant as Special Counsel to investigate Complaint Number 2019-22 and pursue the matter to completion.¹⁹

B. CJC Investigation and Formal Charges

On September 13, 2023, the CJC issued a Statement of Allegations.²⁰ Judge Joseph filed her response to the Statement of Allegations on November 1, 2023.²¹ She also appeared personally before the CJC with her attorneys on November 14, 2023, to respond to the Statement of Allegations.²² The CJC then issued an Amended Statement of Allegations on January 18, 2024, and Judge Joseph filed her response to the Amended Statement of Allegations on February 20, 2024.²³ On July 18, 2024, the CJC issued a Second Amended Statement of Allegations, and Judge Joseph did not submit a further response.²⁴ Finally, the CJC issued its Formal Charges on November 19, 2024.²⁵ Judge Joseph filed her response to Formal Charges (the “Response”) on November 29, 2024.²⁶

C. Hearing

The SJC appointed me as the Hearing Officer in this matter on January 9, 2025.²⁷ In advance of the hearing, I held two status conferences with the parties, on February 12, 2025, and May 7, 2025, to discuss background, scheduling, and logistical matters. On March 25, 2025, the CJC submitted a prehearing memorandum, and the parties jointly submitted a stipulation of undisputed facts (the “Stipulation”) and accompanying appendices. On April 4, 2025, Judge Joseph also submitted a prehearing memorandum. These memoranda laid out the parties’ respective positions on the merits of the case and the evidence they anticipated would be adduced during the hearing. On May 23, 2025, the parties submitted a second stipulation with additional appendices.

¹⁹ CJC Prehearing Mem. at 3. (Cites to “CJC Prehearing Mem.” are to the CJC’s March 25, 2025, Prehearing Memorandum.) I refer to the Special Counsel throughout this Report as the “CJC’s Counsel.”

²⁰ Formal Charges at 1. *See* M.G.L. c. 211C §§ 5(5)-(6).

²¹ Formal Charges at 1.

²² *Id.* *See* M.G.L. c. 211C § 5(7).

²³ Formal Charges at 1. *See* M.G.L. c. 211C § 5(12).

²⁴ *Id.*

²⁵ Formal Charges at 1-11. Pursuant to M.G.L. c. 211C § 5(13), formal charges shall be issued when a majority of the CJC concludes that “there is a preponderance of credible evidence that the judge’s conduct constitutes grounds for discipline.”

²⁶ CJC Prehearing Mem. at 3.

²⁷ Correspondence, Dkt. No. 3; CJC Prehearing Mem. at 3. *See* M.G.L. c. 211C § 7(1).

A public hearing was held from June 9-16, 2025. The hearing began with a viewing at the NDC on the morning of June 9, 2025, which lasted approximately 45 minutes.²⁸ Following the viewing, the hearing resumed at the Suffolk County Courthouse where it continued to its conclusion. The CJC presented its case-in-chief through the testimony of the following nine witnesses:

- 1) David Jellinek, the defense attorney retained by Mr. Medina-Perez on April 2, 2018;
- 2) Eric Mendoza, the Spanish-language interpreter covering the *Commonwealth v. Medina-Perez* matter on April 2, 2018;
- 3) Shannon Jurgens McDermott, the Assistant District Attorney prosecuting the *Commonwealth v. Medina-Perez* matter on April 2, 2018;²⁹
- 4) Lawrence Okstein, the First Assistant Clerk Magistrate assigned to the first session of the Newton District Court on April 2, 2018;
- 5) Paul Scott Noe, Chief Court Officer of the Newton, Waltham, and Concord Divisions of the District Court during the relevant period;
- 6) Mary Elizabeth Heffernan, First Justice of the Newton District Court, and also (since 2023) RAJ for Region 4 (which includes the Newton District Court);³⁰
- 7) Stacey Fortes, RAJ for Region 4 and First Justice of the Lowell District Court during the relevant period, and current Chief Justice of the District Court;³¹
- 8) Paul Dawley, Chief Justice of the District Court during the relevant period; and
- 9) Judge Shelley M. Richmond Joseph.

Judge Joseph's counsel presented evidence through cross-examination of the CJC's witnesses, including Judge Joseph, and the testimony of eight additional witnesses:

- 1) Judge Bonnie MacLeod, a retired judge who formerly sat on a variety of Massachusetts District Courts and the Superior Court;

²⁸ Viewing Tr. 2-27.

²⁹ Shannon Jurgens McDermott is currently serving as an Assistant Clerk Magistrate in the Malden District Court. Tr. 213:15-25. Because she is referred to as ADA Jurgens in the transcript of the proceedings on April 2, 2018, that is how I refer to her in this Report.

³⁰ Because RAJ Heffernan was the First Justice of the Newton District Court during the relevant period in 2018 at issue in this matter, that is how I refer to her in this Report.

³¹ Because Chief Justice Fortes was the RAJ during the relevant period in 2018 at issue in this matter, that is how I refer to her in this Report.

- 2) Elizabeth Bostwick, the bar advocate assigned to Mr. Medina-Perez during the morning calls on April 2, 2018;
- 3) Judge Carol Ball, a retired judge on the Massachusetts Superior Court;
- 4) Allison Koury, an attorney and bar advocate;
- 5) Judge Sevelin B. Singleton, III, a retired judge of the Cambridge District Court;
- 6) Mark Gerrity, a Security Systems Administrator in the Massachusetts Trial Court during the relevant period and now Deputy Chief Information Officer of the Massachusetts Trial Court;
- 7) Douglas Brooks, who was called to read memoranda written by two ICE officers—Officer Richard Simmons and Officer Domenico Federico—into the record; and
- 8) Michael McPherson, Regional Director of Security for the Trial Court during the relevant period and now Director of Security for the Trial Court.

Following the conclusion of the hearing, the parties submitted post-hearing memoranda containing proposed findings of fact and conclusions of law on July 3, 2025, and reply memoranda on July 10, 2025. The hearing transcripts were certified by the stenographer on August 27, 2025. The parties thereafter reviewed the transcripts and, consistent with Mass. R. App. 8(e)(2), proposed by stipulation a number of corrections which I then reviewed and approved on October 1, 2025, at which point the hearing was officially closed.³² Upon review and consideration of the evidence, I make the findings of fact, conclusions of law, and disciplinary recommendation set forth below.

III. Findings of Fact

A. Judge Joseph's Appointment and Training

Judge Joseph graduated from law school and was sworn into the bar in 1992.³³ She began her legal career as Legislative Counsel for Massachusetts State Senator Marc R. Pancheco.³⁴ She then joined the Massachusetts Attorney General's Office,³⁵ moved to a law

³² Exhibits 7 through 12 are blackline versions of the transcripts from June 9 through 16 (reflecting the edits the parties and I agree should be made to the stenographer's certified transcripts), and Exhibits 13 through 18 are clean versions of those revised transcripts—which I will be citing to throughout this Report. Given that the page numbers in Exhibits 13 through 18 are consecutive (from 1 through 1008), I only refer to transcript page numbers when citing to these revised hearing transcripts in this Report, and not the specific Exhibit number. (To be clear, the parties did not undertake a comprehensive revision of the stenographer's certified transcripts, but rather focused their corrections on those matters that they believed were important for the record.)

³³ Tr. 655:21-656:3.

³⁴ Ex. A (Judge Joseph's Resume) at APP003; Tr. 738:1-7.

³⁵ Judge Joseph spent approximately seven years at the Massachusetts Attorney General's Office, five of which were in the Criminal Bureau as a Special Assistant District Attorney. Tr. 738:1-739:6. She spent a year of that (...continued)

firm, and ultimately started her own practice in 2000 primarily focusing on criminal defense.³⁶ Judge Joseph also served as a bar advocate for approximately seven years,³⁷ including at the NDC for at least two years.³⁸ As a bar advocate and in her private practice, Judge Joseph worked on many cases at the NDC, but her appearances there were intermittent: at some points she might have been at the NDC every day of a given week, and at other times she would not appear at the NDC for months.³⁹ As Judge Joseph's private practice grew, she spent less time as a bar advocate.⁴⁰

On November 2, 2017, Judge Joseph was sworn in as a Massachusetts District Court Judge.⁴¹ Upon her appointment, and as part of her orientation, Judge Joseph met with Chief Justice Dawley and the Court's administrative staff, as all new judges do.⁴² Chief Justice Dawley agreed that being a new judge was a bit like "drinking from a fire hose,"⁴³ and testified that new judges in the Trial Court⁴⁴ (like Judge Joseph) were assigned more experienced judges as their mentors for a two-year period.⁴⁵ Judge Joseph characterized the judicial mentorship atmosphere as "collegial," with experienced judges providing new judges with their cell phone numbers and encouraging the new judges to call them should they have any questions.⁴⁶

Like all new judges, upon her appointment Judge Joseph received a large set of materials, including the Massachusetts Rules of Court (approximately 1300 pages),⁴⁷ of

time working at what was then referred to as the Boston District Court (now known as the Boston Municipal Court), and four years as a Special Assistant in the gang unit, prosecuting cases in Superior Court. *Id.*

³⁶ Tr. 656:4-13.

³⁷ In Massachusetts, bar advocates are assigned to represent people who are unable to afford an attorney. Tr. 831:22-832:7. Bar advocates typically have "duty days," during which they go to the courthouse and represent anyone who needs a court-appointed attorney. Tr. 832:8-19.

³⁸ Tr. 656:14-657:13.

³⁹ Tr. 657:24-658:17.

⁴⁰ Tr. 657:8-20.

⁴¹ Ex. N (Transcript of Judge Joseph's June 6, 2023, Sworn Interview with the CJC's Counsel) at APP177:1-5; Tr. 663:9-11.

⁴² Tr. 589:18-590:2; 571:10-17.

⁴³ Tr. 618:22-25.

⁴⁴ The Trial Court has seven courts: District Court, Boston Municipal Court, Housing Court, Juvenile Court, Land Court, Probate & Family Court, and Superior Court. The Trial Court also includes an Executive Office and Office of Court Management. *See* Executive Office of the Trial Court, *available at* <https://www.mass.gov/orgs/executive-office-of-the-trial-court>.

⁴⁵ Tr. 590:8-20; 667:25-668:6.

⁴⁶ Tr. 668:7-19.

⁴⁷ Tr. 571:18-572:13; 618:8-15; 663:12-664:7.

which the District Court Rules comprised approximately 30 pages.⁴⁸ The materials also included a large “90 Day Guide” (designed to be a resource for judges on the circumstances they are most likely to encounter in their first 90 days on the bench) and a “Benchbook” which is a condensed version of the 90 Day Guide.⁴⁹

As part of her initial training as a judge, Judge Joseph was assigned to sit at various district courts, including the Newton District Court, in accordance with a monthly assignment schedule.⁵⁰ In total, Judge Joseph observed about 20 judges in a variety of courtroom proceedings for approximately four weeks.⁵¹ By April 2, 2018, exactly five months into her tenure as a judge, Judge Joseph had sat in at least eight different courthouses.⁵²

Of note, the 90 Day Guide, the Benchbook, and Judge Joseph’s initial judicial training did not address the topic of recording courtroom proceedings or District Court Special Rule 211, which requires proceedings to be recorded (subject to limited exceptions not relevant here).⁵³ Nor did the training provide specific guidance regarding how to address ICE detainers or ICE officers seeking to take custody of someone in a courthouse.⁵⁴

B. The Lunn Policy

On November 10, 2017, the Executive Office of the Trial Court (“EOTC”) issued the Lunn Policy, which governed “the manner in which trial court employees, and in particular, court officers, shall respond to requests from the Department of Homeland Security (DHS) to provide information about, and take custody of, individuals subject to civil immigration detainers.”⁵⁵ It also governed Trial Court employees’ response to DHS officials “enter[ing] a Massachusetts courthouse with the intent of taking custody of an individual subject to a civil immigration detainer.”⁵⁶

The Lunn Policy was promulgated following the SJC’s decision on July 24, 2017, in *Lunn v. Commonwealth*, 477 Mass. 517, 78 N.E.3d 1143 (2017), which addressed the

⁴⁸ Tr. 665:1-22.

⁴⁹ Tr. 578:1-14; 617:14-618:7.

⁵⁰ Ex. M at APP163.

⁵¹ Tr. 667:6-14.

⁵² Tr. 742:19-743:3.

⁵³ Formal Charges ¶ 5; Response ¶ 5; Tr. 621:4-13; 722:18-723:8; *see* Ex. N at APP229:17-230:5.

⁵⁴ Formal Charges ¶ 6; Response ¶ 6.

⁵⁵ Ex. B (Lunn Policy) at APP005-06. The EOTC issued the Lunn Policy via Executive Office Transmittal 17-13 to all Massachusetts state judges, clerks, and other courthouse personnel, titled, “Policy and Procedures Regarding Interactions with the Department of Homeland Security.” *Id.* at APP005. The Lunn Policy is also referred to as the “DHS Policy” in certain documents, including the Statement of Facts agreed between the U.S. Attorney’s Office and Judge Joseph. *E.g.*, Ex. M at APP163.

⁵⁶ Ex. B at APP006.

Commonwealth's authority to hold a person in custody pursuant to an immigration detainer. In *Lunn*, the SJC held that "Massachusetts law provides no authority for Massachusetts court officers to arrest and hold an individual solely on the basis of a Federal civil immigration detainer, beyond the time that the individual would otherwise be entitled to be released from State custody."⁵⁷

The Lunn Policy instructed, in pertinent part:

- "Trial Court employees should be mindful that courthouses are public spaces that are open to all persons and that all persons entering a courthouse should be treated with respect and dignity, including individuals subject to civil immigration detainers and DHS employees."⁵⁸
- "Trial Court employees shall not hold any individual who would otherwise be entitled to release based solely on a civil immigration detainer or civil immigration warrant."⁵⁹
- "[W]hen an individual who was brought into court in custody is subject to release after his or her court proceeding, court security personnel ***shall process that individual out of lock up in the normal course*** regardless of whether the individual is subject to a civil immigration detainer or warrant."⁶⁰
- "***If***, during the processing of an individual subject to release out of the courthouse, ***a DHS official is present in the courthouse and seeks admission into the courthouse's holding cell area in order to take custody of the individual pursuant to an immigration detainer or warrant, court officers shall permit the DHS official(s) to enter the holding cell area in order to take custody of the individual*** once Trial Court security personnel have finished processing that individual out of the court security personnel's custody, if a security department supervisor determines that the DHS official would otherwise take custody of the individual inside or immediately outside of the courthouse."⁶¹
- "Before being granted entry into the holding cell area, DHS officials must present credentials and a copy of the detainer or civil immigration arrest

⁵⁷ 477 Mass. at 537, 78 N.E.3d at 1160.

⁵⁸ Ex. B at APP006.

⁵⁹ *Id.*

⁶⁰ *Id.* at APP007 (emphasis added).

⁶¹ *Id.* at APP007-08 (emphasis added).

warrant to court security personnel, sign in to the holding cell area, and surrender their weapons.”⁶²

- ***“To the extent possible, court security personnel should require that DHS officials transport any individuals taken into custody through the prisoner transport entrance and avoid taking the individual through the public areas of the courthouse.”***⁶³
- ***“In those instances where DHS officials seek to take custody in a courthouse of an individual who is not in custody of the courthouse security personnel, Trial Court employees shall neither impede DHS officials from doing so nor assist in the physical act of taking that individual into custody. In the event that court security personnel are present as DHS officials place an individual in custody in a courthouse, the role of such court personnel is to take those actions necessary to maintain the safety and decorum in the courthouse.”***⁶⁴
- ***“No DHS official shall be permitted to take an individual into custody pursuant to a civil immigration detainer or warrant in a courtroom, unless permission has been given in advance by the regional administrative judge or first justice sitting in the courthouse.”***⁶⁵

As summarized by the CJC’s Counsel, “[t]he essence of [the Lunn Policy] is that court personnel should be neutral toward ICE Officers in the courthouses, allow them to perform their duties, and allow them into lockup areas to take custody of a person being released.”⁶⁶

Consistent with the Lunn Policy, as of April 2, 2018, the Court Officer Manual instructed that ***“[p]risoners/detainees will be released only from the lock-up or holding room unless otherwise ordered by the Judge . . .*** The Court Officer in the lock-up will determine that there are no ‘holds’ on the prisoner/detainee and that he/she is properly identified before the person is released, based on paperwork provided by the court.”⁶⁷

On January 16, 2018, Chief Justice Dawley issued District Court Transmittal No. 1222 to all judges and magistrates via email.⁶⁸ Among the attachments to the transmittal was

⁶² *Id.* at APP008.

⁶³ *Id.* (emphasis added).

⁶⁴ *Id.* (emphasis added).

⁶⁵ *Id.* (emphasis added).

⁶⁶ Tr. 13:21-25.

⁶⁷ Ex. 1 (Court Officer Manual) (emphasis added). The Court Officer Manual, which is cited in the Lunn Policy, includes guidance on the “Release of Prisoners.” *Id.*

⁶⁸ Stipulation ¶ 4; Ex. C (District Court Transmittal No. 1222) at APP010-13; Tr. 669:22-670:13.

an updated “Immigration Benchcard,”⁶⁹ which was distributed at a December 13, 2017, education conference for District Court judges “to note the Supreme Judicial Court’s holding in *Lunn v. Commonwealth*[.]”⁷⁰ Transmittal No. 1222 also noted that “[a]dditional guidance on responding to requests from [DHS] can be found in the Trial Court’s [Lunn Policy].”⁷¹ Although Judge Joseph did not attend the December conference⁷² and did not specifically recall receiving Transmittal No. 1222, she did recall receiving a laminated Benchcard on immigration matters at some point and agreed that she would have received the transmittal at the time it was distributed given that it was emailed to all judges.⁷³

C. Judge Joseph’s Assignment to the Newton District Courthouse on April 2, 2018

On April 2, 2018, Judge Joseph was assigned to preside over the first session courtroom in the NDC.⁷⁴ In general, the NDC was a relatively quiet courthouse, dealing with approximately five to ten criminal cases per week.⁷⁵ That day, Judge Joseph was the only judge sitting in the NDC.⁷⁶ She had previously sat as the only judge in the NDC, but only on days when there were no regularly scheduled matters on the docket and she was presiding over any unscheduled cases that might come in (e.g., last-minute arrests, restraining orders).⁷⁷ This was the first time that Judge Joseph had sat in the NDC alone with a full docket of scheduled matters.⁷⁸

i. Newton District Courthouse Layout

The NDC has three floors: the lower level, the first level, and the second level.⁷⁹ Because the NDC is built on top of an incline, the lower level is underground at the front of

⁶⁹ Stipulation ¶ 4; Ex. D (Immigration Benchcard) at APP015-16.

⁷⁰ Ex. C at APP012.

⁷¹ *Id.*

⁷² Following Judge Joseph’s initial four-week orientation, the December 13, 2017, conference focused on race and bias, but Judge Joseph was unable to attend due to a death in her family. Ex. N at APP180:2-10; Tr. 668:24-669:3. Chief Justice Dawley testified that when judges could not attend conferences, the District Court had a process to ensure that they received any materials that were distributed. Tr. 573:7-13.

⁷³ Ex. N at APP182:5-183:13; Tr. 668:20-23; 669:22-671:11.

⁷⁴ Tr. 673:13-22.

⁷⁵ Tr. 215:19-24.

⁷⁶ Ex. N at APP189:18-22; Tr. 684:13-23.

⁷⁷ Tr. 673:23-674:6; 740:25-741:17.

⁷⁸ Tr. 740:25-741:17; Ex. N at APP189:18-22.

⁷⁹ Tr. 401:14-24.

the courthouse, and above ground at the back.⁸⁰ This incline also means that individuals entering the NDC through the front door must first walk up a flight of stairs before passing through the front entrance,⁸¹ which leads into the main lobby on the first level.⁸² The first level includes the first session courtroom,⁸³ as well as a public stairway which goes up to the second session courtroom on the second level,⁸⁴ and goes down to the public area where the Probation Department is located on the lower level.⁸⁵

The only public point of entry/exit to the first session courtroom is located on the left side of the main lobby, where a pair of doors lead into the courtroom.⁸⁶ In the first session courtroom, the bench is located at the back center of the room.⁸⁷ The session clerk sits directly below the bench,⁸⁸ and the attorneys for the parties sit in front of the clerk at two adjoining tables.⁸⁹ From the perspective of the attorneys (i.e., facing the bench),⁹⁰ the defense typically sits at the right table, while the assistant district attorney sits at the left table.⁹¹ When judges and attorneys have sidebars, the attorneys walk to a small area directly to the right of the bench, right by the two steps and swinging door that judges use to get on the bench, where they can huddle with the judge.⁹²

A defendant in custody sits in the dock, which is an enclosed glass area on the left side of the bench.⁹³ Two small metal apertures embedded in the dock allow defendants in custody to hear and communicate with those in the courtroom, including interpreters.⁹⁴

⁸⁰ *Id.*; Tr. 402:2-4.

⁸¹ Tr. 400:19-401:17; Ex. U (Photographs of the NDC) at APP526.

⁸² Tr. 402:5-8; Ex. U at APP523.

⁸³ Tr. 403:17-23; Ex. U at APP525.

⁸⁴ Tr. 414:7-23; 464:15-465:11.

⁸⁵ Tr. 414:7-23.

⁸⁶ Tr. 661:20-662:11; 403:15-23; Ex. M at APP163; Ex. U. at APP525.

⁸⁷ Tr. 404:7-10; Ex. U. at APP509.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ All relative directions, such as “left” and “right,” in this Report use the perspective of the attorneys (and the public), facing the bench, as an orienting reference point.

⁹¹ Tr. 404:11-15; Ex. U at APP509.

⁹² Tr. 405:25-406:11; Ex. U at APP511.

⁹³ Tr. 336:21-337:15; Ex. U at APP509.

⁹⁴ Tr. 404:20-405:7; Ex. U at APP508-09.

At the back of the dock is a secure door that opens into a stairwell leading down to the lockup area, which is located on the lower level.⁹⁵ The lockup area provides a space where defendants in custody enter and exit the courthouse, and where defendants in custody may wait for scheduled court appearances before proceeding up to the courtroom with a court officer.⁹⁶ In addition to the stairway leading down from the dock in the First Session courtroom, there are at least three other means of entering or exiting the lockup area, each of which also requires going through a secure door: (1) from the Probation Department, which adjoins the lockup area on one side and is near the public stairwell on the other side, (2) from a separate secure stairwell on the opposite side of the public stairwell that connects the lockup area to both upper floors, and (3) from outside, through a sallyport door, which opens from the lockup area onto an outdoor fenced area at the back of the courthouse, where the sheriff's department frequently parks vans.⁹⁷

D. The Events and Proceeding on April 2, 2018

i. First Call

Clerk Okstein was (and still is) the First Assistant Clerk Magistrate of the Newton District Court.⁹⁸ As of April 2, 2018, Clerk Okstein had roughly 25 years of experience as an attorney: he had previously served as an assistant district attorney in Norfolk County, Massachusetts, worked in private practice, and served in the Newton District Court as an assistant clerk magistrate.⁹⁹ As the First Assistant Clerk Magistrate, Clerk Okstein presides over criminal show cause hearings, small claims trials, and cases involving minor vehicle infractions.¹⁰⁰ He also processes appeals, issues search and arrest warrants, and assists District Court judges when the session clerk is unavailable.¹⁰¹ On April 2, 2018, the session clerk was not available, so Clerk Okstein was helping Judge Joseph in the courtroom.¹⁰² Among other responsibilities, session clerks operate the court recording system.¹⁰³

⁹⁵ Tr. 407:10-15; 408:22-24; Ex. U at APP513-15.

⁹⁶ Tr. 764:16-21; Ex. M at APP163.

⁹⁷ Tr. 384:23-385:25; 388:11-389:13; 411:13-413:12; Ex. U at APP517, APP521, APP527. "Secure" doors are those which require court officials' keycards to access, and are not accessible to the public. *See* Tr. 338:11-22.

⁹⁸ Tr. 334:14-18; 370:13-20.

⁹⁹ Tr. 334:19-335:4.

¹⁰⁰ Tr. 335:5-18.

¹⁰¹ *Id.*

¹⁰² Tr. 343:5-8.

¹⁰³ Tr. 340:6-12. On April 2, 2018, the Newton District Court was using a recording system known as JAVS. Tr. 340:19-23.

At 10:34 a.m., the first call was held in the criminal matter *Commonwealth v. Medina-Perez* before Judge Joseph.¹⁰⁴ Mr. Medina-Perez had been arrested by the Newton Police on Friday, March 30, 2018, and was charged with (1) being a fugitive from justice based on a warrant issued eight years earlier in a drunk driving case in Pennsylvania, and (2) two misdemeanor counts of controlled substance violations.¹⁰⁵ Mr. Medina-Perez was also identified as the subject of an outstanding ICE detainer and warrant, which listed both the name “Jose Medina-Perez” and the alias “Oscar Manuel Peguero.”¹⁰⁶

The court provided a Spanish language interpreter, Eric Mendoza, to assist Mr. Medina-Perez.¹⁰⁷ As of April 2, 2018, Interpreter Mendoza—who had roughly 20 years of experience as an interpreter¹⁰⁸—was working for the Massachusetts court system as a “vetted interpreter,” meaning that he was qualified to interpret in minor cases, but had not been “certified” for “major trials.”¹⁰⁹ He had interpreted for the Massachusetts court system for about 18 to 24 months, and he estimated that he had worked at the NDC on approximately six to 12 occasions up to that point.¹¹⁰

During the first call, Judge Joseph advised Mr. Medina-Perez of his right to counsel and stated that she would enter a plea of “not guilty” on his behalf.¹¹¹ As the Probation Department had determined that Mr. Medina-Perez was “marginally indigent,” Judge Joseph appointed the bar advocate assigned to NDC that day, Elizabeth Bostwick, to represent him.¹¹²

ADA Jurgens was assigned to represent the Commonwealth in the *Medina-Perez* case.¹¹³ She had been an ADA with the Middlesex County District Attorney’s Office since

¹⁰⁴ Ex. G at APP037.

¹⁰⁵ *Id.*; Ex. F at APP027.

¹⁰⁶ Ex. F at APP023-26.

¹⁰⁷ Ex. G at APP037; Tr. 253:9-17.

¹⁰⁸ Tr. 248:21-25.

¹⁰⁹ Tr. 249:1-16. Interpreter Mendoza testified that he “was basically not allowed to” become a certified interpreter and that his state employment at the courts did not end up “work[ing] out,” though he also worked for a private agency that “was allowed to send in vetted interpreters.” Tr. 260:12-261:8.

¹¹⁰ Tr. 250:10-251:4.

¹¹¹ Ex. G at APP037.

¹¹² *Id.*; Tr. 832:20-833:4. Attorney Bostwick is an attorney who had worked in private practice and served in the Corporation Counsel’s office for the City of Boston. Tr. 831:6-15. On April 2, 2018, Attorney Bostwick was a member of the Middlesex Defense Attorneys, which “handles bar advocates who work for Middlesex County.” Tr. 831:16-21.

¹¹³ Tr. 214:1-22; 220:17-20.

2015,¹¹⁴ and had been assigned to the NDC only a few weeks prior to April 2, 2018.¹¹⁵ As the only ADA working at the NDC at the time, she was responsible for handling all of her Office's criminal matters at the NDC that day.¹¹⁶ ADA Jurgens had experience with ICE detainers from her time in the District Attorney's Office: she usually received copies of such detainers from the police department or the court clerk's office, and she knew that the clerk's office and the court officers would also have these papers.¹¹⁷ On April 2, 2018, ADA Jurgens had a copy of the ICE detainer for Mr. Medina-Perez.¹¹⁸

ADA Jurgens requested that Mr. Medina-Perez be held without bail on the Pennsylvania warrant and that Judge Joseph schedule the date of Mr. Medina-Perez's next court appearance for three weeks later.¹¹⁹ She also stated that Pennsylvania was willing to extradite him for prosecution on the drunk driving charge.¹²⁰ As is standard practice with a fugitive warrant, Judge Joseph asked whether there was "any question of identification," and ADA Jurgens replied, "I believe it was a fingerprint hit, Your Honor. So, no."¹²¹ Judge Joseph recessed the case to give Attorney Bostwick an opportunity to speak with Mr. Medina-Perez, whom she had just been assigned to represent during this first call, and requested that ADA Jurgens provide the identifying information relating to the Pennsylvania case to Attorney Bostwick.¹²² Properly identifying Mr. Medina-Perez was important because determining whether he was the correct person subject to the Pennsylvania fugitive charge could impact whether he would be held without bail.¹²³

Earlier that morning, at approximately 9:30 a.m., ICE Officer Simmons had arrived in plain clothes at the NDC.¹²⁴ After identifying himself to court security personnel at the courthouse front door, he entered the first session courtroom and sat on a bench on the left

¹¹⁴ Tr. 213:15-25.

¹¹⁵ Tr. 215:15-18.

¹¹⁶ Tr. 214:1-22.

¹¹⁷ Tr. 216:2-23.

¹¹⁸ Ex. G at APP041.

¹¹⁹ Ex. G at APP037.

¹²⁰ *Id.*

¹²¹ Ex. G at APP038.

¹²² *Id.*

¹²³ Tr. 680:22-681:9.

¹²⁴ Ex. Q (Transcript of Sworn Federal Grand Jury Testimony of Officer Richard Simmons) at APP302:2-4. Neither Officer Simmons, nor ICE Officer Domenico Federico who arrived just before 3:00 p.m. in the afternoon on April 2, 2018, testified at the hearing, but each testified before the grand jury and prepared investigation memoranda. Their grand jury testimony and investigation memoranda were admitted into evidence pursuant to the parties' Stipulation.

side of the courtroom,¹²⁵ where Clerk Okstein saw him and registered his presence.¹²⁶ According to Officer Simmons, he identified himself to a court officer inside the courtroom¹²⁷ and requested that he be allowed to take custody of Mr. Medina-Perez in the lockup area after arraignment and upon Mr. Medina-Perez's release from state custody. Officer Simmons did not provide the name of the court officer he spoke with at this time, but stated that the court officer responded to the effect of "[t]hat would be great, no problem," because court security was "shorthanded and it would be easier for them if [Officer Simmons] took [Mr. Medina-Perez] in [the] lockup."¹²⁸ Officer Simmons remained in the courtroom until the lunch recess, when he left to get lunch.¹²⁹

ii. Second Call

The second call of the *Medina-Perez* case began at 12:04 p.m., with Judge Joseph asking whether there was "an issue of ID."¹³⁰ Attorney Bostwick responded by saying that she had "gone through a fair amount of the paperwork," at which point Judge Joseph interjected, "Do you need a further call or...?"¹³¹ Attorney Bostwick then said, "I'm happy to show the Court what I have in terms of, this is for the Pennsylvania warrant and I think it's . . . I don't think it's him."¹³² At this point, ADA Jurgens provided Judge Joseph with a copy of the booking photograph from Pennsylvania,¹³³ and explained that it was "the photo that is attached to the warrant from, the warrant is . . . eight years old . . . and it, it was the FB-, it is . . . PCF number was a fingerprint hit for the warrant."¹³⁴ Judge Joseph responded, "I can't tell by the photograph," after which she and Attorney Bostwick had the following exchange:

- Attorney Bostwick: "I guess Your Honor if I could have a further call because I am trying to get some information from his employer..."
- Judge Joseph: "Sure, of course."

¹²⁵ Ex. Q at APP302:18-304:6.

¹²⁶ Tr. 344:1-14.

¹²⁷ In addition to Court Officer MacGregor, Court Officer Michael Walsh was on duty at the NDC on April 2, 2018. Tr. 381:10-24.

¹²⁸ Ex. Q at APP306:23-307:21; Ex. O (Department of Homeland Security Immigration and Customs Enforcement – Richard Simmons Memorandum of Investigation) at APP283.

¹²⁹ Ex. Q at APP308:1-8.

¹³⁰ Ex. G at APP038.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

- Attorney Bostwick: "...that they may have to verify certain things..."
- Judge Joseph: "Yeah."
- Attorney Bostwick: "I might need a few minutes to do that. But I would just say based on the photo on the Pennsylvania warrant, Your Honor, I don't think it's him."¹³⁵

Judge Joseph then walked through some of the difficulties she was having in comparing Mr. Medina-Perez's features to those of the individual in the photograph, after which she said, "What I'll do is I'll give you additional time today to see if we can figure out if he's the same person that Pennsylvania seeks on that."¹³⁶

Following this exchange, Judge Joseph explained to Mr. Medina-Perez that the recess would be used to determine if he was the person subject to the Pennsylvania warrant: "If you are the correct person, my decision is whether to hold you for the warrant, and allow Pennsylvania to come, and bring you back to Pennsylvania or to release you and allow you to go to Pennsylvania on your own. But the first issue that I have to determine is whether or not you're the same person. So what I'm going to do is allow your attorney a little bit extra time today, to make that determination."¹³⁷ Attorney Bostwick then asked to see a copy of the Triple I form, an interstate FBI record that compiles individuals' criminal records,¹³⁸ which Judge Joseph granted.¹³⁹

Consistent with her office's typical practice, ADA Jurgens advised Judge Joseph that she would be recommending that Mr. Medina-Perez be released without bail on the two misdemeanor controlled substance charges, but that she was requesting that he be held in custody without bail on the Pennsylvania fugitive warrant.¹⁴⁰ Judge Joseph then continued the matter for "further call" and the second call ended at 12:09 p.m.¹⁴¹

¹³⁵ *Id.*

¹³⁶ *Id.* at APP038-39.

¹³⁷ *Id.* at APP039.

¹³⁸ *Id.*; Tr. 300:20-301:5.

¹³⁹ Ex. G at APP039.

¹⁴⁰ *Id.* at APP039-40; Tr. 224:21-226:20.

¹⁴¹ Ex. G at APP040.

iii. Third Call

The third call of the *Medina-Perez* case at approximately 12:38 p.m. was brief: Attorney Bostwick stated that she had just sent a fax, presumably in connection with the identity issue.¹⁴²

iv. Fourth Call

The fourth call of the *Medina-Perez* case happened shortly thereafter and was also brief: Attorney Bostwick asked for additional time over the lunch break, and to delay the next call until at least 2:15 p.m., because she had a medical appointment and the interpreter also had to be somewhere.¹⁴³ Judge Joseph granted the request and indicated that court would resume at about 2:15 or 2:30 p.m.¹⁴⁴ The court then recessed for lunch at 12:40 p.m.¹⁴⁵

v. Lunch Recess

a. Judge Joseph's Consideration of Whether To Follow First Justice Heffernan's Practice of Asking ICE Officers Not To Enter the Courtroom

During the lunch recess, Clerk Okstein—who had seen Officer Simmons sitting in the first session courtroom during the morning¹⁴⁶—informed Judge Joseph that an ICE officer was present in the courtroom.¹⁴⁷ Clerk Okstein explained that First Justice Heffernan¹⁴⁸ had adopted a practice to address ICE's presence in the courthouse and to avoid disruption in the courtroom.¹⁴⁹ Under this practice, the judge would have the session clerk ask the ICE officers to wait in the courthouse lobby outside of the courtroom, so as not to interfere with

¹⁴² Ex. H (Full Day Transcript for April 2, 2018) at APP082.

¹⁴³ Ex. H at APP083.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Tr. 344:1-14.

¹⁴⁷ Tr. 346:7-24.

¹⁴⁸ Each Massachusetts District Court has its own First Justice, who is tasked with managing and administering the court. Tr. 460:2-461:9. First Justice Heffernan became a judge in 2013, and began serving as First Justice of the Newton District Court in 2016. Tr. 459:21-460:1. She became Regional Administrative Justice for Region 4 of the District Court in 2023. Tr. 458:20-459:3. She had previously clerked on the Massachusetts Appeals Court, served in the Middlesex District Attorney's Office, worked in private practice at a law firm and as general counsel at a healthcare provider, and served in former Governor Deval Patrick's cabinet. Tr. 459:4-20.

¹⁴⁹ Tr. 346:11-24; 467:7-468:2 (First Justice Heffernan testified that her practice applied to "any law enforcement," not just ICE officers).

court proceedings.¹⁵⁰ The practice was never put in writing, and Clerk Okstein testified that it was not something that other judges were required to follow.¹⁵¹ Notably, Chief Court Officer Noe testified that ICE officers “very rarely” came to the NDC, estimating that it had happened only approximately one to three times per year up to this point.¹⁵²

Judge Joseph had never heard of the practice of excluding ICE officers from a courtroom, and testified that she was concerned that it might infringe on the public’s right to access the courtroom.¹⁵³ Because of this, as Judge Joseph explained at the hearing and in her prior testimony before the CJC’s Counsel—and as the CJC does not dispute¹⁵⁴—she took a number of steps over the course of the one hour and 53 minute lunch recess to evaluate whether she should follow First Justice Heffernan’s practice. (Judge Joseph could not ask First Justice Heffernan for advice about this because Judge Heffernan was attending a funeral and was neither at the court nor responding to phone calls on April 2, 2018.¹⁵⁵) For example:

- 1) Judge Joseph asked Clerk Okstein if he had a copy of a court policy relating to ICE, and he tried to track it down for her.¹⁵⁶ Clerk Okstein went to his office to search for it, but was unable to “put [his] hands on the actual policy.”¹⁵⁷
- 2) After confirming that Clerk Okstein did not have a copy of the policy, Judge Joseph searched her own training materials, as well as First Justice Heffernan’s office, to see if she could find it there.¹⁵⁸
- 3) When Judge Joseph was unable to locate a copy, she called the Administrative Office of the District Court (“AODC”).¹⁵⁹ She first reached out to AODC legal counsel Ellen Shapiro and Zach Hillman, neither of whom answered her calls.¹⁶⁰ After leaving voicemails with both counsel, she called Sarah Adamson, an AODC

¹⁵⁰ Tr. 344:21-345:14; 467:7-468:2.

¹⁵¹ Tr. 345:15-23; 488:19-489:4.

¹⁵² Tr. 419:7-12; 431:9-16. Clerk Okstein testified that by April 2018, he typically saw ICE detainees “a few times a week,” but he did not testify as to the frequency of ICE officers actually being physically present at the NDC. Tr. 341:21-342:3.

¹⁵³ Tr. 682:25-683:12.

¹⁵⁴ See CJC Prehearing Mem. at 27, 33.

¹⁵⁵ Tr. 491:1-12; Ex. N at APP232:9-233:7. In fact, Judge Joseph had unsuccessfully tried to call First Justice Heffernan earlier that day in connection with an unrelated matter. Tr. 491:7-16; 509:4-23; 749:4-25.

¹⁵⁶ Tr. 375:17-376:4; 683:1-16; 753:11-754:2.

¹⁵⁷ Tr. 375:22-376:4.

¹⁵⁸ Tr. 752:12-753:10; Ex. N at APP195:4-196:14.

¹⁵⁹ *Id.*

¹⁶⁰ Tr. 754:6-755:3.

administrative assistant.¹⁶¹ Ms. Adamson promised to help, and a few minutes later Ms. Shapiro called Judge Joseph back.¹⁶²

- 4) Judge Joseph explained to Ms. Shapiro that an ICE officer was at the NDC, that First Justice Heffernan's practice called for her to exclude the ICE officer from the courtroom, and that she wanted to know if Ms. Shapiro could offer any guidance on whether it was proper to follow this practice, given Judge Joseph's concerns about excluding people from the courtroom.¹⁶³ Ms. Shapiro responded that there was a relevant policy, and that she would get back to Judge Joseph.¹⁶⁴
- 5) Shortly thereafter, Ms. Shapiro called Judge Joseph back and read much of the Lunn Policy to her, including the portions relating to ICE taking custody of individuals being released from state custody.¹⁶⁵ Ms. Shapiro advised Judge Joseph that it was her view that First Justice Heffernan's practice "was not inconsistent with" the Lunn Policy.¹⁶⁶ She also explained that the Lunn Policy permitted ICE officers to enter the lockup area, which was, in fact, "a preferred place to take custody of somebody because it's the most secure and safest place to do that."¹⁶⁷ In response to Judge Joseph asking for advice as to whether she should exclude the ICE officer from the

¹⁶¹ *Id.*; Ex. N at APP196:21-197:3.

¹⁶² Tr. 754:6-755:3; Ex. N at APP197:12-16.

¹⁶³ Tr. 683:17-684:12; 755:7-16; Ex. N at APP198:3-10 (Judge Joseph had two questions for Ms. Shapiro: "One was, you know, can we do that. I was concerned that there were First Amendment issues. These are public hearings, open to the public. I didn't know of any policy that allowed us to exclude any members of the public just as a general prohibition. Two, the next question I had was even if we can, should I, you know, do I have to.").

¹⁶⁴ Tr. 755:7-16.

¹⁶⁵ Tr. 756:19-757:7; 762:18-763:4 (Judge Joseph explained that she and Ms. Shapiro "actually read the sections a couple of different times, because I didn't physically have a copy, and we were going back and forth, and she was having to repeat reading it to me. We were both together trying to make whatever determination we needed to make."); Ex. N at APP197:17-198:16. Judge Joseph did not receive a copy of the Lunn Policy until later that afternoon (at 3:19 p.m.), when Ms. Shapiro emailed it to her. Tr. 757:25-758:9; Ex. N at APP240:18-241:4. Ms. Shapiro had scanned the policy to create a digital copy of it at 1:54 p.m.—around the time that she was speaking with Judge Joseph. Tr. 758:3-759:10; Ex. 5 (April 2, 2018, email correspondence from Ellen Shapiro to Judge Joseph) at 1.

¹⁶⁶ Tr. 756:19-757:21; Ex. N at APP198-99. Similar to Judge Joseph's initial concerns relating to First Justice Heffernan's practice, Chief Justice Dawley also testified that, when he later learned of it, his "original reaction was, this is impermissible" because "you can't keep people out of the courtroom, there's constitutional implications to an open court." Tr. 596:18-22. However, after consulting with legal counsel, Chief Justice Dawley concluded that a "judge had discretion" to adopt such a policy if they thought ICE's "presence could be disruptive." Tr. 596:22-597:6.

¹⁶⁷ Tr. 763:5-23.

courtroom, Ms. Shapiro expressed her view that it was up to Judge Joseph whether to do so.¹⁶⁸

Judge Joseph ultimately decided to follow First Justice Heffernan's practice because she was a new judge visiting the NDC, and she wanted to respect the First Justice's practices as long as they were permitted by Trial Court policies.¹⁶⁹ Accordingly, she told Clerk Okstein that she would follow First Justice Heffernan's practice and requested that he tell the ICE officer to leave the courtroom.¹⁷⁰ As discussed further below, Clerk Okstein then asked Officer Simmons to leave the courtroom, and he complied by waiting in the lobby of the courthouse, just outside of the courtroom.¹⁷¹

Importantly, Judge Joseph's diligence over the lunch recess appears to have resulted in her, in fact, being the only person in the NDC on April 2, 2018, who actually knew the requirements of the Lunn Policy, including that ICE officers should take custody of an individual subject to an ICE detainer in the lockup area if they are being released from state custody. Clerk Okstein, Chief Court Officer Noe, ADA Jurgens, and First Justice Heffernan (though not present in the NDC that day) all testified either that they were not familiar with the Lunn Policy, or at least that NDC personnel did not follow that policy, as of April 2, 2018.¹⁷² After reviewing the Lunn Policy, Chief Court Officer Noe also confirmed that neither his supervisor nor First Justice Heffernan had ever discussed the Policy with him.¹⁷³

b. Attorney Jellinek's Arrival, Retention, and Initial Actions

By the end of the lunch recess, individuals associated with Mr. Medina-Perez had retained Attorney Jellinek as private counsel for him,¹⁷⁴ and he then filed his appearance in the case.¹⁷⁵ Attorney Jellinek is a graduate of Boston College Law School and has practiced

¹⁶⁸ Tr. 756:19-757:21; Ex. N at APP198:11-16. Judge Joseph estimated that "[i]t took about an hour from when I got back from lunch to get the policy and find the policy and determine what we were going to do." Ex. N at APP200:6-16.

¹⁶⁹ Tr. 756:19-757:21 (Judge Joseph testified: "[Ms. Shapiro] says, you're the judge. But I'm a new judge. And if I have discretion, I wouldn't normally have done that. She says, you're the judge, you make the decision that you want. And I said, you know what, I'm a visiting judge, I'm a new judge, I'm not doing anything that the First Justice in this court wouldn't want me to do so long as it's proper under our policies.")

¹⁷⁰ Tr. 765:9-16; 346:14-24; Ex. N at APP199:2-12.

¹⁷¹ Tr. 347:15-348:6; Ex. Q at APP312:17-313:21.

¹⁷² Tr. 342:13-343:4; 431:24-432:10; 319:5-7; 489:7-490:6; 504:23-505:20; 520:22-522:8; 524:12-525:2. First Justice Heffernan's initial recollection was that April 2, 2018, predated the *Lunn* decision and resulting policy, but when she was shown the Policy during the hearing, she acknowledged her error. Tr. 489:7-490:6.

¹⁷³ Tr. 446:9-19.

¹⁷⁴ Tr. 55:6-56:11; 172:10-16.

¹⁷⁵ Ex. G at APP040; Ex. N at APP200:17-19.

law since 2000.¹⁷⁶ After a one-year clerkship at the Arizona Court of Appeals, he worked for the Massachusetts Committee for Public Counsel as a public defender from 2001 to 2006, in the Legal Affairs Division of the Boston Police Department from 2006 to 2008, and then as a private practitioner from 2008 to the present—where approximately 75% of his practice has been public defense work.¹⁷⁷ Attorney Jellinek knew Judge Joseph from her time in private practice, and had previously had coffee with her to discuss a continuing legal education program that they both had attended.¹⁷⁸

The timing of and reason for Attorney Jellinek’s initial presence at the NDC on April 2, 2018, as well as the circumstances of his retention to represent Mr. Medina-Perez and the manner in which he was paid for that representation, all remain unclear. While Attorney Jellinek claimed that he was at the NDC to make an argument in a case that morning, he could not recall anything about the argument or who he allegedly represented, and there is no indication in the transcript for all court proceedings on April 2, 2018, that he appeared in court that morning on behalf of anyone.¹⁷⁹ Moreover, no other witness testified to seeing Attorney Jellinek at the NDC before the lunch recess.¹⁸⁰ Although he initially claimed that he had first been approached by Mr. Medina-Perez’s associates sometime around 10:30 a.m. or 11:00 a.m. that morning, he later testified that he did not remember the timing of their initial discussion, but that it was “during a break in the session,” and ultimately acknowledged that it might have been during the lunch recess.¹⁸¹ Attorney Jellinek has also given inconsistent statements regarding the form of payment he received for representing Mr. Medina-Perez, telling the federal grand jury in 2019 that he received a check for \$1,000, while telling the CJC’s Counsel in December 2024 that he was paid \$1,000 in cash. He then reverted to his earlier position (at the grand jury) during his testimony at the hearing on June 9, 2025 (i.e., claiming that he was paid by check, not cash).¹⁸² When asked about these inconsistent statements during cross-examination, Attorney Jellinek claimed that his memory

¹⁷⁶ Tr. 45:17-25.

¹⁷⁷ Tr. 45:17-46:12.

¹⁷⁸ Tr. 151:12-23.

¹⁷⁹ Tr. 167:8-168:23 (Judge Joseph’s Counsel: “But the fact is that you didn’t perform anything that day. Right? You never were heard in the morning. On any transcript or any audio. Right?”) Attorney Jellinek: “I was shown a transcript that doesn’t include anything from me, but I believe I was there and did argue.” Judge Joseph’s Counsel: “So are you saying you think that the transcript is wrong?” Attorney Jellinek: “It could be . . .”; 172:17-173:20 (Attorney Jellinek: “Again, I think I was there, and I think that’s why [Mr. Medina-Perez’s] friends approached me, because I made an argument. To the best of my memory, I was there making an argument that morning.”); *see generally* Ex. H.

¹⁸⁰ Officer Simmons, who was in the courtroom starting at 9:30 a.m. on April 2, 2018, testified that Attorney Jellinek “was not in the courtroom the entire morning session. The only case . . . I was aware of in the afternoon was [Mr. Medina-Perez] and it was the only case I thought [Attorney Jellinek] to be involved with.” Ex. Q at APP316:1-5.

¹⁸¹ Tr. 55:6-17; 170:5-173:10. Attorney Jellinek testified that one of these associates claimed to be Mr. Medina-Perez’s employer. Tr. 55:10-17; 177:3-5.

¹⁸² Tr. 56:10-18; 142:4-144:16.

about the form of payment was better when he testified before the grand jury than it was seven years later, when he first spoke with the CJC's Counsel in December 2024.¹⁸³ Attorney Jellinek also testified that to confirm whether he received the payment by check or cash, he had requested his April 2018 bank statement two months prior to the hearing, but that he never received it.¹⁸⁴

After he was retained, Attorney Jellinek noticed discrepancies between Mr. Medina-Perez's photograph and personal information on the one hand, and the Pennsylvania fugitive warrant and the ICE detainer on the other.¹⁸⁵ While Attorney Jellinek's hearing testimony was inconsistent in various respects with what is reflected in the transcript of the April 2, 2018, proceeding and what was otherwise established during the hearing, it is clear that significant identification issues were brought to the attention of ADA Jurgens and Judge Joseph throughout the course of the day, including after Attorney Jellinek had taken over as Mr. Medina-Perez's counsel in the afternoon.

Another illustration of the inconsistencies between Attorney Jellinek's testimony and other evidence received during the hearing relates to his claim that Mr. Medina-Perez's employer showed him a birth certificate with a raised seal, "as if it were an official document" reflecting that Mr. Medina-Perez was born in Puerto Rico,¹⁸⁶ which would make him a United States citizen not subject to deportation. There is no evidence in the transcript of the April 2, 2018, proceeding, in any exhibit introduced at the June 2025 hearing, or in any other witness's testimony, that Attorney Jellinek had brought this alleged birth certificate from Puerto Rico to anyone's attention on April 2, 2018, or in the ensuing days. While a U.S. birth certificate with a raised seal may not have been conclusive evidence that Mr. Medina-Perez was a U.S. citizen, presumably if Attorney Jellinek had, in fact, been shown such a birth certificate, he would have brought it to the attention of the ICE officer, ADA Jurgens, and Judge Joseph (just as he had brought to their attention a variety of other evidence and arguments). But there is no indication that he did so with any of them.

Nevertheless, Attorney Jellinek did argue on April 2, 2018, that the Triple I form he had been able to review that day reflected that approximately 12-13 people were tied to the FBI number triggered by Mr. Medina-Perez's fingerprint, some of whom had physical characteristics that readily distinguished them from Mr. Medina-Perez.¹⁸⁷ These issues caused Attorney Jellinek to argue that Mr. Medina-Perez was not, in fact, the subject of the Pennsylvania fugitive warrant or the ICE detainer.¹⁸⁸

¹⁸³ Tr. 142:22-25; 143:10-145:19.

¹⁸⁴ Tr. 144:6-16.

¹⁸⁵ Tr. 57:18-58:25.

¹⁸⁶ Tr. 61:10-62:10; 191:2-15.

¹⁸⁷ Tr. 61:10-25; *see also* Ex. G at APP041. For example, Attorney Jellinek testified that one man tied to the FBI number "didn't have an arm" and "one had a huge tattoo on his face." Tr. 61:20-22.

¹⁸⁸ Tr. 57:18-58:25.

At some point during the lunch recess, Attorney Jellinek attempted to persuade Officer Simmons that ICE had misidentified Mr. Medina-Perez, but to no avail.¹⁸⁹ As a result, he approached Court Officer MacGregor in the first session courtroom, which was otherwise empty during the recess.¹⁹⁰ Attorney Jellinek knew Court Officer MacGregor from having worked at the NDC over the years.¹⁹¹ He was also familiar with the NDC's physical layout from his time practicing there.¹⁹² Attorney Jellinek testified that he explained to Court Officer MacGregor that he thought ICE "ha[d] the wrong guy."¹⁹³ He initially claimed, on direct examination, that Court Officer MacGregor responded that if Attorney Jellinek could get Mr. Medina-Perez downstairs into the lockup area, Court Officer MacGregor could let him out the sallyport exit if he "ha[d] permission" or "it's cleared."¹⁹⁴ Later, on cross-examination, Attorney Jellinek's testimony regarding Court Officer MacGregor's response did not include any reference to "permission" or "clearance": "He said, if I remember right, if you get him downstairs, I'm allowed to let him out the back."¹⁹⁵ Attorney Jellinek testified that he "knew that ICE generally in Newton is asked to wait outside of the courtroom in the front lobby," and that if Mr. Medina-Perez were "released downstairs, he might have a chance to avoid ICE."¹⁹⁶ He admitted on cross-examination that the plan to have Mr. Medina-Perez avoid ICE in this manner was "my idea."¹⁹⁷

vi. Final Call

Following the lunch recess, the final call of the *Medina-Perez* case began at 2:48 p.m.,¹⁹⁸ with Attorney Jellinek appearing for the first time to represent Mr. Medina-Perez, and ADA Jurgens again appearing on behalf of the Commonwealth.¹⁹⁹ Clerk Okstein, Court Officer MacGregor, and Interpreter Mendoza were also present.²⁰⁰ It is undisputed that prior to the final call, Judge Joseph was unaware that Attorney Jellinek had been retained, and that

¹⁸⁹ Tr. 58:10-59:2; Ex. Q at APP310:5-312:7.

¹⁹⁰ Tr. 62:11-63:9.

¹⁹¹ Attorney Jellinek testified that he was friendly with the courthouse staff and would generally bring them coffee or lunch on Tuesdays, when they were all working in drug court sessions. Tr. 48:10-23.

¹⁹² Tr. 49:9-23; 46:13-47:16.

¹⁹³ Tr. 63:10-22.

¹⁹⁴ Tr. 63:10-65:13; 104:6-9.

¹⁹⁵ Tr. 104:6-9. Moreover, to be clear, the hearing record is devoid of any suggestion that, after the sidebar, Attorney Jellinek ever communicated to Court Officer MacGregor that Judge Joseph had granted permission for Mr. Medina-Perez to be released out the sallyport exit.

¹⁹⁶ Tr. 64:1-10.

¹⁹⁷ Tr. 127:22-128:1.

¹⁹⁸ Ex. G at APP040.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*; Tr. 254:6-12.

Attorney Jellinek had made a plan with Court Officer MacGregor to bring Mr. Medina-Perez to the lockup area after the case was adjourned, so that Court Officer MacGregor would release Mr. Medina-Perez out the sallyport exit.²⁰¹

a. Recorded Sidebar

Immediately after Clerk Okstein called the case, Attorney Jellinek introduced himself and requested a sidebar with Judge Joseph.²⁰² Attorney Jellinek testified that he wanted the sidebar because “there were so many complex issues in the case,” such as the Pennsylvania fugitive of justice charge, which “required a little bit more of an in-depth conversation, and [he] wanted to alert the judge that [they] were going to discuss it in a more complicated way.”²⁰³ Judge Joseph granted the request and conducted a recorded sidebar conference with ADA Jurgens and Attorney Jellinek.²⁰⁴

During this sidebar, Judge Joseph remained on the judge’s bench (though she “roll[ed] [her] chair over to the side where the lawyers were”²⁰⁵), and Attorney Jellinek and ADA Jurgens were to the right (from the perspective of the gallery), by the two stairs that led to the entrance to the bench.²⁰⁶ Attorney Jellinek testified that ADA Jurgens was about a foot and a half away from him during the sidebar and generally acknowledged that she would have heard everything he said.²⁰⁷ When the sidebar began, Mr. Medina-Perez was not yet in the courtroom—Clerk Okstein had asked Court Officer MacGregor to go to the lockup area to bring him up and Attorney Jellinek stated that he did not want to wait for him to arrive.²⁰⁸ Clerk Okstein testified that during the sidebar, he was performing administrative tasks, so he was not paying attention to the discussion.²⁰⁹

When the sidebar began, the white noise machine was turned on in the courtroom, to make it especially difficult for anyone who was not at the sidebar to hear the discussion.²¹⁰ Judge Joseph began the recorded portion of the sidebar by stating, “[*Inaudible*] is dismissed,

²⁰¹ See Response ¶¶ 18-19; CJC Prehearing Mem. at 35.

²⁰² Ex. G at APP040; Tr. 93:3-5; CJC Proposed Findings of Fact, Conclusions of Law, and Recommendations for Discipline (“CJC Post-hearing Mem.”) ¶ 71; Request for Findings of Fact and Conclusions of Law Submitted on Behalf of Judge Shelley M. Richmond Joseph (“Judge Joseph Post-hearing Mem.”) ¶ 83.

²⁰³ Tr. 67:8-15.

²⁰⁴ Ex. G at APP040. For some unknown reason, after Judge Joseph stated, “We’re just going to go sideb-,” the recording stopped for just a second at 2:48:47 p.m., but immediately resumed at 2:48:48. *Id.*

²⁰⁵ Tr. 767:19-21.

²⁰⁶ Tr. 93:8-21; 227:20-228:9; 303:3-304:1; 844:15-24.

²⁰⁷ Tr. 95:6-96:23.

²⁰⁸ Ex. G at APP040; Tr. 254:13-17; 686:8-687:1.

²⁰⁹ Tr. 349:24-351:4.

²¹⁰ Tr. 94:2-6; 273:16-274:14.

so it's my understanding that ICE is here . . . ,"²¹¹ at which point Attorney Jellinek interrupted her and the following exchange occurred:

- Atty Jellinek: "[*Inaudible*] . . . so there's the fugitive –["]
- Judge Joseph: "If there's no warrant –"
- ADA Jurgens: "-Yes."
- Atty Jellinek: "["] . . . there isn't [*inaudible*] that we can tie this to him."
- ADA Jurgens: "eh-, I, I don't think it's him."
- Judge Joseph: "Okay."²¹²

While it is unclear from the transcript what Judge Joseph was saying at the very beginning of the sidebar (when she said "[*Inaudible*] is dismissed"),²¹³ I do not find it surprising that Judge Joseph was the first person to reference ICE during this initial exchange. During the lunch recess Clerk Okstein had told her about the presence of the ICE officer, and she had just spent much of the almost two-hour recess evaluating how to address Officer Simmons' presence at the NDC in light of First Justice Heffernan's practice of excluding ICE officers from the courtroom. Notably, the colloquy that immediately followed Judge Joseph's reference to ICE related to (1) the outstanding Pennsylvania fugitive warrant, (2) whether there was sufficient evidence to tie Mr. Medina-Perez to that warrant, (3) the belief by both ADA Jurgens and Attorney Jellinek that the evidence tying Mr. Medina-Perez to that warrant was, in fact, insufficient, and (4) Judge Joseph accepting their assessment in that regard.²¹⁴

Attorney Jellinek then moved on to address the fact that ICE was there, stating:

"ICE is convinced that this guy. I went over to ICE, they say they have a biometric match. I went through it and did the research. There's 13 FBI numbers connected to this social. So something's bad with the [*inaudible*]. My client denies that it's him. ICE is going to pick him up if he walks out the front door. But I think the best thing

²¹¹ Ex. G at APP040.

²¹² Ex. G at APP040-41.

²¹³ Judge Joseph testified that she did not know what "is dismissed" may have referenced, as no charges had been dismissed by that time. Tr. 687:15-688:4; Ex. N at APP204:8-18.

²¹⁴ Ex. G at APP041-42. Nothing in the record explains why ADA Jurgens—who throughout the morning calls expressed confidence that Mr. Medina-Perez was the subject of the Pennsylvania fugitive warrant—had reversed her position on this issue (e.g., whether any new information had been brought to her attention since the morning calls that caused her to change her view on whether Mr. Medina-Perez was the subject of the Pennsylvania warrant).

for us to do is to clear the fugitive issue, release him on a personal ... and hope that we can avoid ICE.”²¹⁵

I do not infer that a reasonable person with no knowledge of Attorney Jellinek’s plan with Court Officer MacGregor would have understood Attorney Jellinek to be saying that he was hoping that Mr. Medina-Perez would be able to avoid ICE by sneaking out of the NDC through the sallyport exit while ICE remained upstairs in the courthouse lobby. Nor is that how ADA Jurgens or Judge Joseph interpreted his statement. Indeed, as ADA Jurgens testified, one way for Attorney Jellinek to help Mr. Medina-Perez avoid being taken into custody by ICE would be to convince the ICE officer that he was not, in fact, the actual subject of the ICE detainer—as Attorney Jellinek had just successfully convinced ADA Jurgens with respect to the Pennsylvania fugitive warrant.²¹⁶

In considering the identity concern that Attorney Jellinek had just raised, Judge Joseph replied in a similar fashion to how she had engaged with Attorney Bostwick during the morning calls, by saying, “[*Inaudible*] . . . the other alternative is if you need more time to figure this out – hold until tomorrow ...”²¹⁷ After Attorney Jellinek said something inaudible, Judge Joseph started to say, “Then it’s a different ...” when ADA Jurgens began to speak about the ICE detainer and her role. Neither Attorney Jellinek nor ADA Jurgens addressed Judge Joseph’s proposal about possibly giving Attorney Jellinek “more time to figure this out.”²¹⁸ Rather, ADA Jurgens stated “[t]here is a detainer attached to my paperwork. But I, I feel like that’s separate and apart from what my role is,”²¹⁹ and Attorney Jellinek then stated that “[t]here is an ICE detainer. So if he’s bailed out from Billerica [an overnight jail] ... [*inaudible*] ... ICE will pick him up.”²²⁰ Judge Joseph responded, “ICE is gonna get him?” and then, following an inaudible statement from Attorney Jellinek, she attempted to revert to her earlier point—concerning whether Attorney Jellinek needed more time to figure this out, which neither Attorney Jellinek nor ADA Jurgens had addressed—asking simply, “What if we continued it?”²²¹

²¹⁵ Ex. G at APP041.

²¹⁶ Tr. 305:5-17.

²¹⁷ Ex. G at APP041.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.* While the parties stipulated that the five words of this transcription were “What if we detain him,” as I noted to the parties during the May 7, 2025, prehearing status conference, I believe the audio recording reflects that Judge Joseph in fact said, “What if we continued it.” May 7, 2025, Prehearing Status Conference, Tr. 27:1-29:11; Ex. J (Enhanced Audio Recordings for April 2, 2018 hearings) at 2:49:53-2:49:58. Although the thrust of the two statements remains largely the same—that Judge Joseph was considering whether to continue the case until the following day, during which time Mr. Medina-Perez would continue to be held in state custody overnight (and therefore he would continue to be detained)—I believe the actual phrasing she used (“continued it”) reflects that her primary focus at this time was on whether to pause the proceeding in order to give Attorney (...continued)

In short, Judge Joseph simply raised the question of whether the case should be briefly continued to the following day in order to afford Mr. Medina-Perez’s new lawyer, Attorney Jellinek, some additional time to continue his investigation of Mr. Medina-Perez’s identity, and potentially engage further with the ICE officer about this issue. Moreover, I find it understandable that she raised this question at this point given that (1) she had just learned from ADA Jurgens and Attorney Jellinek that biometric information, on which ICE was basing its identification of Mr. Medina-Perez, had inaccurately identified him as the subject of the Pennsylvania fugitive warrant, and (2) it was already nearly 3:00 p.m. and the NDC would be closing by 4:30 p.m.²²² I credit Judge Joseph’s testimony that she was “just trying to hit pause”—which was consistent with her approach throughout the morning calls, when she repeatedly allowed Attorney Bostwick time to investigate Mr. Medina-Perez’s identity.²²³ This motivation is also consistent with ADA Jurgens’ perception that Judge Joseph was offering Attorney Jellinek and Mr. Medina-Perez time to do what they could to sort out the identity issue.²²⁴ Whether Judge Joseph was right or wrong in thinking this way, I believe that she genuinely viewed the possibility of continuing to hold Mr. Medina-Perez in state custody overnight as being analogous to continuing to hold him in custody at the courthouse throughout the day while his case was repeatedly adjourned for further calls, as she had been doing that morning.²²⁵

Judge Joseph testified that she “had a responsibility to everybody involved, the defendant, the attorneys, the district attorney’s office, ICE, everybody needed to know who [Mr. Medina-Perez] was,”²²⁶ and, assuming the defense would consent to it,²²⁷ a continuance

Jellinek additional time to further investigate the identity issue, just as she had repeatedly done for Attorney Bostwick in the morning, and as she testified was her focus at the time. *See* Tr. 702:18-23 (Judge Joseph: “Again, my concern was, allowing the defense attorney enough time to investigate and do whatever job he felt that he could do with whatever information that he got. I was just trying to hit pause, just like I had four times during the morning.”); Ex. G at APP038-40. Although this wording difference (between “detain him” and “continued it”) does not affect my findings and recommendation in any respect, I would encourage anyone who might consider this to be important to listen to the recording (specifically at 2:49:53-2:49:58 of Ex. J).

²²² Tr. 697:7-24; 740:11-21; 769:14-770:4; *see* Ex. G at APP041.

²²³ Tr. 701:14-704:10.

²²⁴ Tr. 305:18-307:10. Notably, this approach is consistent with a principle that First Justice Heffernan acknowledged to be important during her testimony: giving a defense lawyer time to do his or her job. Tr. 525:23-25; 526:3-527:1 (First Justice Heffernan: “The time that is required by the defense and the assistant DA for any case is liberally given by me.” Judge Joseph’s Counsel: “And certainly, even though ICE isn’t your issue, you wouldn’t want ICE to take the wrong person, would you?” First Justice Heffernan: “Certainly not.”); *see also* Tr. 301:19-21 (ADA Jurgens agreeing that “there’s nothing wrong with a judge giving a lawyer time to do his or her job”).

²²⁵ Tr. 771:5-21.

²²⁶ Tr. 707:5-10.

²²⁷ Tr. 789:5-6.

would ensure that each of these parties would return the following day.²²⁸ If Attorney Jellinek were unable to marshal additional evidence or arguments by the following day to persuade ICE that Mr. Medina-Perez was not the subject of their detainer and warrant, then ICE would take custody of him, and Attorney Jellinek could pursue legal recourse thereafter. At a high level, Judge Joseph’s overall concern with respect to the possibility that Mr. Medina-Perez might not be the subject of the ICE detainer was in alignment with perspectives ADA Jurgens and First Justice Heffernan expressed during the June hearing—that it would not have been good if ICE had taken custody of the wrong person.²²⁹

To be clear, at this particular point in the proceeding, the Pennsylvania fugitive charge had not been dismissed, and ADA Jurgens’ request that Mr. Medina-Perez be held without bail remained. Indeed, all that ADA Jurgens had said with respect to that charge up to this point was “I, I don’t think it’s him.”²³⁰ Although ADA Jurgens’ statement clearly suggested that there would be further discussion regarding where things stood with respect to the Pennsylvania charge and that a motion to dismiss might follow, that had not yet taken place. Moreover, Judge Joseph had not made a determination to continue the matter to the next day (and thus have Mr. Medina-Perez remain in detention overnight). Rather, she was simply putting a question to counsel as to whether he would like any additional time before continuing with the proceeding.

As discussed further below, it was only *after* the entire sidebar had concluded (including the 52-second off-the-record portion of the sidebar that I will address in the next section of the Report), that Judge Joseph, ADA Jurgens, and Attorney Jellinek engaged—in open court—in the following far more detailed and explicit discussion regarding the identity issue in relation to the Pennsylvania fugitive charge:

- Atty Jellinek: “After some extensive research into the various FBI numbers [inaudible] social security numbers, as well as obtaining a photo from Pennsylvania, we don’t believe that this gentleman is the same gentleman as on the fugitive-from-justice warrant.”
- ADA Jurgens: “Your Honor, with the information that I have I don’t think that there is enough tying him to the Pennsylvania warrant. The great deal of other out-of-state records – I do believe that some of them . . . belong to this individual. But that is not what’s at issue here.”
- Judge Joseph: “OK.”

²²⁸ Tr. 697:19-24; 702:24-703:24 (Judge Joseph testified that she proposed that the proceeding “pause, everything stops right here, and we are going to do all of this tomorrow, we’d handle the fugitive from justice matter tomorrow, we’ll handle the arraignment on the Newton charge tomorrow, he’s going to get held one more day so you can do your investigation however you want to do it and get any information that you think might be helpful, if there’s any helpful information, we’ll all come back tomorrow.”).

²²⁹ Tr. 296:3-7; 526:23-527:1.

²³⁰ Ex. G at APP041.

- ADA Jurgens: “So at this point I would dismiss, um, the —”
- Judge Joseph: “The fugitive?”
- ADA Jurgens: “- count one, -”
- Judge Joseph: “OK.”²³¹

Whether Judge Joseph would have had the legal authority to keep Mr. Medina-Perez in state custody overnight prior to the above exchange and prior to the dismissal of the Pennsylvania fugitive charge is an academic question that I need not resolve. Judge Joseph fully agrees that, if the fugitive charge had been dismissed, she would not have had the authority to detain Mr. Medina-Perez overnight.²³² But at the time of the sidebar, there had not been a fuller discussion about that charge (including, for example, with respect to whether ADA Jurgens had been in contact with the Pennsylvania authorities to confirm their position on the identity issue). Nor had that charge been dismissed. It is therefore not surprising, and indeed I find it understandable, that Judge Joseph would have thought that, under the circumstances and with the consent of the parties, it might be appropriate to at least consider continuing the matter to the next morning.²³³ Moreover, even if continuing the matter meant that Mr. Medina-Perez would remain in state custody overnight, she was simply raising the possibility of doing so for Attorney Jellinek’s and ADA Jurgens’ consideration. In any event, after Attorney Jellinek had implicitly and quickly rejected her proposal, and ADA Jurgens had explained her position on the identity issue and then moved to dismiss the fugitive charge, Judge Joseph promptly moved on from the possibility of continuing the matter to the next day and granted ADA Jurgens’ motion to dismiss.

b. Going Off the Record

Before the Pennsylvania fugitive charge was dismissed, however, and while Judge Joseph, Attorney Jellinek, and ADA Jurgens were still at the sidebar, Attorney Jellinek responded to Judge Joseph’s question about possibly continuing the proceeding by asking “Are we on the record?” Judge Joseph then asked Clerk Okstein, “[C]an we go off the record

²³¹ Ex. G at APP041-42.

²³² Tr. 703:4-8. The only remaining charges against him were misdemeanor drug charges (for which ADA Jurgens was not seeking to detain Mr. Medina-Perez, Ex. G at APP037-39), and an order of pretrial detention without bail is generally available in Massachusetts only for certain felonies that involve violence or the threat of violence, or when release will not “reasonably assure the appearance of the person before the court” or ensure the “safety of any other person or the community.” M.G.L. c. 276, §§ 57, 58.

²³³ I note that the CJC’s Counsel argued in summation that “[a]fter a career as a criminal defense lawyer, could [Judge Joseph] really be so cavalier about sending a defendant to the jail overnight with no legal basis. That’s preposterous.” Tr. 967:25-968:3. For a number of reasons, I do not agree with the suggestion that Judge Joseph was being in any way cavalier about Mr. Medina-Perez’s liberty, starting with the fact that as of 2:48 p.m. on April 2, 2018, there was only one likely alternative to him spending the night in state custody, and that was him spending the night in federal custody because of the ICE detainer. Far from being cavalier about Mr. Medina-Perez’s liberty, I believe Judge Joseph was endeavoring to be as thoughtful and considerate of Mr. Medina-Perez’s situation as possible under the circumstances.

for a moment?”²³⁴ Clerk Okstein was not paying attention and asked Judge Joseph, “What’s that?”²³⁵ Judge Joseph responded, “Are we off the record?” to which Clerk Okstein stated, “No we’re on the record.”²³⁶ Attorney Jellinek then asked, “Can we go off the record for a minute?”²³⁷ after which Clerk Okstein turned off the courtroom recording system.²³⁸ Judge Joseph did not know why Attorney Jellinek wanted to go off the record, nor did she ask.²³⁹ While she testified at the hearing that she believed that Attorney Jellinek may have wanted to discuss something personal or why he was replacing Attorney Bostwick,²⁴⁰ and she testified in her sworn interview with the CJC’s Counsel that she “didn’t know if there was something personal, something related to him, something related to the client, [or] something related to Attorney Bostwick and why she wasn’t back,” Judge Joseph also explained that “everything [was] moving very quickly,” and she “didn’t give it much thought.”²⁴¹

Going off the record to discuss the substance of a case violated District Court Special Rule 211, which requires that:

“all courtroom proceedings, including arraignments in criminal . . . cases, shall be recorded electronically, subject to the availability and functioning of appropriate recording devices, except that the following may but need not be recorded: (a) the call of the list and similar matters of an administrative nature; (b) proceedings that are being recorded by a court reporter appointed by the court; and (c) proceedings conducted by a magistrate other than a judge.”²⁴²

²³⁴ Ex. G at APP041.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ Ex. G at APP041; Tr. 310:5-7; 692:3-20; Ex. N at APP208:17-22.

²³⁹ Ex. N. at APP209:3-11; Tr. 31:23-33:1; 692:3-20. As Judge Joseph explained when asked what she was thinking when Attorney Jellinek asked to go off the record, “[e]verything happened really quickly. . . There wasn’t a lot of contemplation. What I do remember is everything was moving very quickly, and at every juncture with this case something was changing.” Ex. N at APP209:12-210:6.

²⁴⁰ Tr. 692:3-693:5.

²⁴¹ Ex. N. at APP209:12-213:16. The CJC argues that it is not plausible that Judge Joseph could have thought Attorney Jellinek may have wanted to address why he was replacing Attorney Bostwick because Attorney Bostwick was present within the bar enclosure at the time. CJC Post-hearing Mem. at 45-46; Tr. 844:15-845:11. I disagree. Indeed, even assuming Judge Joseph had seen Attorney Bostwick in the courtroom when the afternoon proceeding began, one could well imagine that her presence would, in fact, still raise questions in Judge Joseph’s mind as to why Attorney Jellinek had replaced her (given that, in Judge Joseph’s view, Attorney Bostwick had been doing a “great job” representing Mr. Medina-Perez). App N. at APP207:2-14.

²⁴² Ex. K (District Court Special Rule 211) at APP122.

While Special Rule 211 does not define “courtroom proceedings” and does not specifically address sidebars, Judge Joseph concedes that “all courtroom proceedings” includes sidebar conferences.²⁴³

However, as of April 2, 2018, Judge Joseph was unaware of the requirement that courtroom proceedings be recorded, given that (1) none of her training as a new judge, the 90 Day Guide, or the Benchbook addressed Special Rule 211,²⁴⁴ and (2) throughout the course of her career, she had experienced many occasions in which judges went off the record for a variety of reasons.²⁴⁵ She was not alone in this regard: neither Clerk Okstein nor Attorney Jellinek were aware of Special Rule 211,²⁴⁶ and neither Clerk Okstein nor ADA Jurgens raised any concern about going off the record.²⁴⁷ Even First Justice Heffernan acknowledged that she only learned about “a rule regarding recording . . . anecdotally.”²⁴⁸

In general, the hearing testimony reflected that the practice of going off the record in court proceedings in the District Court and the Superior Court varied widely among judges, though it generally became less frequent over time.

For example, Judge MacLeod, who sat in various District Courts for approximately 13.5 years and then the Superior Court for approximately 14 years, testified that she “probably [went off the record] at least once a week.”²⁴⁹ She explained that she and her

²⁴³ Ex. M at APP163.

²⁴⁴ Ex. N at APP229:17-230:5; Tr. 58:17-59:5 (Judge Joseph testified that had she known there was a rule against going off the record, she would not have done so on April 2, 2018.); *see also* Tr. 605:17-25 (Chief Justice Dawley testified that there was no training on Special Rule 211 or the requirement that courtroom proceedings be recorded prior to the April 2, 2018, incident.). Judge Joseph testified that she was generally familiar with the District Court Rules from her practice prior to becoming a judge, but she conceded that when she became a new judge and received training materials—including the approximately 1300-page Massachusetts Rules of Court which included Special Rule 211 in a 30-page section on District Court rules—she did not review the District Court rules from start to finish. Tr. 663:12-666:5.

²⁴⁵ For example, when she was a prosecutor at the Attorney General’s office, Judge Joseph participated in unrecorded lobby conferences with judges to resolve cases. Ex. N at APP184:17-185:16. In addition to having seen and/or participated in discussions that were off the record relating to potential dispositions or pleas, Judge Joseph testified that she also had experience with off-the-record discussions relating to things like “perhaps a lawyer is ill” or “something personal with a client or some collateral issue, whatever it may be, that may not be appropriate to discuss. It may not be for dispositional purposes, but case related.” Ex. N at APP185:17-186:18.

²⁴⁶ Tr. 354:8-10; 205:13-18. ADA Jurgens was not asked at the hearing whether she was aware of Special Rule 211.

²⁴⁷ Tr. 354:11-16; 232:5-25. Clerk Okstein testified that the practice of going off the record varied by judge, and that off-the-record conferences (including in the NDC) generally concerned personal matters. Tr. 351:10-353:21. Although ADA Jurgens did not voice any objection to Attorney Jellinek’s request to go off the record, she testified that she had not previously experienced going off the record “while a case [was] being discussed.” Tr. 232:5-16. Attorney Jellinek testified that while he had not been off the record “in a while,” in the early 2000’s “we would go off the record frequently.” Tr. 81:14-23.

²⁴⁸ Tr. 461:22-462:1.

²⁴⁹ Tr. 806:18-807:4.

colleagues went off the record both in the District Court and the Superior Court for various reasons, such as to protect the safety and personal privacy of parties and witnesses.²⁵⁰ Judge MacLeod testified that she generally trusted lawyers, so she would grant their requests to go off the record without knowing what they wanted to discuss,²⁵¹ and she would then put the substance of the discussion on the record afterwards if she felt it did not justify being off the record.²⁵²

Similarly, Judge Ball testified that she witnessed judges going off the record “[l]eft, right, and center,” and this was “[i]n both the District Court and in the Superior Court.”²⁵³ She explained that in her experience as both a practicing lawyer and a Judge, going off the record was a frequent occurrence, and for good reason from the perspective of many litigants and judges:

“it was a very popular practice with lawyers on both sides, with judges, because everybody felt people were . . . it’s human nature . . . you’d get the real scoop if you’re off the record . . . people are much more willing to give a judge the full information for any . . . number of reasons, privacy reasons, office politics reasons, witness problems, and . . . the goal here was to do justice in the individual case . . . to do that, you, as a judge, you want as much information as you possibly can . . . it allowed us to do justice to have the opportunity to get the real scoop on some things.”²⁵⁴

Judge Ball explained that there was a “progression” over time in terms of the frequency and location of parties going off the record, and that “the courts pushed us . . . towards going on the record and definitely not doing stuff in the lobby . . . The move was to go to side bar and do it in full sight of the public even if not in the hearing of the public.”²⁵⁵ As a Superior Court Judge, Judge Ball did not require counsel to provide their reason for going off the record, because

²⁵⁰ Tr. 799:20-800:11; 806:12-17; 807:5-809:14. To be clear, Special Rule 211 does not apply to the Superior Court (though on May 3, 2018, the Superior Court adopted a similar rule, Administrative Directive No. 18-1, which mandates that “[a]ll proceedings in criminal cases in the Superior Court shall be recorded by either an electronic recording system or a per diem court reporter”) It is irrelevant, however, that there was no rule analogous to Special Rule 211 that applied to Superior Court proceedings prior to April 2018, given that, as of April 2, 2018, Judge Joseph was not aware that there was a requirement for *either* District or Superior Court proceedings to be recorded, and her experience in both District and Superior Courts over her 25-year career clearly caused her to genuinely believe—albeit inaccurately—that it was not inappropriate to readily agree to Attorney Jellinek’s request to go off the record.

²⁵¹ Tr. 809:15-812:22.

²⁵² Tr. 810:13-812:22.

²⁵³ Tr. 854:7-13.

²⁵⁴ Tr. 855:23-856:20.

²⁵⁵ Tr. 855:10-20.

“I really like lawyers. And I trusted lawyers . . . I always trusted that lawyers were doing the right job, were helping counsel and doing the right job for their clients . . . We all have different attitudes about it. But I err on the side assume that counsel’s asking to . . . approach or go off the record, they were doing it for reasons that were consistent with their representing their client effectively. And if there was a problem, then you deal with it at the time.”²⁵⁶

Judge Ball also specifically recalled that when Judge Joseph appeared in front of her in Superior Court, there were “absolutely” occasions when they went off the record.²⁵⁷

Chief Justice Dawley agreed that “for a long time [Special Rule 211] was honored more in the breach than in fact by some people.”²⁵⁸ Although he also agreed that generally, over time, the practice of going off the record became less common,²⁵⁹ he testified that he thought “there were some circumstances” when it is permissible to go off the record—while caveating that “I’ll only speak for myself.”²⁶⁰ He provided examples of when he went off the record, including (1) “[w]hen somebody clearly wanted to speak to me about” something “[p]ersonal to the lawyer. Something non-case related,” or (2) “challenging” circumstances during which he was “very cautious not to record” lawyers or law enforcement discussing the fact that a defendant subject to arraignment or sentencing was a cooperating witness or informant.²⁶¹

Former District Court Judge Singleton testified that he had experience going off the record, though he generally frowned upon doing so and would usually “press” the attorney requesting to go off the record to “at least give . . . a hint” regarding the reason for the request.²⁶²

On the other hand, First Justice Heffernan testified that she had never gone off the record in her 12 years as a judge.²⁶³ Similarly, RAJ Fortes testified that in her 18.5 years as a judge, she had never gone off the record.²⁶⁴

Multiple witnesses were asked questions about the fact that from 2007 through 2015, the law was in flux regarding whether “lobby conferences” involving plea discussions were

²⁵⁶ Tr. 859:11-24.

²⁵⁷ Tr. 860:8-16.

²⁵⁸ Tr. 619:10-15.

²⁵⁹ Tr. 619:10-20.

²⁶⁰ Tr. 582:18-23.

²⁶¹ Tr. 582:18-583:21.

²⁶² Tr. 879:15-880:9.

²⁶³ Tr. 463:12-15.

²⁶⁴ Tr. 533:23-534:3.

required to be recorded.²⁶⁵ This was the result of SJC guidance that had been issued in 2007²⁶⁶ and a 2015 amendment to Massachusetts Rule of Criminal Procedure 12(b)(2) which required that “judge[s] may participate in plea discussions at the request of one or both of the parties if the discussions are recorded and made part of the record.”²⁶⁷ To be clear, however, Rule 12(b)(2) is not applicable here because the April 2, 2018, events at issue in this matter did not involve plea discussions.

At some point after April 2, 2018, Chief Justice Dawley arranged for the District Court Committee on Education to incorporate Special Rule 211 into the training for new judges, because, as a result of this case, he learned that not all new judges were aware of the Rule.²⁶⁸

c. Off-the-Record Sidebar

As the CJC has acknowledged, the principal dispute in this matter centers around what was said during the 52-second off-the-record sidebar with Judge Joseph, Attorney Jellinek, and ADA Jurgens.²⁶⁹ For the reasons set forth below, and based on the credible evidence adduced during the hearing, I find that neither Attorney Jellinek nor Judge Joseph said or did anything during this brief off-the-record sidebar that would support the conclusion that Judge Joseph knew of or authorized Attorney Jellinek’s plan to have Mr. Medina-Perez return to the lockup area for the purpose of enabling him to evade ICE by exiting out the back of the courthouse—much less that they said or did anything that would support such a conclusion by clear and convincing evidence. As the relevant witness accounts of the off-the-record sidebar differed significantly, it is worth examining each.

²⁶⁵ Lobby conferences—which were often held to work out a plea—involved the defense lawyer, prosecutor, and probation discussing a case in a judge’s chambers “frankly and directly” off the record. Tr. 81:24-82:6; 585:18-24.

²⁶⁶ See *Murphy v. Boston Herald, Inc.*, 449 Mass. 42, 57 n.15, 865 N.E.2d 746, 758 n.15 (2007) (“If there was ever a case that demonstrates the need for lobby conferences, where cases or other court matters are discussed, to be recorded, this is the case. This litigation, with all its unfortunate consequences for those involved, might not have occurred if the critical lobby conference . . . had been transcribed. We trust that the lesson learned here will be applied by trial judges to prevent unnecessary problems that often arise from unrecorded lobby conferences.”).

²⁶⁷ Ex. L at APP125; Tr. 586:22-588:1; Mass. R. Crim. P. Rule 12. The reporter’s notes to Mass. R. Crim. P., Rule 12 indicate that “[j]udges are experienced in determining when sidebars or other such restrictions are appropriate, and the rule anticipates that they will continue to apply that experience [in judiciously] exercising this discretion.” Ex. L at APP144.

²⁶⁸ Tr. 605:17-606:11. As Chief Justice Dawley explained during the hearing, his view had been “that people knew about [Special Rule 211] and it was kind of self-evident. It turns out over time that was not the case.” *Id.*

²⁶⁹ Tr. 7:20-24. It should be noted that given that Attorney Jellinek and ADA Jurgens needed to walk back from the sidebar (on the right side of the bench) to their prior positions at the counsel tables after the sidebar concluded—which would have taken at least a few seconds—the actual discussion during the off-the-record sidebar likely lasted even less than 52 seconds.

1. Attorney Jellinek's Account

Attorney Jellinek claimed that during the off-the-record sidebar, he explained how Mr. Medina-Perez could evade ICE by going downstairs to the lockup area and then exiting the building through the basement sallyport door while the ICE officer remained “out front”:

“I said that I was very concerned that ICE, as I said on the record, ICE had the wrong individual, because this was supposedly biometric data that didn’t match up, and that I had spoken to the court officer, and they’re allowed to let the gentleman out the basement sallyport door, *if I can get him downstairs, and I knew that ICE was out front, so that might be a way for him to avoid getting into ICE custody.*”²⁷⁰

He then reiterated the alleged clarity of his statement during the off-the-record sidebar when he testified that he and Judge Joseph both knew that the ICE officer was “waiting in the front lobby, *and that’s why I said if we can get him downstairs and out the back he won’t be caught by ICE.*”²⁷¹

According to Attorney Jellinek, Judge Joseph responded by simply saying: “*then that’s what we’ll do, we’ll proceed that way; or something like that.*”²⁷² He

²⁷⁰ Tr. 73:19-74:3 (emphasis added).

²⁷¹ Tr. 74:11-16 (emphasis added). Attorney Jellinek has recounted his purported exchange with Judge Joseph and ADA Jurgens in varying ways. See, e.g., Tr. 162:9-22 (Attorney Jellinek testified on cross-examination that during the off-the-record discussion, he “advocated for [Mr. Medina-Perez] to be released,” raised the issue of going downstairs “to see [his] client,” and “asked that [Mr. Medina-Perez] be able to go downstairs *and be released to the lockup area*”) (emphasis added); Tr. 163:13-23 (Attorney Jellinek told the CJC’s Counsel in her December 2024 interview of him that he told Judge Joseph during the off-the-record discussion “essentially” that “if ICE was waiting out front, [he] thought it would be best” for Mr. Medina-Perez “to be released out the back door”).

²⁷² Tr. 74:4-7 (emphasis added); see Tr. 164:23-165:10 (Attorney Jellinek told the CJC’s Counsel in December 2024 that Judge Joseph responded, “that’s what we’ll do”). Notably, it appears that the first time Attorney Jellinek told anyone what he is now claiming Judge Joseph said in response to his allegedly having told her and ADA Jurgens of his proposed plan (that if Mr. Medina-Perez can go “downstairs and out the back [of the courthouse] he won’t be caught by ICE”) was when he spoke with the CJC’s Counsel in *December 2024*:

- Judge Joseph’s Counsel: “And you were asked about that same topic in 2019, six years prior, you never said, yeah, that’s what we’ll do. You never quoted a single word from [Judge Joseph] in response, right?”
- Attorney Jellinek: “I don’t remember saying – I don’t remember the details of the meeting. If that’s what the report from the FBI said, as I said earlier, I believe those are fragments of our conversation. The whole thing may have been slightly different. But if that’s what it says there, then you can read that.” Tr. 198:8-18.

Attorney Jellinek also claimed in his testimony that the United States Attorney’s Office may not have been interested in what, if any, response Judge Joseph may have had to his allegedly having told her and ADA Jurgens of his proposed plan:

(...continued)

claimed that he would not have proceeded with his plan unless he believed that he had Judge Joseph's "blessing."²⁷³

Notwithstanding the simplicity and clarity of Attorney Jellinek's purported statement to Judge Joseph and ADA Jurgens during the unrecorded sidebar—"if we can get him downstairs and out the back he won't be caught by ICE"—on February 12, 2019, over three months after he began speaking with the U.S. Attorney's Office in connection with its investigation of this matter, and less than a year after the incident, Attorney Jellinek admitted that he had "*no idea what was in [Judge] Joseph's mind during and after the sidebar conversation.*"²⁷⁴ This admission belies the possibility that he could have said to Judge Joseph and ADA Jurgens anything as simple and straightforward as what he testified he said to them. Nor could Judge Joseph have said anything in response to his alleged statement to them that could be viewed as a clear endorsement (or "blessing") of his escape plan—such as the simple and straightforward statement, "then that's what we'll do"—while still leaving Attorney Jellinek with "no idea what was in [her] mind." Yet that remains Attorney Jellinek's position. Indeed, during the June 2025 hearing, in response to Judge Joseph's counsel reminding him that he had told the United States Attorney's Office in 2019 that "he had no idea what was in Judge Joseph's mind during and after the side bar conversation," Attorney Jellinek responded "*Again, that's correct. I did not know what was in her mind. I only knew what my reading of statements [inaudible] the implications were. I had made inferences.*"²⁷⁵

As discussed further below, it is not plausible that one would have "*no idea*" what was in the mind of a person who said "that's what we'll do" in response to a defense attorney saying he wants to sneak his client "out the back" of a courthouse so "he won't be caught by ICE." Nor do I believe one would need to "*make inferences*" from, or attempt to discern "*the implications*" of, such an exceedingly simple exchange. Yet that is what Attorney Jellinek testified to during the June 2025 hearing. It is for this reason, as well as several others I address further below, that I do not credit Attorney Jellinek's account of what was said during the 52-second off-

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- Judge Joseph's Counsel: "Well, they would be interested, would they not, in whatever Judge Joseph had to say in response? Correct?"
 - Attorney Jellinek: "I don't know what they were interested in at that point."
 - Judge Joseph's Counsel: "So if you had said to them that she responded in some affirmative way that signaled that she was fine with him going out the back door, they would have put that in the notes, don't you think?"
 - Attorney Jellinek: "They also would have probably asked me directly, and I don't remember that they asked me directly either. I don't think that's in the notes either . . ." Tr. 186:17-187:5.

²⁷³ Tr. 75:21-76:6.

²⁷⁴ Tr. 164:15-22 (emphasis added).

²⁷⁵ Tr. 197:4-11 (emphasis added).

the-record sidebar. Foremost among these reasons is that his account is fundamentally irreconcilable with ADA Jurgens' account.

2. ADA Jurgens' Account

Both parties agree that ADA Jurgens was a credible witness.²⁷⁶ The CJC's Counsel, for example, states that "[h]er testimony was clear and precise and consistent with her previous statements."²⁷⁷ I concur. Unlike Attorney Jellinek's testimony, I find that ADA Jurgens' testimony was reliable and trustworthy, without any suggestion of invention, deception, or bias. She was listening attentively to the questions from counsel throughout her testimony, and consistently evidenced the care and thought one would expect from a conscientious and truthful witness.

ADA Jurgens readily acknowledged that she did not "remember a lot of what was on the record and what was off the record," explaining that the off-the-record discussion "was just a continuation of the same type of conversation"²⁷⁸ that had happened on the record: "[y]ou know, just ICE being there . . . Just different options to have the individual not be taken by ICE . . . I think whether, if there is a bail put on him . . . I can't be certain. I don't remember."²⁷⁹ She similarly testified on cross-examination that it all "kind of blends in."²⁸⁰ The "only firm memory . . . in terms of . . . a statement" that ADA Jurgens recalled was Attorney Jellinek asking to speak with Mr. Medina-Perez downstairs in the lockup area.²⁸¹ This testimony on its own strongly suggests that Attorney Jellinek did not say anything particularly noteworthy during the off-the-record portion of the sidebar—such as a plan to sneak Mr. Medina-Perez out the back of the courthouse to escape from the ICE officer who was waiting for him in the courthouse lobby.

During her hearing testimony, ADA Jurgens agreed that her memory of the sidebar "was probably better in January of 2019 [when she testified before the grand jury] than it is in June of 2025."²⁸² She also confirmed that she had provided the following testimony to the grand jury:

"so I don't have a memory of what was on and off the record, but having heard the recording now, what else was discussed at side bar was Attorney Jellinek's request to have Mr. [Medina-Perez] brought back downstairs to lockup, there was also a short

²⁷⁶ CJC Reply at 5; Judge Joseph Reply at 22.

²⁷⁷ Tr. 979:6-8.

²⁷⁸ Tr. 233:6-15.

²⁷⁹ Tr. 233:6-234-2.

²⁸⁰ Tr. 291:21-292:4. ADA Jurgens also testified that there was a discussion at some point in the day about where the ICE officer was waiting, but she could not recall if that discussion took place during the sidebar. Tr. 236:20-237:3.

²⁸¹ Tr. 311:19-25.

²⁸² Tr. 314:18-21.

discussion and, again, I remember zero direct quotes, but there was the continued discussion between Judge Joseph and Attorney Jellinek of sort of what can we do, and I just have a memory again, I can't remember any direct words of Attorney Jellinek, but saying something to the effect of, [he is] all set, I have a plan, I don't remember him saying I have a plan, but it was the gist and . . . that is what I got from their exchange was, you know, what should we do, and he is like I've got it under control, that sort of thing. Again, I don't remember any words, but that was the impression that I was getting at side bar, and after that is when he asked still at side bar if his client could be brought back downstairs to speak with him."²⁸³

At the same time, ADA Jurgens also testified that the discussion made her "uncomfortable" because her "training was that ICE . . . didn't play a calculus in a criminal case."²⁸⁴

Most notably, and in direct contradiction to Attorney Jellinek's allegation, ADA Jurgens testified that Attorney Jellinek did not say anything along the lines of, "if I take [Medina-Perez] downstairs, the court officer will let him out the back door," nor did Judge Joseph respond, "yes, that's what we'll do."²⁸⁵ ADA Jurgens was clear that if someone had said that they had made a decision to release Mr. Medina-Perez "out the back door," she would remember it—and that did not happen.²⁸⁶ She was also quite clear that she "had no reason to believe, having been present at side bar" that Judge Joseph "knew that David Jellinek was going to have [Mr. Medina-Perez] released out the back door."²⁸⁷

That Attorney Jellinek did not, in fact, reveal his plan for Mr. Medina-Perez's escape to ADA Jurgens and Judge Joseph during the off-the-record sidebar is further corroborated by the fact that ADA Jurgens clearly left the sidebar believing that Mr. Medina-Perez would ultimately be walking through the front door of the courtroom, not through the sallyport exit.²⁸⁸ As discussed further below, after the court proceeding concluded, ADA Jurgens left the courtroom through the front door, and then walked over to Officer Simmons and shared her expectation that Mr. Medina-Perez would be exiting out the front of the courtroom.²⁸⁹ In

²⁸³ Tr. 314:22-315:20; Tr. 235:25-236:13 (ADA Jurgens testified that she recalls Judge Joseph saying "something to the effect of . . . what could we do and [Attorney Jellinek] saying, I have a plan, it's all set"). Chief Court Officer Noe testified that ADA Jurgens told him that at some point during the sidebar, either on or off the record, "Attorney Jellinek requested that [Mr. Medina-Perez] be released so he can get an immigration attorney," and that ADA Jurgens responded "I don't know how that's going to happen, ICE is right there waiting for him." Tr. 455:22-456:10. Since this is not reflected in the transcript of the April 2, 2018, proceeding, if this exchange occurred, it would have been during the off-the-record portion of the sidebar. ADA Jurgens' testimony never referenced this exchange.

²⁸⁴ Tr. 236:8-19.

²⁸⁵ Tr. 293:24-294:8.

²⁸⁶ Tr. 294:24-295:8.

²⁸⁷ Tr. 295:14-18.

²⁸⁸ Tr. 293:2-7.

²⁸⁹ Section III.D.vii, *supra*.

fact, she then remained with Officer Simmons in the courthouse lobby for an extended period of time while the two of them (and Officer Federico, who had just arrived at the NDC to support Officer Simmons) waited for Mr. Medina-Perez to walk through the front door of the courtroom into the lobby.²⁹⁰ As ADA Jurgens made quite clear at the hearing, there is no way she “would have gone out to the hall and told ICE he’s coming out [the courtroom] door” if Attorney Jellinek “had said at side bar . . . if I take him downstairs, the court officer will let him out the back door, and the judge said, yes, that’s what we’ll do[.]”²⁹¹

In short, ADA Jurgens’ testimony cannot be reconciled with Attorney Jellinek’s claim that during the off-the-record sidebar he explicitly stated his plan to have Mr. Medina-Perez evade ICE by walking out the back of the courthouse through the sallyport exit. Nor am I persuaded by the CJC’s attempts to explain the stark disparity in the testimony of its two principal witnesses. For example, the CJC argues that ADA Jurgens testified that she “does not remember” Attorney Jellinek’s alleged statements regarding Mr. Medina-Perez being released through the sallyport exit to evade ICE, not that he “did not make” those statements.²⁹² But this argument ignores ADA Jurgens’ clear testimony (discussed above) that (1) Attorney Jellinek did not in fact make those statements,²⁹³ and (2) if he had made such statements, she would remember them—and she does not.²⁹⁴ The CJC also appears to place significance on ADA Jurgens’ testimony that she did not believe that any defendant would ever be released from custody out of the back of the courthouse.²⁹⁵ But ADA Jurgens having such a belief only underscores that if Attorney Jellinek had actually said that Mr. Medina-Perez would be released out the back, she would have taken particular note that such an unprecedented action (from her perspective) was about to take place.²⁹⁶

Notwithstanding my view that ADA Jurgens’ testimony casts overwhelming doubt about the truthfulness and reliability of Attorney Jellinek’s claim that he told Judge Joseph and ADA Jurgens about this plan to sneak Mr. Medina-Perez out the back of the courthouse, I also recognize and credit ADA Jurgens’ overall discomfort with the ICE-related portions of the entire sidebar conference. On the one hand, she testified that her impression of Judge Joseph during the April 2 proceeding was that she had engaged in a “misguided attempt[] to

²⁹⁰ Tr. 241:6-242:3.

²⁹¹ Tr. 293:15-294:5.

²⁹² CJC Reply at 5.

²⁹³ Tr. 293:24-294:8.

²⁹⁴ Tr. 294:24-295:8.

²⁹⁵ CJC Reply at 5 (citing Stenographer’s Certified Tr. 241:5-21).

²⁹⁶ The CJC also notes that ADA Jurgens testified that Judge Joseph said something to the effect of “what can we do,” and argues that such a question by Judge Joseph must have been off the record since it does not appear in the transcript of the proceeding and “must have referred to [Mr. Medina-Perez’s] problem with ICE.” CJC Reply at 5. While I agree with that inference, such a statement by Judge Joseph would be consistent with her statements on the record during the sidebar in which she was attempting to explore potential options to enable Attorney Jellinek to continue to investigate the identity issue. However, it does not suggest in any respect that Attorney Jellinek then revealed his escape plan to Judge Joseph and ADA Jurgens.

do what she thought was right.”²⁹⁷ On the other hand, however, ADA Jurgens characterized the sidebar discussion as seeming “weird or sketchy”²⁹⁸ and stated that the ICE-related discussion (referring to both the on- and off-the-record sidebar discussion) made her feel “uncomfortable.”²⁹⁹ As addressed below, ADA Jurgens’ perspective in this regard is relevant to my consideration of whether Judge Joseph’s ICE-related statements during the afternoon session of the *Medina-Perez* matter (which lasted just over six minutes in total), while made innocently and in good faith, may nonetheless have created the appearance of impropriety and bias.³⁰⁰

3. Judge Joseph’s Account

Judge Joseph’s testimony during the June 2025 hearing and her June 2023 interview with the CJC’s Counsel regarding the off-the-record portion of the sidebar is generally consistent with ADA Jurgens’ recollection, namely that it was largely a “continuation” of the on-the-record discussion.³⁰¹ Judge Joseph recalled that the topics discussed off the record included Mr. Medina-Perez’s identity, the Pennsylvania fugitive charge, ICE’s detainer, and Attorney Jellinek’s request to speak with Mr. Medina-Perez in the lockup area with the assistance of Interpreter Mendoza.³⁰² Judge Joseph also explained that she thought Attorney Jellinek’s request was “completely appropriate . . . I was under the impression that he was going to go back downstairs, pick up his property, and go right into ICE custody through the sallyport, and in order for him to have an opportunity to speak with . . . his client, that would be the only place to securely do that.”³⁰³ Judge Joseph testified that this request was the only substantive statement she could recall that had not previously been discussed on the record,³⁰⁴ and she granted the request in part because she was not confident that the ICE agents would delay their seizure of Mr. Medina-Perez to permit such an attorney-client conversation.³⁰⁵

Judge Joseph also testified that, at some point during the proceeding, Attorney Jellinek rejected her suggestion that they consider the possibility of continuing the case to the following morning to provide him additional time to address the identity issue, at which point

²⁹⁷ Tr. 243:20-244:4.

²⁹⁸ Tr. 313:20-314:1.

²⁹⁹ Tr. 232:19-233:5.

³⁰⁰ Section IV.C.i.b, *infra*.

³⁰¹ Tr. 696:3-13; 730:8-19; Ex. N at APP213:17-23.

³⁰² Ex. N at APP228:14-229:2; Tr. 694:10-22.

³⁰³ Tr. 772:20-773:10.

³⁰⁴ Tr. 695:18-696:13.

³⁰⁵ Tr. 708:6-17.

she “drop[ped] the issue.”³⁰⁶ While Judge Joseph could not recall if this occurred on or off the record, she agreed that it must have occurred off the record because Attorney Jellinek’s rejection is not reflected in the transcript of the proceeding.³⁰⁷

Judge Joseph adamantly denied that Attorney Jellinek told her that he thought he could have Mr. Medina-Perez released out the back door if she granted his request to speak with Mr. Medina-Perez in the lockup area.³⁰⁸ When the CJC’s Counsel pressed Judge Joseph during her June 6, 2023, sworn interview on whether she specifically recalled that Attorney Jellinek did not say this, Judge Joseph responded, “he absolutely did not.”³⁰⁹ When presented with Attorney Jellinek’s grand jury testimony during which he stated that “he believed he had [Judge Joseph’s] blessing for the plan to have his client released out the back,” Judge Joseph responded that there was nothing she could “think of that would have given him that impression.”³¹⁰

4. Interpreter Mendoza’s Account

The record is clear that the sidebar took place by the steps on the right side of the Judge’s bench as one is facing the Judge, that the white noise machine was on throughout both the on- and off-the-record portions of the sidebar, which lasted a little over two minutes, and that Interpreter Mendoza was not standing with the attorneys at the sidebar. It is also clear from the audio recording of the proceeding that Judge Joseph and the attorneys were generally keeping their voices lower than usual during this discussion, as is typically the case during sidebars.³¹¹ Notwithstanding these significant impediments to Interpreter Mendoza’s ability to hear what was being said during the sidebar—and particularly given where he was located in the courtroom relative to the three participants in the sidebar—he testified that (1) he had the impression that Judge Joseph “didn’t like the fact that ICE was around,” and (2) “the gist of what I heard was that she wasn’t happy” and “was suggesting that [Mr. Medina-Perez] be let go out the back . . . or a different way.”³¹²

I do not find Interpreter Mendoza’s testimony to be reliable for a number of reasons, including, for example:

³⁰⁶ Tr. 769:17-771:4.

³⁰⁷ Tr. 769:17-770:22.

³⁰⁸ Ex. N at APP214:17-215:1.

³⁰⁹ *Id.*

³¹⁰ Ex. N at APP248:1-12.

³¹¹ Ex. J at 2:48:48-2:49:58.

³¹² Tr. 254:18-257:3.

- 1) He was the only witness to testify that the sidebar took place on the left side of the bench,³¹³ rather than the right side, where it actually took place.³¹⁴
- 2) His statements regarding his location and the location of the prosecutor and defense attorney (both before and during the sidebar) were materially inconsistent over the course of his brief testimony (which lasted approximately one hour), and also clearly inaccurate in important respects. For example:

During his direct examination by CJC's Counsel, he testified as follows:

- Q. "[When the sidebar conversation started], *where were you while you were waiting for the defendant?*"
- A. "*Towards the left, close to the table of where the attorneys sit, kind of set away.* Like you don't -- *I don't have to listen to what's being said or what the judge is doing at side bar.* Sometimes you can hear. Sometimes you can't. But I was trying to set back -- I don't know -- just being respectful. I wasn't right there. Nobody had to say, hey, move away or anything."
- Q. "*Were you able to hear some of what was being said at side bar?*"
- A. "*A little bit.*"³¹⁵

During cross-examination by Judge Joseph's Counsel, however, he testified as follows:

- Q. "And so when the case was called, you told us earlier that you were sitting at the special desk or carrel that they had for interpreters?"
- A. "I may have been sitting closer. That's what I mentioned, that there's a, *there's a legal desk where the prosecutor or defender* -- I'm not sure in Newton which one it is back there, but *I may have been like leaning up against that table or sitting right, right at that table.*"
- Q. "*But you weren't over by the dock because there was nobody in the dock when the case was first called; correct?*"
- A. "*Correct.*"

³¹³ Tr. 273:1-15; 282:7-284:19.

³¹⁴ Tr. 227:18-228:5; *see also* 50:19-51:11; 405:25-406:11; 844:15-21.

³¹⁵ Tr. 254:13-255:6 (emphasis added).

- Q. “[In open court, before the sidebar], you would have been next to the conversation or next to the lawyers; correct?”
- A. *“I was kind of behind the attorney, because the defendant wasn’t up there yet.”*
- Q. “Yup. And there was no interpreting for you to do.”
- A. “Excuse me?”
- Q. “There was -- No defendant means there was no interpreting for you to do; correct?”
- A. “Correct.”
- Q. *“And so when they moved the side bar, they moved away from you to your right and up next to the judge; right?”*
- A. *“No. They moved closer.”*
- Q. *“Closer to the judge? Or closer to you?”*
- A. *“No. Closer to me.”*
- Q. “Oh. Because you were on the right side now or on the left side facing the judge?”
- A. *“Facing the judge, I’m on the left side.”*
- Q. *“So in your memory, the side bar was on the left side, not the right side of the courtroom.”*
- A. *“When you’re looking at the court, on the left side.”*
- Q. “That’s where you remember the side bar to be.”
- A. “Yes.”
- Q. “And so do you recall . . . when they moved to side bar, was there any white noise in the courtroom? Do you know what white noise is?”
- A. “Yes, there was.”
- *****
- Q. “And are you saying that the white noise had no impact on your ability to hear what was being said at side bar?”

- A. “No, I’m not saying that . . . I’m saying that’s why I didn’t hear everything that was being said, because ***there was white noise and it was side bar. It’s not my position to be listening.***”³¹⁶

Then, in response to my questioning towards the end of his testimony, Interpreter Mendoza gave yet another version of where he was located just before the sidebar began, testifying that he “was like standing right on the corner of the dock,”³¹⁷ (i.e., contrary to his testimony on direct that he “may have been like leaning up against [the counsel] table or sitting right, right at that table,” and contrary to his testimony on cross that he “was kind of behind the attorney, because the defendant wasn’t up there yet”).

Thereafter, in response to my asking whether he was saying that he was “located somewhere between that location where the court officer typically sits and that door to the dock,” he testified that “during the side bar, I was, I was closer, because it was the end of the day, they were making a decision as to what they were going to do with the client, so I was standing a little closer, but I wasn’t able to hear everything” (i.e., (1) contrary to his testimony on direct that “I don’t have to listen to what’s being said or what the judge is doing at side bar,” (2) contrary to his testimony on cross that “there was white noise and it was side bar. It’s not my position to be listening,” and (3) contrary to the fact that the sidebar took place at the very beginning of the afternoon proceeding, at the request of the new attorney for Mr. Medina-Perez, and before there was any clarity as to whether the matter was going to go forward or be continued yet again).

- 3) Interpreter Mendoza’s claim that he could hear even a “little bit” of the sidebar is belied by Attorney Bostwick’s testimony that she could not hear anything that was said during that part of the proceeding.³¹⁸ Notably, Attorney Bostwick was sitting within the bar enclosure of the courtroom, and on the right side.³¹⁹ Accordingly, to the extent that anyone in the courtroom might have been able to hear anything that was being said at the sidebar—notwithstanding the white noise and lowered voices of the participants to the sidebar—Attorney Bostwick presumably would have been in the best position to do so.
- 4) Interpreter Mendoza was clearly confused regarding basic elements of the *Medina-Perez* proceeding, and court process, as illustrated by the following examples:

³¹⁶ Tr. 271:18-273:19; 274:15-23 (emphasis added).

³¹⁷ Tr. 282:7-24.

³¹⁸ Tr. 255:4-6; 845:5-11.

³¹⁹ Tr. 844:15-845:4; Ex. G at APP040.

- a) He thought that the male attorney at the sidebar (Attorney Jellinek) was the prosecutor in the case;³²⁰
 - b) He thought that a male attorney had represented Mr. Medina-Perez during the morning calls, notwithstanding that Attorney Bostwick was the only attorney who represented Mr. Medina-Perez in the morning;³²¹ and
 - c) Though he acknowledged that he was not certain of this, he testified that he thought that, as a general matter, sidebars are not recorded, “especially if there is white noise.”³²²
- 5) He often seemed confused during his testimony, particularly during cross-examination and in responding to my questions.³²³ Interpreter Mendoza’s challenges in understanding straightforward questions further underscore my skepticism that he actually and accurately heard and understood what was being said during the sidebar.
 - 6) He adopted an aggressive, and at times confrontational, demeanor during cross-examination—noticeably different from what he exhibited during the direct examination—which also undermines his credibility.³²⁴
 - 7) Finally, Interpreter Mendoza acknowledged that if Judge Joseph had said that Mr. Medina-Perez had been “released”—as she clearly did at the end of the arraignment³²⁵—that would be consistent with what he claimed to have heard at the sidebar.³²⁶

³²⁰ Tr. 277:10-21.

³²¹ Tr. 280:3-281:7.

³²² Tr. 274:24-275:7 (Counsel for Judge Joseph: “[D]o you have a memory as to whether or not the whole conversation at side bar was being recorded or not being recorded?” Interpreter Mendoza: “I don’t believe side bar is recorded, especially if there is white noise. I’m not sure, though.” Counsel for Judge Joseph: “But you don’t know.” Interpreter Mendoza: “If I was to make a – if I was a gambling man, I would say that it wasn’t recorded.”).

³²³ Tr. 256:12-14; 262:21-263:3; 272:10; 272:22. While Interpreter Mendoza testified virtually during the hearing, it was clear to me that his confusion did not stem from any issue with the audio on the virtual connection, which was clearly adequate throughout his testimony, other than when his screen shut off for a very brief period. Tr. 270:5-7.

³²⁴ Tr. 264:14-17 (Judge Joseph’s Counsel: “And the next time that you had contact with Mr. Medina Perez was in the morning or in the afternoon?” Interpreter Mendoza: “You tell me.”)

³²⁵ Ex. G at APP043.

³²⁶ Tr. 275:14-19. It appears that Interpreter Mendoza may have been surprised that Mr. Medina-Perez was being “released” given that ICE was there to take custody of him. Although unclear, his confusion may be the product of him not understanding the difference between Mr. Medina-Perez being released on the state charges as opposed to in relation to the ICE detainer. In addition, as with other matters Interpreter Mendoza testified to, his testimony with respect to Judge Joseph having said that Mr. Medina-Perez was being “released” evolved (...continued)

5. Attorney Jellinek Credibility Issues Relating to the Off-the-Record Sidebar

While I address Attorney Jellinek's overall credibility issues in greater detail in Section III.E, set forth immediately below are some of the principal reasons that I do not credit his testimony regarding the off-the-record sidebar in particular:

First, as noted above, it is directly at odds with the testimony of ADA Jurgens, who was standing less than two feet from Attorney Jellinek throughout the discussion, was the only participant in the off-the-record sidebar other than Attorney Jellinek and Judge Joseph, and who the parties and I agree was credible. While Attorney Jellinek testified at one point that ADA Jurgens was "standing next to me. If she had been paying attention, she would have heard it,"³²⁷ he has also offered several non-credible and inconsistent theories over time for why ADA Jurgens may not have heard or understood his allegedly explicit description of his plan for Mr. Medina-Perez to evade ICE by leaving through the sallyport exit. For example:

- 1) He has alleged that his statements during the off-the-record sidebar may have been "subtle enough that ADA Jurgens didn't understand" his plan to release Mr. Medina-Perez through the sallyport exit.³²⁸ At the same time, he also testified that he believes Judge Joseph understood those very same statements by him, saying "I don't believe you could ever know completely what's in someone else's mind, but I certainly knew or it felt like it was she was agreeing to."³²⁹ While it is not entirely clear what he was attempting to say here, there is no question that it was in tension with his repeated statements that he had "no idea what was in [Judge] Joseph's mind during and after the sidebar conversation."³³⁰
- 2) He also suggested that ADA Jurgens may not have understood what he was saying during the off-the-record sidebar because she was "a relatively new ADA,"³³¹ while

over the course of his testimony, with him later saying that he did not, in fact, hear Judge Joseph say the word "release," and that rather he "heard a judge say let the client go." Tr. 276:12-20.

³²⁷ Tr. 115:5-9.

³²⁸ Tr. 108:5-20. During cross-examination, Attorney Jellinek initially denied that he had previously characterized his off-the-record statements as "subtle," stating that he thought he had said that ADA Jurgens "might not have gotten it," but when defense counsel asked whether he told the CJC's Counsel that he might have "said something to the [U.S. Attorney's Office] to the effect of it was subtle enough that ADA Jurgens didn't understand," Jellinek acknowledged that this "sounds like" what he said. *Id.*

³²⁹ Tr. 164:7-14.

³³⁰ Tr. 164:15-22.

³³¹ Tr. 109:15-23; Tr. 89:1-90:9.

at the same time acknowledging that by April 2018 she had already been in the job for almost three years and had probably “handled thousands of cases.”³³²

- 3) He further testified that he was “not sure [ADA Jurgens] was paying too much attention” after “she said, basically, it’s not him, so the Pennsylvania warrant is dismissed and we’re not asking for bail.”³³³ However, at this point in the proceeding, ADA Jurgens had not yet explained her post-lunch recess thinking with respect to the Pennsylvania fugitive warrant (beyond uttering the single phrase, “I don’t think it’s him”), nor had she moved to dismiss the Pennsylvania charge. Moreover, Attorney Jellinek’s suggestion that ADA Jurgens may have somehow lost focus during the brief off-the-record sidebar is difficult to credit given that one would expect her to be especially focused at this point, both because she felt “concerned” with the discussion being off-the-record and she was generally “uncomfortable” with the ICE-related discussion during the sidebar.³³⁴ In addition, her interest in the ICE-related issue was clearly demonstrated by her decision to wait with ICE right after the arraignment.³³⁵ Indeed, as already noted, the fact that ADA Jurgens immediately engaged with Officer Simmons after the arraignment, and then stood with him while they both waited for Mr. Medina-Perez to walk through the front door of the courtroom, only serves to underscore that she was, in fact, extremely focused on ICE’s interest in Mr. Medina-Perez, and therefore would not have stopped paying attention to what Attorney Jellinek was saying about ICE and Mr. Medina-Perez during this 52 second discussion.³³⁶

Second, considering the totality of the circumstances at the time of the off-the-record sidebar, I find it highly unlikely that Attorney Jellinek would have sought approval from Judge Joseph for his (as he characterizes it) “perhaps right on the edge of acceptable or appropriate” plan to enable Mr. Medina-Perez to evade ICE by sneaking him out the back of the courthouse.³³⁷ In addition, not only do I find it unlikely that he would seek Judge

³³² Tr. 110:2-10. ADA Jurgens had also supervised up to 10 or 11 ADAs in other courts, though Attorney Jellinek said that he “didn’t know her work history.” *Id.*

³³³ Tr. 110:13-21.

³³⁴ Tr. 232:5-233:5.

³³⁵ Tr. 326:3-11.

³³⁶ Tr. 240:8-241:15. The CJC asserts that while ADA Jurgens was “present and listening,” she “focused her attention on her responsibilities,” CJC Post-hearing Mem. ¶ 103, implying that ADA Jurgens would have missed what Attorney Jellinek is claiming he told both ADA Jurgens and Judge Joseph during the off-the-record sidebar. Nothing in the record supports such a lack of attention on her part. To the contrary, her testimony, as well as her statements and actions both during and after this brief (less than seven minute) proceeding on the afternoon of April 2, 2018, make clear that she was quite attentive throughout.

³³⁷ Tr. 72:18-24; 90:22-91:6 (Attorney Jellinek: “I didn’t think it was unethical and I didn’t think it was illegal.” Q. “Did you think it was on the edge of ethical?” Attorney Jellinek: “Absolutely.”); 90:7-13 (Attorney Jellinek: “It’s on the edge of ethical and it’s on the edge of legal. And that’s one of the reasons that we went off the record . . . It’s a little bit in the grey area.”); 85:4-6 (Attorney Jellinek: “It is arguable, according to the Federal Government, that [it] constituted obstruction.”).

Joseph's approval of his plan under any circumstances, but I find it even more unlikely that he would do so (1) in the presence of a state prosecutor, ADA Jurgens, and (2) when obtaining Judge Joseph's approval of his corrupt plan was entirely unnecessary for him to execute it. All he needed was Judge Joseph's permission for Mr. Medina-Perez to return downstairs to the lockup area. Standing on its own, this would be a reasonable request that one would expect any judge to grant under the circumstances: Mr. Medina-Perez had property there, and Attorney Jellinek understandably would want to speak with his client about a number of issues after the arraignment (including, for example, the ICE detainer, the status of the Pennsylvania case, next steps in his Commonwealth drug case, and whether he should request an examination to determine if he is a drug-dependent person who would benefit from treatment, which Judge Joseph told Mr. Medina-Perez he would need to do "in writing within five days" if he wanted to pursue such treatment).³³⁸ Especially in light of Attorney Jellinek's acknowledgement that his plan for Mr. Medina-Perez's escape was, at a minimum, "right on the edge of acceptable or appropriate," I find it implausible that he would also tell Judge Joseph and ADA Jurgens that he was trying to facilitate his client's escape from ICE by sneaking him out the back door of the NDC, when doing so would risk the possibility that Judge Joseph and/or ADA Jurgens would object to his plan and inform ICE. I would also note that, while it is not necessary for me to decide this question for the Report, it is my view that Attorney Jellinek's plan was not merely "on the edge of acceptable or appropriate," it was over the edge, both legally and ethically.

Third, Attorney Jellinek's characterization of his plan as "right on the edge of acceptable or appropriate" is inconsistent with his statement to the U.S. Attorney's Office during his first interview with them on November 8, 2018, that he "thought it was okay for [Mr. Medina-Perez] to be released from the lockup area."³³⁹

Fourth, Attorney Jellinek claims that if Judge Joseph had rejected his request to go off the record, he still would have "said exactly the same thing" on the record.³⁴⁰ This also defies credulity and is yet another illustration of the contradictory statements he has made over time in this matter. As noted above, Attorney Jellinek acknowledges (as he must) that the plan he had devised with Court Officer MacGregor "was perhaps right on the edge of acceptable or appropriate."³⁴¹ The notion that he would have said "exactly the same thing" on the record as what he claims he said off-the-record³⁴² (when he was allegedly trying "to protect essentially everybody, but [himself] and the judge, most primarily")³⁴³ is, to put it mildly, difficult to accept. Moreover, it is belied by the fact that, as discussed further below,

³³⁸ Ex. G at APP042.

³³⁹ Tr. 163:1-7.

³⁴⁰ Tr. 73:10-12. Further, when asked whether Judge Joseph's statements during the recorded sidebar affected his plans for how to proceed, he answered that he "was going to proceed however [he] was going to proceed." Tr. 72:5-10.

³⁴¹ Tr. 72:18-24.

³⁴² Tr. 73:10-12.

³⁴³ Tr. 72:25-73:9.

he did not recount what he claims was said during the off-the-record discussion to anyone he spoke with later that day or over the ensuing days and weeks, including First Justice Heffernan, Chief Court Officer Noe, Attorney Bostwick, and ADA Jurgens. If he would have said “exactly the same thing on the record” as he claims he said off-the-record, why did he not say anything remotely close to the same thing to any of these individuals when they later engaged with him on this matter?

6. Finding as to the Off-the-Record Sidebar

Given the evidence, credibility, and reliability considerations discussed above, as well as the statements on the record after the off-the-record sidebar (addressed further below), I find that the discussion during the 52-second off-the-record sidebar included some or all of the following:

- 1) continued discussion about Mr. Medina-Perez’s identity, the Pennsylvania fugitive charge, ICE’s presence and whether ICE might take custody of Mr. Medina-Perez following the arraignment;
- 2) Judge Joseph asking something to the effect of, “what could we do;”
- 3) further discussion relating to possible courses of action, such as Judge Joseph’s question regarding whether the case should be continued until the next morning, which would entail keeping Mr. Medina-Perez in custody overnight;
- 4) Attorney Jellinek rejecting the idea of continuing the case until the next morning and stating, in substance, that he has “a plan,” is “all set” or has “it under control;”
- 5) Attorney Jellinek then requesting that he be allowed to go down to the lockup area with Mr. Medina-Perez and Interpreter Mendoza after the proceeding was adjourned so that he could speak further with his client; and
- 6) Judge Joseph indicating that she would permit that.

The off-the-record sidebar did not, however, include any explicit statement or implicit suggestion to the effect that Mr. Medina-Perez would be let out the sallyport exit in order to evade ICE. Nor did Judge Joseph in any way (explicitly or implicitly) “bless” or approve of such a plan.

In addition to the fact that the evidence refutes any allegation of Judge Joseph’s complicity in Attorney Jellinek’s plan, it defies logic and common sense that Judge Joseph would go to the lengths that she did for the better part of a two-hour lunch recess to determine whether it was permissible to request that ICE wait outside the courtroom, but then, in less than a minute, readily and willfully agree to facilitate Attorney Jellinek’s plan. Put another way, I do not find it plausible that the same person who had just struggled for an extended period of time with whether to abide by an experienced supervisory judge’s

practice of keeping ICE personnel out of the courtroom,³⁴⁴ would then, minutes later, and seemingly without a moment's hesitation, leap at the opportunity to facilitate a defense attorney's scheme to enable a criminal defendant's escape from the same ICE personnel. Certainly, and at a minimum, the evidence propounded at the hearing in support of the CJC's charge that Judge Joseph was complicit in Attorney Jellinek's plan falls well short of meeting the clear and convincing standard I am required to apply in this proceeding.

d. The Arraignment

In total, the entire sidebar (both on and off the record) lasted just two minutes and nine seconds. At its conclusion, the proceeding resumed in open court at 2:50:57 p.m., with the attorneys having left the sidebar and returned to their counsel tables, and Clerk Okstein stating, "Judge, we're back on the record on Mr . . . Jose Medina Perez. Attorney Jellinek on behalf of Mr. Perez."³⁴⁵ As set forth in detail above,³⁴⁶ Attorney Jellinek and ADA Jurgens then explained to Judge Joseph why each of them thought there were serious issues with whether Mr. Medina-Perez was the individual who was the subject of the Pennsylvania fugitive warrant, and that ADA Jurgens had decided to seek dismissal of the fugitive charge. After Judge Joseph granted ADA Jurgens' motion to dismiss that charge, ADA Jurgens indicated that she would not seek bail on the remaining controlled substance charges, and requested a pretrial conference date on those charges, to which Judge Joseph and Attorney Jellinek agreed.³⁴⁷

Attorney Jellinek then reiterated his request to speak with Mr. Medina-Perez in the lockup area (which he had just made during the off-the-record sidebar): "I would ask that he . . . I believe he has some property downstairs. I'd like to speak with him downstairs with the interpreter if I may."³⁴⁸ Judge Joseph responded, "That's fine. Of course."³⁴⁹ Per Judge

³⁴⁴ As noted in Section III.D.v.a, *supra*, on April 2, 2018, Judge Joseph was a new junior judge whose concern with doing the right thing had just been illustrated that very day, and in the very same case, by the actions she took to address her uncertainty as to whether she should adhere to a more senior judge's practice relating to where ICE officers should physically be located in the courthouse. Before agreeing to do so, she took it upon herself to research the propriety of the practice by (1) scouring the rules, regulations and training materials that she could find in the courthouse, (2) calling several different people in the AODC to see if they had any experience with or view about the practice, and (3) then having one of those counsel read (and re-read) to her much of a lengthy newly issued policy about ICE to see if that policy might address whether the senior judge's practice was lawful and proper. Only upon receiving confirmation that this practice was, in fact, permissible under court rules and policies did she agree to abide by it.

³⁴⁵ Ex. G at APP041.

³⁴⁶ See Section III.D.vi.a, *supra*.

³⁴⁷ Ex. G at APP041-42.

³⁴⁸ *Id.* Attorney Jellinek testified that his intention in saying this was, "I meant I wanted to go back downstairs with my client . . . essentially so he could go out the back door, have a further conversation, and then he could be let out the sallyport door to avoid ICE." Tr. 76:21-77:10.

³⁴⁹ Ex. G at APP042.

Joseph's testimony, this memorialized a portion of the off-the-record discussion that was new.³⁵⁰

As of April 2, 2018, the general practice in the NDC when the outcome of a proceeding resulted in a defendant being released from custody was to release them into the courtroom, subject to certain exceptions.³⁵¹ However, it was not unusual for a defendant being released from custody to first go downstairs to the lockup area for any number of reasons prior to ultimately exiting through the dock into the courtroom and then out the courtroom front door.³⁵² Notably, the NDC general practice of releasing defendants from

³⁵⁰ Tr. 695:11-696:2.

³⁵¹ Tr. 661:20-662:11; Ex. M at APP163.

³⁵² Defendants who went to the lockup area after their proceeding (for whatever reason) would typically thereafter come back up the stairs from the lockup area to the dock in the courtroom, and then exit through the courtroom front door. Tr. 357:24-358:6. Witnesses offered various recollections relating to what typically happened after a judge ordered that a defendant should be released from custody at the NDC, assuming that the defendant did not need to check in with probation or post bail. For example:

- 1) Attorney Jellinek testified that usually, defendants who were in custody would be released from the dock into the courtroom and would then exit through the courtroom door. However, such defendants might instead go back down to the lockup area to retrieve their property or for "other reasons," and that it "was not that unusual" for them to do so. Tr. 53:3-17; 152:2-11. When asked by Judge Joseph's counsel "you didn't think it was unusual for you to be able to go downstairs and to speak to your client before being released; correct?" Attorney Jellinek responded, "No, no. That happens sometimes." Tr. 155:25-156:4.
- 2) Clerk Okstein testified that defendants would "get their possessions [from the lockup area], and the court officer would walk with them up the stairs, and they literally would walk right out the front door." Tr. 357:24-358:6.
- 3) Allison Koury, who had practiced in the NDC multiple times a week as a bar advocate between 2017 and April 2, 2018, testified that defendants released from custody would always "go back downstairs." Tr. 872:3-873:14. She explained that such defendants would be released into the lockup area either for shackle removal, or if they were not in cuffs, to retrieve their property. Tr. 873:5-14. She also noted that "if something confusing had taken place" or she or the defendant had questions, she would want to go meet with the defendant in the lockup area, particularly if an interpreter was involved, while both the defendant and the interpreter were in the courthouse. Tr. 873:15-874:5.
- 4) Attorney Bostwick testified that it was "not unusual" for her to speak with a defendant and an interpreter in the lockup area. Tr. 846:18-847:6.
- 5) First Justice Heffernan testified that defendants "could either leave right from the dock" or if they had property in the lockup area "they could go downstairs and retrieve that" or accept it from a court officer, who would bring the property up to the courtroom. Tr. 465:18-466:15.
- 6) Chief Court Officer Noe testified that when defendants in custody arrived in court, a court officer would escort them up the lockup stairs with their property, stay in the dock with them during the courtroom proceeding, and then, if they were being released, hand them their property and release them from the dock into the courtroom. Tr. 416:15-417:18.

(...continued)

custody into the courtroom—whether or not they first did anything in the lockup area—created a potential conflict with the Lunn Policy if the defendant was also the subject of an ICE detainer.³⁵³ However, as of April 2, 2018, the Lunn Policy had only been in effect for just over four months, and, per Chief Court Officer Noe’s testimony, in the three years that he worked at the NDC leading up April 2, 2018, ICE officers had appeared there only approximately one to three times per year.³⁵⁴

After Judge Joseph confirmed on the record that at the conclusion of the proceeding Mr. Medina-Perez, Attorney Jellinek, and the interpreter would be permitted to go to the lockup area to speak and retrieve Mr. Medina-Perez’s property, he was then arraigned on the remaining charges and a pretrial conference date was set.³⁵⁵

It was at this point that Clerk Okstein advised Judge Joseph that, “[t]here was a representative from . . . ICE here in the Court . . . [inaudible] to, to visit the lock-up.”³⁵⁶ Judge Joseph responded, “*That’s fine. I’m not gonna allow them to come in here. But he’s been released on this.*”³⁵⁷ The plain reading of this exchange between Clerk Okstein and Judge Joseph is that Judge Joseph was expressly permitting ICE personnel to visit the lockup area—where Mr. Medina-Perez, Attorney Jellinek, and Interpreter Mendoza were heading—while continuing to adhere to First Justice Heffernan’s practice of not allowing ICE

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- 7) ADA Jurgens (who had only been on duty at the NDC for about a month as of April 2, 2018) testified that she did not recall defendants going down to the lockup area to retrieve their property, and that her “best memory” was that if a defendant being released from custody had left property in lockup, “one of the court officers would just run it up to them.” Tr. 318:15-20; 220:9-16.
 - 8) Judge Joseph stipulated in her agreement with the United States Attorney’s Office in 2022 that the “normal and custom and practice in Newton District Court, subject to certain exceptions, was that a defendant would be released from custody into the courtroom.” Ex. M at APP163. She also explained during her interview with the CJC’s Counsel in June 2023 that, at least in her personal experience as a defense attorney, she did not actually recall any of her clients being released through the dock of the courtroom at the NDC, and that, again at least in her personal experience, “they were released either into the parking lot or into the public hallway.” Ex. N at APP190:24-192:6.

³⁵³ The Lunn Policy required that “If, during the processing of an *individual subject to release out of the courthouse*, a *DHS official is present in the courthouse and seeks admission into the courthouse’s holding cell area* in order to take custody of the individual pursuant to an immigration detainer or warrant, *court officers shall permit the DHS official(s) to enter the holding cell area in order to take custody of the individual* once Trial Court security personnel have finished processing that individual out of the court security personnel’s custody[.]” Ex. B at APP007 (emphasis added); Tr. 638:3-639:11 (Chief Justice Dawley reviewing the Lunn Policy and concluding that the Newton District Court’s general practice of releasing defendants from custody into the courtroom “seem[s] to be inconsistent with the policy”).

³⁵⁴ Tr. 431:1-16.

³⁵⁵ Ex. G at APP042.

³⁵⁶ *Id.* at APP043.

³⁵⁷ *Id.* (emphasis added).

personnel to be in the courtroom itself.³⁵⁸ Judge Joseph’s response to Clerk Okstein’s inquiry—that it was “fine” for the ICE officer to go to the lockup area—was also mandated by the Lunn Policy that had just been read to her over the lunch recess, which provided that “court officers *shall permit* the DHS official(s) to enter the holding cell area in order to take custody of the individual.”³⁵⁹

The CJC criticizes Judge Joseph for “cho[osing] to repeat” the instruction to Clerk Okstein that “the ICE officer could not enter the courtroom.”³⁶⁰ I do not view this as a fair criticism for several reasons. First, it ignores the fact that Judge Joseph was responding to a clear and specific inquiry from Clerk Okstein as to whether it would be permissible for the ICE officer to “visit the lockup.”³⁶¹ Second, it is also evident that Judge Joseph wanted to be very clear that, while it was “fine” for the ICE officer “to visit the lockup,” he would still not be permitted to do so by physically entering the courtroom itself, because she still wanted to abide by First Justice Heffernan’s practice in this regard (which she could easily do given that the courtroom was only one of several access points that the ICE officer could have used to enter the lockup area).³⁶² Third, beyond First Justice Heffernan’s practice, Judge Joseph’s statement that the ICE officer was not allowed to “come in here” was also compelled by a specific directive in the Lunn Policy that had just been read to her: “[n]o DHS official shall be permitted to take an individual into custody pursuant to a civil immigration detainer or warrant *in a courtroom*, unless permission has been given in advance by the regional administrative judge or first justice sitting in the courthouse.”³⁶³ Under the circumstances, I believe criticism of Judge Joseph would be warranted only if she had chosen not to repeat her instruction that the ICE officer could not enter the courtroom.

Following the exchange between Clerk Okstein and Judge Joseph about ICE visiting the lockup area, Clerk Okstein advised Mr. Medina-Perez of his pretrial conference date and

³⁵⁸ Judge Joseph confirmed in her testimony that she intended to convey that ICE “can go to the lockup, but in compliance with [Judge Heffernan’s practice], they can’t come into the courtroom to access the lockup, but they can use any of the other entrances and opportunities to get to the lockup that they’re able to.” Tr. 774:20-775:6; Ex. N at APP218:1-22 (Judge Joseph explaining that she meant that ICE “can’t get there [the lockup] from here [the courtroom], but they can certainly get there any other way they want” and that “certainly the ICE agents . . . in [her] mind, could access the lockup area any way they wanted. They just couldn’t consistent with the Newton policy come into the courtroom to do that.”). See also Tr. 239:16-22 (CJC’s Counsel: “Did you understand the judge to be saying something about whether ICE could go into lockup?” ADA Jurgens: “I don’t have a memory of that. In reading the transcript, it was just that the ICE officer wasn’t going to be permitted to come into the courtroom.”).

³⁵⁹ Ex. B at APP007 (emphasis added).

³⁶⁰ CJC Post-hearing Mem. ¶ 115.

³⁶¹ Ex. G at APP043.

³⁶² As noted above, there are several other ways one could access the lockup area besides through the courtroom itself. See Section III.C.i, *supra*; see also n.358.

³⁶³ Ex. B at APP008 (emphasis added).

the consequences of incurring any new criminal charges while his case was pending.³⁶⁴ Court Officer MacGregor then asked Clerk Okstein, “He’s released, Mr. Clerk . . . He’s released?” which Clerk Okstein and Attorney Jellinek confirmed.³⁶⁵ Judge Joseph then responded, “He is . . . [Attorney] Jellinek asked if the interpreter can accompany him downstairs . . . to further interview him – [Attorney Jellinek interjected, “Yes, please”] – and I’ve allowed that to happen.”³⁶⁶ The courtroom proceeding in the *Medina-Perez* matter concluded at 2:55:00 p.m.³⁶⁷

Allowing Mr. Medina-Perez to return to the lockup area after the arraignment made sense, both because he had property there and because Attorney Jellinek wanted to have some time to speak with him and the interpreter. It was an appropriate use of Judge Joseph’s judicial discretion to accommodate the attorney-client relationship by giving a defendant the opportunity to briefly confer with his counsel, aided by an interpreter, in a private area.³⁶⁸ Moreover, as ADA Jurgens testified, the “small” first session courtroom would not have been an appropriate place for a defendant, an attorney, and an interpreter to have a privileged discussion.³⁶⁹ This was particularly true because another case was about to be called shortly after the *Medina-Perez* case adjourned,³⁷⁰ so a private conversation in the first session courtroom would have been especially difficult. Finally, as ADA Jurgens testified, it would also be a “legitimate concern that, if [Mr. Medina-Perez] walked out the doorway [of the courtroom] with his lawyer, [ICE] might not be quite as respectful of the attorney/client privilege and they might not give [Mr. Medina-Perez] a chance to talk to his counsel.”³⁷¹

vii. Mr. Medina-Perez’s Release From the Sallyport Exit

After the *Medina-Perez* proceeding adjourned, Court Officer MacGregor escorted Mr. Medina-Perez, Attorney Jellinek, and Interpreter Mendoza downstairs to the lockup

³⁶⁴ Ex. G at APP043.

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ First Justice Heffernan testified that such an accommodation would be appropriate. Tr. 518:3-13. Judge Joseph testified that when she “was the bar advocate, and I needed to interview a client, I would interview [the] client in lockup . . . for arraignment purposes or whatever needed to happen. And if I had a client in the lockup that was being transported elsewhere after a case, then I would go to the lockup to interview my client or talk to my clients . . . before being released to wherever they were going next.” Tr. 764:3-15.

³⁶⁹ Tr. 316:24-317:3.

³⁷⁰ See Ex. H at APP086 (noting that the *Medina-Perez* matter was “[n]ot transcribed between 2:48:14 to 2:54:58 as per instructions of [the] transcript order” and that when “[c]ourt resumed at 3:15 p.m.” another matter was called).

³⁷¹ Tr. 317:4-16.

area.³⁷² Interpreter Mendoza estimated that he spent a couple minutes speaking with Attorney Jellinek and Mr. Medina-Perez, while Attorney Jellinek claims that their discussion lasted only approximately 15 to 30 seconds.³⁷³ Court security records establish that Court Officer MacGregor opened the sallyport door at 3:01:03 p.m.³⁷⁴ (six minutes and three seconds after the proceeding had concluded), which indicates that Mr. Medina-Perez remained in the lockup area for a little under six minutes before departing through the sallyport door. While it likely took a bit of time for Court Officer MacGregor to escort the group down to the lockup area and unshackle Mr. Medina-Perez, it is unlikely that this accounts for the majority of the six minutes and three seconds between the close of the proceeding and when Mr. Medina-Perez was let out the sallyport exit. Attorney Jellinek testified that after Mr. Medina-Perez had left the building, he then spoke to Court Officer MacGregor for approximately 10 to 15 seconds before returning upstairs.³⁷⁵

viii. ICE's Afternoon Interactions With Court Personnel

According to Officer Simmons, he returned to the first session courtroom and sat on one of its benches at approximately 2:00 p.m. (i.e., still during the lunch recess).³⁷⁶ As discussed above, Officer Simmons then spoke with Attorney Jellinek, who attempted (unsuccessfully) to persuade him that Mr. Medina-Perez was not the person sought by the ICE detainer.³⁷⁷ Thereafter, Officer Simmons exchanged “a few words” with ADA Jurgens,³⁷⁸ and he then spoke with Clerk Okstein.

Although Clerk Okstein and Officer Simmons remember their conversation and interactions differently in a variety of respects, I find that the following has been clearly established:

³⁷² Formal Charges ¶ 33; Response ¶ 33. Interpreter Mendoza testified that “on the way downstairs” to the lockup area, Attorney Jellinek “asked me if I was good with all this,” and that he responded, “that’s not for me to make a decision or judgment on what the judge decides, I’m just here to like interpret and be unbiased.” Tr. 258:2-8. Attorney Jellinek did not testify about any such exchange, and, in any event, it is unclear what “all this” may have meant (including very possibly simply referring to the fact that Judge Joseph had approved Attorney Jellinek’s request for Interpreter Mendoza to join him in the lockup area to interpret for Mr. Medina-Perez).

³⁷³ Tr. 258:8-18; 78:20-24.

³⁷⁴ Ex. 3 at 4; Stipulation ¶ 18.

³⁷⁵ Tr. 98:17-25.

³⁷⁶ Ex. Q at APP310:5-17.

³⁷⁷ Ex. Q at APP310:10-312:7; Tr. 58:7-24.

³⁷⁸ Ex. Q at APP312:8-16.

- 1) Clerk Okstein told Officer Simmons that Judge Joseph did not want ICE officers in the courtroom, but that it would be fine for him to wait outside the courtroom in the courthouse lobby.³⁷⁹
- 2) Clerk Okstein initially told Officer Simmons that if Mr. Medina-Perez were to be released, it would be “into the court and [he] would walk through the [courtroom] doors . . . out to the lobby area.”³⁸⁰
- 3) Officer Simmons had significant officer safety concerns because (a) there were three male individuals who were associates of Mr. Medina-Perez who had been in the NDC all day, and who had multiple conferences with Attorney Jellinek in the conference room on the first floor of the courthouse just across from the courtroom (all after Attorney Jellinek had first appeared in the courthouse on the afternoon of April 2, 2018); and (b) Officer Simmons was alone.³⁸¹
- 4) Later on, Clerk Okstein came back out to the lobby and told Officer Simmons that he would let him know when the case was at an end, but that “they had changed their minds” in terms of where exactly Mr. Medina-Perez would be released from, indicating that he was now “expecting that [Mr. Medina-Perez] would be . . . accompanied by a court officer [and] brought up the [public] steps [that come from the probation counter], and then they would walk out the front door [of the courthouse].”³⁸²
- 5) Because of his safety concerns, Officer Simmons asked Clerk Okstein if he would be allowed to take custody of Mr. Medina-Perez in the lockup area, and Clerk Okstein said that he would ask Judge Joseph.³⁸³
- 6) Then, after raising with Judge Joseph that Officer Simmons wanted “to visit the lock-up” (on the record at 2:53:34 p.m.)—to which Judge Joseph responded, “That’s fine,” while noting that ICE could not come in “here” (referring to the courtroom), but that Mr. Medina-Perez has “been released on this”—Clerk Okstein returned to the lobby and told Officer Simmons that he could not go to the lockup area, and that Mr. Medina-Perez would be “coming up and going out the front door” of the courthouse.³⁸⁴

In terms of why Clerk Okstein told Officer Simmons that he could not go to the lockup area right after Judge Joseph had said that it was “fine” for him to do so, but not

³⁷⁹ Ex. Q at APP312:17-313:17; Tr. 347:24-348:3.

³⁸⁰ Ex. Q at APP313:3-314:16.

³⁸¹ Ex. Q at APP324:1-13; APP314:17-316:16.

³⁸² Tr. 361:25-362:11; Ex. Q at APP316:17-317:14.

³⁸³ Tr. 348:7-18.

³⁸⁴ Ex. G at APP043; Tr. 355:22-359:17.

through the courtroom, he testified that he “understood that response [by Judge Joseph] to be following the practice of the court, the officer was an agent, . . . [he] wasn’t coming into the courtroom to go down to the lockup, but she was releasing the prisoner and he was free to leave, and whatever happened after that was between him and ICE.”³⁸⁵ Although the CJC’s Counsel followed up by asking whether ICE could go to the lockup area any way other than through the courtroom, Clerk Okstein did not answer that specific question:

- Q. “And did you have any understanding as to whether ICE could go to the lockup another way?”
- A. “I think at that time there was a policy that indicated that ICE agents were permitted to go to lockup. I had never seen them in Newton go to the lockup. I had never seen in Newton that occur, in my experience. But I think under the policy that the court put out to all the clerks and judges, I think that a judge could allow it.”
- Q. “And did you understand that Judge Joseph was allowing it?”
- A. “No. As I understood it, Judge Joseph was saying the agent was not permitted to come into the courtroom down the stairs through the courtroom to lockup but that she was releasing him and he was, the individual was free to leave, and then she was just following the practice of the court, that this gentleman would leave and if the ICE agent wanted to take him into custody he would.”³⁸⁶

³⁸⁵ Tr. 356:13-23.

³⁸⁶ Tr. 356:24-357:18. Because First Justice Heffernan’s policy of excluding ICE from the courtroom would not preclude ICE from accessing the lockup area through any alternative route that would not go through the courtroom, at the end of Clerk Okstein’s testimony, I followed up on this issue:

- Q. “Did you tell [Officer Simmons] there are other ways to get to the lockup?”
 - A. “I didn’t discuss it with him, no.”
 - Q. “You knew he wanted to go to the lockup.”
 - A. “. . . He made it clear.”
 - Q. “And were you clear with him? Do you believe that you told him you just can’t go to the lockup *through the court?*”
 - A. “I didn’t say just. I think I was under the impression he couldn’t go to the lockup at all.”
 - Q. “Based on what?”
 - A. “Based on, when I asked the judge, I said there was someone here to visit the lockup, I think is how I phrased it, to get the person intended to be taken. And she said something like, okay, but I’m not going to allow him in here but he’s released. I took that to mean that she was following Judge Heffernan’s practice of releasing him, he’d walk out the court front door, and if they wanted to take
- (....continued)

Separately, Chief Court Officer Noe arrived at the NDC at some point in the afternoon and spoke with Court Officer Mike Walsh, who informed him that an ICE officer was waiting outside the courtroom.³⁸⁷ According to Chief Court Officer Noe, he then introduced himself to Officer Simmons in the courthouse lobby and told him that Mr. Medina-Perez would be “coming up soon” and that Officer Simmons could “go to the sallyport . . . if you’d like to pick him up, or you can wait right here, he’s going to be released from here.”³⁸⁸ Chief Court Officer Noe testified that he told Officer Simmons that there was a van in the sallyport, which meant that ICE could not park in the sallyport but would have had to walk to the sallyport or park in a regular parking space in the parking lot.³⁸⁹ Chief Court Officer Noe testified that Officer Simmons responded, “[N]o, I’m fine, as long as [Mr. Medina-Perez is] coming out from there” (i.e., into the courthouse lobby).³⁹⁰

Clerk Okstein testified that around the time that the *Medina-Perez* proceeding concluded, Officer Simmons expressed concern about being alone in the lobby given that Mr.

him into custody, that’s where they would take him into custody. So that’s what I was under the impression.”

- Q. “Okay. And so your impression was that he was not going to be allowed to go to the lockup area *from any direction*.”
- A. “Correct. I didn’t go over with him the different ways. I didn’t think he would be going to the lockup area.”
- Q. “But you did understand Judge Joseph to be saying he can’t go to the lockup area *through the court*.”
- A. “Yeah. I understood that just how she said it. Because I listened to the tape, too. That’s how she said it. And that’s how I took it. But I took her to mean I’m – when she said I’m releasing him, what she meant was, he’s going to walk out, and so if they want him, they can take him, but it’s not my, not my issue.”

Tr. 390:9-392:1 (emphasis added). I do not believe Clerk Okstein’s interpretation of Judge Joseph’s clear response to his inquiry regarding ICE’s interest in visiting the lockup area is correct. However, given that there is no evidence of Clerk Okstein being aware of Attorney Jellinek’s plan to have Mr. Medina-Perez escape out the back, I accept that he could have assumed that after Mr. Medina-Perez had spoken with Attorney Jellinek and Interpreter Mendoza—and retrieved his property—in the lockup area, he would have then walked up the stairs and into the courthouse lobby where ICE was waiting for him.

³⁸⁷ Tr. 419:23-420:6; 420:18-422:11.

³⁸⁸ Tr. 422:12-423:10.

³⁸⁹ Tr. 422:23-423:16.

³⁹⁰ Tr. 423:17-20. Chief Court Officer Noe and Officer Simmons have differing accounts of their interactions on the afternoon of April 2, 2018, in various respects. For example, in contrast to Chief Court Officer Noe’s testimony concerning their initial exchange, Officer Simmons testified before the grand jury that the first time he met Chief Court Officer Noe was after 3:00 p.m., “when we found out the subject had been released. I asked him, ‘What happened?’ He said, ‘I don’t know. He was released out the back door.’” Ex. Q at APP320:25-321:14.

Medina-Perez had “a friend” around.³⁹¹ According to Officer Simmons, there were actually three gentlemen associated with Mr. Medina-Perez who were present in the courtroom throughout the day.³⁹² As a result, Clerk Okstein called Chief Court Officer Noe and expressed Officer Simmons’ concern.³⁹³ Chief Court Officer Noe testified that Clerk Okstein told him that Mr. Medina-Perez was being released and “has to sign papers with probation” (which was incorrect), “but he has several friends in the building” so “there could be a problem,” and asked that Chief Court Officer Noe go to the Probation Department counter.³⁹⁴ According to Chief Court Officer Noe, he then visited the Probation Department, but was told that Mr. Medina-Perez did not need to sign papers, so he returned to the first floor lobby via the public stairs.³⁹⁵

As demonstrated by the above summary, there are many inconsistencies between Chief Court Officer Noe’s hearing testimony, Clerk Okstein’s hearing testimony, and the grand jury testimony and report of Officer Simmons. While resolving these inconsistencies is not possible based on the evidence presented during the hearing, doing so is not necessary in order for me to reach the findings and conclusions that I must for this Report.

After ADA Jurgens had completed her work in the courtroom, she went out to the courthouse lobby, where she engaged with the ICE officers who were waiting for Mr. Medina-Perez.³⁹⁶ Based on what she had heard in the courtroom, as well as her experience in the NDC over the prior few weeks, ADA Jurgens expected that Mr. Medina-Perez would come back up the lockup stairs and out the front door of the courtroom.³⁹⁷ Although she was aware that there was a sallyport exit in the lockup area through which defendants in state custody could enter or leave the courthouse, she did not have “any thought that there was

³⁹¹ Tr. 359:18-360:6.

³⁹² Ex. Q at APP316:6-16.

³⁹³ Tr. 360:7-14; Ex. Q at APP316:6-16.

³⁹⁴ Tr. 424:10-22.

³⁹⁵ Tr. 424:23-425:8.

³⁹⁶ Tr. 240:8-17. Because of Officer Simmons’ safety concerns, by this time a second ICE officer, Officer Domenico Federico, had arrived at the NDC at approximately 2:51 p.m. Ex. R at APP399:13-18; Ex. P (Department of Homeland Security Immigration and Customs Enforcement – Domenico Federico Memorandum of Investigation) at APP287. ADA Jurgens seems to recall only one ICE officer being present during these interactions, but both ICE officers’ reports and grand jury testimony state that they were together in the courthouse lobby at this time. *Compare* Tr. 240:8-17 (ADA Jurgens noting that when she “went out into the hallway,” she “saw the ICE officer was still there”); *with, e.g.*, Ex. Q at APP319:8-320:3 (Officer Simmons recalling that Officer Federico was with him when ADA Jurgens approached them and “when the concerns about [Mr. Medina-Perez] being released out the back door came to light”); Ex. P at APP287 (Officer Federico noting that ADA Jurgens greeted him and Officer Simmons shortly after he arrived at the NDC).

³⁹⁷ Tr. 241:6-12 (CJC’s Counsel: “***After what you had heard in the courtroom . . .*** what was your expectation as to where the defendant was going to come out?” ADA Jurgens: “Right up the back door of that main courtroom that you showed in one of the earlier exhibits.” CJC’s Counsel: “In accordance with what you had previously experienced in Newtown.” ADA Jurgens: “Correct.”) (emphasis added).

another way he might be released.”³⁹⁸ ADA Jurgens recalls telling Officer Simmons that Mr. Medina-Perez “has to come out this way,” as she was not aware of another exit unless someone was “leaving in custody.”³⁹⁹

ADA Jurgens then remained with Officer Simmons and Officer Federico while they waited for Mr. Medina-Perez to come out of the front door of the courtroom.⁴⁰⁰ Officer Federico recalls that ADA Jurgens “was just talking to us,” and that at some point she indicated that “[s]he thought it was taking a long time.”⁴⁰¹ ADA Jurgens similarly recalls thinking that “[i]t was just a really long time . . . I wonder what’s going on.”⁴⁰² According to Officer Federico, thereafter, “a male employee from the court [likely Clerk Okstein] told us that it was going to take a few minutes or so for the subject to come up . . . [u]p to ten minutes.”⁴⁰³

At some point thereafter, with Mr. Medina-Perez still not having appeared and her concern continuing to grow, ADA Jurgens asked the victim witness advocate to “go downstairs and check to see what was taking so long.”⁴⁰⁴ Officer Federico recalls that, after doing so, the victim witness advocate returned and reported, “I don’t see [Mr. Medina-Perez] in the lockup area. I doubt that he got released, but I don’t see him.”⁴⁰⁵ Officer Simmons recalls the victim witness advocate noting “that the only other way to leave the building is from lock up but he doubted that the court officers would have allowed for that to happen,” and that ADA Jurgens “made a similar statement that she couldn’t believe that would happen.”⁴⁰⁶

ix. Discovery of Mr. Medina-Perez’s Release From the Sallyport Exit

Chief Court Officer Noe testified that after he returned to the courthouse lobby from the Probation Department, Officer Simmons told him that Mr. Medina-Perez had not yet come up from the lockup area.⁴⁰⁷ Chief Court Officer Noe “looked through the glass of the doors [into the courtroom] and saw there was nobody on the bench,” so he called down to the

³⁹⁸ Tr. 241:13-15.

³⁹⁹ Tr. 241:16-22.

⁴⁰⁰ Tr. 241:23-25.

⁴⁰¹ Ex. R at APP341:13-342:5.

⁴⁰² Tr. 242:1-3.

⁴⁰³ *Id.*

⁴⁰⁴ Ex. R at APP342:8-13; Ex. P at APP287; Ex. O at APP284.

⁴⁰⁵ Ex. R at APP342:17-21.

⁴⁰⁶ Ex. O at APP284; Ex. R at APP342:17-343:6 (Officer Federico: ADA Jurgens “made a similar statement, ‘I don’t believe they would do that, release him from the back.’”).

⁴⁰⁷ Tr. 425:4-20.

lockup area on his radio—multiple times—but got no response.⁴⁰⁸ He then called from the security desk phone, and Court Office MacGregor finally answered.⁴⁰⁹ Chief Court Officer Noe asked Court Officer MacGregor twice where Mr. Medina-Perez was, and, “after a little delay,” Court Officer MacGregor admitted that he had “released him out the back.”⁴¹⁰ Chief Court Officer Noe became upset, asked Court Officer MacGregor why he “would do something like that,” hung up the phone, and told Officer Simmons that Mr. Medina-Perez “was released out the back.”⁴¹¹

Meanwhile, after Attorney Jellinek had returned back upstairs from the lockup area, he saw ADA Jurgens in the courthouse lobby.⁴¹² Attorney Jellinek testified that the ICE officers and ADA Jurgens “were all angry with each other,”⁴¹³ and that ADA Jurgens told him that “ICE is pissed at me.”⁴¹⁴ ADA Jurgens, on the other hand, recalls something far more notable from this encounter: she saw that Attorney Jellinek “had a property bag in his hand,” undoubtedly Mr. Medina-Perez’s, which caused her to realize for the first time what had likely just happened.⁴¹⁵ She testified: “at some point, I put . . . together what had happened. And I don’t recall if somebody else said something, too, or if I just figured it out [that Attorney Jellinek had somehow facilitated Mr. Medina-Perez leaving the NDC without being detained by ICE] . . . [a]t some point . . . I can’t remember if it was still inside the hallway or right outside the front door, but I said I know what you did and that was not the

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ Tr. 425:21-426:3.

⁴¹¹ Tr. 425:21-426:8. “Over the next few days or weeks,” Chief Court Officer Noe had several conversations with Court Office MacGregor, who provided “varying answers” as to why he allowed Mr. Medina-Perez to leave through the back door. Tr. 426:9-16. For example:

- 1) At one point, Court Officer MacGregor said he did not “have the detainer in hand.” Tr. 426:17-19. Chief Court Officer Noe “followed that up with, but you knew there was a detainer, you knew there was a detainer. He said yeah. And I said, well, could you explain it to me,” and he said he could not. Tr. 426:20-23.
- 2) At another point, Court Officer MacGregor “proceeded to tell [Noe] that he didn’t bring [Mr. Medina-Perez] up through the courtroom because [Judge Joseph] was on the bench.” Tr. 426:23-427:5.
- 3) Then, at another point that same day or the next, Court Officer MacGregor claimed that “he had a feeling that the judge wanted the person to be released.” Tr. 427:5-8.

In all of these conversations, Court Officer MacGregor never once mentioned Attorney Jellinek, let alone admit that Attorney Jellinek had orchestrated Mr. Medina-Perez’s escape. Tr. 442:10-18.

⁴¹² Tr. 242:13-243:6; 289:17-23. Attorney Jellinek has vacillated over time between placing this particular encounter with ADA Jurgens in the courtroom or the courthouse lobby (another, albeit far less significant, example of his many factual inconsistencies when telling his story). Tr. 79:8-15; 112:3-113:1.

⁴¹³ Tr. 113:2-4.

⁴¹⁴ Tr. 79:8-20.

⁴¹⁵ Tr. 242:13-243:9.

right thing to do.”⁴¹⁶ Notably, however, Attorney Jellinek did not respond to ADA Jurgens’ statement as one would expect him to if he had, in fact, just explained his plan for Mr. Medina-Perez’s escape while standing less than two feet away from her during the off-the-record sidebar. In response to ADA Jurgens’ accusation, he did not suggest in any way that he had just told her and Judge Joseph of his plan—or that Judge Joseph had just blessed his plan—during their sidebar. Indeed, he did not reference their sidebar or Judge Joseph at all.⁴¹⁷ Rather, he merely “smiled and . . . didn’t say a word.”⁴¹⁸ If Judge Joseph had actually authorized Mr. Medina-Perez’s release out the sallyport exit during the off-the-record sidebar, and in the presence of ADA Jurgens herself no less, it completely defies common sense that Attorney Jellinek would not have immediately noted as much in responding to her very clear rebuke of him.

According to Attorney Jellinek, shortly thereafter, while he was walking to his car outside the NDC, he saw Attorney Bostwick, at which point he volunteered to her that he “had gotten Mr. [Medina-Perez] out the back and he avoided ICE,” and that he (Attorney Jellinek) “was pleased.”⁴¹⁹ Attorney Jellinek testified that, upon hearing this, Attorney Bostwick was “*not* pleased.”⁴²⁰ “Dismayed,” she responded that “she thought it was obstruction of justice.”⁴²¹ Again, as with his encounter with ADA Jurgens, Attorney Jellinek did not suggest that Judge Joseph knew of, or had approved, Mr. Medina-Perez’s release out the sallyport exit, or otherwise reference Judge Joseph in any way.

Attorney Jellinek similarly did not suggest to Chief Court Officer Noe that Judge Joseph had approved of his plan to have Mr. Medina-Perez released out the back of the courthouse when, on either April 3 or April 4, Chief Court Officer Noe asked him about the events of April 2. Rather, according to Chief Court Officer Noe, he simply “shrugged his shoulders” and did not say anything.⁴²²

Just as Attorney Jellinek was pleased that he had enabled Mr. Medina-Perez to escape ICE, so too was Court Officer MacGregor. According to Officer Federico, when he saw Court Officer MacGregor outside the courthouse towards the rear parking lot after Mr. Medina-Perez had already left the building, he asked Court Officer MacGregor why he had allowed that to happen “knowing that we were there, we had the detainer, a warrant of arrest

⁴¹⁶ *Id.*

⁴¹⁷ Tr. 290:2-13; *see also* Tr. 101:21-102:6; 113:16-114:6.

⁴¹⁸ Tr. 290:14-17; *see also* Ex. O at APP284 (Officer Simmons recalls ADA Jurgens telling him “that she had a bad feeling that [Mr. Medina-Perez] was released out the back of the building. She based her feeling on a ‘look’ that she got from [Attorney Jellinek].”).

⁴¹⁹ Tr. 79:21-80:6.

⁴²⁰ *Id.* (emphasis added).

⁴²¹ *Id.* Attorney Bostwick does not recall the specifics of this conversation with Attorney Jellinek. Tr. 847:10-848:2.

⁴²² Tr. 456:11-20.

and . . . were there all day.”⁴²³ In response, Court Officer MacGregor “had like a smirk, like a smart alec,” and he said “I just let him go from the back,” coming across to Officer Federico as being “pretty sarcastic[,] almost like proud of it.”⁴²⁴

On April 2, 2018, nobody informed Judge Joseph that ICE had not taken Mr. Medina-Perez into custody that day. After the court recessed at 4:15 p.m.,⁴²⁵ Judge Joseph printed out a copy of the Lunn Policy that she had received from Ellen Shapiro in a 3:19 p.m. email following up on their discussion over the lunch recess.⁴²⁶ Judge Joseph then put a copy of the Lunn Policy in her personal binder and also made copies of it that she distributed to several people, including the NDC clerk magistrate (Magistrate Schultz), the NDC assistant clerk magistrate (Clerk Okstein), and First Justice Heffernan.⁴²⁷ Judge Joseph did not learn of Mr. Medina-Perez’s escape from ICE until two days later, in a discussion she had with First Justice Heffernan on April 4.⁴²⁸

E. Events Following April 2

i. First Justice Heffernan’s Meetings and Calls Regarding the April 2, 2018, Incident

On April 3, 2018, Attorney Jellinek sought out First Justice Heffernan to discuss the previous day’s events.⁴²⁹ He knew First Justice Heffernan from regularly advocating in her courtroom during weekly drug court sessions, which were generally less formal than typical court proceedings.⁴³⁰ He claimed during the hearing that the reason he wanted to speak with First Justice Heffernan was because he “thought she should know what had happened in her courtroom because there might have been something she should know about, particularly with regards to the ADA.”⁴³¹

Attorney Jellinek’s and First Justice Heffernan’s accounts of their conversation on April 3 conflict in many respects. For example:

⁴²³ Ex. R at APP344:4-21.

⁴²⁴ *Id.*; Ex. R at APP347:1-11.

⁴²⁵ Ex. H at APP089.

⁴²⁶ Tr. 757:25-758:10; Ex. 5 (April 2, 2018, email correspondence from Ellen Shapiro to Judge Joseph) at 1.

⁴²⁷ Tr. 783:13-23; Ex. N at APP240:18-241:10.

⁴²⁸ Tr. 718:13-719:2.

⁴²⁹ Tr. 80:7-22; 469:8-13.

⁴³⁰ Tr. 122:24-123:12; 47:5-48:4.

⁴³¹ Tr. 124:6-13.

- Attorney Jellinek:
 - Testified that the conversation was “very brief;” he “told her what had happened the day before, not in great detail, and *she said she already knew about it.*”⁴³²
 - Told the CJC’s Counsel in December 2024 that:
 - he “*advised Judge Heffernan there was an issue with [Medina-Perez’s] identity and he was let out the back door,*”⁴³³ and
 - “Judge Heffernan told him she already knew about the incident and not to worry *She said I know about it, basically just go away,* and I didn’t respond.”⁴³⁴
 - Testified in response to my questions at the hearing, “If my memory’s right, I said [to First Justice Heffernan that] ADA Jurgens was upset yesterday, ICE got mad at her, and she was upset, I thought you should know about it.” When I inquired whether First Justice Heffernan asked what ADA Jurgens was upset about, he responded, “No, not to my memory.”⁴³⁵
- First Justice Heffernan, on the other hand, testified that:
 - Attorney Jellinek was, in fact, “*the first person that told [her] anything about this incident;*”⁴³⁶
 - Attorney Jellinek, however, did not tell her that “anybody had gone out the back door;”⁴³⁷ and
 - She does not recall Attorney Jellinek telling her that ADA Jurgens was upset or angry about anything.⁴³⁸

⁴³² Tr. 80:13-81:1 (emphasis added).

⁴³³ Tr. 125:16-126:6 (emphasis added).

⁴³⁴ *Id.*; Tr. 126:14-21.

⁴³⁵ Tr. 204:3-205:8. When asked what he thought First Justice Heffernan already knew before he met with her on April 3, he stated, “I don’t know what she already knew and what she was thinking. I know that, when I went in, it was a very brief conversation, and the implication I got was that she understood everything that happened, I had given her a full briefing, and I was okay and to go away.” Tr. 194:16-23. In response to being asked whether she seemed “willing to spend more time with [him] that morning?” Attorney Jellinek stated, “Not that morning, no.” Tr. 194:24-195:1.

⁴³⁶ Tr. 492:16-493:3 (emphasis added).

⁴³⁷ Tr. 500:7-9.

⁴³⁸ Tr. 500:17-501:1.

- First Justice Heffernan also testified that:
 - Attorney Jellinek “told me that he had a client whose identity was in question, that had a fugitive from justice warrant out of Pennsylvania, that he used the services of an interpreter to go downstairs with his client to talk about clearing up the warrant, because it appeared to be cleared up during the session;”⁴³⁹ she also believes that Attorney Jellinek mentioned “that he requested the judge allow him to go downstairs with the defendant.”⁴⁴⁰
 - Attorney Jellinek did not reference either of these things during his recounting of their discussion.
- According to First Justice Heffernan, it was only after her conversation with Attorney Jellinek on April 3, 2018, that she then went downstairs in the NDC and spoke with Chief Court Officer Noe, who “told [her] that an incident had happened that someone went out the back door . . . and he said he understood the court officer had let someone out the back door, so I was alarmed at that, and I listened, and then I think the clerk came in and talked to me, too, Larry Okstein, and I was just kind of getting as much information as I could from those parties.”⁴⁴¹

It is undisputed that Attorney Jellinek did not say anything to First Justice Heffernan about (1) going off the record, (2) the plan that he contrived with Court Officer MacGregor to release Mr. Medina-Perez out the sallyport exit to evade ICE, or (3) any alleged disclosure to, or authorization from, Judge Joseph of his plan.⁴⁴² When specifically asked whether he told First Justice Heffernan about his conversation with Court Officer MacGregor, he said, “Not to my memory, no . . . it didn’t seem relevant. I was just trying to give her the basics that something had happened and that ADA Jurgens said that ICE was mad at her.”⁴⁴³ When asked if he said anything to First Justice Heffernan about his discussion with Court Officer MacGregor, what he had allegedly told Judge Joseph, or what Judge Joseph allegedly said or did in response, he stated, “*Again, it didn’t seem relevant. It wasn’t part of the core facts.*”⁴⁴⁴

⁴³⁹ Tr. 470:3-9.

⁴⁴⁰ Tr. 470:12-14. First Justice Heffernan also acknowledged the likely accuracy of her February 28, 2019, grand jury testimony in which she similarly testified that Attorney Jellinek had explained to her during their April 3, 2018, conversation that “he told me that he had represented a fellow who they didn’t know if he was wanted in Pennsylvania, ICE was also in the building wishing to effect service on him . . . he asked [Judge Joseph] if he could bring his fellow downstairs after he had been released with the interpreter to talk to probation, something about trying to sort out whether the Pennsylvania warrant was still active.” Tr. 498:12-500:6.

⁴⁴¹ Tr. 498:12-500:6.

⁴⁴² Tr. 81:11-12; 470:10-11; 500:10-13; 83:1-15; 470:15-17.

⁴⁴³ Tr. 83:1-9.

⁴⁴⁴ Tr. 83:1-15 (emphasis added).

I do not find Attorney Jellinek’s testimony in this regard at all credible. He testified that the reason he reached out to First Justice Heffernan on April 3, 2018, was “[b]ecause [she is] the presiding judge, and I wanted her to know that something had occurred in the courthouse the day before and that at least some people didn’t think it was proper and that ICE had been angry with the district attorney.”⁴⁴⁵ He also claimed that First Justice Heffernan was a person of importance to him and that he valued whether she had confidence in his honesty and integrity.⁴⁴⁶ If any of this were true, I find it implausible that he did not think that his plan with Court Officer MacGregor to enable Mr. Medina-Perez’s escape out of the back of the courthouse, or Judge Joseph’s alleged approval of that plan, was “relevant” or “part of the core facts.” Indeed, the ease with which he attempted to dispense with Judge Joseph’s counsel’s questions concerning his failure to tell First Justice Heffernan about his plan and Judge Joseph’s alleged approval of it (e.g., by claiming that he “was just trying to give [First Justice Heffernan] the basics that something had happened and that ADA Jurgens said that ICE was mad at her”)⁴⁴⁷ only further contributes to my overall assessment of his testimony throughout the hearing: it was repeatedly at odds with both the factual record and common sense. Moreover, his willingness to so readily and so often make such specious claims makes it especially difficult to credit his uncorroborated claims of Judge Joseph’s knowledge of and complicity in his plan.

On April 3, 2018, First Justice Heffernan also spoke with Clerk Okstein about the events of April 2.⁴⁴⁸ Clerk Okstein testified that their discussion that day was consistent with First Justice Heffernan’s typical practice when coming back to the courthouse after having been absent for a day, which was to ask how things went and whether there were any issues or things she should be aware of, as she tries “to monitor how the day went for everybody.”⁴⁴⁹ Their accounts of this conversation, however, were not entirely clear and were at times inconsistent. For example:

- 1) Clerk Okstein testified that he told First Justice Heffernan that there had been an issue involving someone leaving the court “not through the front door” that prevented ICE from taking them into custody,⁴⁵⁰ and that “the tape was off”—though without stating that Judge Joseph had directed him to turn off the recording device.⁴⁵¹
- 2) First Justice Heffernan initially testified on direct examination that in her first conversation with Clerk Okstein on April 3, he told her that he had already listened to

⁴⁴⁵ Tr. 81:4-10.

⁴⁴⁶ Tr. 122:24-123:2; 126:22-127:2.

⁴⁴⁷ Tr. 83:1-9.

⁴⁴⁸ Tr. 471:20-472:3. Clerk Okstein testified that this conversation took place on either April 3 or 4; he believed it was April 3, but was not certain. Tr. 363:14-25.

⁴⁴⁹ Tr. 364:1-13.

⁴⁵⁰ *Id.*

⁴⁵¹ Tr. 364:14-21.

the recording of the proceeding and Judge Joseph had gone off the record.⁴⁵² However, she later testified in her direct examination, and then again on cross-examination, that when she sent a summary of the April 2 events to RAJ Fortes on April 5⁴⁵³—two days after she had spoken with Clerk Okstein—she still may not have known that Judge Joseph had gone off the record.⁴⁵⁴

- 3) In addition, while First Justice Heffernan’s initial testimony on direct examination portrayed her conversation with Clerk Okstein as relatively matter of fact,⁴⁵⁵ she later

⁴⁵² Tr. 471:20-472:3.

⁴⁵³ Tr. 477:21-478:9.

⁴⁵⁴ Tr. 483:6-16; 511:3-512:8. During her testimony, First Justice Heffernan provided an inconsistent account of when she learned that Judge Joseph had gone off the record. Her recollection was also inconsistent with RAJ Fortes’ testimony. For example:

- She first testified that by the time of her initial conversation with Clerk Okstein on April 3, he had already “listened to the tape, and he told [her] that there were several, he thought, minutes that were -- that the judge had gone off the tape[.]” Tr. 471:20-472:3.
- Later in her testimony, she said that, at some point, Clerk Okstein told her there was a “gap in the tape” (though she did not know when he said this), and that she did not recall whether he had told her that Judge Joseph had gone off the record by even as late as April 5. Tr. 483:6-16.
- At another point, she testified that she recalled speaking with Clerk Okstein about Judge Joseph going off the record because he came in with his “hair on fire” to tell her that there was “a large gap in the tape.” However, she did not recall Clerk Okstein sharing that information, with his “hair on fire,” even by as late as April 5th, the date on which she emailed her summary of what she had learned about the incident to Judge Fortes (which did not mention that Judge Joseph had gone off the record). First Justice Heffernan acknowledged that if she had that information as of April 5, she would have included it in her summary email to Judge Fortes and the fact that she did not suggested to her that she had not yet spoken to Clerk Okstein at that point about Judge Joseph going off the record. Tr. 511:3-512:8.
- And at yet another point, she testified that she instructed Clerk Okstein to listen to the recording, after which she learned from him that there was “a blank spot of almost a minute or two,” though, as noted above, she originally testified that he listened to the tape on his own accord before he first spoke with her. Tr. 477:1-12; 471:20-472:3.
- First Justice Heffernan’s testimony is also inconsistent with RAJ Fortes’ testimony on this issue. RAJ Fortes testified that at some point *prior to April 5*, First Justice Heffernan called her to discuss the events of April 2 and told her that “[there was] a portion of [the April 2 proceeding] that was not recorded” and “the judge involved went off the record.” Tr. 535:24-538:14. RAJ Fortes’ memory was that First Justice Heffernan knew this from her clerk. Tr. 537:9-11. However, when First Justice Heffernan was asked why the summary email she sent to RAJ Fortes on April 5 (after her discussion with RAJ Fortes) in which she summarized the incident did not reference the fact that Judge Joseph had gone off the record, she responded that at that point she may not yet have known that Judge Joseph had gone off the record. Tr. 483:6-16.

I note these inconsistencies and inaccuracies not because I think any of them are the product of intentional misstatements. To the contrary, I have no doubt that First Justice Heffernan, RAJ Fortes, and Clerk Okstein were each attempting to give as complete and accurate a recounting of their exchanges with each other and others as they could, now over seven years after the fact and without the benefit of having taken any contemporaneous notes. Rather, I note these matters here (and at other points throughout this Report), in part, (...continued)

testified that Clerk Okstein “was quite alarmed” about Judge Joseph having gone off the record, characterizing him as having his “hair on fire.”⁴⁵⁶

Another person First Justice Heffernan spoke with about the *Medina-Perez* matter on April 3, 2018, was Chief Court Officer Noe, who told her that “someone had gone out the back door of the courthouse” while ICE was waiting in the front and that ICE was not happy.⁴⁵⁷ He also showed her a written memorandum he had prepared to clarify for all court staff at the NDC that defendants should be released from custody out of the front of the courthouse.⁴⁵⁸

On April 4, 2018, when Judge Joseph was again sitting in the NDC, First Justice Heffernan approached her to discuss the *Medina-Perez* case and to try to understand what had happened on April 2.⁴⁵⁹ Judge Joseph testified that First Justice Heffernan told her that Mr. Medina-Perez had evaded ICE officers by leaving through the back door, which was the first time Judge Joseph had learned of this.⁴⁶⁰ First Justice Heffernan testified that during this discussion, Judge Joseph noted that she had permitted Attorney Jellinek and Mr. Medina-

to make clear why I am unpersuaded that the CJC has met its burden of proving by clear and convincing evidence that Judge Joseph was untruthful or less than fully candid or forthright in her interactions with the supervisory judges in the days and weeks following April 2, 2018.

⁴⁵⁵ See Tr. 471:20-472:6.

⁴⁵⁶ Tr. 473:15-18; 511:7-17. Notably, First Justice Heffernan’s testimony that Clerk Okstein was “quite alarmed” and had his “hair on fire” about Judge Joseph going off the record is inconsistent with (1) the fact that Clerk Okstein knew full well that Judge Joseph had gone off the record because he was the person who had turned off the recording system at Judge Joseph’s direction, see Ex. G at APP041; Tr. 311:16-18; 692:3-9; Ex. N at APP208:17-209:2, and (2) Clerk Okstein’s testimony that First Justice Heffernan spoke to him, consistent with her usual practice of touching base after being absent from the courthouse, and that he “did say at some point the tape was off, and that’s it.” Tr. 363:24-364:21.

Notwithstanding these inconsistencies, I believe it is certainly possible that Clerk Okstein appeared to First Justice Heffernan to be alarmed by what had happened on April 2, but because of Mr. Medina-Perez’s escape from ICE, and not because Judge Joseph had briefly gone off the record with his assistance. In other words, I believe First Justice Heffernan’s memory about Clerk Okstein being alarmed may be accurate, though her recollection (now seven years after the fact) regarding why he was alarmed is likely not correct.

⁴⁵⁷ Tr. 471:5-11.

⁴⁵⁸ Tr. 471:12-14. The memorandum was dated April 4, 2018, and instructed that “[a]ll custodies of the Newton Court that are scheduled to be released, will be released out of the front of the courthouse – ONLY!! They will be escorted to the lobby from the courtroom or through the Probation Department. If necessary, property will be given back outside the front door security station.” Ex. 2; Tr. 428:7-17. Michael McPherson (then-Regional Director of Security for the Trial Court, now Director of Security) testified that this memorandum violated the Trial Court’s general policy that all defendants should be released from custody in the lockup area, as set forth in the Court Officer Manual and the Lunn Policy. Tr. 902:12-903:4; 910:18-911:8. See Ex. 1; Ex. B at APP007.

⁴⁵⁹ Tr. 472:7-473:3.

⁴⁶⁰ Tr. 718:13-719:2.

Perez to go to the lockup area after the arraignment.⁴⁶¹ Neither First Justice Heffernan nor Judge Joseph suggested that First Justice Heffernan was concerned or surprised by this. During her sworn interview with the CJC’s Counsel, Judge Joseph testified that she explained to First Justice Heffernan the confusing nature of the case as a result of Mr. Medina-Perez’s identity issues, the presence of ICE, and the difficulty she had in locating the Lunn Policy.⁴⁶² Judge Joseph testified that the conversation was very brief,⁴⁶³ and that First Justice Heffernan was focused on Mr. Medina-Perez having evaded ICE,⁴⁶⁴ her concern about his identity, and the potential public safety risks.⁴⁶⁵

First Justice Heffernan did not ask Judge Joseph about going off the record.⁴⁶⁶ Initially she testified that this was because she assumed that “everyone knows that you never go off the record,”⁴⁶⁷ but later she stated that, as of this conversation, she may not have been aware that Judge Joseph had gone off the record.⁴⁶⁸ I find it understandable that Judge Joseph did not affirmatively raise the fact that a very short portion of the sidebar had been off the record at Attorney Jellinek’s request, given that as of this point in time she was still unaware that a court rule (Special Rule 211) prohibited doing so,⁴⁶⁹ and she did not view anything that was said during the unrecorded portion of the sidebar to be particularly notable (not yet being aware of what Attorney Jellinek would later allege was discussed during it).

After her conversation with Judge Joseph, First Justice Heffernan also spoke with RAJ Fortes on April 4, 2018,⁴⁷⁰ letting her know that a defendant subject to an ICE detainer had “gone out the back door” and that ICE had “not been able to effectuate” the detainer.⁴⁷¹ RAJ Fortes testified that during this conversation, First Justice Heffernan stated that she had heard from her clerk that Judge Joseph had gone off the record.⁴⁷² In response, RAJ Fortes asked First Justice Heffernan to obtain the recording of the April 2, 2018, proceeding to

⁴⁶¹ Tr. 473:21-24.

⁴⁶² Ex. N at APP220:5-17.

⁴⁶³ Tr. 719:17-22; 777:25-778:8.

⁴⁶⁴ Ex. N at APP226:9-227:6; *id.* at APP233:8-24; Tr. 784:7-13.

⁴⁶⁵ Tr. 779:16-780:12; 719:23-720:5; Ex. N at APP233:8-24; APP240:1-17.

⁴⁶⁶ Tr. 473:8-11.

⁴⁶⁷ Tr. 473:12-14.

⁴⁶⁸ Tr. 483:6-16.

⁴⁶⁹ Tr. 719:3-16.

⁴⁷⁰ RAJ Fortes was first appointed as a judge in December 2006. Tr. 530:5-30. In April 2018, she served as the Regional Administrative Justice for the region that included Newton and as the First Justice of the Lowell District Court. Tr. 529:17-531:7. RAJ Fortes has since been appointed as the Chief Justice of the District Court and currently serves in that role. Tr. 529:17-19.

⁴⁷¹ Tr. 536:13-25.

⁴⁷² Tr. 537:1-11.

confirm that Judge Joseph had gone off the record and to summarize the April 2, 2018, incident in an email.⁴⁷³ First Justice Heffernan testified that she then instructed Clerk Okstein to listen to the recording. (As discussed above, much of this is inconsistent with First Justice Heffernan’s other testimony regarding (1) when she learned that Judge Joseph had gone off the record, and (2) when Clerk Okstein first listened to the recording.⁴⁷⁴)

On April 5, 2018, in response to RAJ Fortes’ request from April 4, First Justice Heffernan sent RAJ Fortes an email summarizing the information she had received from the various people she had spoken with since April 3 concerning the events of April 2.⁴⁷⁵ Notably, the email did not reference that Judge Joseph had permitted the sidebar to go off the record, notwithstanding that the evidence (including the testimony of RAJ Fortes and Clerk Okstein) establishes that by the time of this email First Justice Heffernan knew, or at least had received a strong indication, that part of the *Medina-Perez* proceeding had been conducted off the record.⁴⁷⁶ In addition, First Justice Heffernan did not express any concern regarding Judge Joseph’s conduct in her April 5 email, even though she knew that Judge Joseph had authorized Attorney Jellinek and Mr. Medina-Perez to go to the lockup area after the arraignment.⁴⁷⁷

On April 6, 2018, First Justice Heffernan and Judge Joseph spoke briefly by telephone.⁴⁷⁸ Following their discussion on April 4, Judge Joseph was “really upset” by their shared concern that a defendant with identity issues had left the courthouse on April 2, so she reached out to First Justice Heffernan on April 5 to further discuss her concerns. First Justice Heffernan returned her call on April 6.⁴⁷⁹ During their call, Judge Joseph told First Justice Heffernan that she was “really concerned that we don’t know who he is,” and First Justice Heffernan told her “don’t worry about it, you know, it happens”⁴⁸⁰ In her sworn

⁴⁷³ Tr. 537:12-23.

⁴⁷⁴ See *supra* n.456.

⁴⁷⁵ Tr. 477:21-483:5; Ex. V at APP540-41.

⁴⁷⁶ Tr. 483:6-16; *supra* n.472.

⁴⁷⁷ See Ex. V at APP540-41; Tr. 473:21-24. The April 5, 2018, email contained several factual errors, though it is unclear whether the source of these errors was First Justice Heffernan or the people from whom she was collecting information. For example, it stated that: the usual practice in NDC was for ICE officers to wait outside the “courthouse” (rather than the “courtroom”); the ICE officer had a detainer but not a warrant (when he had both); and Attorney Jellinek wanted to speak with his client and the interpreter in the Probation Department (rather than the lockup area).

⁴⁷⁸ Tr. 779:20-780:12.

⁴⁷⁹ Tr. 779:16-780:12.

⁴⁸⁰ *Id.* (“Q. After that conversation on Wednesday, did you have a different – a second conversation with First Judge Heffernan about the Medina Perez case?” “[Judge Joseph]. I did. During our conversation [First Justice Heffernan] was very concerned about the identity of Mr. Medina Perez saying that now we don’t know . . . who he is or where he is and . . . we don’t know what warrants he may have or what we can do. You know, so we talked with that. And that really upset me, so I called her on Thursday, sometime late in the day, I left her a (...continued)

interview with the CJC's Counsel, Judge Joseph also explained that although she had "nothing to do" with Mr. Medina-Perez evading ICE, she apologized because she was the judge at the time, and the aftermath was "complicating things" for First Justice Heffernan.⁴⁸¹

ii. Judge Joseph's Meeting With RAJ Fortes

At some point between April 5 and April 20, 2018, RAJ Fortes met with Judge Joseph at the Lowell District Court, where they were both sitting.⁴⁸² RAJ Fortes asked Judge Joseph to speak during the lunch recess.⁴⁸³ The meeting was informal: while RAJ Fortes and Judge Joseph were eating lunch, they spoke about personal matters and how things were going for Judge Joseph as a new judge, before discussing the events of April 2.⁴⁸⁴ During her testimony, RAJ Fortes agreed that at some point she raised the *Medina-Perez* case, saying to Judge Joseph that "I understand you may have gone off the record" and asking her what happened.⁴⁸⁵ She also testified that Judge Joseph never disputed that a portion of the proceeding was off the record.⁴⁸⁶ During this discussion, RAJ Fortes showed Judge Joseph a copy of Special Rule 211 and emphasized that all courtroom proceedings must be recorded.⁴⁸⁷ This was the first time Judge Joseph learned that going off the record was prohibited by a court rule.⁴⁸⁸ RAJ Fortes testified that she and Judge Joseph had a preliminary discussion about "what happened in Newton," but did not discuss ICE or Mr. Medina-Perez's identity issues because RAJ Fortes' focus was on why part of the proceeding had not been recorded.⁴⁸⁹ RAJ Fortes also testified that at the end of the conversation, Judge Joseph made clear that she understood what they discussed, including that all courtroom proceedings must be recorded.⁴⁹⁰

voicemail message. She called me back on Friday morning, and we talked about it a little bit, really just on the public safety concern . . . I said, I'm really concerned that we don't know who he is . . . So she said, don't worry about it, you know, it happens . . ."). First Justice Heffernan testified that she does not recall this conversation. Tr. 508:23-509:3.

⁴⁸¹ Ex. N at APP234:8-235:2.

⁴⁸² Tr. 540:11-541:7.

⁴⁸³ Tr. 476:19-23; 540:11-541:7.

⁴⁸⁴ Tr. 543:6-544:7; 554:23-555:1; 781:11-22.

⁴⁸⁵ Tr. 556:2-5; 543:6-15.

⁴⁸⁶ Tr. 556:6-557:4. Judge Joseph, for her part, testified during her sworn interview with the CJC's Counsel that when RAJ Fortes asked her about going off the record, she "acknowledged it immediately." Ex. N at APP240:11-13; APP223:8-11.

⁴⁸⁷ Tr. 724:3-725:3; 546:15-547:1; 557:5-7.

⁴⁸⁸ Tr. 778:14-17.

⁴⁸⁹ Tr. 545:20-547:9; 560:24-561:6.

⁴⁹⁰ Tr. 546:15-547:7 ("I recall that I had made a copy of Rule 211 for her prior to the meeting. I also made a copy of the ICE policy. I gave her a copy. Reviewed 211 with her. Told her, Shelley, you know all courtroom (...continued)

RAJ Fortes testified that Judge Joseph never explicitly stated during their meeting that she had directed the clerk to turn off the recording system, but also readily acknowledged that she “didn’t ask her directly either.”⁴⁹¹ Judge Joseph testified that she believed that RAJ Fortes understood that she had directed the clerk to go off the record: “Yes. I mean, she said it when we started the meeting that she understood that . . . part of the conversation was off the record . . . I don’t remember the specific words. But it was clear that we were talking about the same thing. That’s why she opened the book, read me the book, and she even printed a copy of the rule for me.”⁴⁹² When asked if she had told RAJ Fortes directly that she had “told the clerk to go off the record,” Judge Joseph responded, “Again, I don’t remember. But it was clear that we were off the record. And I was the judge, so whether the words came out or it was inferred, I can’t speak as to what the exact words that [were] said seven years ago.”⁴⁹³

Whether or not Judge Joseph specifically stated to RAJ Fortes that she had directed the clerk to go off the record, I believe it was reasonable for Judge Joseph to have assumed that RAJ Fortes thought that she had permitted the off-the-record discussion to take place because, *inter alia*, RAJ Fortes (1) had started off their conversation about what had happened on April 2, 2018, by telling Judge Joseph that “I understand you may have gone off the record,” and (2) had even brought a copy of Special Rule 211 to their meeting so that the two of them could review this rule that required that all courtroom proceedings be recorded (with limited exceptions). I also find it understandable for Judge Joseph to have thought that there would have been no reason for RAJ Fortes to educate her about Special Rule 211 if the off-the-record discussion on April 2 had come about as a result of anything other than Judge Joseph allowing it (e.g., an equipment malfunction or a clerk forgetting to turn on the recording system).

In short, the context of the conversation between RAJ Fortes and Judge Joseph strongly supports Judge Joseph’s stated understanding that RAJ Fortes knew that she had approved going off the record for a portion of the *Medina-Perez* proceeding. Judge Joseph’s assumption that RAJ Fortes knew this is also corroborated by the fact that during their

proceedings have to be recorded. She said she knew that. I also believe I gave her a copy of the Trial Court ICE policy, and I think she said that she had it because she called the administrative office. And she said she understood everything, so we went back to work. . . . I don’t think she said specifically I know about Rule 211. But she said I know. All court proceedings need to be recorded. Yes, I know, she said.”).

I believe from the context of the conversation (in which RAJ Fortes had given Judge Joseph a copy of Rule 211, and then reviewed the Rule with her) that when Judge Joseph said that “I know” that all courtroom proceedings need to be recorded, she may well have simply been conveying that she understood what RAJ Fortes was telling her regarding Special Rule 211, and that she now knows that all courtroom proceedings should be recorded, not that she had previously known—and certainly not as of April 2, 2018—that there was a rule that required all courtroom proceedings to be recorded.

⁴⁹¹ Tr. 544:12-17.

⁴⁹² Tr. 724:11-21.

⁴⁹³ Tr. 724:24-725:3. During her sworn interview with the CJC’s Counsel, Judge Joseph testified that she explained to RAJ Fortes the complexity of the *Medina-Perez* case to provide context for why she granted Attorney Jellinek’s request to go off the record. Appendix N at APP250:1-251:23.

discussion, Judge Joseph raised an unrelated matter from the Waltham Courthouse where she had also approved going off the record (because of a concern that the recording machine's microphone was actually broadcasting a sidebar conference into the audience).⁴⁹⁴

The focus of the meeting was on Special Rule 211 and ensuring that Judge Joseph knew not to go off the record going forward, and RAJ Fortes did not delve into the ICE issues in any detail.⁴⁹⁵ After their conversation, RAJ Fortes considered the matter handled. She made no notes of their discussion.⁴⁹⁶

iii. Chief Justice Dawley's Emails With RAJ Fortes and First Justice Heffernan

On April 20, 2018, RAJ Fortes forwarded First Justice Heffernan's April 5 email summary to Chief Justice Dawley, copying First Justice Heffernan.⁴⁹⁷ She did so because she had learned that Chief Justice Dawley had an upcoming meeting with the ICE Regional Director and she did not want the Chief Justice to be "blindsided by any info" relating to the *Medina-Perez* matter.⁴⁹⁸ Chief Justice Dawley responded by asking four follow-up questions, to which First Justice Heffernan promptly replied. In her response to Chief Justice Dawley's third question, "[w]ho was responsible for allowing the defendant to exit the courthouse via [a non] public entrance?", First Justice Heffernan explained that the defense attorney had asked the judge to speak with his client "downstairs in probation" about the open warrant in Pennsylvania and that "[t]he judge allowed it and the judge believes the

⁴⁹⁴ Tr. 725:7-19. At some point following her meeting with Judge Joseph, RAJ Fortes called First Justice Heffernan and told her that she had spoken with Judge Joseph. RAJ Fortes testified that she noted that Judge Joseph did not specifically tell her that she had instructed the clerk to turn off the recording, and that First Justice Heffernan responded that she knew that Judge Joseph had done so because she had listened to the recording. RAJ Fortes testified that she responded, "well, I talked to her, and that was it." Tr. 547:14-21.

⁴⁹⁵ Tr. 545:20-546:6; 560:24-561:12.

⁴⁹⁶ Tr. 547:22-548:1; 555:17-22. Insofar as there were any differences between the recollections of RAJ Fortes and Judge Joseph as to what exactly was said—and not said—during their informal lunch over seven years ago in April of 2018, at which neither of them took any notes, I do not believe such differences are in any way significant, and indeed, I believe they are to be entirely expected. In this regard, I note that, when commenting on the differences in various witnesses' testimony and accounts of conversations, the CJC's Counsel has made the appropriate observation (more than once) that such differences "support no inference, and no credibility judgment other than that each has provided his or her honest recollection." *See, e.g.,* CJC Posthearing Reply Mem., at 8 and 9. To the extent that the CJC's Counsel believes that Judge Joseph's recollection may differ in any respect from what any of the supervisory judges can now recall from their conversations with her in 2018—and, in my judgment, the differences are both few and minor—I believe that Judge Joseph is entitled to the same consideration.

⁴⁹⁷ *See* Ex. V. at APP539-40. Chief Justice Dawley was appointed as an associate justice of the Brockton District Court in 2001. Tr. 565:25-566:14. He served as an RAJ before being appointed as Chief Justice of the District Court in 2018. *Id.* He served as Chief Justice until his retirement in 2022. *Id.* As the Chief Justice of the District Court, Chief Justice Dawley had disciplinary authority over District Court judges, including Judge Joseph. Tr. 567:12-14.

⁴⁹⁸ Ex. V at APP540.

defendant was brought downstairs in custody to the probation department.”⁴⁹⁹ Later that day, Chief Justice Dawley responded that he did not think the incident was a problem because “[i]t sounds like court personnel were just trying to accommodate the attorney-client relationship by use of the interpreter.”⁵⁰⁰

iv. Judge Joseph’s May 8, 2018, Meeting With Chief Justice Dawley and RAJ Fortes

On May 8, 2018, Chief Justice Dawley and RAJ Fortes met with Judge Joseph in Chief Justice Dawley’s office.⁵⁰¹ In advance of the meeting, Judge Joseph had requested a copy of the recording of the April 2 *Medina-Perez* proceeding and listened to it.⁵⁰² During the meeting, Chief Justice Dawley asked whether Judge Joseph had instructed the clerk to go off the record and Judge Joseph immediately acknowledged that she had and that she should not have done so.⁵⁰³ Judge Joseph explained that she had not been aware of Special Rule 211 and assured Chief Justice Dawley that it would not happen again.⁵⁰⁴ Chief Justice Dawley testified that when he asked why she had gone off the record, she said “something to the effect of the defense lawyer wanted to speak to her off the record because [he] was concerned that the identity of his client was not the same individual [for] whom there was an out of state warrant.”⁵⁰⁵ His memory of what Judge Joseph said was discussed during the unrecorded portion of the sidebar was that it related to the defendant’s identity and the out of state warrant; he did not recall her mentioning “any discussion about ICE.”⁵⁰⁶ When asked whether Judge Joseph said that she thought she had a responsibility to determine the defendant’s identity with respect to the ICE detainer, Chief Justice Dawley responded, “No. We never got to that level of discussion,” explaining that their discussion “was more about the tape being shut off, the importance of the rule.”⁵⁰⁷

⁴⁹⁹ Ex. V at APP538-39. In her testimony, First Justice Heffernan acknowledged that this response did not actually answer Chief Justice Dawley’s question. Tr. 486:20-25.

⁵⁰⁰ Ex. V at APP539.

⁵⁰¹ Chief Justice Dawley testified that after RAJ Fortes emailed him on April 20, 2018, he requested a copy of the recording of the *Medina-Perez* proceeding, and, after listening to it, he wanted to meet with Judge Joseph and RAJ Fortes because he was concerned about the “tape being shut off.” Tr. 597:19-599:24.

⁵⁰² Tr. 728:10-729:14.

⁵⁰³ Tr. 550:6-19; 600:11-601:2.

⁵⁰⁴ Tr. 600:11-601:2. Chief Justice Dawley testified that after he discussed “the fact that it appears the tape was shut off,” Judge Joseph “acknowledged that she had directed the clerk to do that. She apologized. She indicated to me she was not aware that there was a rule that required the tape to be on. And she essentially said it would not happen again. She had been made aware of it, she had thought about it, and [it] wouldn’t happen again.” *Id.*

⁵⁰⁵ Tr. 601:3-16.

⁵⁰⁶ Tr. 602:13-20.

⁵⁰⁷ Tr. 603:7-12.

Chief Justice Dawley asked Judge Joseph if she was “responsible for,” “aware of,” or “had any knowledge whatsoever of” Mr. Medina-Perez’s release through the sallyport exit “while ICE was waiting for him.”⁵⁰⁸ Judge Joseph strongly denied any such responsibility, awareness, or knowledge.⁵⁰⁹ He then asked if she had anything at all to do with Mr. Medina-Perez leaving the NDC that way, which Judge Joseph also adamantly denied.⁵¹⁰ Chief Justice Dawley testified that he accepted her denial.⁵¹¹

Similar to RAJ Fortes’ focus in her discussions with Judge Joseph in April, Chief Justice Dawley’s primary focus during the May 8 meeting was on Judge Joseph granting an attorney’s request to go off the record. He told Judge Joseph that the incident was a very serious matter and he wanted to ensure that she understood the rule regarding recording of court proceedings.⁵¹² He explained that in his experience, when a judge is accused of misconduct, the most favorable piece of evidence is the recording of the proceeding, emphasizing that “the record is your friend.”⁵¹³ Chief Justice Dawley testified that he viewed their discussion on May 8 as a “training issue,” rather than a “disciplinary matter.”⁵¹⁴

At the end of the meeting, Judge Joseph was apologetic about going off the record, stated she understood the policies they had discussed, and apologized for taking up Chief Justice Dawley’s and RAJ Fortes’ time.⁵¹⁵ Later that evening, Judge Joseph emailed Chief Justice Dawley, thanking him for the meeting and reiterating that she had understood everything they discussed.⁵¹⁶ Chief Justice Dawley responded two days later, on May 10, 2018, that he appreciated meeting with Judge Joseph and her consideration of the issues.⁵¹⁷

The CJC argues that it was misleading and/or false for Judge Joseph not to tell Chief Justice Dawley that she “inadvertently” or “unintentionally” facilitated Mr. Medina-Perez’s exit through the sallyport.⁵¹⁸ I do not agree. I do not believe that Judge Joseph should have

⁵⁰⁸ Tr. 603:20-604:9.

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.*

⁵¹¹ Tr. 604:10-11.

⁵¹² Tr. 551:2-12.

⁵¹³ Tr. 601:17-602:12; 785:19-786:1.

⁵¹⁴ Tr. 604:15-605:16.

⁵¹⁵ Tr. 552:8-14.

⁵¹⁶ Ex. V at APP534.

⁵¹⁷ *Id.* Chief Justice Dawley testified that no one at the May 8 meeting took notes “on that day,” and that “there were no notes that were created by [him] or Judge Fortes regarding the meeting at a later time.” Tr. 614:16-21.

⁵¹⁸ See Tr. 604:12-14 735:11-736:15; CJC Post-hearing Memorandum at 46. The CJC argues: “In paragraph 32 of her Response to the Formal Charges issued in this matter, Judge Joseph admitted that her assent to allow defendant, defense counsel, and the interpreter to go to the lockup had the unintended effect of assisting in what (...continued)

viewed her granting Attorney Jellinek’s request to speak with his client and an interpreter in the lockup area, where his client also had some property that would be returned to him, as “facilitating” Mr. Medina-Perez’s escape from the building. It is important to keep in mind that as of May 8, 2018, Attorney Jellinek had not yet confessed to anyone that he had devised a plan to have Mr. Medina-Perez exit through the sallyport if he could get him down to the lockup area after the arraignment. That plan was still a secret between Attorney Jellinek and Court Officer MacGregor, and I believe it is unfair to suggest that Judge Joseph should have viewed herself as having been an unwitting accomplice in a scheme that she knew nothing about. Moreover, to be clear, Chief Justice Dawley was already fully aware (as a result of his emails with RAJ Fortes and First Justice Heffernan on April 20, 2018) that Judge Joseph had granted Attorney Jellinek’s request to have Mr. Medina-Perez return downstairs after the arraignment so that they could speak with each other with the benefit of an interpreter, which Chief Justice Dawley had understandably viewed as “just trying to accommodate the attorney-client relationship by use of the interpreter.”⁵¹⁹ If one could fairly view this “accommodation” as having facilitated Mr. Medina-Perez’s exit through the sallyport (even inadvertently or unintentionally), then certainly Chief Justice Dawley had the very same basis for holding this view as Judge Joseph as of May 8, 2018. But nothing in Chief Justice Dawley’s emails with RAJ Fortes and First Justice Heffernan in 2018, or in his testimony during the hearing, suggests that he held this view.

F. Overall Assessment of Attorney Jellinek’s Credibility and Reliability

The CJC’s Formal Charges, particularly with respect to Judge Joseph’s alleged approval of Mr. Medina-Perez’s release out the sallyport exit in order to evade ICE during the off-the-record sidebar, rely heavily, and in many respects exclusively, on Attorney Jellinek’s testimony. As addressed, in part, in Section III.D.vi.c.5, *supra*, there are many reasons I am unable to credit Attorney Jellinek’s testimony in this matter, particularly with respect to the off-the-record sidebar. While the following overview is not exhaustive, these reasons include:

- 1) His testimony about his allegedly explicit statements to Judge Joseph and ADA Jurgens during the unrecorded portion of the sidebar cannot credibly be reconciled with (1) ADA Jurgens’ testimony (in addition to Judge Joseph’s testimony) regarding what was said—and not said—during that portion of the sidebar, or (2) ADA Jurgens’ actions and statements minutes after the proceeding when she waited with the ICE officers for Mr. Medina-Perez to walk into the courthouse lobby.⁵²⁰

happened, but Judge Joseph failed to make any such admission in response to Chief Justice Dawley’s questions.” CJC Post-hearing Memorandum at 43; *see id.* at 46; Response to Formal Charges ¶ 32. While Judge Joseph recognized the unintended effect of allowing Mr. Medina-Perez to return to the lockup area years later, after she had learned about Attorney Jellinek’s plan, it is understandable that she did not have or voice any such recognition during her discussions with the supervisory judges in April and May 2018, when she had not yet learned about Attorney Jellinek’s plan.

⁵¹⁹ Ex. V at APP538.

⁵²⁰ *See* Section III.D.vi.c.2, *supra*.

- 2) His attempts to explain why ADA Jurgens may not have understood his allegedly explicit statements during the off-the-record sidebar have materially evolved over time, and have never made sense.⁵²¹
- 3) It is implausible that he would explain his corrupt plan to a District Court Judge and an Assistant District Attorney when doing so (1) would have clearly jeopardized his plan given the judge's and prosecutor's legal and ethical responsibilities, and (2) was unnecessary for its execution. All he needed to do was obtain permission for Mr. Medina-Perez to return to the lockup area, and he had two compelling and legitimate reasons for doing so that had nothing to do with Mr. Medina-Perez escaping from ICE: (a) he wanted to speak with his client with the benefit of the interpreter, and (b) his client had property there.
- 4) His claim that he wanted to go off the record to "protect" himself and Judge Joseph⁵²² is belied by his categorical—and wholly not credible—assertion that he would have "said exactly the same thing on the record."⁵²³
- 5) His testimony about what he purportedly thought Judge Joseph meant when she said "that's fine" in response to Clerk Okstein stating that the ICE officer wanted to visit the lockup is not credible:
 - a) Attorney Jellinek: "I don't believe the 'that's fine' refers to them visiting the lockup."
 - b) Hearing Officer: "Okay. Just so I'm clear, the language, again, is Clerk Okstein saying that [']there's a representative from ICE here in the court inaudible to, to visit the lockup.['] Judge Joseph, [']that's fine, I'm not going to allow them to come in here, but he's been released on this.[']"
 - c) Attorney Jellinek: "If that's what the transcript says, that might be what she meant. That's not what I interpreted."
 - d) Hearing Officer: "Okay. You interpreted it to mean that the ICE people should stay upstairs in the lobby —"
 - e) Attorney Jellinek: "Yes."
 - f) Hearing Officer: "—of the courthouse."
 - g) Attorney Jellinek: "Yes."⁵²⁴

⁵²¹ See Section III.D.vi.c.5, *supra*.

⁵²² Tr. 72:18-73:9.

⁵²³ Tr. 73:10-12.

⁵²⁴ Tr. 203:9-204:2.

- 6) His many unsupported assertions and inconsistent statements, such as:
- a) He claims that he was at the courthouse on the morning of April 2, 2018, because he was making an argument in another case, though he could not remember anything about the identity of this other alleged client or the subject of the alleged argument, and there is no record of him appearing on behalf of anyone else that day.⁵²⁵
 - b) He claims that he was approached by Mr. Medina-Perez's employer because the employer was impressed by his alleged argument that morning on behalf of the alleged client he could not remember and of which there is no evidence.⁵²⁶
 - c) He has vacillated back and forth between:
 - i) claiming he was paid by Mr. Medina-Perez's employer with a \$1,000 check on April 2, 2018 (during his grand jury testimony in 2019);
 - ii) claiming that he was paid by the employer with \$1,000 in cash that day (during his initial discussion with the CJC's Counsel in December 2024), and
 - iii) then reverting back to claiming that he was paid by the employer with a \$1,000 check that day (during his testimony in the June 2025 hearing).⁵²⁷
 - d) He claims that Mr. Medina-Perez's employer gave him a birth certificate with a raised seal showing that Mr. Medina-Perez was born in Puerto Rico, though he never once mentioned this purported birth certificate in any of his discussions with the ICE officer, ADA Jurgens or Judge Joseph on April 2, 2018.⁵²⁸
- 7) His own admission—as understated as it was—that his conduct on the afternoon of April 2, 2018, was “right on the edge” of being ethical or legal (though he told the U.S. Attorney's Office in his first interview on November 8, 2018—before receiving immunity—that he “thought it was okay for [Mr. Medina-Perez] to be released from the lockup area”).⁵²⁹

⁵²⁵ See Section III.D.v.b, *supra*.

⁵²⁶ See *id.*; Tr. 167:12-22.

⁵²⁷ See Section III.D.v.b, *supra*.

⁵²⁸ *Id.*

⁵²⁹ Tr. 163:1-163:7.

- 8) His actions, statements, and at times notable silence, in his encounters with others immediately after Mr. Medina-Perez's escape and over the ensuing days. This included, for example:
- a) His not attempting to engage with ADA Jurgens at all (other than mutely smiling), in response to her confronting him after Mr. Medina-Perez had evaded ICE and she had come to realize what had happened (saying "I know what you did and that was not the right thing to do),"⁵³⁰ when one would fully expect him to respond that she—of all people—knew full well that Mr. Medina-Perez was going to evade ICE because she had just been at the sidebar minutes earlier when he had allegedly told her and Judge Joseph about his plan;
 - b) His not saying anything about Judge Joseph's or ADA Jurgens' alleged awareness of his plan, much less about Judge Joseph's alleged approval of it, when responding to Attorney Bostwick's statement in the NDC parking lot that his actions constituted obstruction of justice;
 - c) His not responding to Chief Court Officer Noe's inquiry about the events of April 2 by explaining that Judge Joseph had approved of his plan to have Mr. Medina-Perez released out the back of the courthouse, but rather simply "shrug[ing] his shoulders" and not saying anything⁵³¹; and
 - d) His discussion with First Justice Heffernan, discussed below.
- 9) His material inconsistencies with First Justice Heffernan as to the circumstances and content of their discussion on April 3, 2018, including, for example:
- a) He claimed that he requested the meeting with First Justice Heffernan specifically to inform her that ICE had been unhappy with ADA Jurgens, while First Justice Heffernan testified that she did not recall anything to this effect;⁵³²
 - b) He claimed that he told First Justice Heffernan that Mr. Medina-Perez had been released out the back door of the courthouse, while First Justice Heffernan testified that he did not tell her this;⁵³³ and
 - c) He claimed that First Justice Heffernan told him she was already aware of Mr. Medina-Perez's release, while First Justice Heffernan testified that her

⁵³⁰ Tr. 242:17-243:6.

⁵³¹ Tr. 456:11-20; 472:20-473:3.

⁵³² *Id.*

⁵³³ *Id.*

conversation with him was the first time anyone had discussed the *Medina-Perez* case with her.⁵³⁴

10) His not telling First Justice Heffernan during their discussion on April 3, 2018, among other things:

- a) That he had come up with a plan to have Mr. Medina-Perez leave the courthouse through the sallyport exit while ICE remained in the courthouse lobby;
- b) That he had asked to go off the record, and there was in fact an off-the-record discussion;
- c) That he had allegedly made both Judge Joseph and ADA Jurgens aware of his plan during this off-the-record discussion; and
- d) That Judge Joseph had allegedly approved and facilitated his plan.

11) His repeatedly making claims that were not remotely credible, for example:

- a) Judge Joseph's Counsel: "Do you think that you owed it to [First Justice Heffernan] to tell her that you had had this conversation with her court officer about letting [Mr. Medina-Perez] out the back? Yes or no?"
- b) Attorney Jellinek: "She said she already knew about it."⁵³⁵

- c) Judge Joseph's Counsel: "Are you telling the hearing officer that you interpreted that to mean that she already knew that MacGregor had made this deal with you?"
- d) Attorney Jellinek: "I don't know what she knew. I – She said I know about it, basically just go away, and I didn't respond."⁵³⁶

12) His own admission that he may have "hedged" his answers during his first interview with the U.S. Attorney's Office,⁵³⁷ because he was "worried" that he "could be indicted," and did not yet have immunity.⁵³⁸

⁵³⁴ *Id.*

⁵³⁵ Tr. 126:9-13.

⁵³⁶ Tr. 126: 15-21.

⁵³⁷ Tr. 150:1-13.

⁵³⁸ Tr. 148:18-149:6.

- 13) His own admission about his selectivity when it comes to being honest: “I’m always honest with the ADA, but not when it relates to the advocacy of my client.”⁵³⁹
- 14) His obvious motivation for accusing Judge Joseph of being complicit in his plan, including, for example:
- a) He was the admitted architect of the plan, and therefore faced the clear likelihood of being criminally charged with obstruction of justice, in addition to being disbarred and losing his livelihood.⁵⁴⁰ He acknowledged that he was being investigated for federal crimes punishable by lengthy prison terms,⁵⁴¹ and that Clerk Okstein’s attorney had told him that he “*might be a target* and I should get a lawyer.”⁵⁴² He testified that his “biggest worry” when he went to speak with law enforcement on November 8, 2018, was losing his livelihood and not being able to support his family;⁵⁴³ and
 - b) Doing so could—and in fact did—result in him not being criminally charged in connection with his client’s escape from ICE, not going to prison, not being disbarred, and not losing his livelihood.
- 15) His similarly obvious motivation to continue to adhere to his accusation of Judge Joseph’s complicity in his scheme, or risk being the subject of criminal charges and disbarment if he were to now, seven years later, admit that his accusation had, in fact, been false.

IV. Conclusions as to Violations

A. Burden of Proof

The CJC bears the burden of proving its case against Judge Joseph by clear and convincing evidence.⁵⁴⁴ This standard imposes “a greater burden than proof by a preponderance of the evidence, but less than the proof beyond a reasonable doubt required in

⁵³⁹ Tr. 106:22-23. Attorney Jellinek made this statement in the context of his explaining why he would *not* have told ADA Jurgens about his plan (with Court Officer MacGregor) to have Mr. Medina-Perez released out the back of the courthouse. His statement is perplexing on several levels, including because he was simultaneously claiming that he did, in fact, tell ADA Jurgens (and Judge Joseph) of his escape plan during their off-the-record sidebar.

⁵⁴⁰ Tr. 84:21-85:10; 137:19-139:13.

⁵⁴¹ Tr. 138:2-139:13.

⁵⁴² Tr. 133:8-13 (emphasis added).

⁵⁴³ Tr. 137:16-138:1.

⁵⁴⁴ M.G.L. c. 211C § 7(4).

criminal cases.”⁵⁴⁵ To meet the clear and convincing standard, “[t]he evidence must be sufficient to convey a high degree of probability that the contested proposition is true.”⁵⁴⁶ Evidence carries this burden when it is “strong, positive and free from doubt,” and “full, clear and decisive.”⁵⁴⁷

B. Code of Judicial Conduct and Statutory Provisions in the Formal Charges

The CJC charges Judge Joseph with engaging in willful misconduct that brought the judicial office into disrepute, as well as conduct prejudicial to the administration of justice and unbecoming a judicial officer, in violation of M.G.L. c. 211C § 2(5), and with violating Rules 1.1, 1.2, 2.2, 2.5, and 2.16 of the Code of Judicial Conduct.

Chapter 211C § 2(5) sets forth several grounds for which a judge may be subject to discipline. The CJC alleges that Judge Joseph should face discipline under Chapter 211C § 2(5)(b), which prohibits “willful misconduct in office.”⁵⁴⁸ As the SJC has explained, “the term ‘wilfully’ has not been defined consistently in either dictionaries or across our jurisprudence.”⁵⁴⁹ “At its core, however, it ‘means intentional and by design in contrast to that which is thoughtless or accidental.’”⁵⁵⁰ For example, in prior judicial misconduct cases, the SJC has concluded that judges acted willfully by “engag[ing] in a ‘pattern[] of disregard or indifference’”⁵⁵¹ and engaging in “intentional wrongdoing.”⁵⁵²

The CJC further alleges that Judge Joseph should face discipline under Chapter 211C § 2(5)(d), which prohibits “conduct prejudicial to the administration of justice or conduct

⁵⁴⁵ *Matter of Sushchyk*, 489 Mass. 330, 334, 183 N.E.3d 388, 393 (2022) (quotation omitted). To find that a proposition has been proven by a preponderance of the evidence, “the trier of fact had to conclude that it was more probable than not.” *Cont’l Assur. Co. v. Diorio-Volungis*, 51 Mass. App. Ct. 403, 409 n.9, 746 N.E.2d 550, 555 n.9 (2001); see also *Sargent v. Massachusetts Acc. Co.*, 307 Mass. 246, 250, 29 N.E.2d 825, 827 (1940) (“After the evidence has been weighed, that proposition is proved by a preponderance of the evidence if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there.”).

⁵⁴⁶ *Matter of Sushchyk*, 489 Mass. at 334, 183 N.E.3d at 393 (quotation omitted).

⁵⁴⁷ *Stone v. Essex Cnty. Newspapers, Inc.*, 367 Mass. 849, 871, 330 N.E.2d 161, 175 (1975); see *Adoption of Lisette*, 93 Mass. App. Ct. 284, 293 n.14, 102 N.E.3d 1018, 1026 n.14 (2018) (same); Howard J. Alperin & Ronald F. Chase, Summary of Basic Law § 9:18, 5th ed. (2024) (collecting cases).

⁵⁴⁸ M.G.L. c. 211C § 2(5).

⁵⁴⁹ *Commonwealth v. Pfeiffer*, 482 Mass. 110, 116, 121 N.E.3d 1130, 1138 (2019) (citing *Millis Pub. Schools v. M.P.*, 478 Mass. 767, 775-776, 89 N.E.3d 1170, 1177 (2018)).

⁵⁵⁰ *Id.* at 1138 (quoting *Commonwealth v. McGovern*, 397 Mass. 863, 868, 494 N.E.2d 1298, 1301 (1986)).

⁵⁵¹ *Matter of Markey*, 427 Mass. 797, 807, 696 N.E.2d 523, 530 (1998) (quoting *Matter of Scott*, 377 Mass. 364, 367, 386 N.E.2d 218, 220 (1979)).

⁵⁵² *Sushchyk*, 489 Mass. at 339, 183 N.E.3d at 396.

unbecoming a judicial officer, whether conduct in office or outside of judicial duties, that brings the judicial office into disrepute.”⁵⁵³

In addition, the CJC alleges that Judge Joseph violated the following Rules of the Code of Judicial Conduct:⁵⁵⁴

Rule 1.1 is a catchall provision requiring that “[a] judge shall comply with the law, including the Code of Judicial Conduct.”⁵⁵⁵ “Law” is defined under the Code of Judicial Conduct to include “court rules”—which would include Special Rule 211—as well as “statutes, constitutional provisions, and decisional law.”⁵⁵⁶

Rule 1.2 requires that “[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”⁵⁵⁷ Comment 2 to Rule 1.2 explains that a judge “should expect to be the subject of public scrutiny,” and Comments 1 and 3 further explain that “[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety,” and “[c]onduct that compromises or appears to compromise the independence, integrity, or impartiality of a judge undermines public confidence in the judiciary.”⁵⁵⁸ “Impropriety” is defined to include violations of law or the Code of Judicial Conduct, as well as other conduct for which a judge could be disciplined pursuant to Section 2(5).⁵⁵⁹ Comment 5 to Rule 1.2 provides that “[i]mproprieties include violations of law.”⁵⁶⁰ The test for what constitutes the appearance of impropriety is “whether the conduct would create in reasonable minds a perception that the judge violated [the Code of Judicial Conduct] or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.”⁵⁶¹

⁵⁵³ M.G.L. c. 211C § 2(5).

⁵⁵⁴ A violation of the Code of Judicial Conduct would also result in a technical violation of M.G.L. c. 211C § 2(5)(e), which prohibits “any conduct that constitutes a violation of the codes of judicial conduct or professional responsibility.”

⁵⁵⁵ Code of Judicial Conduct, Rule 1.1.

⁵⁵⁶ Code of Judicial Conduct, Terminology.

⁵⁵⁷ Code of Judicial Conduct, Rule 1.2.

⁵⁵⁸ Code of Judicial Conduct, Rule 1.2. The Code of Judicial Conduct defines “independence” as “a judge’s freedom from influences or controls other than those established by law,” “integrity” as a judge’s “probity, fairness, honesty, uprightness, and soundness of character,” and “impartiality” as “absence of bias or prejudice in favor of, or against, particular parties or classes of parties or their representatives, as well as maintenance of an open mind in considering issues that may come before a judge.” Code of Judicial Conduct, Terminology.

⁵⁵⁹ Code of Judicial Conduct, Terminology.

⁵⁶⁰ Code of Judicial Conduct, Rule 1.2.

⁵⁶¹ *Id.*

Rule 2.2 requires that “[a] judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”⁵⁶² Comment 2 to Rule 2.2 provides that “[a]lthough each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.”⁵⁶³ Comment 3 to Rule 2.2 further provides that “[w]hen applying and interpreting the law, a judge sometimes may make good faith errors of fact or law. Errors of this kind do not violate this Rule. In the absence of fraud, corrupt motive, or clear indication that the judge’s conduct was in bad faith or otherwise violates this Code, it is not a violation for a judge to make findings of fact, reach legal conclusions, or apply the law as the judge understands it.”⁵⁶⁴

Rule 2.5 requires that “[a] judge shall perform judicial and administrative duties competently, diligently, and in a timely manner.”⁵⁶⁵ Rule 2.5 also requires that “[a] judge shall cooperate with other judges and court officials in the administration of court business.”⁵⁶⁶ Comment 1 to Rule 2.5 provides that “[c]ompetence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge’s responsibilities of judicial office.”⁵⁶⁷

Finally, Rule 2.16 requires that “[a] judge shall cooperate and be candid and honest with judicial and lawyer disciplinary authorities.”⁵⁶⁸ Comment 1 to Rule 2.16 explains that such cooperation “instills confidence in judges’ commitment to the integrity of the judicial system and the protection of the public.”⁵⁶⁹ For example, in *Matter of Sushchuk*, the SJC found that a judge violated Rule 2.16 by knowingly providing a false version of events when confronted with allegations of misconduct.⁵⁷⁰ In *Matter of King*, the SJC similarly found that a judge violated a prior version of the Code of Judicial Conduct because he was “less than forthcoming” with a commissioner appointed to investigate his alleged misconduct, to whom he had an obligation of complete candor.⁵⁷¹

⁵⁶² Code of Judicial Conduct, Rule 2.2.

⁵⁶³ *Id.*

⁵⁶⁴ *Id.*

⁵⁶⁵ Code of Judicial Conduct, Rule 2.5.

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ Code of Judicial Conduct, Rule 2.16.

⁵⁶⁹ *Id.*

⁵⁷⁰ 489 Mass. at 337, 183 N.E.3d at 395.

⁵⁷¹ 409 Mass. 590, 606, 568 N.E.2d 588, 596-97 (1991).

C. Conclusions

The alleged violations of M.G.L. c. 211C § 2(5)⁵⁷² and the Code of Judicial Conduct can be divided into three categories:

- First, whether Judge Joseph violated Rules 1.1, 1.2, 2.2, and 2.5, and Chapter 211C § 2(5) by allegedly willfully (1) authorizing Mr. Medina-Perez to return to the lockup area for the purpose of enabling him to exit through the back of the courthouse in order to evade ICE, (2) not advising other court personnel on April 2, 2018, that she had done so, and (3) making statements to suggest that she would be willing to help Mr. Medina-Perez avoid ICE detention;
- Second, whether Judge Joseph violated Rules 1.1, 1.2, 2.2, and 2.5, and Chapter 211C § 2(5) by going off the record during the sidebar allegedly in knowing or negligent violation of Special Rule 211; and
- Third, whether Judge Joseph violated Rule 2.16 and Chapter 211C § 2(5) by allegedly willfully failing to be candid and forthcoming during her meetings with the three supervisory judges regarding going off the record and her purported authorization of Mr. Medina-Perez exiting through the back of the courthouse to evade ICE.

I address each category in turn.

i. Charges of Willfully Authorizing Mr. Medina-Perez To Evade ICE and Creating the Appearance of Impropriety and Bias

The CJC's Formal Charges raise two fundamental questions: first, whether Judge Joseph willfully authorized Mr. Medina-Perez to exit through the back of the courthouse to evade ICE, and second, whether Judge Joseph's conduct on April 2, 2018, created the appearance of impropriety and bias.

a. Willful Authorization of Mr. Medina-Perez's Escape

I find that the CJC has failed to prove by clear and convincing evidence that Judge Joseph authorized the scheme to help Mr. Medina-Perez exit through the back of the courthouse in order to evade ICE. The charges that Judge Joseph (1) willfully authorized Mr. Medina-Perez to do this, and (2) willfully failed to advise other court personnel that she had done so, turn on the discussion that took place during the off-the-record sidebar.

As set forth in greater detail in the Findings of Fact, the evidence put forth by the CJC does not establish by clear and convincing evidence that Judge Joseph knew of or approved Attorney Jellinek's plan for three primary reasons.

⁵⁷² Although the CJC does not refer to specific subsections of Chapter 211C § 2(5) in its Formal Charges or Post-hearing briefing, I assume it is alleging violations of subsections (b), (d), and (e).

First, ADA Jurgens was present at the sidebar and did not hear Attorney Jellinek describe his plan, or Judge Joseph authorize it. The CJC’s argument—that Judge Joseph heard Attorney Jellinek explicitly describe his plan and then approved it explicitly enough for him to understand that she was authorizing it, and yet that this exact exchange was simultaneously obscure enough to leave ADA Jurgens completely in the dark about the plan and Judge Joseph’s purported approval of it—defies common sense. ADA Jurgens had several years of experience, was less than two feet away from Attorney Jellinek, and was sufficiently engaged with the issues relating to ICE that she stood with the ICE officers in the courthouse lobby immediately after the proceeding had ended waiting for Mr. Medina-Perez to return from the lockup area.⁵⁷³ I do not find the theory plausible—let alone sufficient to meet the clear and convincing standard—that ADA Jurgens’ purported inexperience, or her feeling that the ICE-related issues were not for her to resolve, could have caused her to miss such an explosive and improper exchange between Attorney Jellinek and Judge Joseph relating to a matter in which she was clearly so invested.

Second, as set forth in detail above, I do not find Attorney Jellinek’s testimony relating to what was said during the off-the-record sidebar to be credible or reliable.⁵⁷⁴

Third, both Judge Joseph’s clear statements on the record, and her other undisputed actions on April 2, 2018, strongly support that she did not authorize Attorney Jellinek’s escape plan. When Clerk Okstein advised Judge Joseph that, “[t]here was a representative from . . . ICE here in the Court . . . [inaudible] to, to visit the lock-up,” her immediate response was, “[t]hat’s fine. I’m not gonna allow them to come in here. But he’s been released on this.”⁵⁷⁵ Consistent with the plain meaning of her words, Judge Joseph testified that she said “that’s fine” to confirm that ICE “can go to the lockup, but in compliance with [First Justice Heffernan’s practice], they can’t come into the courtroom to access the lockup, but they can use any of the other entrances and opportunities to get to the lockup that they’re able to.”⁵⁷⁶ While Clerk Okstein and Attorney Jellinek testified that they understood Judge Joseph to be prohibiting, rather than permitting, the ICE officers entering the lockup,⁵⁷⁷ that does not square with the plain language of Judge Joseph’s response.⁵⁷⁸ Furthermore, as Judge Joseph had just been read the Lunn Policy—which states that “[n]o DHS official shall be permitted to take an individual into custody pursuant to a civil immigration detainer or warrant *in a courtroom*,” and explains that “court officers *shall permit* the DHS official(s) to enter the holding cell area in order to take custody of the individual once Trial Court security personnel have finished processing that individual out of the court security personnel’s

⁵⁷³ Tr. 232:10-18; 240:8-242:12.

⁵⁷⁴ Section III.e, *supra*.

⁵⁷⁵ Ex. G at APP043.

⁵⁷⁶ Tr. 774:24-775:6; *see* Ex. N at APP218:1-6.

⁵⁷⁷ *See supra* n.386; Tr. 203:9-204:2.

⁵⁷⁸ Notably, this is a good illustration of Chief Justice Dawley’s advice that “the record is your friend.” Tr. 785:19-786:1.

custody”⁵⁷⁹—it makes complete sense that she would have approved the ICE officers entering the lockup area, but repeated her instruction that they could not come into the courtroom (in compliance with both First Justice Heffernan’s practice and the Lunn Policy). I therefore conclude that when Judge Joseph responded “that’s fine” to Clerk Okstein’s question as to whether the ICE officer could visit the lockup area, she meant exactly what she said. I also find that Judge Joseph would not have approved the ICE officer visiting the lockup area if, just a moment before, she had approved a scheme for Mr. Medina-Perez to go to the very same lockup area in order to try to escape from ICE (which, quite obviously, would (1) foil the attempted escape, and (2) risk a potentially violent interaction between Mr. Medina-Perez and ICE as he was attempting that escape).

Judge Joseph’s willingness to repeatedly allow Mr. Medina-Perez’s lawyers additional time to investigate the identity issue (that pertained to both the Pennsylvania and ICE matters), as well as her choice to spend much of the nearly two-hour lunch break researching whether ICE officers could be excluded from the courtroom, strongly suggest that she was being a conscientious judge who was trying to get things right—not a judge who would cavalierly authorize Mr. Medina-Perez’s surreptitious evasion of ICE. The CJC places weight on the fact that Judge Joseph was the first person to raise the topic of ICE on the record after the lunch recess. However, I believe this was certainly understandable given the significant amount of time that she had just devoted during that recess to researching and discussing the Lunn Policy and whether ICE could be in the courtroom. For these reasons (in addition to others explained above),⁵⁸⁰ I find that when Judge Joseph raised the question of whether the case should be briefly continued to the following day, she was simply soliciting counsel’s views as to whether it made sense to give Mr. Medina-Perez’s new lawyer additional time to continue his investigation of Mr. Medina-Perez’s identity and then potentially engage further with ICE, all without compromising in any way ICE’s ability to take him into custody the following day if Attorney Jellinek was unable to convince ICE that his client was not the subject of their detainer.⁵⁸¹ Whether Judge Joseph should have taken more care to avoid creating a misimpression that she was considering holding Mr. Medina-Perez in state custody overnight in order to frustrate ICE’s enforcement efforts is an appearance of impropriety issue that I address further below.

As I find that the CJC has failed to prove by clear and convincing evidence that Judge Joseph knew of Attorney Jellinek’s plan to have Mr. Medina-Perez evade ICE—let alone that she willfully authorized it⁵⁸²—I find that her conduct in this regard did not violate Rules 1.1, 1.2, 2.2, or 2.5, or Chapter 211C §§ 2(5)(b) or (d):

⁵⁷⁹ Tr. 756:19-757:7; Ex. N at APP198:3-20; Ex. B at APP008 (emphasis added).

⁵⁸⁰ Section III.D.v, *supra*.

⁵⁸¹ Section III.D.vi.a, *supra*.

⁵⁸² The SJC has explained that an act is willful when it is “‘intentional and by design,’ and not ‘thoughtless or accidental.’” *Pfeiffer*, 482 Mass. at 116, 121 N.E.3d at 1138. The SJC has further clarified that the modern definition of “willful” does not require proof of “evil intent.” *Commonwealth v. Adams*, 482 Mass. 514, 526, 125 N.E.3d 39, 51 (2019). This interpretation accords with Black’s Law Dictionary, which defines “‘willful’ as (...continued)

- Rule 1.1 mandates that “[a] judge shall comply with the law, including the Code of Judicial Conduct.”⁵⁸³ Because Judge Joseph did not authorize the plan to evade ICE, her conduct in this regard did not violate any applicable law.
- Rule 1.2 requires that “[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”⁵⁸⁴ Because Judge Joseph did not authorize the plan to evade ICE, her conduct in this regard did not compromise her independence, integrity, or impartiality. I address the alleged “appearance of impropriety” question below.
- Rule 2.2 requires that “[a] judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”⁵⁸⁵ Because Judge Joseph did not violate the law by assisting in Mr. Medina-Perez’s escape, she did not violate Rule 2.2.
- Rule 2.5 requires that “[a] judge shall perform judicial and administrative duties competently, diligently, and in a timely manner.”⁵⁸⁶ Rule 2.5 also requires that “[a] judge shall cooperate with other judges and court officials in the administration of court business.”⁵⁸⁷ Judge Joseph’s conduct during the 52-second off-the-record sidebar (and throughout April 2, 2018, more generally) does not support a finding that she did not perform her judicial and administrative duties competently, diligently, and in a timely manner. Nor did she fail to cooperate with court officials that day, because she was, in fact, unaware of the plan to help Mr. Medina-Perez escape, and thus she had nothing to disclose.

‘[v]oluntary and intentional, but not necessarily malicious.’” *Id.* (quoting Black’s Law Dictionary 1834 (10th ed. 2014)). In *In re Troy*, the SJC found that Judge Troy acted willfully because he “for a prolonged period of time participated in filling a tidewater area in an illegal manner” and possessed “full knowledge of the illegality of the operation.” 364 Mass. 15, 46, 306 N.E.2d 203, 220-21 (1973). Here, by contrast, Judge Joseph did not authorize or know about the plan that Attorney Jellinek had devised with Court Officer MacGregor. Unlike the prolonged and intentional misconduct in *In re Troy*, Judge Joseph did not engage in any intentional misconduct. Moreover, even if Attorney Jellinek genuinely believed that Judge Joseph was approving his request to have Mr. Medina-Perez return to the lockup area so that he could leave through the back exit and evade ICE—a highly doubtful proposition—I find that whatever statements she made during this brief off-the-record discussion that could have caused him to have that belief were not willful.

⁵⁸³ Code of Judicial Conduct, Rule 1.1.

⁵⁸⁴ Code of Judicial Conduct, Rule 1.2.

⁵⁸⁵ Code of Judicial Conduct, Rule 2.2.

⁵⁸⁶ Code of Judicial Conduct, Rule 2.5.

⁵⁸⁷ *Id.*

- Rule 2.16 requires that “[a] judge shall cooperate and be candid and honest with judicial and lawyer disciplinary authorities.”⁵⁸⁸ As discussed below, because Judge Joseph did not authorize the plan to evade ICE, she was not dishonest when she denied any involvement in that scheme to other judges and court officials.
- Chapter 211C §§ 2(5)(b), (d), and (e) prohibit “willful misconduct in office,” “conduct prejudicial to the administration of justice or conduct unbecoming a judicial officer, whether conduct in office or outside of judicial duties, that brings the judicial office into disrepute,” and “any conduct that constitutes a violation of the codes of judicial conduct or professional responsibility.”⁵⁸⁹ Judge Joseph did not contravene any of the components of the statute because she did not authorize Attorney Jellinek’s plan for Mr. Medina-Perez to evade ICE—and thus did not willfully commit misconduct, bring the judicial office into disrepute, or violate any provision of the Code (as discussed above).

b. Appearance of Impropriety and Bias

Although I find that Judge Joseph had no intention of impeding ICE, I also find that she unintentionally created the appearance of impropriety and bias, in violation of Rule 1.2, by (1) making statements on and off the record that could be interpreted to suggest that she did not want ICE to take custody of Mr. Medina-Perez, and (2) going off the record during a discussion relating to ICE’s interest in taking custody of him. In reaching this conclusion, I credit ADA Jurgens’ testimony that, overall, she found the sidebar to be “weird or sketchy,” and that the ICE-related discussion made her “uncomfortable.”⁵⁹⁰

Judge Joseph made several statements during the afternoon portion of the *Medina-Perez* proceeding that could have created the impression—and in the case of ADA Jurgens, did create the impression—that Judge Joseph was concerned that ICE might take custody of Mr. Medina-Perez. More generally, her statements could be interpreted to suggest that she was overly focused on a matter that was not germane to the criminal proceeding over which she was presiding.

First, at the outset of the recorded portion of the sidebar, Judge Joseph said “so it’s my understanding that ICE is here . . .”⁵⁹¹ She was thus the first person to raise the issue of ICE’s presence in the courthouse. In context, this makes sense: Judge Joseph had just spent much of the lunch recess evaluating whether to follow First Justice Heffernan’s practice with respect to excluding ICE from the courtroom. However, the timing of and manner in which she made this observation, including that she was raising this issue before she and the attorneys had addressed the status of the criminal case after the lunch recess, could be

⁵⁸⁸ Code of Judicial Conduct, Rule 2.16.

⁵⁸⁹ M.G.L. c. 211C § 2(5).

⁵⁹⁰ Tr. 313:23-314:1; 233:4-5; 236:8-16.

⁵⁹¹ Ex. G at APP040.

misunderstood to suggest that she was overly concerned about the ICE officer's presence in the courthouse.

Second, Judge Joseph's engagement with Attorney Jellinek following his explanation of his discussions with ICE up to that point could have been interpreted as a greater-than-appropriate concern on Judge Joseph's part about ICE potentially taking custody of Mr. Medina-Perez. For example, when Attorney Jellinek said that "I think the best thing for us to do is to clear the fugitive issue, release [Mr. Medina-Perez] on a personal, and hope that we can avoid ICE,"⁵⁹² Judge Joseph did not seek clarification from Attorney Jellinek as to what he meant when he expressed the "hope that we can avoid ICE." Rather, she remained focused on the identity issue and whether Attorney Jellinek might need additional time to investigate that issue, saying, "... the other alternative is if you need more time to figure this out – hold until tomorrow"⁵⁹³ When Attorney Jellinek responded by ignoring Judge Joseph's question about whether he needed "more time to figure this out," and instead saying that "[t]here is an ICE detainer. So if he's bailed out from Billerica [an overnight jail] . . . [inaudible] ICE will pick him up,"⁵⁹⁴ Judge Joseph replied in a concerned voice, "– ICE is gonna get him? [inaudible statement from Attorney Jellinek]. . . What if *we* continued it –."⁵⁹⁵

Lastly, as ADA Jurgens testified, shortly afterward, Judge Joseph then said during the off-the-record sidebar, something to the effect of "what could *we* do."⁵⁹⁶ Assuming ADA Jurgens' recollection is correct, this was the second time in the sidebar, in short succession, that Judge Joseph used the word "we" in relation to potential actions that would result in delaying ICE from taking custody of Mr. Medina-Perez.

On the one hand, I do not believe that Judge Joseph's statements demonstrate that she held any substantive bias or partiality in violation of Rule 2.2. In this regard, I note that while the CJC argues that Judge Joseph knowingly facilitated Attorney Jellinek's plan, it nonetheless agrees that her actions on the afternoon of April 2 were not done "out of any political motive" or "any ill intention. To the contrary," her actions were done "in an effort to prevent what she thought was an imminent injustice."⁵⁹⁷ As the record makes clear, Judge

⁵⁹² Ex. G at APP041.

⁵⁹³ *Id.*

⁵⁹⁴ *Id.*

⁵⁹⁵ *Id.* (emphasis added); Ex. J at 2:50:00. According to RAJ Fortes, Chief Justice Dawley commented during the May 8, 2018, meeting with Judge Joseph that there were "some things that he was concerned about in the recording [of the *Medina-Perez* afternoon session], I think things like lack of formality in the beginning, professionalism . . ." Tr. 550:12-15. While it is not clear what exactly the "lack of formality in the beginning, professionalism" comment is referring to, I believe it is certainly possible that this exchange between Judge Joseph and Attorney Jellinek—in particular, when Judge Joseph says in a concerned voice, "ICE is gonna get him?"—may have been one of the reasons Chief Justice Dawley made this comment (in addition to likely being one of the reasons ADA Jurgens testified that generally the ICE-related portions of the discussion made her "uncomfortable").

⁵⁹⁶ Tr. 236:8-13 (emphasis added).

⁵⁹⁷ Tr. 995:14-20.

Joseph was dealing with a complex and fast-moving case, and serious issues linked to Mr. Medina-Perez’s identity had persisted throughout the day. In fact, over the course of just a few hours (from the morning to the afternoon), ADA Jurgens herself had completely reversed her position regarding his identity and whether he was the individual who was the subject of the Pennsylvania fugitive warrant. In addition, ADA Jurgens’ initial belief that Mr. Medina-Perez was the subject of the Pennsylvania warrant was based on an alleged biometric (fingerprint) match, the very same basis for ICE’s belief that he was the subject of its detainer and warrant.⁵⁹⁸ Late in the day, with the Pennsylvania fugitive charge still pending, the courthouse closing soon, and foundational identity issues still lingering, Judge Joseph was considering the possibility of “just trying to hit pause” on the matter—as she had done throughout the morning calls when she had repeatedly allowed Attorney Bostwick additional time to further investigate questions relating to Mr. Medina-Perez’s identity.⁵⁹⁹ I credit Judge Joseph’s testimony that she believed that she “had a responsibility to everybody involved, the defendant, the attorneys, the district attorney’s office, ICE, everybody needed to know who [Mr. Medina-Perez] was.”⁶⁰⁰

Judge Joseph’s potential legal errors also do not suggest a substantive bias. Judge Joseph acknowledges that she would not have had authority to detain Mr. Medina-Perez overnight if she had already dismissed the Pennsylvania fugitive charge.⁶⁰¹ However, she had not yet dismissed that charge when she raised the possibility of continuing the case to the next day. Rather, in the course of a rapid discussion—and before the more detailed exchange with Attorney Jellinek and ADA Jurgens relating to the serious identity issues with respect to the fugitive charge, and ADA Jurgens then moving to dismiss that charge—Judge Joseph was simply raising a question with Attorney Jellinek as to whether he might need some additional time “to figure this out.”⁶⁰² If so, she was floating the idea to Attorney Jellinek and ADA Jurgens that perhaps they might do, in essence, precisely what she had just repeatedly done during the morning with Attorney Bostwick and ADA Jurgens: put the matter over to a later call, though this later call would be the next morning instead of a couple of hours later given that they were already approaching 3:00 p.m. Because Attorney Jellinek was not interested in pursuing that idea, Judge Joseph did not continue the case or hold Mr. Medina-Perez overnight. However, even if Attorney Jellinek had pursued this idea without objection from ADA Jurgens, and Judge Joseph had then continued the case to the next morning (with Mr. Medina-Perez therefore being held overnight), and even if doing so were deemed to be a legal error (which is far from certain given that the Pennsylvania charge had not yet been dismissed), I believe that any such error in that circumstance—which again is not, in fact, how things played out—would have been a “good faith error of . . . law” under Rule 2.2,

⁵⁹⁸ Tr. 687:7-24; 740:11-21; *see* Ex. G at APP041.

⁵⁹⁹ Tr. 702:18-23; *see* Section III.D.vi.a, *supra*.

⁶⁰⁰ Tr. 707:1-10.

⁶⁰¹ Tr. 703:4-8; M.G.L. c. 276, §§ 57, 58; *see* Section III.C.ii.f.1, *supra*.

⁶⁰² Ex. G at APP041.

Comment 3, and thus would not have violated the mandate in Rule 2.2 that judges “perform all duties of judicial office fairly and impartially.”⁶⁰³

Judge Joseph’s statements during the afternoon session of the *Medina-Perez* proceeding also accord with foundational principles of due process and the role of the judiciary. Rule 2.6(a) mandates that “[a] judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law. A judge may make reasonable efforts, consistent with the law, to facilitate the ability of all litigants . . . to be fairly heard.”⁶⁰⁴ This reflects the bedrock principle that “judges must ensure that all parties . . . receive a fair trial and that principles of due process are followed.”⁶⁰⁵ Furthermore, Rule 1.2 requires judges to “act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.”⁶⁰⁶ In the circumstances of April 2, 2018, it was reasonable for Judge Joseph to be concerned about the identity of a defendant appearing before her, and to explore options to give Attorney Jellinek more time to investigate Mr. Medina-Perez’s identity if he wanted. As both First Justice Heffernan and ADA Jurgens agreed, it would have been troubling if ICE had detained the wrong person.⁶⁰⁷ While the Lunn Policy generally requires neutrality towards ICE, and states that “Trial Court employees shall neither impede DHS officials from [taking custody of individuals] nor assist in the physical act of” doing so,⁶⁰⁸ I do not find that Judge Joseph took any steps to impede DHS officials from taking custody of Mr. Medina-Perez. Indeed, to the contrary, once she determined that Mr. Medina-Perez was going to be released from state custody, she expressly approved the ICE officer going to the lockup area—where she was also allowing Mr. Medina-Perez and his attorney to go after the proceeding had ended.

However, I find that Judge Joseph created the appearance of impropriety and bias (or partiality) by the tone and substance of some of her statements and questions on the afternoon of April 2, 2018, relating to the possibility of ICE taking custody of Mr. Medina-Perez under the unusual circumstances presented to her that day, which Judge Joseph compounded by granting Attorney Jellinek’s request to go off the record when she did. Regardless of whether Judge Joseph intended for her statements and actions in the less than

⁶⁰³ See generally, Code of Judicial Conduct, Rule 2.2, Comment 3 (“When applying and interpreting the law, a judge sometimes may make good faith errors of fact or law. Errors of this kind do not violate this Rule.”); M.G.L. c. 211C, § 2(4) also prohibits the CJC from censoring judges for legal mistakes: “[i]n the absence of fraud, corrupt motive, bad faith, or clear indication that the judge’s conduct violates the code of judicial conduct, the commission shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he understands it. Commission proceedings shall not be a substitute for an appeal.” M.G.L. c. 211C, § 2(4).

⁶⁰⁴ Code of Judicial Conduct, Rule 2.6.

⁶⁰⁵ *Morse v. Ortiz-Vazquez*, 99 Mass. App. Ct. 474, 484, 169 N.E.3d 205, 214 (2021).

⁶⁰⁶ Code of Judicial Conduct, Rule 1.2.

⁶⁰⁷ Tr. 296:3-7; 526:23-527:1.

⁶⁰⁸ Ex. B at APP008.

seven minute *Medina-Perez* proceeding to have this effect, I take seriously ADA Jurgens' overall impression that:

- 1) the ICE-related portion of the sidebar was “not really a proper conversation”⁶⁰⁹ and made her “uncomfortable” because her “training was that ICE . . . just didn’t play a calculus in a criminal case,”⁶¹⁰
- 2) Judge Joseph and Attorney Jellinek mulled “different options to have [Mr. Medina-Perez] not be taken by ICE,”⁶¹¹ and
- 3) Judge Joseph’s actions were a “misguided attempt to do what she thought was right.”⁶¹²

The SJC has explained that “[i]t is quite possible for a judge to uphold the highest standards of integrity and impartiality and yet violate” the Code of Judicial Conduct.⁶¹³ I believe this is such an instance. As discussed above, Rule 1.2 requires that “[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”⁶¹⁴

On the afternoon of April 2, 2018, Judge Joseph was a new judge dealing with sensitive issues in a fast-moving case without full information, and she attempted to resolve those issues neutrally and fairly. But in doing so, she inadvertently expressed herself in ways that created the appearance of bias against ICE and in favor of Mr. Medina-Perez—and by extension, were inconsistent with the spirit of the Lunn Policy—by, for example: (1) expressing concern about whether ICE would take custody of Mr. Medina-Perez, (2) discussing potential actions that could delay ICE from doing so, (3) using the word “we” when making statements such as “what could we do,” and “[w]hat if we continued it,”⁶¹⁵ and (4) granting Attorney Jellinek’s request to go off the record in the midst of a discussion specifically relating to ICE’s interest in taking custody of someone in the courthouse, an issue that had been receiving a fair amount of attention at the time and that had been the subject of both an SJC opinion and a Trial Court policy, each of which had been issued within the prior ten months. I therefore find that the CJC has proven by clear and convincing

⁶⁰⁹ Tr. 232:19-25.

⁶¹⁰ Tr. 236:14-19.

⁶¹¹ Tr. 232:19-234:2.

⁶¹² Tr. 243:25-244:3.

⁶¹³ *Matter of Brown*, 427 Mass. 146, 148, 691 N.E.2d 573, 575 (1998).

⁶¹⁴ Code of Judicial Conduct, Rule 1.2.

⁶¹⁵ Ex. G at APP041; Tr. 236:8-13.

evidence that Judge Joseph’s words and actions on the afternoon of April 2, 2018, created the appearance of impropriety and bias in violation of Rule 1.2.⁶¹⁶

ii. Charges of Violating the Code of Judicial Conduct by Going Off the Record

Special Rule 211(A)(1) requires that District Court courtroom proceedings before a judge be recorded electronically, with certain narrow exceptions for administrative matters or matters in which a court reporter is creating the record.⁶¹⁷ The parties agree that, in conducting a portion of the *Medina-Perez* hearing off the record, Judge Joseph violated this Rule.⁶¹⁸ However, Judge Joseph disputes that the violation of Special Rule 211 also constituted conduct prejudicial to the administration of justice and unbecoming a judicial officer in violation of Chapter 211C § 2(5)(d) or a violation of Rules 1.1, 1.2, or 2.5. As Judge Joseph was unaware of Special Rule 211 and did not go off the record with the intent of shielding any substantive matters from public view, I find that her conduct does not rise to the level of a Chapter 211C § 2(5) or Code violation, except in how it contributed to the appearance of impropriety and bias addressed above.⁶¹⁹

⁶¹⁶ Although the CJC argues that creating the appearance of bias is a violation of Rule 2.2, *see* CJC Post-hearing Mem. at 37, Rule 2.2 only requires that a judge “perform all duties of judicial office fairly and impartially.” “Impartially,” in turn, is defined to include the “absence of bias.” Code of Judicial Conduct, Terminology. Therefore, while Rule 2.2 requires that a judge perform her duties without bias, it does not speak to an “appearance of bias”—which would fall under the scope of Rule 1.2. Accordingly, notwithstanding my conclusion that the record does not support a finding that Judge Joseph acted with actual bias, I nonetheless find that certain of her statements and actions created the appearance of bias against ICE, in violation of Rule 1.2. In addition, because her conduct violated Rule 1.2, it also technically violated Rule 1.1, the provision requiring “judge[s] [to] comply with the law, including the Code of Judicial Conduct.”

⁶¹⁷ The Rule reads, in pertinent part, “In all divisions of the District Court Department and in the Boston Municipal Court Department, all courtroom proceedings, including arraignments in criminal and juvenile delinquency cases, shall be recorded electronically, subject to the availability and functioning of appropriate recording devices, except that the following may but need not be recorded: (a) the call of the list and similar matters of an administrative nature; (b) proceedings that are being recorded by a court reporter appointed by the court; and (c) proceedings conducted by a magistrate other than a judge.” Ex. K at APP122.

⁶¹⁸ Judge Joseph Post-hearing Mem. at 49; Formal Charges ¶ 22; Response ¶ 22.

⁶¹⁹ *See* Section IV.C.i.b, *supra*. Although the CJC’s Post-hearing Memorandum alleges that Judge Joseph “granted [Mr. Medina-Perez’s] request to go off the record, without being given any basis for doing so, and despite the clear prohibition in District Court Rule 211 that requires that non-administrative courtroom proceedings be conducted on the record” in a subsection titled, “Judge Joseph not only violated Rule 1.1, Rule 1.2, and Rule 2.2 but did so willfully,” CJC Post-hearing Mem. at 44-45, I do not understand the CJC to be asserting that Judge Joseph was aware of Special Rule 211 as of April 2, 2018, and acted willfully in violating it. This is because elsewhere, the CJC argues that Judge Joseph either “knowingly failed to follow District Court Special Rule 211 or was merely negligent in failing to familiarize herself with the rules of the District Court.” *Id.* at 39. In any event, as I find that Judge Joseph did not know of Special Rule 211 as of April 2, 2018, I find that she did not willfully violate the Rule.

On April 2, 2018, Judge Joseph was a new, inexperienced judge who was not aware of Special Rule 211.⁶²⁰ As explained above, her ignorance of Special Rule 211 was understandable given that her training as a new judge did not address that Rule, and during her career, she had experienced many occasions in which judges had gone off the record for a variety of reasons.⁶²¹ Notably, both Clerk Okstein and Attorney Jellinek were also unaware of Special Rule 211, and even the far more experienced First Justice Heffernan acknowledged that she only learned about “a rule regarding recording . . . anecdotally.”⁶²² The testimony adduced during the hearing reflected that the practice of going off the record in the District and Superior Court varied widely among judges, though it generally became less frequent over time.⁶²³ Multiple former judges testified that going off the record was not an uncommon practice, and indeed that there were circumstances in which it was beneficial to the efficient and secure handling of a case to do so.⁶²⁴ For example, although First Justice Heffernan and RAJ Fortes testified that they never went off the record, Judge McLeod, Judge Ball, and Chief Justice Dawley each testified that there were many occasions during their careers when they went off the record.⁶²⁵ Because the evidence does not support a finding that Judge Joseph was aware of Special Rule 211 or any rule that required that all court proceedings must be recorded, I find that she did not violate the Rule willfully.

Nor does the evidence support that Judge Joseph went off the record with any intent to avoid creating a public record of a discussion regarding Mr. Medina-Perez evading ICE.⁶²⁶ Although Attorney Jellinek testified that this was his intention,⁶²⁷ Judge Joseph’s testimony and her conduct throughout the multiple calls during the *Medina-Perez* proceeding demonstrate that she was primarily focused on accommodating the attorney-client

⁶²⁰ Tr. 778:4-20. The CJC claims that when Judge Joseph met with RAJ Fortes in April 2018 that she told “[RAJ] Fortes that she already knew that all courtroom proceedings must be recorded.” CJC Post-hearing Mem. at 32 (citing Tr. Stenographer’s Certified Tr. 546:9-11 (RAJ Fortes’ testimony that when she told Judge Joseph that all courtroom proceedings must be recorded, “[s]he said she knew that.”)). RAJ Fortes later clarified that “I don’t think she said specifically I know about Rule 211. But she said I know. All court proceedings need to be recorded.” Tr. 547:4-719-21. I do not view RAJ Fortes’ testimony as being inconsistent with Judge Joseph’s testimony that this conversation with RAJ Fortes was the first time that she learned of Special Rule 211. Tr. 722:18-723:17; 778:14-17; Ex. N at APP222:15-223:11. As discussed above, *supra* n.490, I find that Judge Joseph likely said “I know” simply to acknowledge what RAJ Fortes was telling her when explaining Special Rule 211, as opposed to implying that she had known—even before April 2, 2018—that there was a court rule that mandated that all court proceedings be recorded.

⁶²¹ See Sections III.A; III.D.vi.b, *supra*.

⁶²² Tr. 205:13-18; 358:8-10; 461:22-462:1.

⁶²³ See Section III.D.vi.b, *supra*.

⁶²⁴ See *id*. Indeed, following the events of April 2, 2018, Chief Justice Dawley was concerned enough about the issue of judges possibly going off the record, that he instituted an additional training on Special Rule 211 for new judges. Tr. 605:17-25.

⁶²⁵ See Section III.D.vi.b, *supra*.

⁶²⁶ Section III.D.vi.c, *supra*.

⁶²⁷ Tr. 72:18-73:9.

relationship, first for Attorney Bostwick and then for Attorney Jellinek. Granting the request to go off the record was another instance of such an accommodation.⁶²⁸ Indeed, given the sudden change in defense counsel and ADA Jurgens' seemingly abrupt reversal on whether Mr. Medina-Perez was in fact the subject of the Pennsylvania fugitive warrant, it is not surprising that Judge Joseph granted Attorney Jellinek's request, thinking that there may be some ancillary or sensitive matter regarding Mr. Medina-Perez's identity or representation, especially given (1) her prior experience with judges permitting off-the-record discussions, (2) she was unaware of Special Rule 211, (3) the absence of any objection or concern being voiced by either ADA Jurgens or Clerk Okstein to going off the record, and (4) the fast-moving nature of the proceeding and Attorney Bostwick having been replaced by Attorney Jellinek without explanation.⁶²⁹

For these reasons, I find that Judge Joseph's violation of Special Rule 211 is insufficient to support a finding that it also resulted in a violation of Chapter 211C § 2(5)(d) or the Code of Judicial Conduct. While the CJC is correct that Rules 1.1 and 1.2 prohibit violations of law, which are defined to include court rules like Special Rule 211, the technical and isolated nature of Judge Joseph's violation of Special Rule 211 does not rise to the level of a Code violation.⁶³⁰ Judge Joseph unintentionally violated a procedural rule one time,⁶³¹ for 52 seconds. While the frequency of off-the-record discussions being permitted by a number of experienced District and Superior Court judges over the years—including on many occasions in Judge Joseph's presence during the course of her 25-year career before she was appointed to the bench—does not suggest that she did not violate Special Rule 211, this context is relevant to the issues in this case and undermines the charge that Judge Joseph violated Rule 2.5 by failing to perform her judicial duties competently.

iii. Charges of Willfully Failing To Be Candid During Meetings with Supervisory Judges

The CJC charges that Judge Joseph was less than fully candid in her conversations with Chief Justice Dawley, RAJ Fortes, and First Justice Heffernan regarding her alleged involvement in Mr. Medina-Perez evading ICE, and her having gone off the record in the *Medina-Perez* proceeding. As I find that Judge Joseph was truthful when she denied having any complicity in Attorney Jellinek's plan to enable Mr. Medina-Perez to evade ICE, and was otherwise fully candid in her conversations with the supervisory judges, I find that she did not violate M.G.L. c. 211C, § 2(5)(b) or (d), or Rule 2.16.

On April 4, 2018, when First Justice Heffernan first approached Judge Joseph to discuss the events of two days earlier, Judge Joseph learned for the first time that Mr.

⁶²⁸ See Section III.D.vii, *supra*.

⁶²⁹ See Ex. N. at APP209:3-213:16; Tr. 692:2-693:3.

⁶³⁰ See *supra* n.554.

⁶³¹ Tr. 778:21-22.

Medina-Perez had exited the court via the sallyport door, thereby evading ICE.⁶³² First Justice Heffernan was trying to gather information about what had happened, and did not ask Judge Joseph whether she went off the record.⁶³³ Nor did Judge Joseph think to raise with First Justice Heffernan the fact that there had been a brief off-the-record discussion.⁶³⁴ I do not find it surprising that Judge Joseph did not affirmatively note that there had been this off-the-record discussion given that, at the time, she was still unaware that there was a rule prohibiting this.⁶³⁵ I also think it is understandable that Judge Joseph did not affirmatively raise with First Justice Heffernan the fact that she had approved Mr. Medina-Perez going back to the lockup area after the arraignment so that he could speak with his attorney, with the aid of the interpreter, and pick up his property. As of April 4, 2018, Judge Joseph was still completely unaware of Attorney Jellinek’s plan with Court Officer MacGregor, and there was no reason for her to have viewed permitting Mr. Medina-Perez to return to the lockup area as being at all questionable. There was also no reason for her to have thought that doing so would have somehow precluded or impeded ICE from then taking Mr. Medina-Perez into custody in the lockup area—which Judge Joseph had also explicitly allowed.⁶³⁶ First Justice Heffernan testified that she felt that Judge Joseph told her “what she thought was important,” and that she did not think Judge Joseph “was holding back anything.”⁶³⁷ I agree.

Judge Joseph also met with RAJ Fortes at the Lowell District Court at some point between April 5 and April 20, 2018. The CJC argues that during Judge Joseph’s conversation with RAJ Fortes, she “never specifically acknowledged that a portion of the proceeding on April 2, 2018, [was] not recorded,” and did not “admit at any point during this meeting that she had told the clerk to turn off the recording system.”⁶³⁸ I do not believe these arguments fairly take into account the context of this meeting and what RAJ Fortes testified they said to each other when they met. As discussed in greater detail in my Findings of Fact, during her testimony, RAJ Fortes agreed that she began their discussion about the April 2, 2018, incident with her telling Judge Joseph that “***I understand you may have gone off the record.***”⁶³⁹ She also agreed that Judge Joseph never disputed that, and that the assumption throughout their discussion was that a portion of the proceeding was conducted off the record.⁶⁴⁰ Indeed, RAJ Fortes had even brought a copy of Special Rule 211 with her to their

⁶³² Tr. 718:21-719:2.

⁶³³ Tr. 473:8-11.

⁶³⁴ Tr. 719:3-16.

⁶³⁵ Tr. 719:3-14.

⁶³⁶ See Section III.D.vi.d, *supra*.

⁶³⁷ Tr. 506:15-23.

⁶³⁸ CJC Post-hearing Mem. at 41.

⁶³⁹ Tr. 556:2-5 (emphasis added).

⁶⁴⁰ Tr. 556:6-557:4.

meeting and reviewed its requirements with Judge Joseph.⁶⁴¹ Thus, it is clear from the context of the conversation that Judge Joseph and RAJ Fortes were working under the same assumption—that part of the proceeding had been conducted off the record.⁶⁴² In addition to the fact that RAJ Fortes began their discussion by stating that she understood that Judge Joseph may have gone off the record, Judge Joseph’s belief that RAJ Fortes understood that she had permitted the discussion to go off the record is also supported by the fact that during their meeting Judge Joseph told RAJ Fortes that she had previously approved going off the record in a case that she had presided over in Waltham (by directing that the microphone at the sidebar be disconnected; in that case, there was a concern that the recording machine’s microphone was actually broadcasting the sidebar conference into the audience).⁶⁴³

On May 8, 2018, Judge Joseph met with Chief Justice Dawley and RAJ Fortes in Chief Justice Dawley’s office. The CJC charges that Judge Joseph was less than fully candid in several respects during this meeting.

First, the CJC alleges that:

“[w]hen Chief Justice Dawley asked Judge Joseph *why she had directed that the courtroom recorder be shut off*, Judge Joseph was less than fully candid when she failed to respond by telling him that she was concerned that ICE was incorrectly seeking Mr. Medina-Perez on an immigration detainer, that she was concerned that (1) ICE would take custody of Mr. Medina-Perez before his attorney had a chance to confer with him, (2) she wanted to pause ICE taking him into custody, or (3) she wanted Mr. Medina-Perez’s attorney to have an opportunity to explain his rights to him before ICE took him into custody.”⁶⁴⁴

In doing so, the CJC conflates Judge Joseph’s reasons for raising with Attorney Jellinek and ADA Jurgens the possibility of continuing the proceeding until the following day with her reasons for granting Attorney Jellinek’s request to go off the record. As to the latter question, Judge Joseph was clear both during the hearing and her June 6, 2023, interview with the CJC’s Counsel that, at the time, she did not know why Attorney Jellinek was requesting to go off the record.⁶⁴⁵ He did not provide a reason for his request, nor did she ask for one.⁶⁴⁶ As Judge Joseph testified, “everything happened really quickly,” “[t]here wasn’t a

⁶⁴¹ Tr. 546:15-547:1; 724:15-21.

⁶⁴² See Tr. 556:2-557:2; Tr. 724:22-725:3.

⁶⁴³ See Tr. 725:7-726:10; Tr. 557:16-20 (RAJ Fortes acknowledging that while she does not have a specific recollection, it is certainly possible that she may have asked Judge Joseph if she had “ever gone off the record before, and [Judge Joseph] started talking about something that had happened in Waltham.”),

⁶⁴⁴ CJC Post-hearing Mem. at 42 (emphasis added).

⁶⁴⁵ Tr. 692:3-6; 696:14-17; Ex. N at APP209:3-11.

⁶⁴⁶ Tr. 692:3-6. During her interview with the CJC’s Counsel, which took place five years after her discussion with Chief Justice Dawley and RAJ Fortes, Judge Joseph speculated as to what she thought Attorney Jellinek might raise during the off-the-record sidebar: aside from Mr. Medina-Perez’s identity, she speculated that he (...continued)

lot of contemplation,” and she very simply “didn’t give it much thought.”⁶⁴⁷ The speed at which all of this was transpiring is reflected in the transcript and audio of the proceeding, which indicate that Judge Joseph agreed to go off the record immediately after Attorney Jellinek’s request,⁶⁴⁸ clearly demonstrating that when she granted his request, she did not give it any thought (which is not surprising given her experience over the years with judges going off the record and her unfamiliarity at the time with Special Rule 211). The CJC’s suggestion that Judge Joseph should have thought to explain to Chief Justice Dawley everything that she had been thinking about *throughout the recorded portion* of the sidebar when she was responding to his specific and narrow question about why she had gone off the record is also inconsistent with what Chief Justice Dawley made clear he was interested in understanding at the time. As Chief Justice Dawley testified, they “never got to that level of discussion . . . it was more about the tape being shut off, the importance of the rule.”⁶⁴⁹ Certainly, if Chief Justice Dawley was interested in hearing what Judge Joseph’s thoughts were regarding ICE, their interest in Mr. Medina-Perez, the identity issues people were looking into, her interest in ensuring that Attorney Jellinek and Mr. Medina-Perez have an opportunity to speak with each other, etc., he could have asked Judge Joseph about such matters.

Second, the CJC alleges that Judge Joseph failed to say that the off-the-record sidebar “included a discussion of ICE and a way for Mr. Medina-Perez to avoid ICE custody.”⁶⁵⁰ First, with respect to ICE generally, Chief Justice Dawley already knew that there was a serious identity issue with respect to ICE’s detainer that Attorney Jellinek, Judge Joseph and ADA Jurgens had been discussing during the April 2 proceeding (as was evident from the recording of that proceeding that Chief Justice Dawley had reviewed prior to the meeting).⁶⁵¹ Judge Joseph’s supposed failure to mention that the off-the-record portion of the sidebar included a continuation of the on-the-record discussion of ICE is entirely reasonable, particularly given that, as noted above, Chief Justice Dawley made clear that the primary focus of their discussion during the May 8 meeting was on the importance of remaining on the record, characterizing the meeting as a whole as a training opportunity.⁶⁵² Moreover, Judge Dawley’s framing of the meeting suggests that he was steering the discussion and did not expect Judge Joseph to recite every detail of the off-the-record discussion. Second, with respect to the allegation that Judge Joseph failed to say that the off-the-record sidebar included a discussion about how Mr. Medina-Perez could avoid ICE by leaving the courthouse through the sallyport exit, I find, as explained above, that the off-the-record

might have wanted to discuss “something personal, something related to him, something related to the client, something related to Attorney Bostwick and why she wasn’t back.” Ex. N at APP213:1-8.

⁶⁴⁷ Ex. N at APP210:1-6; Tr. 692:3-16.

⁶⁴⁸ Ex. G at APP041; Ex. J at 2:49:58-2:50:05.

⁶⁴⁹ Tr. 603:3-19.

⁶⁵⁰ CJC Post-hearing Mem. at 42.

⁶⁵¹ Tr. 597:15-25; 600:15-17.

⁶⁵² Tr. 603:7-12; 604:15-605:10.

sidebar did not include such a discussion. Accordingly, I find that Judge Joseph was candid in this respect as well.

Third, the CJC alleges that although Judge Joseph “strongly and adamantly” denied to Chief Justice Dawley that she had any role in Mr. Medina-Perez’s leaving the NDC through the sallyport exit to evade ICE, she should have admitted that her actions had the “unintended effect” of assisting Mr. Medina-Perez, as she stated in her Response to the CJC’s Formal Charges.⁶⁵³ I disagree. Judge Joseph reasonably interpreted Chief Justice Dawley’s questions as asking whether she had taken any action that day with the intent to assist Mr. Medina-Perez in leaving the courthouse through the sallyport exit in order to evade ICE.⁶⁵⁴ It would have been unreasonable for Judge Joseph to have interpreted Chief Justice Dawley’s questions as asking whether she did anything that might have somehow *unintentionally* assisted Mr. Medina-Perez’s evasion. This is especially so given that, as of May 8, 2018, Judge Joseph did not know about Attorney Jellinek’s plan, and so she would not have viewed her granting his request to speak with his client and an interpreter in the lockup area, where Mr. Medina-Perez also had property that would be returned to him, as somehow “facilitating” his escape from ICE (even unintentionally). In addition, it was already clear from the recording—which Chief Justice Dawley had already reviewed—that Judge Joseph had approved Attorney Jellinek’s request to go to the lockup area with Mr. Medina-Perez.⁶⁵⁵ Accordingly, I also find that Judge Joseph did not fail to respond candidly to Chief Justice Dawley’s inquiry relating to whether she had played any role in Mr. Medina-Perez’s escape from ICE.

Similarly, the CJC also alleges that Judge Joseph failed to admit in her June 6, 2023, interview that (1) she said or did anything to facilitate Mr. Medina-Perez avoiding ICE, (2) she said or did anything that could have led Attorney Jellinek to believe that she had authorized his plan, or (3) that Attorney Jellinek told her about his plan during the off-the-record sidebar.⁶⁵⁶ For the same reasons that it was reasonable for Judge Joseph to make no such admissions in her May 8, 2018, discussion with Chief Justice Dawley and RAJ Fortes, it was reasonable for her not to do so in her interview with the CJC’s Counsel.

In sum, for the reasons set forth above, including in the detailed Findings of Fact section of this Report, I find that Judge Joseph was fully candid in her discussions with the supervisory judges and did not violate Rule 2.16 or M.G.L. c. 211C, § 2(5)(b) or (d).

⁶⁵³ CJC Post-hearing Mem. at 42-43.

⁶⁵⁴ Tr. 735:11-736:10.

⁶⁵⁵ Tr. Tr. 597:15-25.

⁶⁵⁶ CJC Post-hearing Mem. at 43.

V. Sanction Recommendation

A. Discussion

M.G.L. c. 211C § 8(4) sets out eight sanctions that the CJC may recommend to the SJC: removal, retirement, imposition of discipline as an attorney, imposition of limitations or conditions on the performance of judicial duties, public or private reprimand or censure, imposition of a fine, assessment of costs and expenses, or imposition of any other sanction which is reasonable and lawful. While the appropriate sanction “depends on the particular circumstances,”⁶⁵⁷ decisions in prior judicial misconduct cases in Massachusetts offer some guidance as to the appropriate sanction.⁶⁵⁸

B. Mitigating and Aggravating Factors

In determining the appropriate sanction, “it is necessary to consider both mitigating and aggravating factors.”⁶⁵⁹ As explained below, relevant mitigating factors can include inexperience, the respondent’s judicial record both before and after the alleged misconduct, personal and professional stress, admission of mistake (if committed), and remorse. Potentially relevant aggravating factors can include dishonesty, whether the misconduct involved corruption, moral turpitude, or illegality, and lack of remorse.

i. Mitigating Factors

There are five relevant mitigating factors in this matter:

First, as the CJC acknowledges, Judge Joseph was a relatively new, inexperienced judge on April 2, 2018, making it likely that she was less sensitive to appearance issues than more tenured judges.⁶⁶⁰

Second, she has learned from her mistake of going off the record, and has not done so since.⁶⁶¹

⁶⁵⁷ *Matter of Larkin*, 368 Mass. 87, 91, 333 N.E.2d 199, 201 (1975); accord *Matter of Sushchuk*, 489 Mass. at 337, 183 N.E.3d at 395 (The “appropriate disposition of disciplinary matters of this type depends on the particular circumstances.” (internal quotation omitted)).

⁶⁵⁸ See *Matter of Sushchuk*, 489 Mass. at 340 n.9, 183 N.E.3d at 397 n.9.

⁶⁵⁹ *Matter of King*, 409 Mass. at 608, 568 N.E.2d at 598; see also *Matter of Ford*, 404 Mass. 347, 356, 535 N.E.2d 225, 230 (1989) (“[I]n considering an appropriate disposition of the matter, we take into account certain mitigating factors established in the record.”).

⁶⁶⁰ See CJC Post-hearing Mem. at 49.

⁶⁶¹ Tr. 778:21-22. See *Matter of Scott*, 377 Mass. 364 at 369, 386 N.E.2d at 221 (including as a “palliating circumstance[.]” that Judge Scott’s courtroom misconduct “was largely committed several years ago, without significant recurrence in recent years”); see also *Matter of Markey*, 427 Mass. at 805, 696 N.E.2d at 529 (noting that the “[m]itigating facts found by the hearing officer include that ... Judge Markey has corrected his practice (...continued)

Third, shortly after the incident, Judge Joseph acknowledged her mistake in going off the record and apologized to Chief Justice Dawley and RAJ Fortes.⁶⁶² She also expressed remorse about going off the record in her sworn interview with the CJC’s Counsel.⁶⁶³ I note that these acts of contrition are somewhat counterbalanced by Judge Joseph’s failing to acknowledge that her choice of words in certain respects, and her decision to go off the record during the sidebar conference in which ICE’s presence was being discussed, created the appearance of impropriety and bias. However, I am also mindful that Judge Joseph stated in her Response to the Formal Charges as follows: “Although I had no knowledge of David Jellinek’s plan, and no intent to assist in Medina-Perez’s escape, I regret the harm that my handling of the matter caused the reputation of the Massachusetts judiciary.”⁶⁶⁴

Fourth, the CJC acknowledges that Judge Joseph “has already experienced hardship due to the heightened public scrutiny and lengthy pendency of this matter, the federal indictment, and her suspension from the bench pending resolution of the federal indictment.”⁶⁶⁵ Following her indictment in April 2019, Judge Joseph was suspended from judicial duties and unable to work for over three years.⁶⁶⁶ Her federal case and the Formal Charges garnered significant local and national media coverage, much of it reflecting an inaccurate or incomplete understanding of the facts.

Finally, the conduct underlying the Code violation “did not involve corruption or moral turpitude [and] was not directed to personal gain.”⁶⁶⁷ Rather, it involved statements and actions that could be misinterpreted to suggest an improper or biased perspective on a matter in which actual and perceived neutrality is critically important.

ii. Aggravating Factors

None of the aggravating factors typically considered in judicial disciplinary proceedings (noted above) apply here.

with regard to plea colloquies, and the proceedings around the Commission’s charges have raised his consciousness with regard to the impropriety of his ex parte telephone call.”).

⁶⁶² Tr. 550:6-19; 600:11-601:2. See *Matter of Scott*, 377 Mass. at 369, 386 N.E.2d at 221 (considering as a mitigating factor that Judge Scott “has accepted responsibility for the misconduct”).

⁶⁶³ See Ex. N at APP229:17-230:5 (“Had I known that there was [Special Rule 211] then, I never would have gone off the record.”); APP255:9-256:1 (“[I]f I had known that it was wrong to be off the record, certainly that never would have happened.”).

⁶⁶⁴ Judge Joseph’s Response to Formal Charges, at 26.

⁶⁶⁵ CJC Post-hearing Mem. at 49.

⁶⁶⁶ Ex. N at APP236:5-6; 254:23-255:6.

⁶⁶⁷ *Matter of Scott*, 377 Mass. at 369, 386 N.E.2d at 221; see also *In re Murphy*, 452 Mass. 796, 803, 897 N.E.2d 1220, 1226 (2008) (considering absence of “dishonesty, corruption, or illegality” as a relevant mitigating factor).

C. Analysis and Sanction Recommendation

The CJC urges that I impose a sanction of indefinite suspension without pay and referral to the legislature and the governor for removal, in addition to public reprimand or public censure.⁶⁶⁸ However, its arguments for suspension without pay are based on alleged violations of Rules 2.5 and 2.16 that are not supported by clear and convincing evidence. Moreover, it bases its reasoning for suspension on three prior SJC decisions—*Matter of Bonin*, *In Re: Thomas Estes*, and *In the Matter of Paul Sushchyk*⁶⁶⁹—each of which addressed conduct materially different from, and far worse than, Judge Joseph’s.

First, in *Matter of Bonin*, which the CJC concedes involved “very different” facts, the SJC found that Judge Bonin attended a meeting that he “should have known” was intended to be a fundraiser for parties with cases pending before the Superior Court, in addition to receiving gifts and making appointments that created the appearance of impropriety.⁶⁷⁰ Though Judge Joseph’s actions also created the appearance of impropriety, they were unintentional, not premeditated, and generally motivated by a desire to allow an attorney sufficient time to adequately represent his client. Second, in *In Re: Thomas Estes*, Judge Estes stipulated that he had an undisclosed sexual relationship with a clinician member of the “team” in a drug court session he oversaw, that he and the clinician had discussions regarding drug court matters during their undisclosed relationship, that he used his chambers for several of their sexual encounters, and that he used his official court email account to communicate regarding the affair.⁶⁷¹ Finally, in *In the Matter of Paul Sushchyk*, the SJC concluded that Judge Sushchyk engaged in an intentional, nonconsensual, and unwelcome touching of a court employee and that he knowingly provided a false version of events after being confronted with the allegations.⁶⁷² Judge Joseph’s words and actions during a six minute and 12 second proceeding over seven years ago, in which she did not engage in any intentional misconduct and was confronting an unusual set of circumstances as a new judge, pale in comparison to the conduct at issue in the cases cited by the CJC. In addition, I find that Judge Joseph has been fully candid about the events of April 2, 2018, with supervisory judges, the CJC’s Counsel, and this Hearing Officer.

⁶⁶⁸ *Id.* at 52. The SJC has stated that there is no meaningful difference between a public reprimand and a public censure: “[t]he Committee has discussed in its ‘Recommendation’ whether the proper sanction to be applied is public reprimand or public censure. We have used the terminology of public censure in prior cases of judicial misconduct, but the choice of one form of words rather than another to express a result is not important, nor does it carry any special significance. What is important is that this court publicly reprehends Judge Scott’s behavior and will not tolerate any repetition.” *Matter of Scott*, 377 Mass. at 369, 386 N.E.2d at 221 (citation omitted). See also *Matter of Donohue*, 390 Mass. 514, 521 n.6, 458 N.E.2d 323, 327 n.6 (1983) (“[t]he hearing officer recommended a ‘reprimand,’ and the commission also used the term ‘censure.’ The difference in terminology is not important.”).

⁶⁶⁹ CJC Post-hearing Mem. at 49.

⁶⁷⁰ *Matter of Bonin*, 375 Mass. 680, 711, 378 N.E.2d 669, 685 (1978).

⁶⁷¹ *In Re: Thomas Estes*, SJC No. OE-136, Order at 2, 4.

⁶⁷² 489 Mass. at 337, 183 N.E.3d at 395.

Based on my findings that Judge Joseph violated Rule 1.2 (and, as a result, Rule 1.1) by creating the appearance of impropriety and bias through her statements regarding ICE during the sidebar conference, and by going off the record in violation of Special Rule 211 during that discussion, I recommend that Judge Joseph receive a public reprimand pursuant to M.G.L. c. 211C § 8(4)(e). If not for the highly public nature of this matter over the past seven years, including the public hearing held in June, I would recommend that Judge Joseph receive a private reprimand.⁶⁷³ As the CJC notes, “nearly all” CJC proceedings are confidential under M.G.L. c. 211C § 6, and “judicial disciplinary matters become public only in rare instances and many complaints that include discipline are resolved without any public disclosure.”⁶⁷⁴ However, as this has very much been a public matter, a private reprimand would not serve the interests of transparency. Moreover, given the history of this matter, I think it is important that there not be any misunderstanding as to what Judge Joseph is—and is not—being reprimanded for.

I further recommend that the reprimand state, in essence, as follows:

Judge Shelley M. Richmond Joseph is hereby publicly reprimanded for having inadvertently created the appearance of impropriety and bias through her communications with the defense counsel and assistant district attorney during a defendant’s arraignment, and for unknowingly violating a court rule by granting the defense counsel’s request to go off the record during a discussion regarding immigration authorities’ interest in taking custody of the defendant. For the avoidance of doubt, because the record does not support a finding that Judge Joseph engaged in any intentional misconduct—including (1) authorizing the defense counsel’s plan to enable the defendant to evade immigration authorities, or (2) misleading court authorities when discussing her actions on the day of the defendant’s arraignment—she is not being reprimanded for any such alleged conduct.

⁶⁷³ Historically, the SJC has reserved public reprimand for cases involving conduct far more serious than the inadvertent appearance of impropriety and bias conduct at issue here. For example, in *Matter of Scott*, the SJC imposed a public reprimand after finding that “over a protracted period of time” of approximately six years, Judge Scott “ha[d] followed a course of judicial conduct which was without justification in law . . . [that] resulted in the violation of legal rights, including constitutional rights, of the parties before her,” many of whom were “generally indigent.” 377 Mass. 364, 368, 386 N.E.2d 218, 221 (1979). As another example, in *Matter of Brown*, the SJC publicly reprimanded Judge Brown for making inappropriate comments about a party appearing in court before him. 427 Mass. 146, 154, 691 N.E.2d 573, 578-79 (1998). In that case, the SJC held that Judge Brown’s comments went “far beyond any comment appropriate to the circumstances” and “were intemperate, excessive, unjustified by anything properly before the court, and gratuitously insulting of persons directly and indirectly implicated in the case at bar.” 427 Mass. 146, 150, 691 N.E.2d 573, 576 (1998). And in *In re Murphy*, Judge Murphy was publicly reprimanded for using court stationery to write letters—that were inappropriate in tone and in substance and “could be viewed as an attempt by a judge to exert inappropriate pressure”—to the opposing party in a lawsuit in which he was personally involved. *In re Murphy*, 452 Mass. at 798-802, 897 N.E.2d at 1222-25.

⁶⁷⁴ CJC Response at 11-12.

I do not recommend that there be any period of monitoring associated with this proposed reprimand, nor do I recommend that Judge Joseph be assessed the costs incurred by the CJC for its investigation or the hearing.

Finally, I would note that in arguing for public reprimand, indefinite suspension, and referral to the legislature and the governor for removal, the CJC cites the SJC's concerns in *In Re: Thomas Estes*, asserting that Judge Joseph is unable to "command the respect and authority essential to the performance of [her] judicial function."⁶⁷⁵ While I fully share the view that public trust in the judiciary is an important consideration, I disagree that Judge Joseph is unable to command the public's respect and authority in the future. Indeed, one of the reasons that this Report is as detailed as it is, and that I am recommending that the proposed reprimand of Judge Joseph be public, is in an effort to help ensure that. Since the events of her less than seven minute conference in the *Medina-Perez* proceeding on the afternoon of April 2, 2018, Judge Joseph has repeatedly demonstrated through her conduct, including her candor during the investigation and hearing in this matter and her engagement in public service while suspended from her judicial duties,⁶⁷⁶ that she is a thoughtful, diligent, and conscientious judge undeserving of the harsh public criticism she has received in connection with this matter, and entirely worthy of the opportunity to finally move on from it.

Respectfully submitted,


Denis J. McInerney
Hearing Officer

October 31, 2025

⁶⁷⁵ *In Re: Thomas Estes*, SJC No. OE-136, Order at 5.

⁶⁷⁶ Ex. N at APP254:23-255:6.